Case No. 3:24-cv-01479-S

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

IN RE HIGHLAND CAPITAL MANAGEMENT, L.P.,
Debtor

NEXPOINT REAL ESTATE PARTNERS, LLC (F/K/A HCRE PARTNERS, LLC)

Appellants

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.

Appellee

On Appeal from the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-slg
The Honorable Judge Jernigan, Presiding

APPENDIX IN SUPPORT OF APPELLANT'S OPENING BRIEF

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
515 Congress Ave, Suite 1900
Austin, TX 78701
Tel.: (737) 227-3102
aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway,
Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
bgameros@legaltexas.com

	Record Reference	Exhibit Description	Doc Date(s)	Page Range:
1.	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims	Dkt. No. 906	07/20/2020	ROA.000782-000804
2.	NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims	Dkt. No. 1212	10/29/2020	ROA.000805-000814
3.	Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief	Dkt. No. 2197	04/21/021	ROA.000822-000845
4.	Response to Motion to Disqualify Wick Phillips Gould & Mattin, LLP as Counsel to HCRE Partners	Dkt. No. 2278	05/06/21	ROA.001379-001382
5.	Brief in Support of Response to Motion	Dkt. No. 2279	05/06/21	ROA.001383-001401

	to Disqualify Wick Phillips Gould & Mattin, LLP as Counsel to HCRE Partners			
6.	Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin LLP as Counsel to HCRE Partners, LLC and For Related Relief	Dkt. No. 3106	12/20/2021	ROA.001761-001764
7.	Motion to Withdraw Proof of Claim for NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC re: Claim 146	Dkt. No. 3443	08/12/2022	ROA.001765-001773
8.	Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim	Dkt. No. 3487	09/02/2022	ROA.001774-001800
9.	Declaration of John Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim	Dkt. No. 3488	09/02/2022	ROA.002083-002084
10.	Reply In Support of Motion to Withdraw Proof of Claim	Dkt. No. 3505	09/09/2022	ROA.002225-002229
11.	Order Denying Motion to Withdraw Proof of Claim [Docket No. 3443] as Moot	Dkt. No. 3518	09/14/2022	ROA.002853A-002853B
12.	Excerpts From September 12, 2022, Hearing Transcript	Dkt. No. 3519	09/14/2022	ROA.002793-002853

13.	Excerpts From Reorganized Debtor's Witness and Exhibit List with Respect to Trial to be Held on November 1, 2022	Dkt. No. 3590	10/27/022	ROA.004457-004458
14.	Excerpts From November 1, 2022, Hearing Transcript	Dkt. No. 3616	11/08/2022	ROA.010069, ROA. 010122-010123, ROA, 010127-010130, ROA.010142-010143, ROA. 01077-010178
15.	Memorandum Opinion and Order Sustaining Debtor's Objections to, and Disallowing, Proof of Claim No. 146 [Dkt. No. 906]	Dkt. No. 3766	04/28/2023	ROA.010726-010764
16.	Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146	Dkt. No.3851	06/16/2023	ROA. 010804-010817
17.	Excerpts From Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146	Dkt. No.3852	06/16/2023	ROA. 011107-011253

18.	Response to Debtor's Moti0n for (A) Bad Faith Finding and (B) Attorneys' Fees	Dkt. No. 3995	12/22/2023	ROA.011254-011276
19.	Highland Capital Management L.P.'s Reply in Further Support of its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) In Connection with Proof of Claim 146	Dkt. No. 4018	01/19/2024	ROA.011277-011292
20.	Highland Capital Management, L.P.'s Amended Reply in Further Support of its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC in Connection with Proof of Claim 146	Dkt. No. 4023	01/23/2024	ROA.011293-011307
21.	Transcript Regarding Hearing Held January 24, 2024 Before Judge Stacey G.C. Jernigan re: 1) Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of	Dkt. No. 4030	01/25/2024	ROA.011308-011390

	Claim 146; and 2) Highland's Motion to Stay Contested Matter [Dkt. 4000] or Alternative Relief			
22.	Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146	Dkt. No. 4038	03/05/2024	ROA.000154-000185
23.	Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146	Dkt. No. 4039	03/05/2024	ROA. 000186-000217
24.	Motion for Relief From Order	Dkt. No. 4040	03/18/2024	ROA.011455-011459
25.	Memorandum of Law in Support of Motion for Relief From Order	Dkt. No. 4041	03/18/2024	ROA.011460-011511
26.	Notice of Appeal	Dkt. No. 4042	03/18/2024	ROA.000001-000004
27.	Amended Notice of Appeal	Dkt. No. 4044	03/20/2024	ROA.000005-000074
28.	Highland's Opposition to Motion for Relief from Order	Dkt. No. 4052	04/22/2024	ROA.011512-011524

29.	Reply in Support of Motion for Relief from Order	Dkt. No. 4055	05/01/2024	ROA.011525-011544
30.	Order Denying Motion of NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Seeking Relief from Order Pursuant to Fed. R. of Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(1) & (6)	Dkt. No. 4069	05/21/2024	ROA.011545-011552
31.	Second Amended Notice of Appeal	Dkt. No. 4074	06/04/2024	ROA.000075-0000153

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 5, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD & ASSOCIATES PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

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

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

DEBTOR'S FIRST OMNIBUS OBJECTION TO CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS

*****CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS IN THE SCHEDULES ATTACHED TO THE PROPOSED ORDER ON THIS OBJECTION*****

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

A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH OR BY EMAIL REQUEST TO JONEILL@PSZJLAW.COM

A HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 10, 2020 AT 2:30 P.M. CENTRAL TIME.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242-1496 BEFORE CLOSE OF BUSINESS ON SEPTEMBER 1, 2020 WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM THE DATE OF SERVICE HEREOF. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Highland Capital Management, L.P. (the "Debtor"), by and through its undersigned counsel, hereby files this omnibus objection (the "Objection"), seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), (i) disallowing certain duplicate claims listed on **Schedule 1** to the Order (the "Duplicate Claims"), (ii) reducing and allowing certain overstated claims listed on **Schedule 2** (the "Overstated Claims") in amounts which comport with the Debtor's books and records, (iii) disallowing certain claims that were filed after the applicable bar date listed on **Schedule 3** to the Order (the "Late-Filed Claims"), (iv) disallowing certain claims that have already been satisfied listed on **Schedule 4** to the Order (the "Satisfied Claims"), (v) disallowing certain claims for which the Debtor's books and records show no liability listed on **Schedules 5** and **6** to the Order (the "No-Liability Claims"), and (vi) disallowing claims which contain insufficient documentation listed on **Schedule 7** to the Order (the "Insufficient-Documentation Claims," and together with the Duplicate Claims, the

Overstated Claims, the Late-Filed Claims, the Satisfied Claims, and the No-Liability Claims, the "Disputed Claims"). In support of this Objection, the Debtor respectfully represents as follows:

I. JURISDICTION

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 3007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the "Local Rules").

II. BACKGROUND

3. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's bankruptcy case to this Court [Docket No. 186].[2]

[2] All docket numbers refer to the docket maintained by this Court.

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

7. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the "Bar Date Order"). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the "General Bar Date"). For Governmental Units, the Bar Date Order fixed the deadline to file proofs of claim as April 13, 2020 at 5:00 p.m. (prevailing Central Time). The Bar Date Order also set April 23, 2020 as the deadline to file claims for investors in funds managed by the Debtor (the "Fund Investor Bar Date"). The Debtor also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

8. On March 3, 2020, the Debtor filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the "Bar Date Notice"). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. *See* Certificate of Service [Docket No. 530].

9. The Debtor caused the Bar Date Notice to be published on two occasions each in *The New York Times* and *The Dallas Morning News*—once on March 12, 2020, and once on March 13, 2020. *See Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The New York Times* [Docket No. 533] and *Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The Dallas Morning News* [Docket No. 534].

The Claims Resolution Process

10. In the ordinary course of business, the Debtor maintains books and records (the "Books and Records") that reflect, *inter alia*, the Debtor's liabilities and the amounts owed to its creditors.

11. The Debtor's register of claims (the "Claims Register"), prepared and maintained by Kurtzman Carson Consultants LLC ("KCC")—the court-appointed notice and claims agent in this case—reflects that, as of the date of this Objection, 194 proofs of claim have been filed in the Debtor's chapter 11 case.

12. The Debtor and its professionals have been reviewing and analyzing claims. This process includes identifying categories of claims that may be targeted for disallowance and expungement, reduction, and/or reclassification.

III. RELIEF REQUESTED

13. The Debtor seeks entry of an order, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, (i) disallowing the Duplicate Claims listed on Schedule 1 to the Order, (ii) reducing and allowing the Overstated Claims listed on Schedule 2 to the Order in amounts which comport with the Books and Records; (iii) disallowing the Late-Filed Claims listed on Schedule 3 to the Order, (iv) disallowing the Satisfied Claims listed on Schedule 4 to the Order, (v) disallowing the No-Liability Claims listed on Schedules 5 and 6 to the Order, and (vi) disallowing the Insufficient-Documentation Claims listed on Schedule 7 to the Order.

IV. OBJECTIONS

14. Section 502(a) of the Bankruptcy Code provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). A chapter 11 debtor has the duty to object to the allowance of any

claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1), 1107(a); *see also Int'l Yacht & Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.)*, 922 F.2d 659, 661-62 (11th Cir. 1991).

15. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998); *In re Texas Rangers Baseball Partners*, 10-43400 (DML), 2012 WL 4464550, at *2 (Bankr. N.D. Tex. Sept. 25, 2012). To receive the benefit of *prima fac*ie validity, however, "[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery." *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at *8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff'd sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). Additionally, a claimant's proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes "at least one of the allegations that is essential to the claim's legal sufficiency." *In re Am. Reit, Inc.*, 07-40308, 2008 WL 1771914, at *3 (Bankr. E.D. Tex. Apr. 15, 2008); *In re Starnes,* 231 B.R. 903, 912 (N.D. Tex. May 14, 2008). "The ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . ." 11 U.S.C. § 502(b)(1).

The Disputed Claims Should Be Disallowed and Expunged or Reduced

17. For the reasons set forth below, the Disputed Claims are not enforceable and should be disallowed, expunged, or reduced as set forth herein.

A. Duplicate Claims

18. The Debtor has identified 3 proofs of claim—listed on Schedule 1 to the Order—where each claimant filed multiple proofs of claim representing a single obligation of the Debtor. The Debtor is requesting that the listed Duplicate Claims be disallowed such that only the surviving claims listed on Schedule 1 remain, subject to any other objection the Debtor may bring in the future. Disallowing and expunging these claims will prevent the claimants from receiving multiple recoveries for a single claim.

B. Claims to be Reduced and Allowed

19. The Debtor has examined the 4 proofs of claim listed on Schedule 2 to the Order and has determined that the amounts listed on the claims exceed the liability listed for each claimant on the Debtor's Books and Records. The Debtor is requesting that the amount of each claim be reduced so that it correctly reflects the amount of the Debtor's books and records.

C. Late-Filed Claims

20. The Debtor has identified 1 proof of claim listed on Schedule 3 to the Order that was filed after the passage of the applicable Bar Date.

D. Satisfied Claims

21. The Debtor has identified 11 proofs of claim listed on Schedule 4 to the Order that, according to the Debtor's books and records, were fully satisfied in the ordinary course of business. Disallowing and expunging such claims, therefore, will prevent the claimants from obtaining double-recovery on account of their claims.

E. No-Liability Claims

22. The Debtor has identified 63 proofs of claim listed on Schedules 5 and 6 to the Order that can be characterized as "No-Liability Claims"—*i.e.*, claims that erroneously assert a

liability that is not reflected in the Debtor's books and records. Certain claims listed on Schedule 5 to the Order appear to be protective claims for claimants asserting claims related to agreements with the Debtor. No amount is asserted on these claims and, although the claimants have indicated they would supplement the claims within ninety (90) days, that time has passed and no amendment or supplement has been filed and no additional documentation has been provided to support the claims. Each claim listed on Schedule 6 to the Order erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor. The Debtor has reviewed each No-Liability Claim listed on Schedules 5 and 6 to the Order and all supporting information and documentation provided therewith, made reasonable efforts to research each No-Liability Claim, and determined that the Debtor is not liable for such No-Liability Claims. Accordingly, the Debtor requests that each No-Liability Claim be disallowed and expunged.

F. Insufficient-Documentation Claims

23. The Debtor was not able to determine the validity of the 10 claims listed on Schedule 7 to the Order because such claims were not filed with sufficient accompanying documentation and provided no explanation for the bases of the claims. Additionally, no liability for these claims appears on the Debtor's books and records. Accordingly, the Debtor requests that the Insufficient-Documentation Claims be disallowed and expunged because the claimants have failed to carry their burden to support their claims.

V. RESPONSES TO OBJECTIONS

24. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than **September 1, 2020 at 5:00 p.m. (Central Time)** (the "Response Deadline"). Every Response must be filed with the Office

of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

Pachulski Stang Ziehl & Jones LLP
Jeffrey N. Pomerantz
Ira D. Kharasch
Gregory V. Demo
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
gdemo@pszjlaw.com
joneill@pszjlaw.com

-and-

Hayward & Associates PLLC
Melissa S. Hayward
Zachery Z. Annable
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
mhayward@haywardfirm.com
zannable@haywardfirm.com

25. Every Response to this Objection must contain, at a minimum, the following information:

i. a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;

ii. the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;

iii. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;

iv. any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

v. the name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

26. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor will present to the Court an appropriate order disallowing such claimant's claim, as set forth in **Exhibit A**, without further notice to the claimant.

VI. REPLIES TO RESPONSES

27. Consistent with Local Rules, the Debtor may, at its option, file and serve a reply to a Response by no later than 5:00 p.m. (prevailing Central Time) three (3) days prior to the hearing to consider the Objection.

VII. SEPARATE CONTESTED MATTERS

28. To the extent that a Response is filed regarding any claim listed in this Objection and the Debtor is unable to resolve the Response, the objection by the Debtor to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each claim.

VIII. RESERVATION OF RIGHTS

29. The Debtor hereby reserves the right to object in the future to any of the claims that are the subject of this Objection on any ground, including, but not limited to, 11 U.S.C. § 502(d), and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed claims.

30. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have to exercise rights of setoff against the holders of such claims.

IX. NOTICE

31. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

X. COMPLIANCE WITH LOCAL RULES

32. This Objection includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Objection. The Debtor objects to no more than 100 proofs of claim herein. The Debtor has served notice of this Objection on those persons whose names appear in the signature blocks on the proofs of claim and in accordance with Bankruptcy Rule 7004. Moreover, the Debtor has notified claimants that a copy of their claim may be obtained from the Debtor upon request. Accordingly, the Debtor submits that this Objection satisfies Local Rule 3007-2.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

[Remainder of Page Intentionally Blank]

Dated: July 30, 2020

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717)
Ira D. Kharasch (CA Bar No. 109084)
Gregory V. Demo (NY Bar No. 5371992)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pcszjlaw.com
gdemo@pszjlaw.com

-and-

HAYWARD & ASSOCIATES PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A
(Proposed Order)

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

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

ORDER SUSTAINING FIRST OMNIBUS OBJECTION TO CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS

Having considered the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* (the "Objection"),[2] the claims listed on Schedules 1-7 attached hereto, any responses thereto, and the arguments of counsel, the Court finds that (i) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; (ii) the Objection is a core proceeding under 28 U.S.C. § 157(b)(2); (iii) each holder of a claim listed on Schedules 1–7 attached hereto was properly and timely served with a copy of the Objection, the proposed form of this Order, the accompanying schedules, and the notice of hearing on the Objection; (iv) any entity known to have an interest in the claims subject to the Objection has been afforded reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection; and (v) the relief requested in the Objection is in the best interests of the Debtor's creditors, its estate, and other

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

[2] Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Omnibus Objection.

parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Objection is **SUSTAINED** as set forth herein.

2. Each of the claims listed as a Duplicative Claim on **Schedule 1** hereto is disallowed and expunged in its entirety.

3. Each of the claims listed as an Overstated Claim on **Schedule 2** hereto is reduced and allowed in the amount as stated on Schedule 2.

4. The claim listed as a Late-Filed Claim on **Schedule 3** hereto is disallowed and expunged in its entirety.

5. Each of the claims listed as a Satisfied Claim on **Schedule 4** hereto is disallowed and expunged in its entirety.

6. Each of the claims listed as a No-Liability Claim on **Schedule 5** and **Schedule 6** hereto is disallowed and expunged in its entirety.

7. Each of the claims listed as an Insufficient-Documentation Claim on **Schedule 7** hereto is disallowed and expunged in its entirety.

8. The official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.

9. The Debtor's rights to amend, modify, or supplement the Objection, to file additional objections to the Disputed Claims and any other claims (filed or not) which may be asserted against the Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be overruled, the Debtor's rights to object on other stated grounds or any other grounds that the Debtor may discover are further preserved.

10. Each claim and the objections by the Debtor to such claim, as addressed in the Objection and set forth on **Schedule 1** through **Schedule 7** attached hereto, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

11. The Debtor is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

###END OF ORDER###

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 1 - Duplicate Claims

Sequence No.	Claimant's Name	Claim No. to be Disallowed	Date Filed	Claim Amount	Surviving Claim No.	Objection Page No. Reference
1	Daniel Sheehan and Associates, PLLC	40	3/10/2020	$ 32,433.75	Claim 47	7
2	Dun & Bradstreet	18	12/27/2019	$ 5,746.40	Claim 25	7
3	Eastern Point Trust Company, Inc.	21	12/23/2019	$ 34,875.91	Claim 52	7

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 2 - Overstated Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Proposed Amount	Objection Page No. Reference
1	Collin County Tax Assessor/Collector	34	2/24/2020	$ 524.24	Claim #34 includes an estimated fee of $300.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	$ 224.24	7
2	Collin County Tax Assessor/Collector	35	2/24/2020	$ 2,391.91	Claim #34 includes an estimated fee of $400.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	$ 1,991.91	7
3	Dallas County	6	11/6/2019	$ 62,694.94	Claim #6 includes tax statements for Highland Capital (5 Center Ave, Little Falls, NJ 07242). The Debtor is not affiliated with that party.	$ 60,592.37	7
4	Opus 2 International Inc	10	11/21/2019	$ 51,156.88	Claim #10 includes $11,943 of interest charges. Interest charges are not defined in The Amendment To Opus 2 Internationals Work Order signed on 9/19/2013 between an employee of the Debtor and Opus 2 International, Inc.	$ 39,214.00	7

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 3 - Late Filed Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Parmentier, Andrew	181	5/13/2020	$ 150,000.00	Claim #181 was filed past the April 8, 2020 bar date.	7

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 4 - Satisfied Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	4CAST Inc	12	11/26/2019	$ 16,500.00	Paid via wire on 2/14/2020	7
2	Advent Software Inc	29	12/30/2019	$ 8,378.68	Paid via wire on 3/20/2020	7
3	ConvergeOne, Inc.	61	03/24/2020	$ 23,518.15	Paid via wire on 5/19/2020	7
4	Denton County	Scheduled	12/13/2019	$ 557.14	Paid online on 2/5/2020	7
5	Internal Revenue Service	179	04/27/2020	$ 10,386.87	IRS assessed a late tax deposit penalthy for the claim amount; Payroll provider Paylocity informed Debtor the penalty was removed.	7
6	Kaufman County	9	11/06/2019	$ 12,081.17	Paid online on 2/4/2020	7
7	Maples and Calder	Scheduled	12/13/2019	$ 25,800.11	Paid via wire on 5/29/2020	7
8	McLagen Partners, Inc.	74	04/06/2020	$ 16,400.00	Paid via wire on 4/22/2020	7
9	Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation	76	04/03/2020	$ 7,436.56	Paid by NexBank via check	7
10	Moodys Analytics, Inc.	91	04/08/2020	$ 5,728.05	Paid on 6/8/20 - Reference # 1259769	7
11	Quintairos, Prieto Wood & Boyer	Scheduled	12/13/2019	$ 8,608.17	Paid via wire on 5/13/2020	7

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 5 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Advisors Equity Group, LLC	111	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
2	Eagle Equity Advisors, LLC	110	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
3	HCRE Partner, LLC	146	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
4	Highland Capital Management Fund Advisors,	95	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
5	Highland Capital Management Fund Advisors,	119	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
6	Highland Capital Management Services, Inc.	175	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
7	Highland Capital Management Services, Inc.	176	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
8	Highland Energy MLP Fund	102	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
9	Highland Fixed Income Fund	109	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
10	Highland Floating Rate Fund	125	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
11	Highland Funds I	106	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
12	Highland Funds II	114	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
13	Highland Global Allocation Fund	98	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
14	Highland Healthcare Opportunities Fund	116	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
15	Highland iBoxx Senior Loan ETF	122	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
16	Highland Income Fund HFRO	105	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
17	Highland Long/Short Equity Fund	112	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
18	Highland Merger Arbitrage Fund	132	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
19	Highland Opportunistic Credit Fund	100	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
20	Highland Small-Cap Equity Fund	127	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
21	Highland Socially Responsible Equity Fund	115	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
22	Highland Tax-Exempt Fund	101	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
23	Highland Total Return Fund	126	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
24	NexBank SSB	178	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
25	NexPoint Advisors, L.P.	104	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
26	NexPoint Advisors, L.P.	108	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
27	NexPoint Capital, Inc.	107	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
28	NexPoint Capital, Inc.	140	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
29	NexPoint Discount Strategies Fund	117	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
30	NexPoint Energy and Material Opportunities I	124	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
31	NexPoint Event-Driven Fund	123	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
32	NexPoint Healthcare Opportunities Fund	121	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
33	NexPoint Latin America Opportunities Fund	130	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
34	NexPoint Real Estate Strategies Fund	118	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
35	NexPoint Strategic Opportunities Fund	103	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
36	The Dugaboy Investment Trust	131	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
37	The Dugaboy Investment Trust	177	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 6 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Callan, Bentley	157	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim is for a stock appreciation unit related to a Non-Debtor party	7/8
2	City of Garland	19	12/16/2019	$ 254.58	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
3	Clay Callan	162	04/08/2020	$ 55,125.60	No liability on the Debtor's books and records	7/8
4	Eastern Point Trust Company, Inc.	52	03/18/2020	$ 34,875.91	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
5	Garland Independent School District	20	12/16/2019	$ 459.81	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
6	Grayson County	3	11/06/2019	$ 1,882.01	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
7	HarbourVest 2017 Global Fund L.P.	143	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
8	HarbourVest 2017 Global AIF L.P.	147	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
9	HarbourVest Partners L.P. on behalf of funds and accounts under management	149	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
10	HarbourVest Dover Street IX Investment L.P.	150	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
11	HarbourVest Skew Base AIF L.P.	154	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
12	Hartman Wanzor LLP	42	03/10/2020	$ 701.25	No liability on the Debtor's books and records; claim appears to be filed against Non-Debtor estate	7/8
13	Irving ISD	5	11/06/2019	$ 827.96	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
14	John Morris	60	03/23/2020	$ 500,000.00	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
15	John R. Watkins	89	04/07/2020	$ 322,701.12	No liability on the Debtor's books and records; Never an employee of the Debtor and not an obligation of the Debtor	7/8
16	Linear Technologies, Inc.	4	11/06/2019	$ 489.94	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
17	Mass. Dept. of Revenue	45	03/13/2020	$ 1,352.46	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
18	Mediant Communications Inc.	15	12/02/2019	$ 1,755.57	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
19	Oklahoma Tax Commission	28	02/03/2020	$ 2,706.93	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
20	Park, Jun	73	04/06/2020	$ 32,676.61	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
21	Paul N. Adkins	65	03/30/2020	$ 23,957.95	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
22	Paul N. Adkins	66	03/31/2020	$ 249,230.48	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
23	Tarrant County	2	11/06/2019	$ 8,267.52	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
24	Theodore N. Dameris	85	04/07/2020	Unliquidated	No liability on the Debtor's books and records; claimant does not list an proceeding that they are named as a deponent, witness, party, or any other type of participant in a proceeding.	7/8
25	Theodore N. Dameris	174	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim related to pension and should be asserted against pension, not the Debtor	7/8
26	Zang, Weijun	170	04/09/2020	$ 25,000.00	No liability on the Debtor's books and records; individual not employed at time of bonus payout and not entitled to receive bonus	7/8

Highland Capital Management, L.P.
Case No. 19-34054-sgj11
Schedule 7 - Insufficient Documentation Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Anish Tailor	56	03/20/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
2	Boyce-Field, Mollie	43	03/12/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
3	Charles Byrne	44	03/13/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
4	Donald Salvino	41	03/10/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
5	Garcia, Ericka	71	04/03/2020	$ 2,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
6	Garman Turner Gordon	161	04/08/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
7	Joe Kingsley	171	04/10/2020	BLANK	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
8	Mason, Frederic	63	03/25/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
9	TDA Associates, Inc.	55	03/20/2020	$ 7,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
10	Wilkinson Center	54	03/20/2020	$ -	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8

Jason M. Rudd
Texas State Bar No. 24028786
jason.rudd@wickphillips.com
Lauren K. Drawhorn
Texas State Bar No. 24074528
lauren.drawhorn@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 100
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

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

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

NEXPOINT REAL ESTATE PARTNERS LLC'S RESPONSE TO DEBTOR'S FIRST OMNIBUS OBJECTION TO CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS

NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("HCREP") files this Response to the Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (the "Objection") and respectfully states as follows:

I. PROCEDURAL BACKGROUND

1. On or about April 8, 2020, HCREP filed its Proof of Claim with Highland Capital Management, LP's (the "Debtor") claims agent, a copy of which is attached hereto as Exhibit 1. [Claim No. 146] (the "Proof of Claim"). In the Proof of Claim, HCREP asserts a claim against the Debtor based on the parties' interests and agreements in connection with an entity called SE

Multifamily Holdings, LLC ("SE Multifamily"). In the Proof of Claim, HCREP notes that it has requested information from the Debtor to ascertain the exact amount of its claim, such process is on-going, and has been delayed due to the outbreak of the Coronavirus. *See* Proof of Claim, Ex. A.

2. On July 30, 2020, Debtor filed its Objection, objecting to various categories of claims that it seeks to disallow, expunge, or reduce. HCREP's Proof of Claim was included in Schedule 5 to the Objection, which the Debtor characterized as alleged "No-Liability Claims." Specifically, the Debtor claims that the Proof of Claim has no basis in the Debtor's Books and Records and is not an obligation of the Debtor. *See* Objection, ¶ 22. The Debtor seeks to disallow and expunge the Proof of Claim.

3. After initial discussions between HCREP and the Debtor, the Debtor agreed to multiple extensions of HCREP's deadline to respond to the Objection, such that the agreed deadline for HCREP to respond to the Objection is now October 16, 2020. The parties have attempted to resolve the Objection; however, have not yet been able to do so.

4. For the reasons set forth in detail below, HCREP respectfully requests the Court enter a scheduling order to allow for discovery in connection with HCREP's Proof of Claim, set an evidentiary hearing on HCREP's Proof of Claim, and overrule the Debtor's Objection and allow the claim in the amount determined at such evidentiary hearing.

II. RESPONSE

5. After reviewing what documentation is available to HCREP with the Debtor, HCREP believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, HCREP has a claim to reform, rescind and/or modify the agreement.

6. However, HCREP requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement. Accordingly, HCREP requests the Court enter a scheduling order allowing for formal discovery and set an evidentiary hearing after such discovery has occurred.

III. CONCLUSION

For these reasons, the HCREP respectfully requests that the Court (i) hold a status conference at which it sets a scheduling order in connection with this contested matter; (ii) set a date for an evidentiary hearing on the Proof of Claim; (iii) overrule the Objection and allow HCREP's Proof of Claim in the amount established at such evidentiary hearing; and (iii) grant HCREP such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

Jason M. Rudd
Texas Bar No. 24028786
Lauren K. Drawhorn
Texas Bar No. 24074528
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 100
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255
Email: jason.rudd@wickphillips.com
lauren.drawhorn@wickphillips.com

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, a true and correct copy of the foregoing Joinder was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the following parties:

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

Melissa S. Hayward
Zachery Z. Annable
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

EXHIBIT 1

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas (State)

Case number 19-34054

Official Form 410
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**
   HCRE Partner, LLC
   Name of the current creditor (the person or entity to be paid for this claim)
   Other names the creditor used with the debtor

2. **Has this claim been acquired from someone else?**
   ☑ No
   ☐ Yes. From whom?

3. **Where should notices and payments to the creditor be sent?**
   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

   Where should notices to the creditor be sent?
   HCRE Partner, LLC
   300 Crescent Court, Ste. 700
   Dallas, TX 75201

   Contact phone
   Contact email bryan.assink@bondsellis.com

   Where should payments to the creditor be sent? (if different)
   Contact phone
   Contact email

   Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?**
   ☑ No
   ☐ Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**
   ☑ No
   ☐ Yes. Who made the earlier filing?

1934054200408000000000058

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ See attached Exhibit "A" . **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See attached Exhibit "A"

9. **Is all or part of the claim secured?**

☑ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☑ No

☐ Yes. Identify the property: _____

1934054200408000000000058

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

		Amount entitled to priority
☑	No	
☐	Yes. *Check all that apply:*	
☐	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐	Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐	Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐	Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐	Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐	Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. **Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?**

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$_____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☑ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020
MM / DD / YYYY

/s/James D. Dondero
Signature

Print the name of the person who is completing and signing this claim:

Name: James D. Dondero
First name | Middle name | Last name

Title: _____

Company: HCRE Partner, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: _____

Contact phone _____ Email _____

1934054200408000000000058

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

Debtor:
19-34054 - Highland Capital Management, L.P.
District:
Northern District of Texas, Dallas Division

Creditor:
HCRE Partner, LLC
300 Crescent Court, Ste. 700
Dallas, TX, 75201
Phone:
Phone 2:
Fax:
Email:
bryan.assink@bondsellis.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded
Related Document Statement:

Has Related Claim:
No
Related Claim Filed By:

Filing Party:
Authorized agent

Other Names Used with Debtor:

Amends Claim:
No
Acquired Claim:
No

Basis of Claim:
See attached Exhibit "A"

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
See attached Exhibit "A"

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
No
Amount of 503(b)(9):
No
Based on Lease:
No
Subject to Right of Setoff:
No

Nature of Secured Amount:
Value of Property:
Annual Interest Rate:
Arrearage Amount:
Basis for Perfection:
Amount Unsecured:

Submitted By:
James D. Dondero on 08-Apr-2020 4:47:11 p.m. Eastern Time
Title:
Company:
HCRE Partner, LLC

Exhibit A

HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

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

DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISQUALIFY WICK PHILLIPS GOULD & MARTIN, LLP AS COUNSEL TO HCRE PARTNERS, LLC AND FOR RELATED RELIEF

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor" or "HCMLP") in the above-captioned chapter 11 case ("Bankruptcy Case"), by and through its undersigned counsel, files this memorandum of law in support of its *Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* (the "Motion"). In support of its Motion, the Debtor states the following:

PRELIMINARY STATEMENT

1. Wick Phillips Gould & Martin, LLP ("Wick Phillips") is a law firm that represents HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) ("HCRE") and other entities directly or indirectly owned and/or controlled by James Dondero in four separate matters arising in the Bankruptcy Case.

2. In one of those matters, Wick Phillips is prosecuting a claim on behalf of HCRE arising from an investment that the Debtor and HCRE jointly made in 2018.[2] In its claim, HCRE contends that "all or a portion" of the Debtor's ownership interest in the investment "may" in fact be HCRE's property because the organizational documents "improperly allocate[] the ownership percentage of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, HCRE[] has a claim to reform, rescind, and/or modify the agreement."

3. Mr. Dondero (a) signed the underlying agreements on behalf of the Debtor ***and*** HCRE, (b) signed the proof of claim on behalf of HCRE, and (c) caused his personal counsel to file HCRE's Claim (as that term is defined below) in the Bankruptcy Case before Wick Phillips appeared on behalf of HCRE.

[2] Wick Phillips also represents (a) HCRE in defense of an adversary proceeding commenced by the Debtor to collect on certain promissory notes and recover property of the Debtor's estate (Adv. Pro. 21-03007-sgj); (b) Highland Capital Management Services, Inc. in defense of an adversary proceeding commenced by the Debtor to collect on certain promissory notes and recover property of the Debtor's estate (Adv. Pro. 21-03006-sgj); and (c) NexBank Capital, Inc., and related entities in the prosecution of an administrative claim (*see* Docket No. 1888). The Debtor reserves the right to seek the disqualification of Wick Phillips in all or any of these matters as and if circumstances warrant.

4. After the Debtor objected to HCRE's Claim, Wick Phillips filed HCRE's response, counsel for the parties negotiated a scheduling order, and the parties exchanged written discovery and documents responsive thereto. On March 29, 2021, while the Debtor was preparing for depositions, it became apparent that Wick Phillips served as HCMLP's counsel in connection with the underlying transactions that are the subject of the Claim.

5. The Debtor immediately wrote to HCRE's counsel and (a) adjourned the depositions, (b) demanded that Wick Phillips (i) withdraw as HCRE's counsel, (ii) return the Debtor's files to it, and (iii) disclose the full nature and scope of Wick Phillips' prior representation of the Debtor, and (c) otherwise reserved its rights. After almost two weeks, Wick Phillips disputed the Debtor's contention, claiming that it only represented HCRE in the underlying transactions and that HCMLP's in-house tax counsel, Mark Patrick and Paul Broaddus, represented HCMLP's interests. Wick Phillips failed to provide any engagement letter or other documentary evidence to support its position and ignored completely the undisputed fact that it jointly represented HCMLP and HCRE (among other entities) in connection with the debt financing that made the investment at issue possible.

6. Based on the foregoing and the facts set forth below, the Debtor respectfully requests that the Court enter an order:

- Disqualifying Wick Phillips from serving as counsel to HCRE in connection with the prosecution of HCRE's Claim;
- Directing Wick Phillips to immediately turnover to the Debtor all files and records relating to the LLC Agreement, the Loan Agreement, and the Restated LLC Agreement (as those terms are defined below);
- Directing HCRE to reimburse the Debtor for all costs and fees incurred in making this Motion, including reasonable attorneys' fees;
- Directing HCRE to engage substitute counsel within fourteen (14) days from the entry of an Order granting the Motion to represent it in connection with the prosecution of HCRE's Claim;

- Directing HCRE to disclose all communications it (or anyone purporting to act on its behalf, including Wick Phillips) has had with Mark Patrick and Paul Broaddus concerning HCRE's Claim; and
- Granting the Debtor such other and further relief as the Court deems just and proper.

FACTUAL BACKGROUND

A. Wick Phillips Advises the Debtor in Connection with the Transactions that Are the Subject of HCRE's Claim

7. On or about August 23, 2018, the Debtor and HCRE (together, the "Parties") entered into that certain *Limited Liability Company Agreement* (the "LLC Agreement") pursuant to which SE Multifamily Holdings, LLC ("SE Multifamily") was created. **Morris Dec. Ex. A.**[3]

8. Mr. Dondero signed the LLC Agreement on behalf of the Debtor ***and*** HCRE. **Morris Dec. Ex. A** at 17 (Mr. Dondero signed as President of Strand Advisors, Inc., HCMLP's general partner, and as the Manager of HCRE).

9. The LLC Agreement provides that "[e]xcept with respect to particular items specified in this Agreement, HCRE shall have a 51% ownership interest and HCMLP shall have a 49% ownership interest, respectively, in all assets and activities of the Company, including, without limitation, rights to receive distributions of cash and assets in-kind in the process of winding down and liquidating" SE Multifamily pursuant to the LLC Agreement (the "Allocation"). **Morris Dec. Ex. A** ¶1.7. The Allocation was consistent with the Parties' respective initial capital contributions. **Morris Dec. Ex. A** ¶ 2.1 and Schedule A.

10. SE Multifamily was created to, among other things, acquire and improve real property on behalf of its members, the Debtor and HCRE. **Morris Dec. Ex. A** ¶1.3. In order to finance their investment in SE Multifamily, the Debtor and HCRE, among other borrowers,

[3] Citations to "Morris Dec." are to the *Declaration of John A. Morris Submitted in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* being filed contemporaneously with the Motion.

obtained a secured loan from Keybank National Association ("Keybank"), as administrative agent and lender, as of September 18, 2018. **Morris Dec. Ex. B** (the "Loan Agreement").[4]

11. Pursuant to the Loan Agreement, Keybank provided up to $556,275,000 in secured loans to the Borrowers, including HCMLP and HCRE. The Loan Agreement also provided, among other things, that (a) all of the Borrowers (including HCMLP) were jointly and severally liable to Keybank for all amounts borrowed under the Loan Agreement, but that (b) HCRE was designated as the "Lead Borrower" with the sole authority to request and obtain borrowings and to determine how loan proceeds would be distributed among the Borrowers. **Morris Dec. Ex. B** ¶¶1.05(a), (b).

12. The Loan Agreement expressly identified Wick Phillips as counsel to the "Borrower." **Morris Dec. Ex. B** ¶¶ 4.01(b), 9.01(a). HCMLP was a "Borrower" under the Loan Agreement. **Morris Dec. Ex. B** at 3.

13. Attached to the Loan Agreement as Schedule 3.15 were organizational charts prepared by the Borrowers for each project. Wick Phillips worked with HCMLP to make sure that the organizational charts were accurate. *See*, *e.g.*, **Morris Dec. Ex. C**. In every one of the twenty-two (22) organizational charts in which SE Multifamily was a participant, the Allocation of the Parties' interests in SE Multifamily was depicted consistently with the LLC Agreement (*i.e.*, 51% to HCRE and 49% to HCMLP). *See* **Morris Dec. Ex. B**, Schedule 3.15.

14. On or about March 15, 2019, the Parties entered into an *Amended and Restated Limited Liability Company Agreement*, dated as of August 23, 2018 (the "Restated LLC Agreement") in order to admit a new member. **Morris Dec. Ex. D**.

[4] Upon information and belief, the "Borrowers" under the Loan Agreement were all entities directly or indirectly owned and/or controlled by Mr. Dondero, including HCMLP, HCRE, The Dugaboy Investment Trust, the SLHC Trust, NexPoint Advisors, L.P., NexPoint Real Estate Advisors IV, L.P., SE Multifamily Reit Holdings, LLC, and certain property owners. **Morris Dec. Ex.** B at 3 (definition of "Borrowers").

15. Mr. Dondero signed the Restated LLC Agreement on behalf of the Debtor ***and*** HCRE. **Morris Dec. Ex. D** at 18 (Mr. Dondero signed as President of Strand Advisors, Inc., the HCMLP's general partner, and as the Manager of HCRE).

16. Pursuant to the Restated LLC Agreement, BH Equities, LLC ("BH Equities") acquired 6% of the membership interests in SE Multifamily. Upon information and belief, BH Equities is unrelated to the Debtor or Mr. Dondero.

17. HCRE, the Debtor, and BH Equities adjusted the original Allocation to take into account BH Equities' newly acquired membership interests. Specifically, the Allocation was adjusted to reflect that HCRE's membership interests were diluted by 6%, from 51% to 47.94%; HCMLP's membership interests were diluted by 6%, from 49% to 46.06%; and BH Equities obtained the remaining 6% of SE Multifamily's membership interests (the "Revised Allocation"). **Morris Dec. Ex. D** ¶1.7.[5]

B. The Debtor Files for Bankruptcy and Mr. Dondero Signs and Causes to Be Filed a Proof of Claim on Behalf of HCRE

18. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

19. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].[6]

20. On April 8, 2020, HCRE filed a general unsecured, non-priority claim that was denoted by the Debtor's claims agent as claim number 146 ("HCRE's Claim"). Mr. Dondero signed HCRE's Claim as HCRE's authorized agent and his personal counsel (the law firm of

[5] The Revised Allocation is repeated in Schedule A to the Restated LLC Agreement alongside the capital contributions of each member. **Morris Dec. Ex. D**, Schedule A.

[6] All docket numbers refer to the main docket for the Bankruptcy Case maintained by this Court.

Bonds Ellis Eppich Schafer Jones LLP) was identified as the contact party. A true and correct copy of HCRE's Claim is attached as **Morris Dec. Ex. E**.

21. In an exhibit attached to HCRE's Claim, HCRE asserts that it:

> may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, [HCRE] contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of [HCRE]. Accordingly, [HCRE] may have a claim against the Debtor. [HCRE] has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. [HCRE] is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

Morris Dec. Ex. E, Exhibit. A.

22. HCRE (a) did not attach any documentation to support its Claim; (b) made no further substantive comment, argument, or offer of proof in support of its Claim; and (c) more than a year later, has not updated its Claim or otherwise asserted a liquidated claim amount.

23. On July 30, 2020, the Debtor filed its *First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the "Claims Objection"). **Morris Dec. Ex. F**. As part of the Claims Objection, the Debtor objected to HCRE's Claim on the ground that it has no liability.

24. On October 19, 2020, Wick Phillips filed HCRE's response to the Claims Objection [Docket No. 1212] (the "Response"). **Morris Dec. Ex. G**. In its Response, HCRE asserted that the "organizational documents" relating to SE Multifamily (and that Mr. Dondero signed on behalf of the Debtor ***and*** HCRE) "improperly allocate[] the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, HCRE[] has a claim to reform, rescind and/or modify the agreement." **Morris Dec. Ex. G** ¶5.

25. On December 11, 2020, the Court entered an Order [Docket No. 1568] approving a stipulation between the Parties that set forth a discovery schedule. The Parties thereafter timely exchanged written document requests, produced documents, and served deposition notices.

26. Specifically, the Debtor served (a) a deposition notice on HCRE pursuant to Federal Rule of Civil Procedure 30(b)(6), as well as (b) a notice for the deposition of Mr. Dondero. HCRE served deposition notices on Mark Patrick and Paul Broaddus, two tax attorneys who were employed by HCMLP at the time the LLC Agreement, the Loan Agreement, and the Restated LLC Agreement were drafted and executed.

C. While Preparing for Depositions, the Debtor Learns that Wick Phillips Represented HCMLP in Matters Substantially Related to the Resolution of HCRE's Claim and Demands that Wick Phillips Withdraw as Counsel to HCRE

27. While preparing to take the depositions of Messrs. Patrick and Broaddus, outside counsel for the Debtor was reviewing documents and learned that Wicks Phillips represented HCMLP in the negotiation of the Loan Agreement that was used by the Parties to finance their investment in SE Multifamily. *See* **Morris Dec. Ex. B** ¶¶ 4.01(b), 9.01(a). Based on e-mail communications between Wick Phillips attorneys (including DC Sauter and Rachel Sam)[7] and certain non-attorneys at HCMLP, it also appeared that Wick Phillips represented the Debtor—either solely or jointly with HCRE—in connection with the drafting and negotiation of the original LLC Agreement that HCRE now contends should be rescinded based on "mutual mistake."

28. On Monday, March 29, 2021—the day that they discovered that Wick Phillips represented HCMLP in at least some aspects of the underlying transactions—Debtor's counsel wrote to Wick Phillips the following:

[7] DC Sauter was a partner at Wick Phillips when the transactions at issue were consummated, and he rendered legal advice in connection therewith. Mr. Sauter is now the General Counsel of NexPoint Advisors, L.P., an entity owned and controlled by Mr. Dondero.

> This morning while preparing for tomorrow's deposition I noticed in the attached Loan Agreement that Wicks Phillips represented HCMLP in that transaction. See Article IX section 9.01(a).
>
> It also appears that Wicks Phillips represented HCMLP in the drafting of the LCC documents that HCRE now contends are void due to mutual mistake and lack of consideration (it is unclear whether it was a joint representation with HCRE, but we see that as irrelevant). We do not understand how Wicks Phillips can represent HCRE in this matter given what appear to be substantial and unavoidable conflicts, although if you have a waiver letter, please provide that.
>
> In light of Wicks Phillips' prior representation of HCMLP in the transaction that is at the heart of this litigation, the Debtor (a) demands that Wicks Phillips (i) immediately withdraw as counsel to HCRE in connection with this adversary proceeding, (ii) provide to the Debtor all files relating to Wicks Phillips' engagement by the Debtor in the SE Multifamily transaction (including the Key Bank loan), including any engagement letter(s), and (iii) disclose the full nature and scope of Wicks Phillip's representation in the SE Multifamily transaction (including the Key Bank loan), and (b) intends to adjourn tomorrow's depositions.
>
> Please acknowledge your receipt of this e-mail as soon as possible.

Morris Dec. Ex. H.

29. On Tuesday, March 30, 2021, Debtor's counsel told Wick Phillips that the Debtor needed a response by the end of the week. Later that day, the Debtor informed Wick Phillips that it had run a search for "Wick Phillips" over the Debtor's document production and came up with over 200 "hits." **Morris Dec. Ex. I**.

30. During the next several days, the Debtor continued to press for copies of Wick Phillips' engagement letters relating to the matters at issue and for prompt answers. In response, Wick Phillips failed to provide its engagement letters or any substantive response, stating only that "[w]e are still looking into this. I expect to have a response for you early next week." The Debtor expressed concern that Wick Philips might "need almost a week to determine who Wick Phillips represented in these transactions," and otherwise reserved its rights. **Morris Dec. Ex. I**.

D. Wick Phillips Denies Any Conflict Exists and Refuses to Resign

31. On April 9, 2021, almost two weeks after the Debtor first raised the issue, Wick Phillips wrote to Debtor's counsel denying that it had any conflict and contending that (a) Wick Phillips represented ***only*** HCRE and NexPoint Real Estate Advisors in connection with the negotiation of the LLC Agreement, and (b) Mark Patrick, "an HCMLP employee, drafted the SE Multifamily LLC Agreement in house" with the assistance of outside tax counsel. **Morris Dec. Ex. J**.

32. Wick Phillips completely ignored its representation of HCMLP in connection with the Keybank loan, including the negotiation of the Loan Agreement on behalf of HCRE and HCMLP, and failed to provide any engagement letters or other documentary evidence establishing that it ***only*** represented HCRE (and NexPoint Real Estate Advisors) in connection with the negotiation of the LLC Agreement. *See* **Morris Dec. Ex. J**.

33. Moreover, Wick Phillips offered no explanation (credible or otherwise) as to how it could have ***only*** represented HCRE when Mr. Dondero signed the LLC Agreement on behalf of ***both*** HCRE and HCMLP.

34. Tellingly, Wick Phillips suggested that "[i]f you search the emails of Mark Patrick and Paul Broaddus, emails that are in your sole custody and control, you will see direct communications between Mr. Patrick and Mr. Broaddus and Hunton & Williams on this matter. Accordingly, your assertion of conflict is unwarranted." **Morris Dec. Ex. J**.

35. Wick Phillips offered no explanation as to how it knows of the existence of privileged communications between the Debtor and its counsel that are supposedly within the Debtor's exclusive control. Upon information and belief, Wick Phillips has communicated with Mr. Patrick and Mr. Broaddus—the very tax attorneys that Wick Phillips now contends solely

represented HCMLP in its "negotiations" with Wick Phillips, as counsel to HCRE—in connection with the litigation of HCRE's Claim.

LEGAL STANDARD

36. Courts are obligated to take measures against any unethical conduct occurring in connection with the proceedings before them. *See Musicus v. Westinghouse Elec. Corp.*, 621 F.2d 742, 744 (5th Cir. 1980). Thus, "[a] motion to disqualify counsel is the proper method for a party-litigant to bring the issues of conflict of interest or breach of ethical duties to the attention of the court." *Id.*; *see also In re Am. Airlines*, 972 F.2d 605, 605 (5th Cir. 1992), *cert. denied*, 507 U.S. 912 (1993) (noting that in cases of conflict of interest, "unless a conflict is addressed by courts upon a motion for disqualification, it may not be addressed at all … it is our business—our responsibility"). For this reason, the Fifth Circuit is "sensitive to preventing conflicts of interest," and it has continued to "rigorously apply the relevant ethical standards" in assessing disqualification motions. *Am. Airlines*, 972 F.2d at 605.

37. Motions to disqualify are substantive motions decided under federal law. *In re Dresser Indus., Inc.*, 972 F.2d 540, 543 (5th Cir.1992). In determining motions to disqualify, courts are guided by both state and national ethical standards in light of the public interest in the legal system. *Am. Airlines*, 972 F.2d at 610. Specifically, courts in the Fifth Circuit consider the following ethical canons to determine whether to disqualify counsel: (i) the American Bar Association's Model Rules of Professional Conduct (the "ABA Model Rules"), (ii) the Texas Disciplinary Rules of Professional Conduct (the "Texas Rules"), and (iii) the local rules of the deciding court (the "Local Rules"). *See id.* at 614; *Dresser*, 972 F.2d at 542-43.

38. "When considering motions to disqualify, courts should first look to the local rules promulgated by the local court itself." *In re ProEducation Int'l, Inc.*, 587 F.3d 296, 299 (5th Cir. 2009) (internal quotations omitted). For instance, attorneys practicing in the Northern District of

Texas are subject to the Texas Rules. *See* N.D. TEX. L.B.R. 2090-2(d) (stating that "unethical" behavior means conduct that violates the Texas Disciplinary Rules of Professional Conduct); *Asgaard Funding LLC v. ReynoldsStrong LLC*, 426 F. Supp. 3d. 292, 296 (N.D. Tex. 2019) ("[A]ttorneys practicing in the Northern District of Texas are subject to the Texas Disciplinary Rules of Professional Conduct"). The Fifth Circuit recognizes the ABA Model Rules as the "national standard" for considering motions to disqualify. *Am. Airlines*, 972 F.2d at 610. Thus, "when assessing a motion to disqualify, this Court consider[s] both the Texas Rules and the Model Rules." *Asgaard*, 426 F. Supp. 3d. at 296 (internal quotations omitted).

39. Texas Rule 1.09 governs a lawyer's duty to former clients. It provides, in pertinent part:

> **Conflict of Interest:** Former Client
>
> (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:
>
> . . . .
>
> (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
>
> (3) if it is the same or a substantially related matter.

TEX. R. PROF'L CONDUCT 1.09(a). Texas Rule 1.05, incorporated above, prohibits a lawyer's use of confidential information obtained from a former client to that former client's disadvantage. *See* TEX. R. PROF'L CONDUCT 1.05(b)(3). "Rule 1.09 thus on its face forbids a lawyer to appear against a former client if the current representation in reasonable probability will involve the use of confidential information *or* if the current matter is substantially related to the matters in which the lawyer has represented the former client." *Am. Airlines*, 972 F.2d at 615. These standards are imputed to the former lawyer's law firm as well. Rule 1.09 provides:

> (b) Except to the extent authorized by Rule 1.10, when lawyers are or have become members of or associated with a firm, none of them shall knowingly represent a

> client if any one of them practicing alone would be prohibited from doing so by paragraph (a).
>
> (c) When the association of a lawyer with a firm has terminated, the lawyers who were then associated with that lawyer shall not knowingly represent a client if the lawyer whose association with that firm has terminated would be prohibited from doing so by paragraph (a)(1) or if the representation in reasonable probability will involve a violation of Rule 1.05.

TEX. R. PROF'L CONDUCT 1.09(b)-(c). The ABA Model Rules "are identical in all important respects."[8] *Am. Airlines*, 972 F.2d at 614 n. 2; see also *Asgaard*, 426 F. Supp. 3d. at 298 (same).

40. Fifth Circuit precedent is a "reinforcement" of these applicable ethical rules. *Grosser-Samuels v. Jacquelin Designs Enters, Inc.*, 448 F. Supp. 2d 772, 779-80 (N.D. Tex. 2006; *see also Dresser*, 972 F.2d at 543 (noting that the Fifth Circuit's "source for the standards of the profession has been the canons of ethics developed by the American Bar Association"). For instance, Fifth Circuit law is "fairly straightforward" that, when a former client moves to disqualify an attorney who represents its adversary, the movant need only show: (i) "an actual attorney-client relationship between the moving party and the attorney they seek to disqualify," and (ii) "a substantial relationship between the subject matter of the former and present representations." *Am. Airlines*, 972 F.2d at 614; *see also Wilson P. Abraham Constr. Corp. v. Armco Steel Corp.*, 559 F.2d 250, 252 (5th Cir. 1977) (to show disqualification warranted of former counsel representing

---

[8] *See* ABA Rule 1.9:

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
>
> . . . .
>
> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter
>
> 1. use information relating to the representation to the disadvantage of the former client ….

ABA MODEL R. OF PROF'L CONDUCT 1.9.

adversary, movant "need only to show that the matters embraced within the pending suit are substantially related to the matters or cause of action wherein the attorney previously represented [it]"); *Acad. of Allergy & Asthma in Primary Care v. La. Health Serv. & Indem. Co.*, 384 F. Supp. 3d 644, 652 (E.D. La. 2018) (noting that "[i]n the Fifth Circuit, the substantial relationship test governs whether [local rules] require disqualification of an attorney—and [their] firm by virtue of imputation").

41. The two fundamental protections afforded by the substantial relationship test are "the duty to preserve confidences and the duty of loyalty to a former client." *Am. Airlines*, 972 F.2d at 618 (internal quotations omitted); *see also Grosser*, 448 F. Supp. 2d at 779 (noting that the "substantial relationship" test protects the "basic tenants of the legal profession"). The substantial relationship test thus rests upon an irrebuttable presumption: "Once it is established that the prior matters are substantially related to the present case, the court will *irrebuttably* presume that relevant confidential information was disclosed during the former period of representation." *Am. Airlines,* 972 F.2d at 614 (emphasis added); *see also Wilson*, 559 F.2d at 252 ("This rule rests upon the presumption that confidences potentially damaging to the client have been disclosed to the attorney during the former period of representation"). In other words, once a movant proves that adverse counsel previously represented them as counsel, the court's inquiry is narrowed to the sole issue of whether this prior representation is substantially related to the instant representation. *Am. Airlines,* 972 F.2d at 614.

42. The "second irrebuttable presumption is that confidences obtained by an individual lawyer will be shared with the other members of [their] firm." *Am. Airlines*, 972 F.2d at 614 n.1*; see also Green v. Adm'rs of Tulane Educ. Fund*, No. 97-1869, 1998 WL 24424, at *3 (E.D. La. Jan. 23, 1998) ("The Rules presume that confidences obtained by an individual lawyer are shared with members of his or her firm," noting that Fifth Circuit does not "rebut this presumption");

Grosser, 448 F. Supp. 2d at 772 (same). The substantial relationship test is thus "categorical in requiring disqualification upon the establishment of a substantial relationship between past and current representations." *Am. Airlines*, 972 F.2d at 614; *see also Acad. of Allergy*, 384 F. Supp. 3d at 653 (noting that evidence that a firm has carefully screened a conflicted attorney and that no confidential information has been shared between attorneys in the conflicted attorney's firm is "irrelevant" to the "substantial relationship" test); *Islander East Rental Program v. Ferguson*, 917 F. Supp. 504, 508 (S.D. Tex. 1996) ("It is beyond dispute that an attorney is prohibited from accepting representations to a former client if the subject matter of the current representation is substantially related to the subject matter of the former representation").

43. In assessing whether a conflict warrants disqualification, the Fifth Circuit also considers the public interest and perceptions of "impropriety." *Dresser*, 972 F.2d at 543; *see also Grosser*, 448 F. Supp. 2d at 779 ("included in the ABA standards is the admonition that lawyers should avoid even the appearance of impropriety") (internal quotations omitted); *Green*, 1998 WL 24424 at *4 ("Of greater concern to the Court is the appearance of impropriety, the duty to preserve confidences, and the duty of loyalty to a former client."); *Asgaard*, 426 F. Supp. 3d. at 297 (same). Such factors include "whether a conflict has (1) the appearance of impropriety in general, or (2) a possibility that a specific impropriety will occur, and (3) the likelihood of public suspicion from the impropriety outweighs any social interests which will be served by the lawyer's continued participation in the case." *Dresser*, 972 F.2d at 543.

44. Applying the ethical standards set forth above, Wick Phillips should be disqualified from representing HCRE in connection with the litigation of HCRE's Claim, and the Court should grant the Debtor's plea for related relief.

ARGUMENT

45. Disqualification of Wick Phillips is required under the conflict standards set forth by the Fifth Circuit.

A. The Substantial Relationship Test Is Satisfied

46. The substantial relationship test requires disqualification of Wick Phillips as counsel to HCRE because both elements are met.

1. An Attorney-Client Relationship Existed Between HCMLP and Wick Phillips

47. While Wick Phillips disputes the scope of its representation of HCMLP, at a bare minimum there can be no dispute that (a) Wick Phillips represented HCMLP (and the other Borrowers) in connection with the Loan Agreement, (b) Wick Phillips worked with HCMLP to make sure that the organizational charts attached as Schedule 3.15 to the Loan Agreement were accurate, (c) each of those organizational charts (22 in total) reflected the same Allocation set forth in the LLC Agreement, and (d) the Allocation is the very provision of the LLC Agreement that HCRE now contends was a mistake.

48. Upon information and belief, the evidence will ultimately show that Wick Phillips jointly represented HCRE and HCMLP in the preparation of the LLC Agreement. Indeed, given that Mr. Dondero signed the LLC Agreement (and the Restated LLC Agreement) on behalf of ***both*** parties, no other plausible explanation exists. But that fact, if established, will only serve to reinforce what is already plain: Wick Phillips represented HCMLP and HCRE in connection with the financing of the investment at issue, including working with HCMLP to make sure that the Allocation was properly presented in the Loan Agreement.

49. "An attorney and a client can create an attorney-client relationship either explicitly or implicitly by conduct manifesting an intention to create the attorney-client relationship." *City of El Paso v. Sales-Porras Soule*, 6 F. Supp. 2d 616, 622 (W.D. Tex. 1998). "It is usually not a

difficult matter for the client to establish an attorney-client relationship" for purposes of the substantial relationship test. *Id.*; *see also Green,* 1998 WL 24424 at *4 ("It is undisputed" that attorney-client relationship existed). Here, there can be no dispute that an attorney-client relationship existed between HCMLP and Wick Phillips because the Loan Agreement states so—twice. **Morris Dec. Exhibit B** ¶¶4.01(b), 9.01(a). *See Acad. of Allergy* 384 F. Supp. 3d 654 ("It is inescapably clear that an attorney-client relationship formed because [counsel] formally manifested its consent in an engagement letter it sent to [client]"). The first element of the substantial relationship test is, therefore, satisfied.

2. <u>The Previous and Current Representations Are Substantially Related</u>

50. The subject matter of Wick Phillips' former representation of the Debtor is also "substantially related" to Wick Phillips' current representation in the prosecution of HCRE's Claim. To be "substantially related," the "two representations need only involve the same subject matter." *Am. Airlines* at 625 (internal quotations omitted). Representations involve the same subject matter where, for instance, an issue is relevant or "common" to both. *See Acad. of Allergy*, 384 F. Supp. at 659.

51. Here, at a minimum, Wick Phillips represented HCMLP (and HCRE) in connection the Keybank loan. The Keybank loan was obtained to finance the Parties' investment in SE Multifamily. HCMLP and HCRE (and the other Borrowers) were all jointly and severally liable for all obligations under the Loan Agreement. The Loan Agreement included the organizational charts that were (a) the subject of consultation between Wick Phillips and HCMLP and (b) consistent with the Allocation set forth in the LLC Agreement. And, to complete the circle, the

foundation of HCRE's Claim is that the Allocation was a mistake, and based on that mistake, HCRE is entitled to rescind the Restated LLC Agreement.[9]

52. Under these circumstances, any assertion by HCRE or Wick Phillips that the LLC Agreement, the Loan Agreement, and the Restated LLC Agreement are unrelated cannot be credible.[10] *See Green*, 1998 WL 24424 at *4 (finding the current and former representation "substantially related" where counsel's representations of former client and current client "both involve the suit filed by" former client); *El Paso*, 6 F. Supp. 2d at 624 (representations substantially related where former client relied on counsel's advice and where "[i]t would be patently unfair to allow the same lawyer to represent interests adverse to a former client regarding the same business affairs"); *Grosser*, 448 F. Supp. 2d at 783 (ordering disqualification of counsel where their "former intellectual property representation" of client is "substantially related to the intellectual property issue raised by the pleadings in this case. Thus, there is an irrebutable presumption that relevant confidential information pertaining to the affairs of [former client] was disclosed to [counsel] while he was acting as attorney for [former client]"); *Am. Airlines*, at 625-28 (finding that, despite litigation involving different causes of action, law firm's three prior representations substantially related to current matter where counsel gave advice to client on an issue that was of importance in the instant suit and was privy to former clients' views on another issue related to subject suit).

[9] BH Equities is a party to the Restated LLC Agreement and is therefore a necessary party to this dispute that HCRE has failed to name.

[10] The assertion that the Allocation was the result of a "mistake" also lacks credibility for at least two undisputed reasons. First, the Allocation is reflected in 22 separate organizational charts that were attached to the Loan Agreement and that Wick Phillips worked to make sure were accurate. **Morris Dec. Ex. B** (Schedule 3.15); **Morris Dec. Ex. C** (e-mails between Wick Phillips and HCMLP concerning the accuracy of the organizational charts). Second, HCRE and HCMLP effectively ratified the Allocation when they entered into the Restated LLC Agreement because HCRE, HCMLP, and BH Equities all agreed to adjust the Allocation to take into account BH Equities' acquisition of 6% of the membership interests of SE Multifamily. **Morris Dec. Ex. D** ¶1.7, Schedule A (HCRE's interest was diluted by 6%, from 51% to 47.94%; HCMLP's interests were diluted by 6%, from 49% to 46.06%; and BH Equities was granted a 6% interest in SE Multifamily).

53. For the foregoing reasons, the substantial relationship test is satisfied, and, for this reason alone, disqualification of Wick Phillips is mandated. *See Green*, 1998 WL 24424 at *4 (holding that where attorney's representation of current client and former client met substantial relationship test, Fifth Circuit law and ethical rules required disqualification of attorney and its law firm).

B. The Appearance-of-Impropriety Standard Is Satisfied

54. In addition to the direct conflict demonstrated by the substantial relationship test, Wick Phillips' continued representation of HCRE would create an "appearance-of-impropriety." As noted above, the Debtor disclosed confidential information to Wick Phillips that is related to the very matter governing Wick Phillips' representation of HCRE. This, alone, creates the appearance of impropriety. *See Islander East*, 917 F. Supp. at 514 (counsel's continued representation of party created "appearance of impropriety and unfairness, particularly in light of the Defendant's discovery request for the very information previously disclosed to [counsel] by [former client]").

55. Moreover, there is a "reasonable probability" that Wick Philips' knowledge could be used to disadvantage the Debtor during the course of these proceedings. Indeed, Wick Phillips appears to have knowledge of the Debtor's privileged communications and has noticed for deposition the two attorneys that Wick Phillips now contends solely represented HCMLP's interests. *See Islander*, 917 F. Supp. at 514 (noting that even if the court "were to accept [counsel's] statement that it received no information about any" confidential information, "disqualification would still be required in this case because "there is a reasonable probability" that confidential information received from former client would be "relevant to some of the clients raised by the Defendants in this litigation"); *Aasgard*, 426 F. Supp. 2d at 298-99 (finding appearance of impropriety where counsel "had once-potentially confidential information that

could be relevant to a claim in this lawsuit," and counsel's access to such information therefore "raises the possibility that he used such information to [client's] advantage"). For instance, since Wick Phillips advised the Debtor on the very transaction that is now the subject of HCRE's Claim against the Debtor, Wick Phillips will likely be called as a witness against the Debtor (or called as witness against its own client on the Debtor's behalf). This is, on its face, grounds for disqualification. *See Islander*, 917 F. Supp. at 514 (finding disqualification warranted where, "regardless of the exact content of" party's disclosures to former counsel, "the information disclosed to [party] could be used to impeach [party], depending on the development of the testimony at trial"); *Grosser*, 448 F. Supp. 2d at 785 (ordering disqualification of counsel and all counsel associated with attorney's law firm where there is a "prospect that [counsel] could be called as a witness in this action and might well be made a party" and that such a risk "raises serious concerns").

56. In light of the above, and given the contentious nature of numerous and related claims asserted by the Debtor, HCRE, and Mr. Dondero's other controlled entities, the line between disclosures involving HCRE or SEMF is "simply too fine." *See Islander East*, 917 F. Supp. at 514 ("Given the contentious and acrimonious nature of this litigation and the numerous, aggressive claims asserted by the parties, the line between disclosures involving" the various claims at issue "is simply too fine"); *El Paso*, 6 F. Supp. 2d at 624 (finding that even if the court had found that the legal advice rendered by counsel to former client was not "substantially related to the current cause," there is a "reasonable probability that confidential information related to the administering of the advice could be used to Defendants' disadvantage in this litigation," mandating disqualification pursuant to the confidentiality protections under Texas Rule 1.09 and 1.05).

57. Based on the foregoing, Wick Phillips' continued representation of HCRE would create an appearance of impropriety, and for this additional reason, disqualification is warranted. *See Grosser*, 448 F. Supp. 2d at 783 (noting that "[i]n addition to the direct conflict," existing from counsel's continued representation, "[i]f the appearance-of-impropriety standard is applied to this case, the need for disqualification would become even more apparent"); *Islander East*, 917 F. Supp. at 514 (finding impropriety concerns and requiring disqualification where counsel's continued representation of client against former client would cause "public suspicion of the legal profession generally, and cause the public to question the extent of an attorney's loyalty to [their] client and whether information given to an attorney is truly confidential"); *Green*, 1998 WL 24424 at *4 (finding that "ethical rules, Fifth Circuit precedent, and societal interest all required the disqualification of" counsel where counsel formerly represented party and was exposed to that party's files and confidential information, but is "now employed by the law firm who represents a direct adversary in" that same party's case).

CONCLUSION

58. For the foregoing reasons, Fifth Circuit law and ethical rules proscribed by Texas Rules and ABA Model Rules mandate the disqualification of Wick Phillips as counsel to HCRE.

Dated: April 14, 2021.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717)
Ira D. Kharasch (CA Bar No. 109084)
John A. Morris (NY Bar No. 266326)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

Brant C. Martin
Texas State Bar No. 24002529
brant.martin@wickphillips.com
Jason M. Rudd
Texas State Bar No. 24028786
jason.rudd@wickphillips.com
Lauren K. Drawhorn
Texas State Bar No. 24074528
lauren.drawhorn@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

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

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

RESPONSE TO MOTION TO DISQUALIFY WICK PHILLIPS GOULD & MARTIN, LLP AS COUNSEL TO HCRE PARTNERS, LLC

NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NREP") files this Response to Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC ("Motion to Disqualify") and respectfully states as follows:

For the reasons set forth more fully in its Brief in Opposition to Debtor's Motion to Disqualify and its Appendix, NREP opposes the Debtor's Motion to Disqualify because the Previous Representation[1] is not substantially similar to the Current Representation, the Debtor did not provide Wick Phillips with any confidential information and there is no risk that Wick Phillips

[1] Capitalized terms not defined herein shall have the definition given in NREP's Brief in Support of its Response to Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC, filed contemporaneously with this Response.

may divulge any confidential information in connection with the Current Representation, and there is no appearance of impropriety. As required by the Local Rules for the United States Bankruptcy Court for the Northern District of Texas, NREP submits its contentions of fact, law, arguments, and authorities in its Brief in Opposition and evidence in its Appendix,[2] which will be filed contemporaneously with this Motion.

I. CONCLUSION

For these reasons, NREP respectfully requests the Court grant its Motion for Summary Judgment, dismiss all of the Trustee's claims against it with prejudice, and award it all such other relief at law or in equity to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

Brant C. Martin
Texas Bar No. 24002529
Jason M. Rudd
Texas Bar No. 24028786
Lauren K. Drawhorn
Texas Bar No. 24074528
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255
Email: brant.martin@wickphillips.com
jason.rudd@wickphillips.com
lauren.drawhorn@wickphillips.com

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

[2] Because many of the documents contained in the Appendix are Discovery Materials which have been marked Confidential, in compliance with the Agreed Protective Order in this bankruptcy case, NREP has filed a Motion to File Appendix under Seal contemporaneously with this Response.

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2021, a true and correct copy of the foregoing Joinder was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the following parties:

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

Melissa S. Hayward
Zachery Z. Annable
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

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

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

ORDER DENYING MOTION TO DISQUALIFY

After considering the Debtor's Motion to Disqualify Wick Phillips Gould & Martin LLP as Counsel to HCRE Partners, LLC and Brief in Support ("Motion to Disqualify"), NexPoint Real Estate Partners LLC f/k/a HCRE Partners' Response to the Debtor's Motion to Disqualify and Brief in Opposition (the "Response"), the pleadings, evidence, and arguments of counsel, the Court is of the opinion that the Motion to Disqualify should be DENIED. It is therefore, ORDERED that:

The Motion to Disqualify is DENIED.

End of Order

Brant C. Martin
Texas State Bar No. 24002529
brant.martin@wickphillips.com
Jason M. Rudd
Texas State Bar No. 24028786
jason.rudd@wickphillips.com
Lauren K. Drawhorn
Texas State Bar No. 24074528
lauren.drawhorn@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

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

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

BRIEF IN OPPOSITION TO DEBTOR'S MOTION TO DISQUALIFY WICK PHILLIPS GOULD & MARTIN, LLP AS COUNSEL TO HCRE PARTNERS, LLC

Brant C. Martin
Texas State Bar No. 24002529
brant.martin@wickphillips.com
Jason M. Rudd
Texas State Bar No. 24028786
jason.rudd@wickphillips.com
Lauren K. Drawhorn
Texas State Bar No. 24074528
lauren.drawhorn@wickphillips.com
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NREP") files this Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould & Martin LLP as Counsel for HCRE Partners LLC and for Related Relief and respectfully states as follows:

I. OVERVIEW

The Debtor argues that Wick Phillips' representation of a group of seven borrowers, including the Debtor, in connection with a bridge loan (the "Previous Representation"), disqualifies it from the representation currently before the Court. The transaction the Debtor complains of funded less than half of the purchase price in connection with the acquisition of twenty-some properties through three purchase and sale agreements (to which the Debtor was not a party). Debtor argues that the Previous Representation was substantially similar to Wick Phillips' representation of NREP in connection with its dispute regarding the amended SE Multifamily company agreement (the "Current Representation"). The Current Representation, according to the Debtor, involves a change to the allocation of ownership percentages set forth in the amended SE Multifamily company agreement, which was amended well after the loan funded and sale closed, such that they are not consistent with each parties' capital contribution.

The basis for the Debtor's assertion is solely the fact that SE Multifamily owned the properties that were acquired with the bridge loan. SE Multifamily was formed and structured by the Debtor internally and in consultation with Hunton Andrews Kurth ("Hunton") as tax counsel. Wick Phillips did not prepare the company agreement, nor did it advise the members thereto regarding the allocation of ownership percentages, and the amendment in question occurred after the bridge loan funded and the sale closed.

Significantly, courts and the Disciplinary Rules of Professional Conduct require a considerably more rigorous analysis that soundly rejects disqualification in this case. The Debtor fails to identify any specific subject, issue, or cause of action that is related to the Previous

Representation, and the Debtor provides no specific instances or area in which Wick Phillips had, or with reasonable probability will, disclose Debtor's confidential information. The Previous and Current Representations are not substantially related, and there is no appearance of impropriety. As such, Debtor's motion to disqualify Wick Phillips must be denied.

II. RELEVANT FACTS

A. The Debtor, NREA, and NREP.

1. Highland Capital Management, L.P. (the "Debtor" or "HCMLP") was a multibillion-dollar global investment adviser founded in 1993.[1] HCMLP historically provided money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles and other investments.[2] HCMLP managed some of these assets under shared services agreements with certain formerly affiliated entities, including other affiliated registered investment advisors.[3]

2. HCMLP has approximately 2,000 affiliates or related parties within its business organization.[4] Under various shared services agreements,[5] HCMLP and its related entities shared employees of HCMLP, servers for emails, and other documents.[6] HCMLP and its related entities occasionally pursued joint projects on matters of common interest and in other instances the related

---

1 *See* Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (as Modified) and (II) Granting Related Relief [Docket No. 1943] ("Confirmation Order"), ¶ 4.

2 *Id*. at ¶ 6.

3 *Id*.

4 Order on Motion for Clarification of Ruling [DE #914] and The Joinders Thereto [DE #915 & #927] [Docket No. 935] ("Clarification Order"), p. 2. Although the Court notes that it "is making no finding regarding which Highland Non-Debtor Entities would technically be 'affiliates,' as defined in the Bankruptcy Code or other law, or not." Clarification Order, p. 2.

5 The Debtor terminated many of the shared services agreements during the bankruptcy case.

6 Clarification Order, pp. 2-3.

entities pursued projects and matters unrelated to HCMLP and outside the scope of any joint representation or common interest.[7]

3. NexPoint Real Estate Advisors L.P. ("NREA") and the funds it advises and certain affiliates are alternative investment platforms comprised of groups of investment advisors and sponsors, broker-dealers, and suites of related investment vehicles.[8] NREA was a party to a Shared Services Agreement with HCMLP, under which NREA paid HCMLP to provide certain back- and middle-office support and administrative, infrastructure and other services.[9] Despites sharing certain services, NREA is a separate entity, with separate and independent operations, and separate ownership from HCMLP.[10]

B. Project Unicorn.

4. In or around July 2018, NREA decided to move forward with purchasing a $1.1+ billion portfolio from Starwood, with the project name "Unicorn."[11] This portfolio contained twenty-six properties and had a proposed scheduled closing of September 23, 2018 (the "Unicorn Acquisition").[12] The acquisition was done through three separate purchase and sale contracts, each dealing with a different "bucket" of properties (the "Unicorn PSAs").[13] NREA was the purchaser under the Unicorn PSAs, and HCMLP was not a party to the Unicorn PSAs.[14]

---

[7] Clarification Order, p. 7 (discussing joint representation and common interest in the context of privileged documents).

[8] App. 002.

[9] App. 002.

[10] App. 002.

[11] App. 003

[12] App. 003; App. 222.

[13] App. 006-0221.

[14] App. 006-0221. Although, in accordance with the shared services agreement, notice under the Purchase and Sale Contracts was to NREA c/o HCMLP, Matt McGraner was solely a NREA employee since June 2016. App 002.

5. NREA determined that the various properties would be held by a joint venture LLC with HCMLP.[15] HCMLP personnel, pursuant to the Shared Services Agreement, handled the formation of SE Multifamily Holdings LLC ("SE Multifamily") in-house.[16]

6. In connection with and to help fund the Unicorn Acquisition, KeyBank National Association ("KeyBank") and Freddie Mac provided various financings (the "Loans"). One such financing was a bridge loan with KeyBank for approximately half of the purchase price (the "Bridge Loan").[17] However, KeyBank required additional borrowers on the Bridge Loan and, as a result, HCMLP, NREP, and five other entities were included as co-borrowers under the Bridge Loan with NREP.[18] NREP was the Lead Borrower under the Bridge Loan Agreement and the main point of contact for the borrowing entities.[19]

C. Prior representation.

7. Wick Phillips Gould & Martin, LLP ("Wick Phillips") represented NREA and NREP in connection with the KeyBank financing and the Unicorn Acquisition, including the Unicorn PSAs. As such, Wick Phillips provided advice in connection with the Loans, the Bridge Loan, and the operating agreements for each of the Unicorn properties NREA purchased. As a borrower under the Bridge Loan, Wick Phillips was counsel to HCMLP. However, Wick Phillips did not obtain any of HCMLP's confidential information in connection with such representation and generally communicated with NREP as the Lead Borrower.[20]

---

[15] App. 003.

[16] App. 0255.

[17] App. 003. App. 224-253; *see also*, Motion Ex. B, pp. 16, 23.

[18] App. 003; *See* Motion Ex. B, p. 1.

[19] App. 003; Motion, Ex. B, p. 14, 25-26.

[20] App. 003.

8. While Wick Phillips represented the seven borrowers under the Bridge Loan, Wick Phillips did not represent HCMLP in connection with the Unicorn Acquisition or Unicorn PSAs, and in fact, HCMLP was not a party to the Unicorn PSA. Nor did Wick Phillips represent HCMLP in connection with the formation of SE Multifamily.

9. Wick Phillips did not even represent NREA in connection with the formation of SE Multifamily.[21] Instead, HCMLP, in consultation with Hunton, drafted the SE Multifamily company agreement internally.[22] As drafted by HCMLP, the original SE Multifamily company agreement was dated August 23, 2018 and provided for the following capital contributions and percentage interests:[23]

Schedule A

Capital Contributions and Percentage Interests

Member Name	Capital Contribution	Percentage Interest
HCRE Partners, LLC	$51	51%
Highland Capital Management, L.P.	$49	49%

This allocation of membership interest was consistent with the parties' respective nominal capital contributions of $51 and $49.

10. Although Wick Phillips was not involved in the formation or drafting of the SE Multifamily company agreement, HCMLP provided the SE Multifamily structures to Wick Phillips to relay to the respective lenders in connection with the Loans and the Bridge Loan

[21] App. 004.

[22] App. 272-305; App. 306-332.

[23] Motion, Ex. B, Schedule A.

documentation.[24] Wick Phillips did not comment on the appropriateness of the organizational structure of SE Multifamily and, instead, simply confirmed that the organizational charts submitted in connection with the Loans and the Bridge Loan matched the organizational structures the parties thereto contemplated.[25] The Unicorn Acquisition closed on or around September 26, 2018.[26]

D. The contested proof of claim and current representation.

11. After closing, in early 2019, HCMLP prepared amendments to the SE Multifamily company agreement.[27] The SE Multifamily First Amended and Restated Limited Liability Company Agreement was dated March 15, 2019, to be effective as of August 23, 2018 ("SE Multifamily Amended LLC Agreement").[28] However, the SE Multifamily Amended LLC Agreement, prepared by HCMLP, provided for the following capital contributions and percentage interests:[29]

Schedule A

Capital Contributions and Percentage Interests

Member Name	Capital Contribution	Percentage Interest
HCRE Partners, LLC	$ 291,146,036	47.94%
Highland Capital Management, L.P.	$ 49,000	46.06%
BH Management	$ 21,213,721	6.00%

12. This allocation of membership interest is grossly inconsistent with the parties' respective capital contribution and is the basis of NREP's claim against the Debtor's estate.[30]

[24] App. 224-253; *see also,* Motion, Ex. C.

[25] *See, e.g.*, Motion, Ex. C (confirming the charts accurately depict the organizational structure but providing no advice or comment as to how any of the entities should be structured).

[26] App. 003.

[27] *See* App. 333-364; App. 365-393.

[28] Motion, Ex. D, p. 1.

[29] *Id*. at Schedule A.

[30] *See* Motion, Ex. G, ¶ 5.

Specifically, the basis for this contested matter and claim dispute is that "[NREP] believes the organization documents relating to [SE Multifamily] improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration and/or failure of consideration."[31]

13. On April 8, 2020, NREP filed a general unsecured proof of claim against the Debtor's bankruptcy estate related to SE Multifamily (the "NREP Proof of Claim").[32] The Debtor filed an objection to the NREP Proof of Claim on July 30, 2020 in its First Omnibus Objection to certain claims.[33] On October 19, 2020, NREP filed its Response to the Claims Objection [Docket No. 1212] (the "Response").

14. Neither NREP nor the Debtor dispute the terms of the Loans, the Bridge Loan, or the Unicorn Acquisition. The sole issue in the current dispute is whether HCMLP, which contributed $49,000 of the $312,408,757 contributed to the joint venture (i.e. 0.0015% of the contributed capital), is entitled to a percentage interest of 46.06% and 94.00% of the profits, based on the SE Multifamily Amended LLC Agreement that HCMLP prepared almost six months after the Unicorn Acquisition closed. In other words, does the SE Multifamily Amended LLC Agreement improperly allocate the ownership percentages among BH, NREP, and HCMLP due to mutual mistake, lack of consideration, and/or failure of consideration (the "Contested POC").

III. ARGUMENTS AND AUTHORITIES

A. Standard for disqualification.

15. Motions to disqualify are substantive in nature and are thus decided under federal law. *FDIC v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1312 (5th Cir. 1995). Courts "must consider the

[31] *Id.*

[32] Proof of Claim No. 146.

[33] Docket No. 906.

motion governed by the ethical rules announced by the national profession in light of the public interest and the litigant's rights." *Id*. Attorneys practicing in the Northern District of Texas are subject to the Texas Disciplinary Rules of Professional Conduct ("Texas Rules") and the Fifth Circuit recognizes the American Bar Association's Model Rules of Professional Conduct ("Model Rules") as the national standard; therefore, the court should consider both the Texas Rules and the Model Rules. *Aubrey v. D Magazine Partners, L.P.*, Civ. Action No. 3:19-cv-0056, 2019 WL 2103699, *1 (N.D. Tex. May 14, 2019).

16. However, disqualification "is a sanction that must not be imposed cavalierly," particularly when instigated by an opponent because it "presents a palpable risk of unfairly denying a party the counsel of his choosing." *FDIC v. U.S. Fire Ins. Co.*, 50 F.3d at 1316. The court's analysis of a disqualification motion must include a balancing of competing interests and application of the ethical rules "requires painstaking analysis of the facts and precise application of precedent." *Id*. at 1313. "Mere allegations of unethical conduct in a motion or evidence showing a potential violation of a disciplinary rules will not suffice" under this exacting standard. *In re Chonody*, 49 S.W.3d 376, 379 (Tex. App.—Fort Worth 2000, no pet.). The party seeking to have an attorney disqualified has the burden to show disqualification is warranted. *Vinewood Capital LLC v. Dar Al-Maal Al-Islami Trust*, Civ. Action No. 4:06-cv-316, 2010 WL 1172947, *4 (N.D. Tex. March 25, 2010) (citing *Duncan v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 646 F.2d 1020, 1028 (5th Cir. 1981)).

17. Model Rule 1.9 is identical to Texas Rule 1.09 in all important respects. *Aubrey*, 2019 WL 2103699 at *2. Texas Rule 1.09 provides, in pertinent part:

> (a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

(2) if the representation in reasonable probability will involve a violation of Rule 1.05; or

(3) if it is the same or a substantially related matter.

Tex. Disciplinary Rules Prof'l Conduct R. 1.09, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A-1 (West Supp. 2016).

B. Rule 1.09(a)(3) – substantial relationship.

18. To prevail on a disqualification motion under Rule 1.09(a)(3), the moving party must "specifically establish that the prior and current representations involve overlapping subject matters, issues, and causes of action, and the court must engage in a painstaking analysis of the facts and precise application of precedent." *Aubrey*, 2019 WL 2103699 at *2; *Classic Industries, LP v. Mitsubishi Chem. FP Am., Inc.*, Civ. Action No. 3:07-cv-1201, 2009 WL 10677531, *2 (N.D. Tex. Feb. 17, 2009). Two matters are "substantially related" when "a genuine threat exists that a lawyer may divulge in one matter confidential information obtained in the other because the facts and issues involved in both are so similar." *Classic Ink, Inc. v. Tampa Bay Rowdies*, Civ. Action No. 3:09-cv-784, 2010 WL 2927285, *3 (N.D. Tex. July 23, 2010). Courts consider three factors to determine whether present and former matters are substantially related: (i) the factual similarities between the current and former representation, (ii) the similarities between the legal question posed, and (iii) the nature and extent of the attorney's involvement with the former representation." *Microsoft Corp. v. Commonwealth Scientific and Indus. Research Organisation*, Civ. Action Nos. 6:06 CV 549, 6:06 CV 550, 2007 WL 4376104, *7 (E.D. Tex. Dec. 13, 2007). "A superficial likeness between issues is not enough to equate to a substantial relationship." *Suarez v. Campbell*, Civ. Action No. 4:05-cv-741, 2006 WL 8438381, *2 (N.D. Tex. July 18, 2006).

19. Here, Wick Phillips' Previous Representation of HCMLP was limited to HCMLP as one of the seven borrowers under the Bridge Loan. As noted above, HCMLP was not a party to

the Unicorn Acquisition or Unicorn PSAs, and Wick Phillips did not represent HCMLP in connection with either of those matters. As such, the Previous Representation was limited to the negotiation and drafting of the Bridge Loan. Further, the Lead Borrower, NREP, was the main contact in connection with the Bridge Loan. Wick Phillips had limited communications with HCMLP directly and did not receive any confidential HCMLP information in connection with the Prior Representation. Wick Phillips' representation of NREP in the Current Representation is limited to the proposed reformation, rescission, or modification of the SE Multifamily Amended LLC Agreement based on the improper allocation of ownership percentages of members. These matters do not overlap on subject matter, issues, or causes of action.

20. The Debtor argues that Wick Phillips' involvement in the Bridge Loan is substantially related to the dispute over the SE Multifamily Amended LLC Agreement because Wick Phillips provided organizational charts of the ownership structure of SE Multifamily.[34] However, "[s]imply overlapping subject matter will not establish a substantial relationship between cases. *Classic Industries*, 2009 WL 10677531 at 4; *see also, Microsoft Corp.*, 2007 WL 4376104 at *8 ("…the sole presence of related subject matter does not establish a substantial relationship."). While the Bridge Loan was utilized to fund a portion of the purchase price, SE Multifamily paid in the Unicorn Acquisition, none of these issues are in dispute or important to the issues involved in the Contested POC. *See Classic Industries*, 2009 WL 10677531 at *4 (noting that because the terms of the sale and release were not disputed, the common subject matter between the two cases is not similar in a way that is important to an issue in both the prior litigation and current litigation). In fact, it is no secret that the properties acquired through the Unicorn Acquisition were placed in SE Multifamily and the ownership of SE Multifamily was originally

[34] *See* Motion, ¶ 51.

split between HCMLP and NREP. Wick Phillips could not reveal any information relating to the ownership structure that is not already known to the parties through their discovery. *See, e.g., Classic Ink*, 2010 WL 2927285 at *3 (the movant did not establish that the matters were substantially related where the prior representation involved the acquisition of a trademark and eventual assignment, the acquisition and assignment is not a secret, and such actions are now public matter that are known to the parties through their discovery).

21. Further, there are no similarities between the legal questions posed. The Previous Representation focused on the negotiation and drafting of a bridge loan agreement with KeyBank. While KeyBank required the organizational structure of various entities involved, Wick Phillips did not form or advise the Debtor (or NREP) in connection with the structure or allocation of membership interests in SE Multifamily. Upon information and belief, the Debtor was advised by its internal tax counsel and Hunton in forming SE Multifamily and drafting its organizational documents. The current dispute in the Contested POC raises the legal question of whether there was a mutual mistake, lack of consideration, or failure of consideration as a result of the improper allocation of membership interests in the SE Multifamily Amended LLC Agreement, documented six months after closing, in which the allocation of membership interests and profit participation is grossly inconsistent with the parties' respective capital contribution.

22. Finally, the Previous Representation was limited to Wick Phillips' representation of the borrower group of seven entities under the Bridge Loan. As noted above, NREP was the Lead Borrower and main contact regarding the representation. Such representation was neither broad nor extensive, but limited to the narrow issues related to the Bridge Loan and borrower group.

23. There is a reason that the Texas Rule, Model Rule, and courts refer to the test as the "substantial" relationship test. It is not the "tangential," "theoretical," "hypothetical" or "potential" relationship test. The Previous Representation is not substantially related to the Contested POC. The Debtor fails to satisfy its burden of identifying a specific subject, issue, or cause of action that is substantially related between the Bridge Loan and the Contested POC. As such, the Court must deny the Motion.

C. No appearance of impropriety.

24. The Debtor next argues that disqualification is required because continued representation of NREP would create an appearance of impropriety.[35] However, while courts will also consider the perception of impropriety in connection with its disqualification analysis, "there must be at least a reasonable possibility that some specifically identifiable impropriety did in fact occur." *Covington v. Aban Offshore Limited*, Civ. Action No. 1:10-cv-5, 2011 WL 13196327, *2 (E.D. Tex. Dec. 22, 2011); *see also, U.S. Fire Ins.*, 50 F.3d at 1316 ("[D]isqualification is unjustified without at least a reasonable possibility that some identifiable impropriety actually occurred."). In fact, the appearance of impropriety is not enough to disqualify an attorney when, as a matter of fact, no wrongdoing exists. *Covington*, 2011 WL 13196327 at *3.

25. Here, the Debtor alleges it disclosed confidential information related to the SE Multifamily Amended LLC Agreement and Wick Phillips allegedly has knowledge of the Debtor's privileged communications; however, the Debtor provides no support for its conclusory statements. "A severe remedy such as disqualification cannot be granted on generalities," instead, the moving party has the "burden to delineate with specificity what confidential information was shared." *Microsoft Corp.*, 2007 WL 4376104 at 9; *Classic Industries*, 2007 WL 10677531 at *4

[35] *See* Motion, ¶ 55.

(wholly conclusory testimony regarding the confidential information that was allegedly disclosed does not satisfy the movant's burden of "pointing to specific instances where it revealed confidential information."). The only information the Debtor points to in its Motion is the original 51/49% ownership allocation in the original SE Multifamily Agreement, which is not at issue in the Contested POC and is public information (or at least discoverable through discovery). *See, e.g., Classic Ink*, 2010 WL 2927285 at *3. This is insufficient to meet the high impropriety standard in the disqualification context.

26. The Debtor next points to the fact that NREP noticed for deposition the two individuals that Wick Phillips contends represented the Debtor's interests in connection with the SE Multifamily LLC agreement, including the SE Multifamily Amended LLC Agreement, as a basis for disqualification. However, nothing in the Texas Rules, Model Rules, or case law prevents a party from conducting discovery in a case or taking depositions from those individuals with personal knowledge of the relevant facts at issue. Clearly the individuals involved in the structuring and drafting of the SE Multifamily Amended LLC Agreement have knowledge relevant to NREP's allegations of mutual mistake, lack of consideration, or failure of consideration.

27. The Debtor's last attempt to meet its burden is based on its allegations that Wick Phillips will likely be called as a witness in this case. First, such allegations are misplaced because, as set forth above, Wick Phillips was not involved in the formation or structure of the SE Multifamily partnership agreement. Further, any facts which Wick Phillips may be called to testify about could be established through other witnesses or exhibits, rendering Wick Phillips' potential testimony duplicative and unnecessary. *See Classic Ink*, 2010 WL 2927285 at *4, n.3 (citing *In re Sanders*, 153 S.W.3d 54, 58 (Tex. 2004) ("Disqualification is only appropriate if the lawyers'

testimony is '*necessary* to establish an essential fact.") (emphasis in original)). As such, the potential that Wick Phillips may be a witness does not justify disqualification.

28. The Debtor has not (and cannot) satisfied its burden of pointing out any specific area in which counsel has, or with reasonable probably will, disclose its confidential information. *See, e.g. Vinewood Capital*, 2010 WL 1172947 at *6. Nor has the Debtor successfully alleged any fact demonstrating a reasonable probably that an impropriety has occurred. As such, the Court must deny the Motion.

D. Additional assertions regarding the Current Representation.

29. The Debtor's Motion includes various assertions in its Factual Background that are not only unsubstantiated but misleading, which NREP seeks to address. First, the Debtor appears to argue that, because the same officer executed the SE Multifamily company agreement on behalf of HCMLP and NREP, Wick Phillips must have represented both HCMLP and NREP. However, such allegation is nonsensical. Nowhere in the case law or otherwise does an overlap of officers or directors necessitate both entities utilize common counsel. Moreover, the documentation ***the Debtor produced*** in this contested matter is clear that HCMLP, with the assistance of Hunton, structured, formed, and drafted the LLC agreement for SE Multifamily – not Wick Phillips.[36]

30. The Debtor also appears to argue that because NREP suggested the Debtor search the emails of the HCMLP employees involved in the formation and structure of the SE Multifamily company agreement, Wick Phillips must have access to confidential information.[37] However, the Debtor never asked Wick Phillips or NREP how it knew of such communications. Had the Debtor

[36] App. 272-305; App. 306-332.

[37] *See* Motion, ¶¶ 34-35.

asked, NREP would have explained that ***the Debtor produced some of these communications*** in discovery, many of which are included in NREP's Appendix.

IV. CONCLUSION

The Debtor has not met its burden of satisfying the exacting standard for disqualification. The Prior Representation and Contested POC are not substantially similar, the Debtor did not provide Wick Phillips confidential information in the Prior Representation, and the Debtor fails to provide any reasonable possibility that some specifically identifiably impropriety did in fact occur. For these reasons, NREP respectfully requests the Court deny Debtor's Motion to Disqualify Wick Phillips Gould & Martin and grant NREP such other relief to which it may be entitled.

Respectfully submitted,

/s/ Lauren K. Drawhorn

Brant C. Martin
Texas Bar No. 24002529
Jason M. Rudd
Texas Bar No. 24028786
Lauren K. Drawhorn
Texas Bar No. 24074528
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
Dallas, Texas 75204
Telephone: (214) 692-6200
Fax: (214) 692-6255
Email: brant.martin@wickphillips.com
jason.rudd@wickphillips.com
lauren.drawhorn@wickphillips.com

COUNSEL FOR NEXPOINT REAL ESTATE PARTNERS, LLC F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2021, a true and correct copy of the foregoing Joinder was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the following parties:

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com

Melissa S. Hayward
Zachery Z. Annable
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Email: MHayward@HaywardFirm.com
ZAnnable@HaywardFirm.com

/s/ Lauren K. Drawhorn
Lauren K. Drawhorn

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

Signed December 10, 2021

United States Bankruptcy Judge

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

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

ORDER GRANTING IN PART AND DENYING IN PART HIGHLAND'S SUPPLEMENTAL MOTION TO DISQUALIFY WICK PHILLIPS GOULD & MARTIN, LLP AS COUNSEL TO HCRE PARTNERS, LLC AND FOR RELATED RELIEF

The Court conducted a hearing on November 30, 2021 (the "Hearing") to consider *Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2893] (the "Supplemental Motion") which supplemented the *Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2196] (the "Original Motion", and together with the Supplemental Motion, the "Motion") filed by Highland Capital Management,

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

L.P. ("Highland" or the "Reorganized Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"). In the Motion, Highland sought entry of an order (i) directing the disqualification of Wick Phillips Gould & Martin, LLP ("Wick Phillips") as counsel to HCRE Partners, LLC ("HCRE") in connection with the prosecution of HCRE's Claim;[2] (ii) directing Wick Phillips to immediately turnover to Highland all files and records relating to the LLC Agreement, the Loan Agreement, and the Restated LLC Agreement; and (iii) directing HCRE to (a) reimburse Highland for all costs and fees incurred in making the Motion, including reasonable attorneys' fees; (b) engage substitute counsel in connection with the prosecution of HCRE's Claim within fourteen (14) days of the entry of an order of the Court; and (c) disclose all communications it (or anyone purporting to act on its behalf, including Wick Phillips) has had with Mark Patrick and Paul Broaddus concerning HCRE's Claim. In considering the Motion, the Court has reviewed the (i) Original Motion; (ii) *Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2197]; (iii) the *Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2198] and the exhibits attached thereto; (iv) the Supplemental Motion; (v) *Highland's Memorandum of Law in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2894]; (vi) the *Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief*

[2] Capitalized terms not otherwise defined in this Order have the meanings ascribed to them in *Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2197] and *Highland's Memorandum of Law in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2894].

[Docket No. 2895] and the exhibits attached thereto; (vii) the *Response to Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC* [Docket No. 2278]; (viii) the *Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC* [Docket No. 2279]; (ix) the sealed *Appendix in Support of HCRE Partners, LLC Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP* [Docket No. 2926]; (x) the *Response and Brief in Opposition to Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2927]; (xi) the *Supplemental Appendix in Support of NexPoint Real Estate Partners, LLC's Response and Brief in Opposition to Debtor's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP* [Docket No. 2928]; (xii) *Highland's Reply in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief* [Docket No. 2952]; (xiii) the exhibits admitted at the Hearing on the Motion [Docket No. 3065]; and (xiv) the arguments of counsel at the Hearing. After considering the foregoing, the Court finds that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this matter constitutes a core proceeding under 28 U.S.C. § 157; (c) venue is proper in this judicial district pursuant to 28 U.S.C. § 1409; (d) notice of the Motion and the Hearing were appropriate and adequate; and (e) all persons with standing have been afforded the opportunity to be heard on the Motion. As a result of the findings of fact and conclusions of law set forth on the record at the Hearing, the Court finds good cause to grant in part, and deny in part, the relief requested in the Motion. Accordingly, **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** in part and **DENIED** in part as set forth herein.

2. Wick Phillips is **DISQUALIFIED** from serving as counsel to HCRE in connection with the prosecution of HCRE's Claim.

3. Wick Phillips is directed to immediately turnover to Highland all files and records relating to the LLC Agreement, the Loan Agreement, and the Restated LLC Agreement.

4. HCRE is directed to engage substitute counsel in connection with the prosecution of HCRE's Claim within thirty (30) days of the entry of this Order.

5. Highland's request that HCRE disclose all communications it (or anyone purporting to act on its behalf, including Wick Phillips) has had with Mark Patrick and Paul Broaddus concerning HCRE's Claim is **DENIED**.

6. Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**.

7. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

End of Order

Charles W. Gameros, Jr., P.C.
State Bar No. 00796956
Douglas Wade Carvell, P.C.
State Bar No. 00796316
HOGE & GAMEROS, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: 214-765-6002
Facsimile: 214-559-4905

ATTORNEYS FOR NEXPOINT REAL ESTATE PARTNERS, LLC, f/k/a HCRE PARTNERS, LLC

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-SGJ-11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Movant,	§	
	§	**Contested Matter**
v.	§	
NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC,	§	
Respondent.	§	

MOTION TO WITHDRAW PROOF OF CLAIM

NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NREP" or "Claimant") files this, its Motion to Withdraw Proof of Claim [Proof of Claim No. 146], and respectfully states as follows:

PRELIMINARY STATEMENT

Claimant filed a proof of claim, timely, but long before any Plan was proposed. The Debtor objected.

Since then, the LLC subject to the objection has operated without anticipated interference from the Debtor, and NREP would prefer that the LLC continue to do so. As a result of the Company's operations, and in consideration of the cost and uncertainty with pursuing the Claim in the face of Debtor's objection, Claimant now wishes to withdraw the claim to which the Debtor objected.

At the time of this filing, Debtor was unable to agree or provide that it was unopposed to the withdrawal. Respectfully, objection to the proposed withdrawal of a claim, if any, should be overruled, and this Motion should be granted.

PROCEDURAL HISTORY

On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court"). The Delaware Court thereafter entered an order transferring venue of the Debtor's bankruptcy case (the "Bankruptcy Case") to this Court.

On March 2, 2020, the Court entered its Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof [Docket No. 488] (the "Bar Date Order"), which, among other things, established April 8, 2020 as the deadline for all entities holding claims against the Debtor that arose before the Petition Date to file proofs of claim.

On April 8, 2020, NREP timely filed a proof of claim (the "Proof of Claim") regarding its and the Debtor's interest in a limited liability company, SE Multifamily Holdings, LLC (the "Company").

On July 30, 2020, the Debtor objected to the Proof of Claim in its First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 906] (the "Objection") on the ground that it had no liability. NREP responded the objection on October 19, 2020 (the "Response").

The Debtor's Fifth Amended Plan of Reorganization (the "Plan") [Docket. No. 1808] was confirmed by Order entered by the Bankruptcy Court on February 22, 2021 [Docket No. 1943], and the effective date of the Plan as August 11, 2021 [Docket No. 2700].

A year after NREP filed the Proof of Claim, and eight months after it filed the Objection, the Debtor sought to disqualify NREP's then-counsel Wick Phillips Gould & Martin LLP [Docket Nos. 2196 and 2893]. Following notice and hearing, the Court entered an Order granting in part and denying in part the Debtor's motion, and NREP thereafter secured new counsel.

Thereafter in June 2022, Debtor and NREP (via new counsel) entered a Scheduling Order regarding the Proof of Claim [Docket No. 3356] and the parties have engaged in document and third-party deposition discovery. There have been no hearings in the matter, and no dispositive motions have been filed or set. This contested matter is set for hearing on November 1 and 2, 2022.

There is no other pending proceeding, lawsuit, or matter regarding the Proof of Claim or the claim made in the Proof of Claim.

Given the uninterrupted operation of the Company, and in order to put a stop to the anticipated future time and effort expended on pursuit of the Proof of Claim and the Debtor's

objection to it, NREP conferred with the Debtor about withdrawal. Counsel for the Debtor was unable to state it was agreed or unopposed.

This Motion follows.

ARGUMENT AND AUTHORITY

A. Bankruptcy Rule 3006

Rule 3006 provides after a creditor's proof of claim has drawn an objection, the creditor may not withdraw the claim except on order of the court, after a hearing, and on such terms and conditions as the court deems proper.[1]

B. Standards for Applying Bankruptcy Rule 3006

Although Rule 3006 itself does not provide guidance as to the standards to be applied for withdrawing a proof of claim, the cases and comments applying it advise applying the standards used in relation to FED. R. CIV. P. 41(a).[2]

Courts in the Fifth Circuit "follow the traditional principle that dismissal should be allowed unless the defendant will suffer some plain prejudice other than the mere prospect of a second lawsuit. It is no bar to dismissal that plaintiff may obtain some tactical advantage thereby,"[3] and there are, in fact, "only a limited number of circumstances that will warrant denial of a Federal

---

[1] *See* FED. R. BANKR. P. 3006.

[2] *See In re Manchester, Inc.*, Case No. 08-03163-BJH, 2008 WL 5273289, *3 (Bankr. N.D. Tex. December 19, 2008) (Houser, C.J.) ("A motion to withdraw a proof of claim is frequently analogized to a motion to withdraw a complaint under Federal Rule of Civil Procedure 41(a).") (citing *In re 20/20 Sport, Inc.*, 200 B.R. 972, 979-80 (Bankr. S.D.N.Y. 1996)); Advisory Committee Notes on Rules – 1983 ("This rule recognizes the applicability of the considerations underlying Rule 41(a) F.R.Civ.P. to the withdrawal of a claim after it has been put in issue by an objection.").

[3] *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976) (quoting *Holiday Queen Land Corp. v. Baker*, 489 F.2d 1031, 1032 (5th Cir. 1974)); *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002) ("We have explained that, as a general rule, motions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit."); *Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176, 177 (5th Cir. 1990) ("Generally, courts approve such dismissals unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit."); *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976) ("Nevertheless, in most cases a dismissal should be granted unless the defendant will suffer some legal harm.").

Rule 41(a)(2) motion since 'the [court] should not require that a plaintiff continue to prosecute an action that it no longer desires to pursue.'"[4]

Legal prejudice here means prejudice to some legal interest, some legal claim, some legal argument, and may occur when a dismissal strips an otherwise available defense (*e.g.*, statute of limitation, *forum non conveniens*),[5] or dismissal is requested after an adverse ruling is entered or one is imminent.[6]

The prospect of a second lawsuit, or the fact that plaintiff may obtain some tactical advantage, are *not* sufficient to establish legal prejudice,[7] and that the dismissing party might possibly obtain some tactical advantage in some future litigation is not a bar.[8]

---

[4] *Kumar v. St. Paul Surplus Lines Ins. Co.*, Case No. 3:10-CV-166-O, 2010 WL 1946341, at *2 (N.D. Tex. May 12, 2010) (citing *Radiant Tech. Corp. v. Electrovert USA Corp.*, 122 F.R.D. 201, 204 (N.D. Tex. 1988)).

[5] *See, e.g., Elbaor*, 279 F.3d at 318–19 (vacating and remanding district dismissal because non-movant could potentially lose a statute of limitations defense); *Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176, 178–80 (5th Cir. 1990) (vacating and remanding because non-movant could lose forum non conveniens); *Kumar v. St. Paul Surplus Lines Ins. Co.*, 2010 WL 1946341, *1 ("Legal prejudice has been defined as prejudice to some legal interest, some legal claim, [or] some legal argument.").

[6] *See Robles v. Atlantic Sounding Co., Inc.*, 77 Fed. Appx. 274, 275 (5th Cir. 2003) (per curiam) ("These timing cases are inapposite here because they involve situations where the movant suffered an adverse legal decision *prior* to moving for voluntary dismissal.") (emphasis added); *Forbes v. CitiMortgage, Inc.*, 998 F. Supp. 2d 541, 547 (S.D. Tex. 2014) ("Plain legal prejudice may occur when the plaintiff moves to dismiss a suit at a late stage of the proceedings or seeks to avoid an imminent adverse ruling in the case, or where a subsequent refiling of the suit would deprive the defendant of a limitations defense.") (quoting *Harris v. Devon Energy Prod. Co., L.P.*, 500 Fed. Appx. 267, 268 (5th Cir. 2012))

[7] *See Dale v. Equine Sports Med. & Surgery Race Horse Serv., P.L.L.C.*, 750 Fed. Appx. 265, 268 (5th Cir. 2018) ("[T]he potential for forum-shopping does not count as legal prejudice."); *Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176, 177–78 (5th Cir. 1990) ("That plaintiff may obtain some tactical advantage over the defendant in future litigation is not ordinarily a bar to dismissal."); *Reed v. Falcon Drilling Co., Inc.*, No. 99–0927, 2000 WL 222852, *1, (5th Cir. Feb. 18, 2000) ("The mere prospect of a second lawsuit or the fact that plaintiff may obtain some tactical advantage are insufficient to establish legal prejudice.").

[8] *See Ikospentakis v. Thalassic Steamship Agency*, 915 F.2d at 78 ("That plaintiff may obtain some tactical advantage over the defendant in future litigation is not ordinarily a bar to dismissal.") (citing *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976)); *Bechuck v. Home Depot U.S.A., Inc.*, 814 F.3d 287, 299 (5th Cir. 2016) ("Yet, '[i]t is no bar to dismissal that plaintiff may obtain some tactical advantage thereby.' Indeed, the 'fact that a plaintiff may gain a tactical advantage by dismissing its suit without prejudice and refiling in another forum is not sufficient legal prejudice to justify denying a motion for voluntary dismissal.'") (citation omitted).

In short, absent "legal harm" or "legal prejudice," the general guidance is that Bankruptcy Courts should allow withdrawal absent a showing of legal harm or prejudice.[9]

The burden of showing prejudice falls on the objecting party,[10] and withdrawal is in the Court's discretion, and in consideration of interests of the parties.[11]

In determining whether to approve withdrawal, the Court may consider the (1) diligence in bringing the motion, (2) any "undue vexatiousness" by the movant, (3) the suit's progression, including trial preparation, (4) the duplicative expense of re-litigation, and (5) the movant's reason for seeking withdrawal.[12]

[9] *See In re Manchester*, 2008 WL 5273289, *3 ("[S]ince the general policy under Rule 41(a) is to permit withdrawal of a complaint, withdrawal of a proof of claim should be permitted unless that withdrawal results in a 'legal harm' or 'prejudice' to a non-moving party."); *see also Robles*, 77 Fed. Appx. at 275 (recognizing that Rule 41 motions "should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit").

[10] *See In re Manchester*, 2008 WL 5273289, *3 ("The non-moving party bears the burden to prove that it will suffer such a legal harm or prejudice."); *see also In re Ogden New York Servs., Inc.*, 312 B.R. 729, 733 (S.D.N.Y. 2004) (recognizing that the objecting party bears the burden of demonstrating legal prejudice).

[11] *See In re Manchester*, 2008 WL 5273289, *3 ("As with a Rule 41 (a) (2) motion, a motion to withdraw a proof of claim is left to the bankruptcy court's discretion, which is 'to be exercised with due regard to the legitimate interests of both [parties].'") (quoting *In re 20/20 Sport*, 200 B.R. at 979).

[12] *See In re Manchester, Inc.*, 2008 WL 5273289, *3 (("In determining whether withdrawal of a proof of claim is appropriate, courts consider the following factors: (1) the movant's diligence in bringing the motion, (2) any "undue vexatiousness" on the part of the movant, (3) the extent to which the suit has progressed, including the effort and expense undertaken by the non-moving party to prepare for trial, (4) the duplicative expense of re-litigation, and (5) the adequacy of the movant's explanation for the need to withdraw the claim.").

C. Standards for Applying Bankruptcy Rule 3006

Considering the factors in *Manchester*,

Standard	Application
Diligence in bringing the motion	NREP brought the Motion immediately after conferring with Debtor's counsel.
Undue vexatiousness	NREP has not been vexatious in pursuing its Proof of Claim, and outside the motion to disqualify previous counsel – filed by the Debtor, and which is not substantive – everything in the matter has proceeded by agreement, and there have been no hearings set or held.
Matter's progression, including trial preparation	The hearing on the Debtor's objection is months away, November 1 and 2, and fact and expert discovery is not yet completed.
Duplication of expense of re-litigation	The Proof of Claim is effectively *sui generis* and is not the subject of any other pending action, proceeding, or matter. There is no tactical advantage for the withdrawal.
Reason for dismissal	The operation of the Company during the case, and the anticipated issues therewith, have not materialized and NREP no longer desires to proceed on the matters raised in the Proof of Claim.

There are no pending Motions, and no dispositive motions have been filed, set, or heard.

Neither the Debtor nor any party-in-interest will suffer plain legal prejudice if the Proof of Claim is withdrawn: there are no imminent adverse rulings, no parallel or pending actions, no tactical advantage to be obtained.

The Debtor is reorganized, the Plan effective date has long since passed, and the withdrawal of the Proof of Claim will not have any effect on the Debtor's reorganization.

NREP simply wishes to no longer pursue a claim to which the Debtor has objected.[13]

WHEREFORE, NREP prays that it be allowed to withdraw its claim and for such other relief as may be appropriate.

Respectfully submitted,

/s/ Charles W. Gameros, Jr., P.C.
Charles W. Gameros, Jr., P.C.
State Bar No. 00796596
Douglas Wade Carvell, P.C.
State Bar No. 00796316

HOGE & GAMEROS, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: (214) 765-6002
Telecopier: (214) 559-4905
E-Mail BGameros@LegalTexas.com
WCarvell@LegalTexas.com

ATTORNEYS FOR
NEXPOINT REAL ESTATE PARTNERS, LLC,
F/K/A HCRE PARTNERS, LLC

[13] *See Kumar*, 2010 WL 1946341, *2 ("[T]he [court] should not require that a plaintiff continue to prosecute an action that it no longer desires to pursue.").

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has communicated with counsel for the Debtor regarding the substance of the forgoing Motion, but that counsel could not agree or disagree with the relief sought. As such, Claimant files this Motion.

/s/ Charles W. Gameros, Jr., P.C.
Charles W. Gameros, Jr., P.C.

CERTIFICATE OF SERVICE

This is to certify parties which have so registered with the Court, including counsel for the Debtor, the United States Trustee, and all persons or parties requesting notice and service shall receive notification of the foregoing via the Court's ECF system, and are considered served pursuant to the Administrative Procedures incorporated into the Order Adopting Administrative Procedures for Electronic Case Filing, General Order 2003-01.2.

/s/ Charles W. Gameros, Jr., P.C.
Charles W. Gameros, Jr., P.C.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) *(admitted pro hac vice)*
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

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

HIGHLAND CAPITAL MANAGEMENT, L.P.'S OBJECTION TO MOTION TO WITHDRAW PROOF OF CLAIM

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

RULES

Highland Capital Management, L.P. ("Highland" or, as applicable, the "Debtor"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *Motion to Withdraw Proof of Claim* [Docket No. 3443] (the "Motion to Withdraw"), filed by NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("HCRE" and together with Highland/Debtor, the "Parties"). In support of its Objection, Highland states as follows:

PRELIMINARY STATEMENT[1]

1. In another blatant abuse of the bankruptcy rules and system, HCRE (under the control of Mr. Dondero) filed a baseless proof of claim that it now abruptly seeks to withdraw ***after two years of litigation*** during which Highland expended substantial resources, completed all of ***its*** discovery obligations, and uncovered substantial damage caused by HCRE's actions. Just as Highland was compelling HCRE to complete ***HCRE's*** discovery obligations and preparing for summary judgment, HCRE realized the risk it faced and is now desperately trying to dodge Highland's day in court. Shamelessly, HCRE wants to slither away—without consequence and without offering any evidence—just days before it and its owners were to be deposed on matters certain to elicit testimony concerning HCRE's meritless claim, its contractual breaches, and its questionable tax structuring and filings.[2] Under these dubious circumstances, the Motion to Withdraw should be denied.

[1] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

[2] HCRE's tax filings on behalf of SE Multifamily were so questionable that BH Equities (the lone third-party member of SE Multifamily) disregarded the 2020 Form K-1 that HCRE caused to be prepared and voluntarily reported to the IRS an allocation of profits from SE Multifamily that BH Equities believed comported with the Amended LLC Agreement. *See Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim* (being filed simultaneously with this Objection) ("Morris Dec."), Ex. 1 at 129:21-130:7; 144:8-145:12; 147:5-149:14.

2. Pursuant to Bankruptcy Rule 3006, motions to withdraw contested claims may only be granted after a hearing during which courts may consider various factors (the "*Manchester* Factors") intended to protect the integrity of the system. Application of those factors here establishes that the Motion to Withdraw is a strategic ploy intended to avoid depositions, harass Highland, and otherwise game the system:

- Diligence in bringing the motion: HCRE gives no indication when it concluded that SE Multifamily was being "operated without interference from the Debtor,"[3] but it filed its Motion to Withdraw after two years of heavily contested litigation during which it never expressed any concerns, made any demands, or sought judicial relief concerning Highland's alleged "interference."

- Undue vexatiousness: HCRE's conduct in abruptly moving to withdraw its Dondero-signed proof of claim after two years of litigation, and after taking Highland's deposition but days before its own Witnesses were to be deposed, is a textbook example of vexatiousness—and is just the latest instance of Mr. Dondero bringing motions, or asserting claims, or filing objections, only to withdraw them after forcing Highland to spend time, money, and effort addressing them.

- Progress of the case and the effort and expense of the non-moving party: With the exception of the depositions HCRE seeks to avoid, discovery is complete,[4] and Highland is prepared to move for summary judgment—after spending hundreds of thousands of dollars disqualifying its former counsel over HCRE's objection and engaging in exhaustive discovery, including taking the depositions of the Third-Party Witnesses during which HCRE declined to ask any questions.

- Duplication of re-litigation: Given that this case is trial-ready (but for the completion of the HCRE-related depositions), it would be a massive waste of resources to start this litigation anew (as HCRE implicitly threatens) and would be incredibly prejudicial to Highland because the discovery deadlines have passed and HCRE should be precluded from getting a "do-over."

- Adequacy of explanation: HCRE's explanation makes no sense given the timing: HCRE has not (and cannot) identify anything that occurred between August 10,

[3] Motion to Withdraw at 2.

[4] There is one additional exception that warrants mention because of its timing. In addition to the HCRE depositions, HCRE and Highland entered into a stipulation and proposed amended scheduling on August 5, 2022 (***just seven days before HCRE filed its Motion to Withdraw***) pursuant to which Highland agreed to extend the expert discovery deadline to allow HCRE to proffer an expert report while preserving its right to file a motion for summary judgment. Docket No. 3434. On August 9, 2022 (***just three days before HCRE filed its Motion to Withdraw***), the Court entered an Order approving the stipulation. Docket No. 3438.

2022 (when it took the deposition of Highland's corporate representative) and August 12, 2022 (when it filed the Motion to Withdraw) that caused it to conclude that SE Multifamily was being "operated without interference from the Debtor."

3. Based on the evidence that will be adduced,[5] the Court should deny the Motion to Withdraw, direct HCRE to tender the Witnesses for the depositions that HCRE unilaterally cancelled, and promptly proceed either with Highland's expected summary judgment motion or trial.

4. However, if the Court is inclined to grant the Motion to Withdraw, it should exercise its discretion under Bankruptcy Rule 3006 and set the following terms and conditions (collectively, the "Conditions") to mitigate the legal prejudice to Highland:

- HCRE should make its corporate representative, Mr. Dondero, and Mr. McGraner available for substantive depositions as previously agreed in order to level the playing field;
- HCRE should be barred from deposing BH Equities, Barker Viggato, and Mark Patrick because HCRE declined to question any of those witnesses during their respective depositions and the discovery deadline has passed;
- HCRE should be barred from taking any further discovery from Highland because Highland has completed its discovery obligations and the discovery deadline has passed;
- After the Witnesses' depositions are complete, this Court should order that the withdrawal of HCRE's POC be ***with*** prejudice or, alternatively, this Court should retain jurisdiction over all claims initially raised in HCRE's POC such that any re-filing of such claims must be in this Court; and
- HCRE should be ordered to pay all of Highland's legal fees and expenses related to HCRE's POC, including the motion to disqualify and all discovery.

[5] In addition to the application of the *Manchester* Factors, Highland will present evidence establishing that Mr. Dondero lacked a good faith basis to sign HCRE's POC and that it was fabricated. Specifically, the evidence will establish that the Allocation that HCRE contends was the product of a "mistake" was: (a) drafted by employees of entities owned and/or controlled by Mr. Dondero; (b) consistently set forth in four separate provisions of the Amended LLC Agreement; (c) one of the few provisions in the Amended LLC Agreement that was negotiated with BH Equities before BH Equities was admitted as a new member in SE Multifamily; and (d) according to BH Equities, consistent with the Parties' intent.

5. For the reasons set forth herein, the Motion to Withdraw should be denied; if not, it should be granted subject to all of the Conditions.

RELEVANT BACKGROUND

A. Highland, HCRE, and BH Equities Pursue "Project Unicorn" and Enter into the Amended LLC Agreement

6. In the summer of 2018, HCRE and Highland began moving forward with a plan to purchase 26 properties with an estimated value over $1.1 billion (referred to as "Project Unicorn").[6] Project Unicorn was a complex transaction with multiple, overlapping components. *See, e.g.*, **Morris Dec. Ex. 1** at 29:18-30:7.

7. The first step was to formalize the relationship between HCRE and Highland. At all relevant times until January 9, 2020, both entities were controlled by James Dondero ("Mr. Dondero"), but HCRE had no employees of its own and relied on Highland's employees (and employees of other entities controlled by Mr. Dondero) to conduct business on its behalf.

8. Highland and HCRE entered into that certain *Limited Liability Company Agreement* for SE Multifamily Holdings LLC ("SE Multifamily"), dated as of August 23, 2018 (the "Original LLC Agreement") pursuant to which SE Multifamily was created. **Morris Dec. Ex. 2**. SE Multifamily was created to, among other things, serve as the Project Unicorn vehicle to acquire and improve real property on behalf of its members, Highland and HCRE. ***Id.* ¶ 1.3**.

9. The Original LLC Agreement (a) allocated 51% of SE Multifamily's membership interests to HCRE and 49% of those interests to Highland and (b) was signed by Mr. Dondero on behalf of both Highland and HCRE. ***Id***. at 17 and Schedule A.

[6] *See, e.g.*, *Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips* [Docket No. 2279] ¶¶ 4-6.

10. In order to finance the acquisition of the real estate, Highland and HCRE, among other borrowers (the "Borrowers"), entered into that certain *Bridge Loan Agreement* (the "Loan Agreement") pursuant to which the Borrowers obtained a secured loan from Keybank, N.A. ("Keybank"), as of September 26, 2018. *See* **Morris Dec. Ex. 3** § 2.02(a) and (b) (providing that the purpose of the financing was "to finance the acquisition cost of the Mortgaged Properties" and "to finance a portion of the acquisition cost of the Portfolio Properties . . . .") The Loan Agreement financed about half of the purchase price of the real estate acquisition and was a necessary component to the closing of Project Unicorn. **Morris Dec. Ex. 1** at 32:21-33:8.

11. Pursuant to the Loan Agreement, Keybank provided up to $556,275,000 in secured loans to the Borrowers, including Highland and HCRE.[7] The Loan Agreement also provided, among other things, that (a) all of the Borrowers (including Highland) were jointly and severally liable for all amounts owed under the Loan Agreement, but (b) HCRE was designated as the "Lead Borrower" with the sole authority to request and obtain borrowings and to determine how loan proceeds would be distributed among the Borrowers. **Morris Dec. Ex. 3** ¶¶ 1.05(a), (b).

12. Highland was essential to Project Unicorn because, among other things, it enhanced the creditworthiness of the Borrowers and enabled the financing under the Loan Agreement to go forward. *See* **Morris Dec. Ex. 4** at 25:11-17 ("And KeyBank needed more credit from the borrower side since this was such a large transaction, and that's when Highland Capital was added as an additional borrower to the loan").

13. BH Equities, LLC ("BH Equities") worked with Highland on Project Unicorn in anticipation of becoming a member of SE Multifamily. Without any formal agreement,

[7] Notably, SE Multifamily (the entity created to hold the "unicorn") was not a "Borrower."

BH Equities contributed approximately $21 million in capital to fund Project Unicorn expenses. **Morris Dec. Ex. 1** at 33:9-16, 34:5-35:17.

14. BH Equities, HCRE, and Highland formalized their relationship on March 15, 2019, with BH Equities acquiring 6% of SE Multifamily's membership interests from Highland and HCRE in exchange for the $21 million previously contributed pursuant to that certain *Amended and Restated Limited Liability Company Agreement*, dated as of August 23, 2018 (the "Amended LLC Agreement"). Mr. Dondero signed the Amended LLC Agreement on behalf of HCRE and Highland. **Morris Dec. Ex. 5** at 18 and Schedule A.

15. Pursuant to the Amended LLC Agreement, SE Multifamily's membership interests were allocated 47.94% to HCRE, 46.06% to Highland; and 6% to BH Equities (the "Allocation"). ***Id***. at §§ 1.7, 6.1(a), 9.3 and Schedule A. [8]

16. HCRE has served as the manager of SE Multifamily since that entity was formed in August 2018. *See* ***Id***. § 1.6.

[8] Under the Amended LLC Agreement, while HCRE was allocated 47.94% of the ownership interests and entitled to 47.94% of the "Net Distributable Cash," Highland was allocated 94% of the book "Profits and Losses" from the enterprise. **Morris Dec. Ex. 5** § 6.4(a). According to BH Equities, this "wasn't exactly normal" because "[n]ormally the allocation of profit and losses would also follow an allocation—the waterfall allocation or those things more closely." **Morris Dec. Ex. 1** at 62:15-63:21. Notwithstanding this provision, Highland never received any cash distributions, but was allocated in excess of $30 million of net rental real estate income in 2018 and 2019, which it recognized for purposes of preparing Highland's tax returns. By contrast, HCRE allocated itself zero profits for the years 2018 and 2019, while receiving actual distributions in excess of its "contributed capital." Further, by allocating the loan proceeds entirely to itself, notwithstanding that Highland was jointly and severally liable under the Loan Agreement, HCRE took all of the deductible interest for itself thereby reducing its own tax burden. In other words, taxable gains were washed through Highland, while deductions were used by HCRE. Compounding the potential impropriety of these tax allocation gymnastics, all of the "Distributable Cash" that was actually distributed to Highland-related parties (millions of dollars) was sent to HCRE and Liberty while Highland received nothing. Although similar in style, the scale is not near the more than [$350] million of ordinary, capital gain, and other income attributed to "Hunter Mountain Investment Trust" in 2016 after virtually all of the Highland economic interests were transferred to that entity at the end of 2015. Highland is continuing to investigate that transaction. As a minority member of SE Multifamily (controlled and managed by Mr. Dondero), Highland has a reasonable expectation that similar shenanigans will continue or even exacerbate in the future if this matter is not now resolved with finality.

B. HCRE Files a Proof of Claim, the Debtor Objects, and a Contested Matter Is Initiated

17. On October 16, 2019, Mr. Dondero caused Highland to file a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS). Docket No. 3 at 4.

18. On April 8, 2020, Mr. Dondero caused HCRE to file a proof of claim that was denoted by the Debtor's claims agent as proof of claim number 146 ("HCRE's POC"). HCRE's POC asserted, among other things, that:

> [HCRE] may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions of inactions of the Debtor. Additionally, [HCRE] contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be property of [HCRE]. Accordingly, [HCRE] may have a claim against the Debtor.

Morris Dec. Ex. 6 at 5.[9]

19. On July 30, 2020, the Debtor objected to HCRE's POC contending that it had no liability under HCRE's POC. Docket No. 906 (the "Debtor's Initial Objection").

20. On October 16, 2020, HCRE responded to the Debtor's Initial Objection ("HCRE's Initial Response") asserting, among other things:

> After reviewing what documentation is available to HCREP with the Debtor, HCREP believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, HCREP has a claim to reform, rescind and/or modify the agreement.

Morris Dec. Ex. 7 ¶ 5.

[9] Mr. Dondero signed HCRE's POC under penalty of perjury with a notice next to his signature reminding him of the criminal penalties that could be imposed for filing a fraudulent proof of claim.

21. HCRE's Initial Response was filed by the law firm of Wick Phillips Gould & Martin, LLP ("Wick Phillips"). *See* ***id***.

C. The Parties Litigate for Nearly Two Years

22. With the Parties' positions established, they proceeded to litigate the merits of HCRE's POC and Highland's objections thereto.

1. Initial Discovery

23. On December 10, 2020, the Parties entered into a proposed scheduling order that was subsequently approved by the Court. Docket Nos. 1536 and 1568 (the "Initial Scheduling Order"). Pursuant to the Initial Scheduling Order, the Parties were to complete discovery by March 8, 2021. Docket No. 1536 ¶ 1.

24. Consistent with the Initial Scheduling Order, the Debtor (a) timely served deposition notices and subpoenas, as amended, on HCRE and others, (b) engaged in written discovery, and (c) searched for and produced voluminous documents, including e-mail communications, requested by HCRE.[10]

25. While reviewing documents in preparation for depositions, the Debtor discovered that Wick Phillips had jointly represented HCRE and Highland in connection with at least some of the underlying transactions concerning Project Unicorn. Highland immediately brought the issue to HCRE's attention, but HCRE refused to acknowledge that any conflict existed, and Wick Phillips refused to step aside.

2. The Wick Phillips Disqualification Motion

26. With no choice other than litigating against its prior counsel, the Debtor moved to disqualify Wick Phillips on April 14, 2021. Docket Nos. 2196, 2197, and 2198 (the

[10] *See, e.g.*, Docket Nos. 1898, 1918, 1964, 1965, 1995, 1996, 2118, 2119, 2134, 2135, 2136, and 2137.

"Disqualification Motion"). In the Disqualification Motion, the Debtor contended, among other things, that Wick Phillips should be disqualified from representing HCRE because that firm previously represented the Parties jointly such that pursuing claims against the Debtor would violate Wick Phillips' duties to Highland.[11]

27. On May 6, 2021, HCRE filed its opposition to the Disqualification Motion [Docket Nos. 2278 and 2279], and on May 12, 2021, the Debtor filed its preliminary reply. Docket No. 2294.

28. On May 24, 2021, the Court entered a scheduling order with respect to the Disqualification Motion. Docket No. 2361 (the "Initial DQ Scheduling Order"). The Initial DQ Scheduling Order was amended on August 23, 2021. *See* Docket No. 2757.

29. The Disqualification Motion was heavily contested. The Parties engaged in written discovery, took fact depositions, and retained experts and engaged in expert discovery.[12]

30. On October 1, 2021, following the completion of fact and expert discovery, the Debtor supplemented its Disqualification Motion. Docket Nos. 2893, 2894 and 2895 (the "Supplement").

[11] The move to disqualify Wick Phillips was not an academic exercise. Wick Phillips was an integral part of constructing "Project Unicorn" (as the SE Multifamily transaction was known) for the Highland entities and was working with Mr. Dondero to divest Highland of its ownership stake. This was not the first questionable Highland real estate transaction with which these parties were involved. In 2018, in a transaction referred to as "HE 232," Wick Phillips (through D.C. Sauter, then outside counsel) took direction from Scott Ellington to transfer approximately $3 million that rightfully belonged to Highland to a Cayman Islands entity indirectly owned and controlled by Mr. Dondero and Mr. Ellington as part of the secret "**SAS Structure**." Highland continues to investigate these and related Cayman Island transactions.

[12] *See, e.g.*, Docket No. 3054, Ex. 11 (deposition transcript of Robert Wills, HCRE's Rule 30(b)(6) witness for the Disqualification Motion); Docket No. 3054, Ex. 12 (deposition transcript of Robert Kehr, the Debtor's expert on issues of professional responsibilities and attorney ethics); and Docket No. 3060, Ex. 12 (deposition transcript of Ben Selman, HCRE's expert on issues of professional responsibilities and attorney ethics).

31. On October 15, 2021, HCRE filed its response to Highland's Supplement, [Docket Nos. 2927 and 2928], and on October 22, 2021, Highland filed its reply. Docket No. 2952.

32. In advance of the contested hearing on the Disqualification Motion, the Parties filed their respective witness and exhibit lists, as amended. *See* Docket Nos. 3051, 3052, 3054, and 3060.

33. On November 30, 2021, the Court held a lengthy hearing on the Disqualification Motion. *See* Docket Nos. 3062, 3071.

34. On December 10, 2021, the Court entered an order resolving the Disqualification Motion by, among other things, disqualifying Wick Phillips from representing HCRE in the contested matter concerning HCRE's POC. Docket No. 3106.

3. After the Parties Nearly Complete Discovery, Highland Informs HCRE that It Will Move for Summary Judgment

35. On January 14, 2022, Hoge & Gameros, LLP ("Hoge & Gameros") filed a notice of appearance on behalf of HCRE. Docket No. 3181 (the "Notice of Appearance").

36. On June 9, 2022, the Parties filed a proposed amended scheduling order that the Court subsequently approved. Docket Nos. 3356 and 3368 (the "Amended Scheduling Order").[13]

[13] Despite filing the Notice of Appearance, Hoge & Gameros made no effort to contact Highland' counsel to prosecute HCRE's POC for more than two months. Consequently, on March 31, 2022, Highland's counsel took the initiative to try to bring this matter to a conclusion, but it took several more weeks and follow-up communications before HCRE's counsel drafted an amended scheduling order. **Morris Dec. Ex. 8**

37. Pursuant to the Amended Scheduling Order, the Parties exchanged a second round of written discovery and document production and served various deposition notices and subpoenas, as amended.[14]

38. On July 7, 2022, Highland filed notices of subpoena (the "Subpoenas") for Mr. Dondero and Mr. McGraner and a Rule 30(b)(6) notice for HCRE (the "HCRE Notice" and together with the Subpoenas, the "Notices").[15] Docket Nos. 3392, 3393, and 3394. Hoge & Gameros accepted service of the Subpoenas, and the Notices were amended to accommodate the schedules of HCRE's Witnesses and their counsel.[16] **Morris Dec. Ex. 9**.

39. Highland also served a subpoena on Mark Patrick ("Mr. Patrick").[17] Mr. Patrick has worked at Mr. Dondero's direction for many years (first at Highland and then at Skyview) and was one of the architects of the tax structure embedded in the Amended LLC Agreement. Mr. Patrick was represented by separate counsel, and Highland completed his deposition on August 2, 2022, during which HCRE asked no questions.

40. Highland also served a subpoena on BH Equities that required both the production of documents and an appearance at a deposition.[18] BH Equities was represented by independent counsel, and Highland completed its deposition on August 4, 2022, during which HCRE asked no questions.

41. Highland also served a subpoena on Barker Viggato, LLP ("Barker Viggato" and together with BH Equities, the "Third-Party Witnesses") that required both the

[14] *See, e.g.*, Docket Nos. 3385, 3386, 3418, 3363, 3383, 3392, 3393, 3394, 3412, 3415, 3416, 3417, 3451, and 3452.

[15] The witnesses subject to the Notices (*i.e.*, Mr. Dondero, Mr. McGraner, and HCRE's corporate representative) are collectively referred to as "HCRE's Witnesses".

[16] Docket Nos. 3385, 3415, 3416, and 3418.

[17] Docket Nos. 3394 and 3412.

[18] Docket Nos. 3350 and 3363.

production of documents and the appearance at a deposition.[19] Barker Viggato is the accounting firm that prepared the tax returns and the members' Forms K-1s for SE Multifamily based on information provided by HCRE. Barker Viggato was represented by independent counsel, and Highland completed its deposition on August 5, 2022, during which HCRE asked no questions.

42. HCRE served a Rule 30(b)(6) notice on Highland, and James P. Seery, Jr. was deposed as Highland's corporate representative on August 10, 2022.

43. Pursuant to the final versions of the Notices, and as agreed to by the Parties' counsel, Mr. Dondero was scheduled to be deposed on August 16, and Mr. McGraner was scheduled to be deposed on August 17 in both his individual capacity and in his capacity as HCRE's Rule 30(b)(6) witness (the "Consensual Depositions"). **Morris Dec. Ex. 10**.

44. On August 12, 2022, two days after taking Highland's deposition, HCRE filed the Motion to Withdraw. On August 15, 2022, HCRE's counsel informed Highland's counsel that HCRE was unilaterally cancelling the Consensual Depositions scheduled to take place over the next 48 hours.

D. Mr. Dondero Lacked a Good-Faith Basis to Cause HCRE's POC to Be Filed

45. Substantial evidence exists that establishes that HCRE lacked a good-faith basis to assert that the Allocation set forth in the Amended LLC Agreement was the result of a "mistake" or "lack of consideration."

1. Employees Working at Mr. Dondero's Direction Drafted the Amended LLC Agreement

46. The evidence will show that Mr. Dondero controlled HCRE and Highland at the times the Original LLC Agreement and the Amended LLC Agreement were executed, and

[19] Docket Nos. 3383 and 3417.

because HCRE had no employees of its own, it relied on Highland's employees to execute Project Unicorn. The blurred lines between HCRE and Highland were clear to BH Equities.

47. BH Equities could not distinguish HCRE from Highland and observed that it viewed the negotiation of the Amended LLC Agreement as a bi-lateral negotiation, with BH Equities on one side, and Highland, HCRE, and Liberty CLO Holdco, Ltd. (a subsidiary of the DAF) ("Liberty") acting as a unitary actor on the other side. **Morris Dec. Ex. 1** at 26:6-22; 28:10-29:17; 69:10-70:5.[20]

48. "Highland" (the unitary actor from BH Equities' perspective) drafted the Amended LLC Agreement, and BH Equities provided comments. ***Id***. at 43:9-44:3.

49. In short, the evidence will show that the Original LLC Agreement and the Amended LLC Agreement were drafted by individuals working at Mr. Dondero's direction.

2. The Allocation Is Set Forth in Four Different Places in the Amended LLC Agreement

50. The Allocation was reflected in four separate provisions of the Amended LLC Agreement, making the concept of "mistake" or "lack of consideration" far-fetched, at best.

51. Most prominently, Schedule A to the Amended LLC Agreement identified the "Capital Contributions and Percentage Interests" of the members:

Member Name	Capital Contribution	Percentage Interest
HCRE	$291,146,036	47.94%
Highland	$49,000	46.06%
BH Equities	$21,213,721	6.00%

[20] Grant Scott, Mr. Dondero's childhood friend and college roommate, served as Liberty's Director. *See* **Morris Dec. Ex. 5** at 18 (Liberty's signature block). While Liberty apparently acquired certain preferred interests in SE Multifamily, BH Equities did not know who Mr. Scott was, never communicated with him, and never saw any comments to the Amended LLC Agreement tendered on behalf of Liberty. **Morris Dec. Ex. 1** at 42:4-19.

Morris Dec. Ex. 1 at Schedule A.[21]

52. As if Schedule A were not enough, the Allocation was set forth in three other provisions in the Amended LLC Agreement: Section 1.7 (Company Ownership),[22] Section 6.1(a) (Distributable Cash),[23] and Section 9.3(e) (Liquidation).[24]

53. At the time the Amended LLC Agreement was executed, BH Equities believed that the Allocation set forth in Schedule A and in sections 1.7, 6.1(a), and 9.3 reflected the Parties' intent; none of the members identified and errors or suggested otherwise. **Morris Dec. Ex. 1** at 49:5-15; 50:6-11; 50:16-51:7; 54:4-19; 55:12-19; 56:5-57:19; 58:9-59:23; 62:10-14. In fact, BH Equities agreed that Highland would receive 46.06% of the membership interests in SE Multifamily even though it only contributed $49,000 in capital because it understood that was part of the deal. ***Id***. at 52:4-20; 60:16-61:21.

54. In sum, the evidence will show that (a) the Allocation was consistently and unambiguously set forth in four (4) separate provisions of the Amended LLC Agreement; (b) to

---

[21] The evidence will show that HCRE did not actually contribute ***any*** of its own capital to SE Multifamily—and took no financial risk in connection with Project Unicorn—notwithstanding the "capital contribution" set forth in Schedule A. Instead, HCRE took the corporate opportunity from Highland by misusing its authority under section 1.05(b) of the Loan Agreement to allocate for itself approximately $250 million of the KeyBank loan proceeds and claiming "credit" for the capital even though Highland remained jointly and severally liable for the obligations and provided all of the resources to consummate and execute Project Unicorn. Separately, HCRE borrowed the balance of its "capital contribution" from another affiliate of Mr. Dondero's. Because all of HCRE's "capital contribution" was derived from the proceeds of loans, distributions from SE Multifamily were initially used to pay down those loans in accordance with the "waterfall" set forth in the Amended LLC Agreement. **Morris Dec. Ex. 1** at 123:23-125:7; 126:9-127:21. Thus, by the end of 2020, HCRE held a debt-free 47.94% interest in SE Multifamily without ever having taken any risk and by exploiting Highland's platform, apparent creditworthiness, advantageous tax structure, and human resources. Project Unicorn, indeed.

[22] Section 1.7 of the Amended LLC Agreement provides, among other things, that "except with respect to particular items specified in this Agreement, HCRE shall have 47.94% ownership interest, HCMLP shall have a 46.06% ownership interest, and BH shall have a 6% ownership interest." **Morris Dec. Ex. 5** at 3.

[23] Section 6.1(a) of the Amended LLC Agreement provides, among other things, that "[e]xcept as otherwise specifically provided in this Article 6 and Article 9, all Distributable Cash shall be distributed (i) 47.94% to HCRE, (ii) 46.06% to HCMLP, and (iii) 6% to BH." **Morris Dec. Ex. 5** at 10.

[24] Section 9.3 of the Amended LLC Agreement provides, among other things, that any residual value in a liquidation be distributed "(i) 47.94% to HCRE, (ii) 46.06% to HCMLP, and (iii) 6% to BH." **Morris Dec. Ex. 5** at 14-15.

eliminate any doubt, Schedule A set forth the Parties' respective capital contributions side-by-side with the Allocations; and (c) BH Equities has testified that the Allocation was consistent with the Parties' intent at the time the Amended LLC Agreement was entered into.

3. The Allocation Was Among the Only Provisions in the Amended LLC Agreement that Was Negotiated

55. Ironically, the Allocation was among the only provisions of the Amended LLC Agreement that BH Equities and "Highland" actually discussed.

56. On March 15, 2019 (the day the Amended LLC Agreement was executed), Paul Broaddus, a Highland employee working at Mr. Dondero's direction, sent an e-mail to BH Equities (with a copy to Matt McGraner) attaching a copy of Schedule A that set forth the Allocation as a stand-alone document. **Morris Dec. Ex. 11**. According to BH Equities, ***Schedule A, including the members' actual contribution numbers, was drafted by "Highland"*** and was the subject of discussions before the Amended LLC Agreement was executed – and HCRE has never asked BH Equities to amend Schedule A. **Morris Dec. Ex. 1** at 75:23-78:20; 103:3-7.

57. The Allocation was also raised in the context of Section 6.1, referred as the "waterfall," because that provision fixed the priority of cash distributions from SE Multifamily and BH Equities wanted assurances that all capital contributions would be returned before other distributions were made. Thus, later the same day, BH Equities resurrected an earlier proposal to address the issue, but HCRE rejected it. **Morris Dec. Ex. 1** at 80:23-83:14; **Ex. 12**.

58. Later, Mr. Broaddus sent a counterproposal to BH Equities that was drafted by Freddy Chang (another individual employed in the Highland complex) that (a) addressed BH Equities' concerns, (b) was adopted in full as section 6.1 of the Amended LLC Agreement, and (c) specifically set forth the Allocation. **Morris Dec. Ex. 1** at 88:21-89:25; 91:3-94:16; **Ex. 13**.

59. In sum, Schedule A and Section 6.1 (a) were drafted by employees working within the "Highland" complex; (b) expressly and unambiguously set forth the Allocation; and (c) were among the only provisions in the Amended LLC Agreement that were the subject of negotiations between "Highland" and BH Equities.

4. Highland Intended to Move for Summary Judgment

60. The foregoing facts prove that Mr. Dondero lacked a good-faith basis to file HCRE's POC and would be among the facts Highland would rely upon in support of its anticipated motion for summary judgment.[25]

61. It is absurd to suggest that supposedly sophisticated people like Messrs. Dondero, McGraner, Broaddus, Patrick, and Chang could draft and/or execute the applicable agreements and negotiate BH Equities without ever realizing what the Allocation—again, set out in four different provisions—clearly stated.

62. HCRE's POC was not filed in good faith, and after two years of contested litigation and after receiving notice of Highland's intent to move for summary judgment, HCRE should not be permitted to say "never mind" while reserving the (alleged) right to simply pick up litigation elsewhere at a time and place of its choosing.

E. The Motion to Withdraw Was Not Filed in Good Faith

63. The timing and purported reason for the Motion to Withdraw demonstrate that it was not filed in good faith. HCRE clearly has undisclosed motives and seeks an unfair, strategic advantage.

[25] This list of facts is not intended to be exhaustive. Other evidence—including, but not limited to, tax returns and Forms K-1 that HCRE caused SE Multifamily to prepare—will further establish that HCRE, its principals, and those working on its behalf always knew and intended that Highland had a 46.06% interest in SE Multifamily.

64. ***First***, HCRE claims that it filed the Motion to Withdraw because SE Multifamily has "operated without anticipated interference from the Debtor" and HCRE wants to avoid the cost and uncertainty of litigation. Motion to Withdraw at 2. But HCRE will never be able to offer any evidence to support its suggestion that Highland has interfered or threatened to interfere with SE Multifamily, or that HCRE ever did anything to address its alleged concerns.

65. Moreover, raising concerns about costs (a peculiar proposition given Mr. Dondero's conduct throughout this case) after two years of hard-fought litigation where all that remains is a few depositions and a short trial is simply not credible. It makes no economic sense to shut down the litigation at this stage with so much supposedly at stake.[26]

66. ***Second***, the timing of the Motion to Withdraw is highly suspicious because ***in the seven-day period before the Motion was filed***: (a) the Parties negotiated, and the Court approved, an amendment to the Scheduling Order to enable HCRE to proffer expert opinions [Docket Nos. 3434 and 3438]; (b) HCRE made a supplemental production of over 4,000 documents, and counsel for the Parties spent time dealing with the ramifications of HCRE's untimely and substantial production [**Morris Dec. Ex. 14**]; (c) HCRE took the deposition of Mr. Seery as Highland's corporate representative two calendar days before filing the Motion to Withdraw; and (d) HCRE filed the Motion to Withdraw just days before its Witnesses were expected to testify per agreement [**Morris Dec. Ex. 15**].

67. ***Third,*** based on the foregoing, HCRE's true intent is transparent: it seeks an improper and unfair strategic advantage by avoiding depositions now, leaving the specter of future litigation hanging over Highland's head, and preserving the ability to re-file its claim later

[26] According to Mr. Dondero's "family trust," Highland's interest in SE Multifamily is worth $20 million. *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. Dugaboy's valuation is notable because it shows that HCRE's last-second concern about costs lacks credibility: after two years of litigation, a rational actor would absorb the cost of a few depositions and a short trial to capture a $20 million asset.

(and presumably elsewhere) – in which it could take discovery of Highland and the Third-Party Witnesses, all of which is now foreclosed under the current Scheduling Order.

F. HCRE Materially Breached the Amended LLC Agreement

68. HCRE has breached its obligations to Highland in material ways.

69. ***First***, the evidence will show that HCRE breached its duty of good faith and fair dealing by eliminating the "tax distribution" provision from the Original LLC Agreement while saddling Highland with 94% of SE Multifamily's profits and losses. *See* **Morris Dec. Ex. 2** § 6.1(f) (tax distribution provision in the Original LLC Agreement that was deleted from the Amended LLC Agreement).

70. ***Second***, the evidence will show that, at Mr. McGraner's direction, HCRE breached the Amended LLC Agreement by causing SE Multifamily to return all "capital contributions" to itself and BH Equities while failing to return Highland's capital at the same time.

71. ***Third***, the evidence will show that HCRE breached section 8.3 of the Amended LLC Agreement by failing to allow Highland to inspect and copy SE Multifamily's books and records. **Morris Dec. Ex. 15** (Highland's June 28, 2022 demand for access to SE Multifamily's books and records); **Morris Dec. Ex. 16** (e-mail chain showing that all of the lawyers representing HCRE and Mr. Dondero failed to provide any substantive response to Highland's demand).

ARGUMENT

A. Applying the *Manchester* Factors Mandates Denying the Motion

72. Highland agrees that the applicable standard for this Court's consideration of the Motion is set forth in *Manchester, Inc. v. Lyle (In re Manchester, Inc.)*, 2008 Bankr. LEXIS 3312 (Bankr. N.D. Tex. December 19, 2008). Application of those factors here should compel this Court to deny the Motion.

73. The factors outlined in *Manchester* are:

> (1) the movant's diligence in bringing the motion, (2) any "undue vexatiousness" on the part of the movant, (3) the extent to which the suit has progressed, including the effort and expense undertaken by the non-moving party to prepare for trial, (4) the duplicative expense of re-litigation, and (5) the adequacy of the movant's explanation for the need to withdraw the claim.[27]

74. HCRE applies these factors in a conclusory, selective, and evasive manner. Instead, based on the facts set forth above, the legal prejudice is clear:

- HCRE failed to diligently bring the Motion to Withdraw—and fails to identify what has occurred after two years of litigation to cause it to file the motion at this time.
- "Undue vexatiousness" is easily established: HCRE forced Highland to spend two years litigating and providing complete discovery while now attempting to shut this down before its Witnesses can be deposed and after being informed that Highland intends to move for summary judgment—all while trying to preserve the ability to resurrect the litigation without the restrictions of this Court's scheduling orders.
- Highland has spent considerable time, money, and effort on this matter, including retaining an expert, searching for and producing thousands of pages of documents, taking third-party discovery, and marshalling evidence to present for summary judgment.
- Re-litigating the claims asserted in HCRE's POC would be needlessly expensive and duplicative and (if HCRE has its way) would result in more discovery that is otherwise now foreclosed to it.
- HCRE's explanation for why it suddenly wishes to withdraw its proof of claim has no basis in fact.

75. The *Manchester* Factors are obviously intended to protect the integrity of the bankruptcy process. When the actual facts and procedural posture of this contested matter are applied, it is clear the Motion to Withdraw should be denied.

76. The cases HCRE cites do not command a different result. HCRE relies on *Le Compte v. Mr. Chip, Inc.*, 528 F.2d 601 (5th Cir. 1976), for the proposition that merely gaining

[27] 2008 Bankr. LEXIS 3312, at *11–12.

a "tactical advantage" is "no bar to dismissal" under Rule 41(a) of the Federal Rules of Civil Procedure. But *Le Compte* is factually distinguishable. There, the defendants opposing the dismissal failed to "indicate how defendants would be prejudiced by an unconditional dismissal …. [T]here is nothing … in the record from which we can ascertain whether the court properly exercised its discretion in imposing conditions on the dismissal." *Id.* at 605. Unlike the defendants in *Le Compte*, Highland has demonstrated the significant prejudice an unconditional dismissal would inflict on Highland and the Claimant Trust beneficiaries.[28]

77. The Fifth Circuit refused to broadly apply *Le Compte* in later cases, calling the district court's conditions in that case "unusual" and noting that "the conditions seemed designed to disadvantage the plaintiff, rather than protect the defendant." *Robles v. Atl. Sounding Co.*, 77 Fed. Appx. 274, 276 (5th Cir. 2003). In *Robles*, the Fifth Circuit affirmed the district court's imposition of two conditions on the dismissal "designed to cure any potential prejudice." *Id.* In affirming the district court's dismissal order, the *Robles* court also noted that "[p]lain legal prejudice can also exist regarding the timing of a motion for voluntary dismissal…. [F]iling a motion for voluntary dismissal at a late stage in the litigation can be grounds for denying the motion." *Id*. at 275 (citing *Davis v. Huskipower Outdoor Equip. Corp.*, 936 F.2d 193, 199 (5th Cir. 1991) ("When a plaintiff fails to seek dismissal until a late stage of trial, *after the defendant has*

[28] HCRE also relies on *Kumar v. St. Paul Surplus Lines Ins. Co.*, 2010 WL 1946341 (N.D. Tex. May 12, 2010), for the unremarkable proposition that a plaintiff should ordinarily be permitted to dismiss a lawsuit it no longer wishes to pursue. In that case, the plaintiff had brought a third-party action against its insurer but then sought to dismiss the case before anything of significance had happened in the litigation. The *Kumar* court did note, however, that "a defendant's loss of significant time, effort, or expense in preparing for trial can also constitute legal prejudice" sufficient to deny a motion to dismiss. 2010 WL 1946341, at *4 (citing *U.S. ex rel. Doe v. Dow Chem. Co.*, 343 F.3d 325, 330 (5th Cir. 2003), and *Oxford v. Williams Cos., Inc.*, 154 F. Supp. 2d 942, 952–53 (E.D. Tex. 2001) (denying dismissal when the plaintiff filed for dismissal after 21 months of significant trial preparation)). Again, Highland will suffer precisely this type of harm, among other things, if HCRE is permitted to withdraw its proof of claim without prejudice and without conditions.

exerted significant time and effort, then a court may, in its discretion, refuse to grant a voluntary dismissal") (emphasis added).[29]

78. A case HCRE cites that *does* resemble this case—to the extent Federal Rule of Civil Procedure 41(a)(2) guides a bankruptcy court's consideration of a motion under Bankruptcy Rule 3006—is *Forbes v. CitiMortgage, Inc.*, 998 F. Supp. 2d 541 (S.D. Tex. 2014). There, the district court denied the plaintiff's motion to dismiss, describing a procedural history that should strike this Court as familiar. The plaintiff commenced a suit and then engaged in "a lengthy discovery dispute" for nearly two years, requiring the defendant to file a motion to compel plaintiff's response to several discovery requests she had ignored. A week after the defendant filed its sanctions motion, but before the court could rule on that motion, the defendant filed a motion for summary judgment and "[w]ithin minutes, [plaintiff] filed her motion to dismiss the entire action without prejudice …." 998 F. Supp. 2d at 546–47. Just like HCRE here,

> Forbes filed her motion to dismiss this action without prejudice nearly **two years** after the action was removed to federal court … The **timing** of Forbes's motion, however—after CitiMortgage filed its motions for discovery sanctions and for summary judgment—provides insight into her reasons. The circumstances indicate that Forbes's motion is a **plain attempt to avoid the consequences of her failure to participate in discovery** and to avoid an adverse ruling in her case. CitiMortgage contends that it will be prejudiced if Forbes's motion is granted and opposes dismissal. At the present stage of the litigation, CitiMortgage has

[29] HCRE ignores *Davis* and other cases that uphold a denial of a dismissal motion but *does* cite *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314 (5th Cir. 2002), and *Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176 (5th Cir. 1990). Neither case resembles the situation currently before this Court, and neither case supports HCRE's position here. The *Elbaor* court affirmed the district court's placing of conditions on the dismissal because the defendant "argued below in its opposition … that it would be prejudiced by an unconditional dismissal because such a dismissal would potentially strip it of a viable statute of limitations defense." 279 F.3d at 318. The court continued, "because dismissal without prejudice would have caused [defendant] plain legal prejudice, the district court had only two options: it could deny the motion or it could craft reasonable conditions that would eliminate the prejudice." *Id.* at 319. "If the district court chooses the latter path, we note that our case law requires that the district court allow the [plaintiffs] the opportunity to withdraw their motion to dismiss rather than accept the conditions." *Id* at 320. *Ikospentakis* is a maritime case in which the Fifth Circuit **vacated** the district court's dismissal order because the defendants would suffer the clear legal prejudice of losing the ability to assert a substantive venue defense in any subsequent lawsuit. 915 F.2d at 178. That court reached the opposite conclusion HCRE desires here, citing one of the reasons Highland opposes an unconditional dismissal without prejudice.

> answered the complaint, the parties have participated in scheduling conferences, the parties engaged in mediation, discovery is now complete, and Defendant has briefed and filed a motion for summary judgment. **Based on the factual and procedural history of this case, the Court finds that Defendant will suffer plain legal prejudice if Plaintiff's case is dismissed at this late stage** and Plaintiff is given another opportunity to bring her claims without facing the consequences of her actions in this case. Therefore, Plaintiff's motion to dismiss is denied.

Id. at 547 (emphases added).

79. *Forbes* is squarely on point. Just as in *Forbes,* HCRE filed its Motion to Withdraw after two years of litigation during which Highland (a) waged a lengthy battle to disqualify its former counsel; (b) produced thousands of documents and otherwise satisfied ***all*** of its discovery obligations; (c) took third-party discovery; and (d) notified HCRE that it intends to move for summary judgment. Just as in *Forbes,* HCRE's true motive in seeking to withdraw its Proof of Claim can be gleaned from the timing of its motion—HCRE wants to avoid having its witnesses deposed and facing Highland's imminent summary judgment motion. And just as in *Forbes,* Highland "will suffer plain legal prejudice" if HCRE is permitted to withdraw HCRE's POC "at this late stage and … is given another opportunity to bring [its] claims without facing the consequences of [its] actions in this case."[30]

B. Alternatively, the Court Should Impose the Conditions to Mitigate the Prejudice to Highland

80. HCRE fails to cite any decision granting a motion to withdraw a proof of claim under Bankruptcy Rule 3006 without "terms and conditions" in circumstances remotely similar to those present here. The cases HCRE relies on *all* state that the bankruptcy court can and should impose adequate conditions on any order permitting the withdrawal of a contested proof of

[30] The court in *Davis* reached a similar result for similar reasons: "The Davises moved to dismiss this case without prejudice more than a year after the case was removed to federal court. They filed their motion after months of filing pleadings, attending conferences, and submitting memoranda … we do not believe that the district judge abused his discretion in denying the motion for voluntary dismissal without prejudice." 936 F.2d at 199.

claim to redress the "plain legal prejudice" faced by the non-moving party. Conditioning the withdrawal is the only way to remedy Highland's plain legal prejudice and avoid allowing HCRE to benefit from the cynical games HCRE has shamelessly played here.

81. If this Court is inclined to grant the Motion to Withdraw, this Court should exercise its discretion under Bankruptcy Rule 3006 and impose all of the Conditions.

CONCLUSION

82. For the foregoing reasons, Highland respectfully requests that this Court deny the Motion to Withdraw or, alternatively, grant the Motion to Withdraw subject to the Conditions, and grant such other relief the Court deems just and proper.

[Remainder of Page Intentionally Blank]

Dated: September 2, 2022.

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*pro hac vice*)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

LEAD BORROWER:

[__]

By:_____
Name:
Title:

BRIDGE LOAN AGREEMENT

EXHIBIT C

[INTENTIONALLY OMITTED]

Charles W. Gameros, Jr., P.C.
State Bar No. 00796956
Douglas Wade Carvell, P.C.
State Bar No. 00796316
HOGE & GAMEROS, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: 214-765-6002
Facsimile: 214-559-4905

ATTORNEYS FOR NEXPOINT REAL ESTATE PARTNERS, LLC, f/k/a HCRE PARTNERS, LLC

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-SGJ-11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Movant,	§	
	§	**Contested Matter**
v.	§	
NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC,	§	
Respondent.	§	

REPLY IN SUPPORT OF MOTION TO WITHDRAW PROOF OF CLAIM

NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("NREP" or "Claimant") files this, its Reply in Support of Motion to Withdraw Proof of Claim [Proof of Claim No. 146] (the "Motion"), and respectfully states as follows:

PRELIMINARY STATEMENT

NREP filed the Motion because it no longer wants to pursue its Proof of Claim (No. 146) (the "Claim").

As Highland Capital Management, L.P. ("the Debtor") had objected, the Debtor has achieved its goal: disallowance of the Claim.

Instead of being happy with getting the relief it sought, the Debtor has objected, again — this time to the Claim's withdrawal. According to a response filled with conjecture, strawmen, and, frankly, inappropriate *ad hominem* attacks, the Debtor would like to still pursue and litigate defenses to a claim that NREP no longer wishes to pursue, and to seek relief to which the Debtor would never be entitled in a claim objection.

Respectfully, the Debtor's objection should be overruled, and the Motion should be granted.

REPLY IN SUPPORT OF MOTION

As an initial matter, the Debtor's repeated assertion that the Claim was the subject of "heavily contested litigation" and "vexatiousness" is without any foundation. Except for the Motion to Disqualify the NREP's original counsel – a motion filed by the *Debtor* – there have been no hearings or motions set in this contested matter, and the matter proceeded by agreement of the parties. The majority of the time that the matter has progressed, quite literally nothing was happening, rendering (again) the Debtor's claim of "two years of hard fought litigation" misleading, if not demonstrably false.

NREP made its decision that given the uninterrupted operation of the Company, the stated position of the Debtor, and anticipated future time, effort, and resources expended on pursuit of the Claim and the Debtor's objection thereto, that its best course would be withdraw the Claim.

That decision to withdraw is actually the very *opposite* of vexatiousness. By contrast, the Debtor's apparent desire to continue to spend its, the Court's, and NREP's time and resources to litigate an objection that NREP has accepted – thereby prolonging a case with no basis to do so – speaks to the Debtor's own intent.

Contrary to Debtor's assertion, NREP has not threatened to renew litigation over the matters alleged in the Claim. Indeed, NREP averred in the Motion that the proof of claim process is *sui generis*, that the claims bar date passed long ago, and that the Claim is not the subject of any other pending action, proceeding, or matter. There is no tactical advantage for the withdrawal, and there is no litigation that would be duplicated as a result of the withdrawal.[1]

Finally, as even the Debtor agrees, the standard for opposition is the existence of "plain prejudice other than the mere prospect of a second lawsuit. It is no bar to dismissal that plaintiff may obtain some tactical advantage thereby,"[2] and there are, in fact, "only a limited number of circumstances that will warrant denial of a Federal Rule 41(a)(2) motion since 'the [court] should not require that a plaintiff continue to prosecute an action that it no longer desires to pursue.'"[3]

Absent a showing of "legal harm" or "legal prejudice" – the burden of which is on the Debtor [4]– Bankruptcy Courts should allow withdrawal.[5]

---

[1] The Debtor's red herrings regarding the operation of the Company are likewise unpersuasive. Even if the Debtor had legitimate complaints, they cannot be addressed in an objection to a proof of claim, where the only relief available is the claim's allowance or disallowance.

[2] *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976) (quoting *Holiday Queen Land Corp. v. Baker*, 489 F.2d 1031, 1032 (5th Cir. 1974)); *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002); *Ikospentakis v. Thalassic S.S. Agency*, 915 F.2d 176, 177 (5th Cir. 1990).

[3] *Kumar v. St. Paul Surplus Lines Ins. Co.*, Case No. 3:10-CV-166-O, 2010 WL 1946341, at *2 (N.D. Tex. May 12, 2010) (citing *Radiant Tech. Corp. v. Electrovert USA Corp.*, 122 F.R.D. 201, 204 (N.D. Tex. 1988)). Here, of course, there is no such prospect or tactical advantage.

[4] *See In re Manchester, Inc.*, Case No. 08-03163-BJH, 2008 WL 5273289, *3 (Bankr. N.D. Tex. December 19, 2008) (Houser, C.J.); *see also In re Ogden New York Servs., Inc.*, 312 B.R. 729, 733 (S.D.N.Y. 2004).

[5] *See In re Manchester*, 2008 WL 5273289, *3; *see also Robles v. Atlantic Sounding Co., Inc.*, 77 Fed. Appx. 274, 275 (5th Cir. 2003).

Neither the Debtor nor any party-in-interest will suffer plain legal prejudice if the Claim is withdrawn; there are no pending motions, and no dispositive motions have been filed, set, or heard; there are no imminent adverse rulings, no parallel or pending actions, no tactical advantage to be obtained; the Debtor is reorganized, the Plan effective date has long since passed, and the withdrawal of the Claim will not have any effect on the Debtor's reorganization; and the withdrawal will allow NREP *and* the Debtor to stop spending resources and time on a claim that NREP wants to withdraw and to which the Debtor had objected.

Respectfully, the Debtor's objection to the withdrawal is without basis in reason, fact, or law.

WHEREFORE, NREP prays that it be allowed to withdraw its claim and for such other relief as may be appropriate.

Respectfully submitted,

/s/ Charles W. Gameros, Jr., P.C.
Charles W. Gameros, Jr., P.C.
State Bar No. 00796596
Douglas Wade Carvell, P.C.
State Bar No. 00796316

HOGE & GAMEROS, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: (214) 765-6002
Telecopier: (214) 559-4905
E-Mail BGameros@LegalTexas.com
WCarvell@LegalTexas.com

ATTORNEYS FOR
NEXPOINT REAL ESTATE PARTNERS, LLC,
F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

This is to certify parties which have so registered with the Court, including counsel for the Debtor, the United States Trustee, and all persons or parties requesting notice and service shall receive notification of the foregoing via the Court's ECF system, and are considered served pursuant to the Administrative Procedures incorporated into the Order Adopting Administrative Procedures for Electronic Case Filing, General Order 2003-01.2.

/s/ Charles W. Gameros, Jr., P.C.
Charles W. Gameros, Jr., P.C.

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

Signed September 13, 2022

United States Bankruptcy Judge

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

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

ORDER DENYING MOTION TO WITHDRAW PROOF OF CLAIM [DOCKET NO. 3443] AS MOOT

This matter having come before the Court on the *Motion to Withdraw Proof of Claim* [Docket No. 3443] (the "Motion to Withdraw") filed by NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("HCRE") in the above-captioned chapter 11 case, pursuant to which HCRE sought to withdraw its proof of claim number 146; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core

[1] The last four digits of Highland's taxpayer identification number are 8357. The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered (a) the Motion to Withdraw, (b) *Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim* [Docket No. 3487], (c) the *Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim* [Docket No. 3488], including Exhibits 1-16 annexed thereto, (d) HCRE's *Reply in Support of Motion to Withdraw Proof of Claim* [Docket No. 3505], and (e) the arguments presented by counsel during the hearing conducted on September 12, 2022 (the "Hearing"); and adequate notice of the Motion to Withdraw having been given; and after due deliberation and good cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion to Withdraw is **DENIED** for the reasons set forth on the record during the Hearing.

2. HCRE and Highland are directed to confer in good faith to complete the depositions of Mr. James Dondero, Mr. Matt McGraner, and HCRE at mutually convenient times between September 28 and October 12, 2022.

3. HCRE and Highland shall otherwise comply with items 8, 9, and 10 in the *Order Approving Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim 146 Filed by HCRE Partners, LLC* [Docket No. 3368], including appearing for an evidentiary hearing on November 1 and 2, 2022.

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

END OF ORDER

Excerpts From September 12, 2022, Hearing Transcript
[Pages 1-61]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11(SGJ)
	.	
HIGHLAND CAPITAL	.	Earle Cabell Federal Building
MANAGEMENT, L.P.,	.	1100 Commerce Street
	.	Dallas, TX 75242-1496
	.	
Debtor.	.	Monday, September 12, 2022
. . . . .	.	9:40 a.m.

TRANSCRIPT OF HEARING ON MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443) AND REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS-MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484)

BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

TELEPHONIC APPEARANCES:

For Highland Capital Management, L.P.:	Pachulski Stang Ziehl & Jones LLP BY: JOHN MORRIS, ESQ. 780 3rd Avenue, 34th Floor New York, New York 10017
For NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC:	Hoge & Gameros, L.L.P. BY: CHARLES W. GAMEROS, JR., ESQ. 6116 North Central Expressway Suite 1400 Dallas, Texas 75206
Audio Operator:	Michael F. Edmond

Proceedings recorded by electronic sound recording, transcript produced by a transcript service.

INDEX

INDEX

EXHIBITS

MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443)

		ID	EVD
FOR THE DEBTOR:			
1 through 16	Docket Number 3488 With Declaration of John Morris	9	9
FOR HCRE:			
(None)			

REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS-MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484)

FOR THE DEBTOR:			
1 through 6	Docket Numbers 3485 and 3486 With Declaration of John Morris	7	8
FOR HCRE:			
(None)			

(Proceedings commenced at 9:40 a.m.)

THE COURT: All right. We have a setting this morning in Highland Capital, Case Number 19-34054. We have both a motion to withdraw proof of claim of HCRE Partners, LLC, as well as the reorganized debtor's objection to a motion to quash and cross-motion to enforce subpoenas.

All right. So let's start by getting lawyer appearances, please. For HCRE, who do we have appearing?

Let me get appearances first from the main parties. For the debtor this morning, who is appearing?

MR. GAMEROS: Good morning, Your Honor. Bill Gameros for NexPoint Real Estate Partners f/k/a HCRE.

THE COURT: All right. Thank you.

For Highland, who do we have appearing this morning?

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones for Highland Capital Management, L.P.

THE COURT: Good morning.

All right. I'm guessing these are our only appearances. These are the only parties involved who filed pleadings. If there is anyone who felt the need to appear, go ahead.

(No audible response)

THE COURT: All right. Well, I don't know if you all have talked about the sequence we are going to take things this

morning. Obviously, the first filed motion is HCRE's motion to withdraw proof of claim. But we have a discovery dispute and I think -- well, we've got Highland objecting to the motion to withdraw the proof of claim, but I think the backup argument is at the very least let us take discovery before you rule on the motion to withdraw proof of claim.

So have you all talked about who's going to go first on this one?

MR. GAMEROS: Your Honor, we haven't spoken about it, but it makes sense to me that if we withdraw the proof of claim, it moots everything else. And I think that's really what we ought to do, take it all at one time.

THE COURT: All right. Mr. Morris, do you agree on that sequence?

MR. MORRIS: I'm happy to cede the podium and let Mr. Gameros go first since he filed the first motion, but I do think that Your Honor had your finger on the pulse that before -- either the motion should be denied for the reasons set forth in our papers or we should be permitted discovery.

THE COURT: All right.

With that, Mr. Gameros, I'll hear your opening statement and hear what your evidence is going to be.

MR. GAMEROS: We didn't file any evidence today. We just simply want to withdraw the proof of claim. I think that we've satisfied the Manchester factors.

Quite frankly, there's only been the filing of the proof of claim and a scheduling order entered. Since I've been involved in it, we've only had the scheduling order entered. Anything else that's happened in this case was a motion to disqualify that precipitated our appearance. We filed the motion to withdraw. There's no summary judgments pending, no dispositive motions pending.

Quite frankly, we've looked at it as the company continued to operate. The things we were worried about happening didn't happen. And as a result, we decided we don't need the proof of claim, we don't want to continue it because I think we satisfy Manchester. If the Court has any concerns at all, A, the debtor's reorganized so proceeding with our proof of claim or withdrawing it doesn't affect it and, B, you can conditionally withdraw with a forecredudous [*sic*] order withdrawing the proof of claim.

But, quite frankly, I don't think we could amend it and we passed the claims bar date. So the Court should simply allow NexPoint Real Estate Partners to discontinue pursuing a proof of claim that they don't want to continue anymore. Everything else falls after that. That's it.

THE COURT: All right. Well, assuming the Manchester factors apply here, you're not going to have any evidence on any of these factors?

MR. GAMEROS: I don't believe that we need to have

evidence on those. The only one that could possibly be at issue is one that the debtor might be able to bring but they haven't, and that's actual legal prejudice.

The withdrawal of the proof of claim here essentially says they win. And they've objected to our proof of claim, and now we're withdrawing it. So the proof of claim is resolved in their favor except we're withdrawing it instead of going through all of the exercise to get to a hearing where we don't want to pursue the proof of claim anymore.

THE COURT: All right. But is it a withdrawal that you seek with prejudice with any bells and whistles about future preclusion of litigation?

MR. GAMEROS: Your Honor, the proof of claim -- I know the Court knows this, it's its own type of proceeding. This isn't a adversary proceeding or a different kind of lawsuit. It's simply a proof of claim, and we know we're not going to be able to amend it, we're not going to be able to re-assert it because it's after the bar date. That's why the Court should allow the withdrawal and, to the extent the Court wishes to condition it, condition it with prejudice. That's it.

THE COURT: Mr. Morris, I'll hear from you.

MR. MORRIS: Thank you, Your Honor.

Before I begin, I'd like to move into evidence Exhibits 1 through 6 that appear at Docket 3485 and 3486.

They're mirror images of each other. They're duplicates of each other, Your Honor.

But because our motion -- our objection to the motion for a protective order and the cross-motion to compel were filed as one document, the Court had us file it basically twice so that one is serving as the objection to the motion for the protective order and the other is serving as the cross-motion to compel. And so you'll see at Dockets 3485 and 3486 duplicate declarations from me with Exhibits 1 through 6.

THE COURT: All right. Any objections?

MR. GAMEROS: Your Honor?

THE COURT: Any objection?

MR. MORRIS: And then -- and then, Your Honor?

THE COURT: I'm sorry, I did not hear what Mr. Gameros said.

MR. GAMEROS: Your Honor, we don't object.

THE COURT: All right.

MR. GAMEROS: We don't necessarily believe it's relevant, but we don't object to its admission.

THE COURT: All right. They'll --

MR. MORRIS: And then, Your Honor, we've got --

THE COURT: Docket -- Exhibits 1 through 6 are admitted.

Go ahead.

(Debtor's Exhibits 1 through 6 admitted into evidence)

MR. MORRIS: And then at Docket 3488 we have another declaration under my signature with Exhibits 1 through 16, which are offered in opposition to HCRE's motion to withdraw their proof of claim.

THE COURT: Any objection?

MR. GAMEROS: No, Your Honor.

THE COURT: Okay. Those exhibits and that declaration are admitted, as well.

(Debtor's Exhibits 1 through 16 admitted into evidence)

MR. MORRIS: So, Your Honor, if I may, please, you know, the lack of evidence and the dismissiveness with which HCRE is approaching this proceeding is alarming.

We have litigated for two years. We were forced to move and litigate vigorously a motion to disqualify our prior counsel even though we put into evidence a document that said Wick Phillips represents Highland Capital Management. We were still forced to do that. We were forced to engage in expert. We were forced to have a hearing on this.

We have gone through discovery not once but twice. We have fulfilled every single obligation that were were required to fulfill under the scheduling orders. We have engaged in two rounds of written discovery. We have offered up every witness that has been noticed. We have produced thousands of pages of documents.

We took discovery from third parties, and this is

really important for a number of reasons, Your Honor. We served subpoenas on BH Equities. BH Equities is not subject to the jurisdiction in Dallas, so we served the subpoena. We took the deposition.

They can't be compelled to testify at a hearing. HCRE chose not to ask any questions. The accounting firm, they chose not to ask any questions. Discovery is over, okay. I hear Counsel talk about the proof of claim. We need -- and this is where the prejudice comes in. We need an order on the merits. We need to know that HCRE is never going to challenge again Highland's 46.06 percent interest in SE Multifamily. That's what we need, because that's what we were about to get and they know that. And that's why they're folding their tent.

We informed them that we were moving for summary judgment. In fact, just seven days before they filed their motion, we negotiated a stipulation in order to extend the expert discovery deadline so that they could file an expert report while preserving Highland's ability to move for summary judgment. HCRE knew this when it filed its motion.

Discovery is now closed. There's only three things left to do. There's four things left to do: take the deposition of Mr. Dondero, Mr. McGraner (phonetic) and HCRE and have a hearing on the merits.

I want to say right now, Your Honor, Highland is willing to forego its right to move for summary judgment. We

don't need to take that step. Let's just proceed. This motion should be denied. They offer no evidence whatsoever. Let's just proceed with the three depositions because discovery is otherwise closed and let's have a one-day trial live in your courtroom, Your Honor. We could have this done in six weeks.

The legal prejudice is enormous. We've set it out in our papers. Our evidence supports it. But I want to just highlight a few things. Again, I hear vagueness here. I hear you can dismiss the proof of claim with prejudice, but somehow I get the feeling from their papers from the cases that they cited to, from the quotations that say just because we get a tactical advantage doesn't mean that the motion should be denied, just because we may choose to file this in a different forum.

And that's the question that I really hope the Court will ask Mr. Gameros. Is HCRE waiving its right to ever challenge this again because if you can't get an unambiguous answer to that question, the motion must be denied because that's the prejudice.

But there's more prejudice, too. They've taken our deposition and based on what Mr. Gameros just told you, based on what's in their papers, they perceive something that happened in that deposition as being advantageous to them. If this Court were to consider dismissing this case with prejudice, it should do so on the condition that that

transcript cannot be used for any purpose at any time anywhere because otherwise it's not fair, otherwise we've been prejudiced by them being permitted to take our deposition but foreclosing us from taking their deposition. Either the playing field needs to be level or that deposition transcript should never see the light of day.

That's condition number two, not just the dismissal with prejudice here, we need an ironclad commitment that HCRE is irrevocably waiving its right to challenge Highland's interest in SE Multifamily because that would be the result if this went to trial. And that transcript of Mr. Seery as Highland's 30(b)(6) witness should never see the light of day because they're playing games. They want to use that for some other purpose. And if they want to do that, that's fine, but I get to take their depositions. The playing field has to be level, Your Honor.

We have spent hundreds of thousands of dollars on this case. The excuse that they're giving, the reason that they're giving for dismissing the case at this time makes no sense whatsoever. There's nothing in the proof of claim, nothing in the pleadings. There will never be any evidence.

There's no affidavit suggesting that Highland was interfering with SE Multifamily, that Highland threatened to interfere with SE Multifamily, that until this motion was filed that HCRE had any concerns whatsoever that Highland would be

engaging in wrongful conduct. There will never be any evidence whatsoever that HCRE ever took any steps to protect itself from this so-called interference that they're now so fearful of.

And I do want to -- I have to ask this question, Your Honor. If HCRE believed that they were at risk on Wednesday, August 10th, so that they had to take Mr. Seery's deposition, what happened after that that caused them 48 hours later to file this motion with no notice whatsoever?

It's not right, Your Honor. So let me get to the substance. This is not a motion under Rule 41. Under Rule 41, plaintiffs sometimes have the right, the unilateral right to withdraw a pleading. HCRE has no right to that today. Rule 3006 is very clear. When there is a proof of claim that is contested, the proof of claim can only be withdrawn with court approval after a hearing and subject to whatever conditions the Court decides are appropriate.

And that's to protect the integrity of the process. And that's what we're asking the Court to do, to protect the integrity of the claims resolution process.

It is a fact-intensive inquiry. In this district, as HCRE has pointed out, there is precedent, the Manchester case, that sets forth a long list of factors that a court could consider in the face of such a motion. As we explain in our opposition, we believe that every single one of those factors weighs in favor of denying the motion.

I'm going to go through just a bit of it, Your Honor, because I think it's very important that everybody see exactly what's happening. In contrast to the lack of evidence by HCRE, we have all of the exhibits that have just been admitted into evidence here. The claims stated, the proof of claims, start with the proof of claim, stated that some or all of Highland's interest in SE Multifamily might be the property of HCRE.

It's a proof of claim that was signed by Jim Dondero. It was signed under the penalty of perjury. There is no good-faith basis for that proof of claim to have been filed, none whatsoever. If you take a look at their response to Highland's initial objection which can be found at Exhibit 7 on the initial docket, we'll put it up on the screen jut -- here's Exhibit 7 from Docket Number 3488.

And this is HCRE's response. And if we can go to Paragraph 5. This is the -- this is really their response here. And it says:

> "After reviewing what documentation is available to HCRE with the debtor, HCRE believes the organizational documents relating to SC Multifamily improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or the failure of consideration. As such, HCRE has a claim to reform, rescind, or modify the agreement."

This is their proof of claim, that there was some mistake that happened in the drafting of the SE Multifamily documents. There is no good-faith basis for this proof of claim. There is no good-faith basis for this response that's up on the screen. And let me show you why.

If Your Honor had an opportunity to review BH Equities' deposition transcript, at least the portions that we specifically cited to, BH Equities is a truth third party. They're the only third party that is a member of SE Multifamily. I took their deposition. They retained Dentons. They produced documents. They acted professionally.

And their witness testified up, down, and sideways that from their perspective, it was a bilateral negotiation with them on one side and the grand Highland on the other side and that Highland drafted the ultimate agreement, the amended and restated LLC agreement.

It's an issue that is not in dispute. Highland drafted the document. People working on the Highland platform in the spring of 2019 when Mr. Dondero was in control, solely in control of Highland and HCRE.

So they say in that response and in the proof of claim that the allocation, the allocation is the allocation of the membership interest in SE Multifamily, they say, oh my goodness, that allocation was wrong because Highland only put in $49,000. And Mr. Dondero signed the agreement.

Let's take a look just quickly at Exhibit 5, and let's see how it's possible that Mr. Dondero could swear under oath that he made a mistake. If we can go to Schedule A.

Take a look at this, Your Honor. This is Schedule A. It's about a page or two after Mr. Dondero's signature. It has the percentage interest that he says was a mistake as if he didn't know the capital contribution that Highland put in. And if we got to a trial, Your Honor, we would show that Highland actually reached into its pocket for the $49,000. HCRE, in contrast, borrowed all the money, even though Highland was on the hook for the obligations to Key Bank.

But, nevertheless, here it is. It's in plain, plain, plain terms. The numbers are next to each other. It's not just the percentage interest. It shows the capital contribution. I'd be really interested in asking Mr. Dondero did he review this. I suspect he'll say no because that's what he usually says. But doesn't that scream fraud? How do you say you made a mistake when the numbers are on that page? I don't understand it.

Yet, we've spent two years and hundreds of thousands of dollars litigating this case. But here's the thing, Your Honor, it's not just in Schedule A. If we could go to Section 1.7 earlier in the agreement.

And remember, this is a document that BH Equities says was drafted by Highland. Look at 7; 7 is company

ownership. That's the name of the section. Again, HCMLP has 46.06 percent. Is that a mistake? How did this -- somebody should explain how this mistake happened.

Let's go to Section 6.1. Section 6.1 is critical, and we'll see this in a moment. This is what's known as the waterfall. It shows how the distributions of cash from SE Multifamily are going to be made to its members. And you'll see in Section 6.1A that after certain things occur, cash is going to be distributed 46.06 percent to Highland. Another mistake, I guess, without explanation.

Section 9.3. Section 9 deals with liquidation and termination, and 9.3 is effectively the waterfall that's supposed to be in place upon a liquidation. And at the bottom of the waterfall in 9.3(e), not surprisingly, you see the exact same allocation.

So the allocation that Mr. Dondero swore under oath was the result of a mutual mistake was an allocation that appears in four separate places in a document that was drafted by people under his authority. Think about that. It's extraordinary. We spent two years litigating this case, and now they just want to go home.

But wait, there's so much more, Your Honor. I'm not going to go through all of it, but I want to just show you two other documents because these numbers are not in this document by accident. They're there on purpose.

If we could go to Exhibit Number 11.

So if you've seen from our papers and at all, Your Honor, Highland presented an initial draft of the amended and restated agreement to BH Equities on March 14th. It had to be completed by March 15th in order t make it retroactive to the prior August because that's for tax reasons. And you'll see up on the screen there's an email exchange from Mr. Broaddus at Highland to a fellow named Dusty Thomas at BH Management.

And it's two emails. The first one is sent on the afternoon of March 15th. And the important point is a little bit down where he says: "The contributions schedule in the attached needs to be updated with the actual contribution numbers."

So this is Highland telling BH Equities that the contribution schedule, which is Schedule A, needs to be updated so that the actual contribution numbers are in it. This is the mistake. This is the mistake, right. And notice that Mr. McGraner, I'm told is one of the Apex employees, he's got notice of this. He know exactly what's happening, right.

And Mr. Broaddus follows up. He follows up the next day and says the contribution schedule is attached. Well, let's take a look at what the contribution schedule is, if we can go to the next page. Look at that.

It's the same contribution schedule that appears in the final agreement. And this is just critical, Your Honor,

because this shows that Highland, people working at the direction of Highland are preparing this document and it's a stand-alone document. So it's not as if somebody can say, gee, you know, it got lost in the sauce, it was deep in the details, deep in the weeds and I just missed it.

The very purpose of the sending of this document was to show the other counterparty, BH Equities, exactly what the capital contribution and percentage interest were going to be, not just the percentage interest but the capital contributions.

Later on that day, if we can go the next document, Exhibit 13. BH Equities was very concerned about the waterfall. They wanted to make sure that they were going to get back their capital before other distributions were made. And you can see here this is an email from Mr. Thomas back to Mr. Broaddus where he raises this issue, and I'll just kind of cut to the chase. Attached to Mr. Thomas' email was a proposal that BH Equities had made the prior fall with respect to the waterfall.

There's no dispute that Mr. Broaddus on behalf of Highland, the big Highland, rejected BH Equities' proposal. And if we can go the prior page and see exactly what they did in response. Instead, you can see Mr. Chang, Freddie Chang, another member of the Highland complex, with a very private email to Mr. Broaddus, right, BH Equities isn't even copied on it. And he comes up, it's labeled 6.1, but this is what

becomes -- it's labeled 1.1, but this is what becomes 6.1 in the actual agreement. This is the waterfall. This is Mr. Chang and Mr. Broaddus exchanging an email with a new version of the waterfall that they wanted. And the new version that they wanted shows in Section 1.1(a) here that Highland was going to get 46.06 percent of the distributable cash as set forth therein.

A mistake? A mutual mistake when people working under Mr. Dondero's direction drafted these documents in specific -- as part of a negotiation? This is about the only thing that was the subject of a negotiation.

And, of course, there's more because if you take a look at the deposition transcript that we cited from BH Equities from BH Equities' perspective, Section 1.7, 6.1, and 9.3 and Schedule A all reflects the parties' intent. And that deposition is closed, right. I mean they chose not to ask any questions. They didn't challenge that. There is no good-faith basis for this proof of claim to have ever been filed. And that, Your Honor, is the definition of vexatiousness, and that is one of the Manchester factors.

Another one of the factors is the extent to which the suit has progressed. Other than the depositions that they unilaterally shut down, the only thing left was either a summary judgment motion or a trial. Again, discovery is over. Highland has fulfilled its obligations. There is nothing left

to do here except to take three depositions and have a trial on the merits. So the suit has progressed far.

Duplicate of expense of re-litigation, are we really going to do this again? Are they really going to get the benefit of new discovery in a new lawsuit somewhere else that's not a proof of claim but that somehow tries to recraft it because we've seen stuff like this before from Mr. Dondero. He's going to say, oh, that was just a proof of claim, that's a different standard that somehow, you know, I can bring a different claim in a different court at a different time. We're going to do this again? I hope not.

How about the adequacy of the explanation? They concluded that Highland wasn't interfering. Where was the evidence that Highland ever interfered? Where was the evidence that Highland ever threatened to interfere? Where was the evidence that HCRE ever expressed a concern that Highland would interfere? Where's their application to the Court for some kind of protective order or some type of protection, some type of injunction relief to prevent us from interfering? There's nothing.

HCRE filed this -- and I'll have to speculate here because they're not -- I don't thing they're being candid with the Court. They filed it because they hoped to do this trial in a different forum at a different time elsewhere.

They're shutting it down because they know that their

witnesses are going to be asked questions that are going to further buttress Highland's claims to breach of contract, going to get into some serious tax questions where even BH Equities wouldn't even rely on the K-1s that HCRE caused to be prepared. Really tough questions.

I know they want to get out now, but they never should have filed the proof of claim. And forcing Highland to go down this path to incur this expense, to take our deposition and then try to shut the door, can't think of a better fact scenario for the denial of a 3006 motion than we have here.

Look at just what happened in the seven days before they filed their motion because it is extraordinary, and I didn't even put everything in the papers because one of the things I forgot to put in is Mr. Gameros sent to me seven days before the motion the 30(b)(6) notice for Highland. So that's sent on August 5th.

On August 5th, we finish negotiating and sign a stipulation that extends the expert discovery deadline to allow them to call an expert which we think had no merit which is why we reserve the right on the motion to strike because we don't think -- as described to us at the time, but nevertheless, we reserved our right to either make a motion to strike or to proceed right to summary judgment. It's all in the stipulation that we negotiated, that we signed on behalf of the clients, and that Your Honor's approved just two days before this is

filed.

I think Mr. Seery's deposition was the 10th. At 4:00 on the 9th, HCRE produced over 4,000 pages of documents like six weeks after the deadline, right. And Counsel and I spent the next 24 hours -- you know, I was pretty upset, I'll admit it, but you've got -- you know, it's in the record, you know, what my written responses were. And I tried very hard to avoid motion practice, and I tried very hard as I always do to try to come to a reasonable resolution. And we actually got to that point just moments before Mr. Seery's deposition. And then they take Mr. Seery's deposition.

So think about it. They serve a 30(b)(6) notice, they take a deposition, they produce 4,000 pages of documents, they negotiate and sign a stipulation to extend the discovery deadline, the Court takes the time to review the stipulation, orders it. All of this happens within seven days of their motion, two days after they take Mr. Seery's deposition and just two days before I'm scheduled to take their client's depositions.

Based on the complete lack of evidence on HCRE's part and the evidence that I've just shown the Court, we believe the Court should simply deny the -- deny all three motions, you know what I mean? Let's just cut to the chase, let's take three substantive depositions, and let's set a trial date. That, I believe, is the most appropriate result here.

If the Court is not inclined to rule on the motion to withdraw, the Court should then deny the motion for a protective order and grant our cross-motion to compel the depositions on this motion. I assure the Court that if the Court decides to follow that path, my questioning will be limited to the Manchester factors. And I won't get into the substance because that wouldn't be ripe.

The first question is whether or not they have a right to -- whether the Court should grant their motion to withdraw, and I will limit my questioning if we go down, you know, option B to those questions, to the Manchester questions, right. There's no question that we have the right to discovery. They filed a motion. We filed an objection. We now have a contested matter under the bankruptcy rules. We're entitled to discovery.

I want to address, I guess, on this topic some of the issues that were raised in the motion for the protective order. They say, oh, we didn't serve the witnesses. That's easily -- well, first, I would point out that if you looked at Exhibit 1, you know, Counsel previously accepted service of subpoenas on Mr. Dondero and Mr. McGraner's behalf. Maybe he's got an explanation why he did it before but he won't do that now. But if that's the way HCRE wants to do it, we'll hire professional process servers that can -- that give us a couple of weeks and we'll find them. We'll find them. And if not, we'll get the

adverse inference.

They said we didn't give enough time, that we didn't take into account their scheduling. Just look at Exhibit 4, Your Honor. I specifically wrote to Counsel, it's there in writing. You know, it's there in writing. If you need an accommodation, let me know. Let me know if the dates and times work. I have flexibility. I told him that in writing. And yet, the reason the Court should enter a protective order is because we didn't give them sufficient time or we wouldn't take into account their schedules.

We've got all the time now, Your Honor. I'm actually not available next week, but after that, I can take these depositions any time the last week of September, the first week of October, whatever is convenient for them. That is no reason to grant a protective order.

And then, finally, this notion that, you know, Mr. McGraner and Mr. Dondero are some Apex employees, Your Honor, HCRE has no employees. None. Mr. Dondero signed the original LLC agreement. He signed the amended LLC agreement. He signed the proof of claim. Who else should I be deposing? Mr. McGraner owns a substantial interest of HCRE. He's on the emails that show he had contemporaneous knowledge that people working in the Highland complex were drafting Schedule A in a manner that was ultimately accepted not just by Highland and HCRE but by a third party, BH Equities.

There's nobody to depose other than Mr. McGraner and Mr. Dondero. I mean I guess Mr. Ellington, I haven't thought about that. He is a five percent owner. But for a company with no employees, who else am I supposed to depose?

Finally, Your Honor, I've taken probably enough time here. But option C, right, I think this just be denied outright. If not, we should at least be permitted to get some discovery before the Court rules on the motion. Option C, if the Court really wants to dismiss this -- grant the motion in any respect, there ought to be severe conditions on it.

It has to be a dismissal on the merits. It has to be a dismissal that pays Highland its reasonable legal fees incurred for this waste of time. And it has to be conditioned on the fact that Mr. Seery's deposition transcript will be barred from use in any proceeding going forward or they have got to show up for the depositions to level the playing field.

So that's where we are, Your Honor. Three choices. You know, they're in the order that we think are most appropriate. But I've got nothing further at this point, Your Honor.

THE COURT: All right. A couple of questions for you.

You've represented as an officer of the Court that your client, the estate, has incurred hundreds of thousands of dollars of attorneys' fees and costs relating to this proof of

claim. Is that correct?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. And I'm just curious, did this claimant, HCRE, file other pleadings during the Highland case, like objections to the plan or -- I remember discovery disputes when Wick Phillips was involved in the main case. But I'm just curious, did you look at other times they may have participated as a party, a creditor?

MR. MORRIS: In all candor, Your Honor, I haven't --

THE COURT: Okay.

MR. MORRIS: -- looked at that. My memory, which could be wrong, my memory is that they did file other things, although it's possible I'm just confusing it with Wick Phillips representing different entities of Mr. Dondero. But I believe that Wick Phillips was involved in other matters. I think HCRE filed other things, but I don't know off the top of my head.

THE COURT: Okay. So the representation that hundreds of thousands of dollars were spent on this proof of claim dispute, I mean you're zeroing in on this proof of claim dispute. Is that correct?

MR. MORRIS: One hundred percent limited to this proof of claim.

I mean think about what we did here, Your Honor. We had a whole litigation over Wick Phillips. Both sides retained experts. We took fact discovery. We participated in written

discovery, something that never ever should have happened. But we were forced to do that, and I do include that as part of this.

What else have we done? Because I think it's -- I think Your Honor's asking a fair question, like how do you get to that number. Before the Wick Phillips' disqualification motion and the reason that we got to that point is we had engaged in written discovery. And this is back in the spring of 2021. We served, you know, document requests, we served requests to admit, we served interrogatories. All of that was answered.

We produced thousands of pages of documents at that time. And it was in preparing for the depositions that were then scheduled that we saw in the documents the conflict that Wick Phillips had. So we went though that whole process throughout the rest of 2021, completely unnecessary. Just completely unnecessary, but nevertheless, we did. We prevailed.

New counsel came in in January and did nothing, right. It took us six months to get to a scheduling order. It took me almost three months to get them to respond at all. But we did the whole thing again, and we went through more written discovery and more interrogatories and more requests to admit and more document requests. And we produced more documents.

We served subpoenas on Mark Patrick, on BH Equities,

on Baker Vigotto, the accounting firm that prepares the tax returns at the direction of HCRE on behalf of SE Multifamily. There's lots of negotiations in there. There's -- I mean Your Honor can see just how many times depositions were scheduled and rescheduled and rescheduled again to accommodate everybody's summer and business, right.

So we took the deposition of Mr. Patrick. We took the deposition of Barker Vigotto. We took the deposition of BH Equities. We defended Mr. Seery and his deposition. We took the time to prepare for that. We were reviewing the 4,000 documents that they produced belatedly, right. We're marshaling our evidence, getting ready for our summary judgment motion. We're negotiating amendments to scheduling orders at HCRE's request.

Yeah, we spent several hundred thousand dollars, Your Honor, for sure.

THE COURT: Okay.

All right, Mr. Gameros, do you have cross-examination of Mr. Morris?

MR. GAMEROS: I don't have cross-examination of Mr. Morris. I'd just like to respond to a few points if I could.

Is that permitted, Your Honor?

THE COURT: Oh, yes. I mean this was your chance to cross-examine Mr. Morris since he submitted a declaration with exhibits. But if you decline to do that, I think Mr. Morris --

MR. GAMEROS: Cross-examine Mr. Morris, Your Honor?

THE COURT: Just -- Mr. Morris, the reorganized debtor rests, right? I got the impression you were resting?

MR. MORRIS: Yes, Your Honor.

THE COURT: All right.

MR. MORRIS: Yes.

THE COURT: Mr. Gameros, now your chance for rebuttal.

MR. GAMEROS: All right.

First, in terms of hundreds of thousands of dollars of fees and the activity level since my firm appeared in January of 2022, I think we need to look back at the disqualification proceeding and remember that the estate was denied its request for attorneys' fees on the disqualification and that's in this Court's order.

If we proceed to trial, they won't be entitled to attorneys' fees for winning, if they do. There's no claim here that entitles the estate to shift its attorneys' fees to NexPoint. None.

And I think that's important. The relief that he's asking for, Your Honor, if you listen to what the estate's requesting, it wants to limit the use of Mr. Seery's deposition. It wants to have a trial. Now apparently they may not move for summary judgment. Okay. Things that they would like, but all they get is a ruling on a proof of claim. And

we've already said the Court should allow us to withdraw the proof of claim and condition it with prejudice.

There is no other lawsuit out there. There is no other position being taken anywhere. Frankly, Your Honor, the reason why I said admit the exhibits and I question their relevance is because none of them go to actual legal prejudice. Can't show it, hasn't shown it, hasn't demonstrated it. It says they did a lot of work, gave you the greatest hits of some email, but quite frankly, Your Honor, that goes to merit, not legal prejudice. That goes to, I believe, part of their story as to what happened.

The story that matters to me is we think things were going to happen during the estate, he's right. We didn't move for them. We looked back at it and said we don't need the proof of claim anymore, we should withdraw it. That's the only thing that's happened, and that's why we're here. We don't think he's entitled to discovery as to why we withdrew the proof of claim.

It's his burden to show legal prejudice. He can show it or he can't. He hasn't.

THE COURT: Okay.

MR. GAMEROS: The estate hasn't.

THE COURT: Mr. Gameros?

MR. GAMEROS: (Indiscernible) Mr. Dondero.

THE COURT: I have a question. I mean I'm looking at

your pleading, your motion to withdraw the proof of claim, and I'm looking at this wonderful chart you have on Page 7 saying here are the standards under Bankruptcy Rule 3006, you, Court, should consider. They were articulated in the Manchester case.

And it's not merely about is there any prejudice to the estate. I mean you set forth five factors. One is "reason for dismissal." One is diligence in bringing the motion to withdraw. One is undue vexatiousness. One is the matter's progression including trial preparation. One is duplication of expense of relitigation.

This is your own authority, which I believe actually is correctly articulating the standards. It's not just about prejudice. Yes, I agree that some of the case law has zeroed in on that one in particular. But I mean you say yourself reason for dismissal is a factor the Court must consider.

MR. GAMEROS: That's correct, Your Honor. Those are the factors, and I think our analysis on them is correct.

If we go all the way to trial and the result is that our proof of claim is denied, we're in the same position we are right now. So why should the parties, the estate, and the Court go through that exercise?

THE COURT: Okay. Well, that's another issue, I think, other than the reason for dismissal. But a follow-up question to what you just said is this.

Would you agree to a condition on the withdrawal of

your proof of claim that your client agrees that Highland has a 46-point whatever it was percent interest in SE Multifamily Holdings and your client waives any right in the future to challenge that interest?

MR. GAMEROS: Your Honor, if that's what the Court wants to put in an order and I have a chance to confer with my client on it, I'm pretty sure that would be agreeable.

THE COURT: Today's the day. I'm not going to continue. I've got, you know, the whole day booked if I needed it because I wasn't sure what you all were going to want to put on.

MR. GAMEROS: Your Honor, we'd agree with that.

MR. MORRIS: Your Honor, I'm sorry to interrupt, but a waiver of any appeal, too. I just hard that if that's what you want to put in the order, that's okay. But this case has to end, and that's what we're looking for.

We're a post-confirmation estate that will not go forward with the possibility hanging over its head that it may be divested of this asset. That is what this proof of claim and this dispute is about.

And what the debtor needs in order to avoid legal prejudice is the complete elimination of any uncertainty that it owns 46.06 percent of SE Multifamily. And if HCRE is not willing to give that comfort today, we again renew our request for a direction that the three HCRE witnesses appear for

substantive depositions and we get this on the trial calendar.

MR. GAMEROS: Your Honor, we'll agree to it.

THE COURT: Well, you know what, this is such a big deal I really need a client representative to say that. It would be that --

MR. GAMEROS: I don't have one here today, but I can get you one.

THE COURT: How soon --

MR. GAMEROS: Do you want me to file a stipulation or an affidavit?

THE COURT: Pardon?

MR. GAMEROS: Do you want me to file an affidavit?

THE COURT: Well, let's be a hundred percent clear. Your client would state that with the granting of the motion to withdraw proof of claim number 146, HCRE is irrevocably waiving the right to ever challenge Highland Capital Management's 46 percent interest -- and I know it's 46-point something -- 46 percent interest in SE Multifamily Holdings, LLC and is, likewise, waiving the right to appeal or challenge the order to this effect.

MR. MORRIS: Your Honor, if I may, perhaps we can take a ten-minute recess and allow him to consult with his client and perhaps get a client representative on the phone who can make that representation?

THE COURT: All right. Mr. Gameros, you think you

can get a client rep on the WebEx?

MR. GAMEROS: I'm pretty sure I can, Your Honor.

THE COURT: All right. Well, how about we take a 15-minute recess. Does that sound a reasonable amount of time? We've got, you know, two dozen people --

MR. GAMEROS: It does, Your Honor.

THE COURT: Two dozen people on the WebEx. I don't know if maybe one is a client representative, but we'll take a 15-minute break and I'll come back. Okay.

THE CLERK: All rise.

(Recess at 10:33 a.m./Reconvened at 10:50 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

We're back on the record in Highland.

Mr. Gameros, how did you want to proceed now?

MR. GAMEROS: Your Honor wanted me to get a representative of NexPoint Real Estate Partners to state that they agree that the estate has its 46 percent interest in the company agreement subject to the company agreement. And I've got Mr. Sauter here who has authority to speak on behalf of NexPoint Real Estate Partners.

THE COURT: All right. Well, so what is his position with HCRE?

MR. SAUTER: Your Honor, I don't have -- this is DC Sauter. I don't have an official position with HCRE, but I

have spoken with Mr. Dondero and he has authorized me to appear here today and agree to the conditions that Mr. Gameros just outlined.

THE COURT: All right. Well, it sounds like hearsay to me. I don't know -- Counsel, let me have you both respond. You know, I worry about this will fall apart the minute Mr. Dondero is instructing a lawyer, I never agreed to that. I mean I just don't know. This is highly unusual.

First --

MR. GAMEROS: Your Honor, if I might?

THE COURT: Please.

MR. GAMEROS: Mr. Sauter is an officer of the Court. He works, you know, with Mr. Dondero at his business at NexPoint; certainly an authorized agent on behalf of NexPoint Real Estate Partners to make this agreement on behalf of NexPoint Real Estate Partners.

To the extent that the condition that you originally described as a conclusory matter, in other words, how to end the withdrawal, we already agreed to that, that we also can agree on the record to waive any appeal. Mr. Sauter is authorized to agree to that, as well.

So I think as an agent and a lawyer on behalf of NexPoint Real Estate Partners, he's fully able to do that.

THE COURT: How do I know he's able to do that?

And, by the way, if Mr. Dondero is in I guess the

last 15 minutes given him authority to testify before the Court, why couldn't Dondero just get on the WebEx himself?

MR. SAUTER: Your Honor, I think he felt more comfortable with me being a lawyer agreeing to those terms so that he wouldn't misstate something. He has been listening. I believe he's still on, although I'm not certain.

THE COURT: Mr. Morris, do you want to respond? I mean I'm not sure, frankly, I care what you say, no offense. I don't think I have a person with clear authority here.

MR. MORRIS: I'll just be quick and say I agree.

THE COURT: Okay. Mr. Gameros --

MR. GAMEROS: As an attorney for NexPoint Real Estate Partners, I have the authority to make that agreement on the record and it be binding. Mr. Sauter is confirming that authority having spoken with Mr. Dondero about it.

I think that the Court is fully --

THE COURT: Mr. Gameros --

MR. GAMEROS: -- capable of doing that --

THE COURT: Mr. Gameros, come on. You know this is the client's decision to make. Okay. I don't have a client representative. I don't have an officer or controlling equityholder as evidence here of --

MR. MORRIS: Mr. Dondero --

THE COURT: -- the willingness to make the agreement. Pardon?

MR. MORRIS: Can Mr. Dondero make the representation on the record to the Court that he is authorizing Mr. Sauter to waive any claim that HCRE has to Highland's 46.06 percent interest in SE Multifamily along with any appeal? This is just step one. But if Mr. Dondero was on the phone, let him speak up and make it crystal clear that he is delegating the full authority to Mr. Sauter to negotiate and enter into this consensual order on behalf of HCRE.

THE COURT: All right. Mr. Gameros, do you want to give your client authority to speak up? Your client representative, someone who's actually an officer or a controller or equity owner?

MR. GAMEROS: Your Honor, if Mr. Dondero can do that, that would be great. I don't know if he's in a place where he can do that.

THE COURT: All right. Mr. Dondero, if you can hear us, are you willing to give some quick testimony in that regard?

(No audible response)

MR. DONDERO: I can't see the box --

UNIDENTIFIED SPEAKER: Surprising that -- surprising he was on the phone before, but now he's not after delegating. Just I'm not --

MR. SAUTER: Your Honor, he's on the phone. I'm just -- if you will give me a minute, I got to run around the corner

and try to make sure he knows how to unmute himself.

THE COURT: Star 6. If he's on a phone, star 6 is the way to unmute himself. But I want to see video, too.

THE OPERATOR: There we go. Try again.

MR. DONDERO: Hello?

THE COURT: All right.

MR. DONDERO: Hello?

THE COURT: Mr. Dondero, is that you?

MR. DONDERO: It's me. I've been on the entire time.

THE COURT: All right. Can you turn your video on, please?

MR. DONDERO: I am on my cell phone.

THE COURT: Okay. Well, so I guess you just called in on your cell phone, you don't have a WebEx connection on your cell phone?

MR. DONDERO: I don't have a WebEx.

THE COURT: Okay. Well -- yeah, it sounded like you were in the same office as Mr. Sauter. Is that -- did I misunderstand?

MR. DONDERO: We work in the same office. I'm in my car. I just stepped out of my car.

THE COURT: All right. Well, this is not ideal, you know, without us seeing you. But I'll go ahead and swear you in. All right. Can you hear me okay? I need to swear you in.

MR. DONDERO: Yes.

THE COURT: All right.

JAMES DONDERO, HCRE'S WITNESS, SWORN

THE COURT: All right.

Mr. Gameros, do you want to ask him the questions we need to hear answers on, please?

MR. GAMEROS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. GAMEROS:

Q Mr. Dondero, on behalf of HCRE, do you agree as a condition for withdrawing the proof of claim that HCRE will not challenge the estate's ownership or equity interest in SE Multifamily subject to the company agreement?

A Yes.

Q Do you agree that you will not appeal and that, therefore, HCRE is waiving any appeal right to that determination as a condition of withdrawing the proof of claim?

A Yes.

MR. GAMEROS: Those are the questions for Mr. Dondero.

MR. MORRIS: Your Honor, if I may?

THE COURT: Mr. Morris, you may.

MR. MORRIS: I'm very uncomfortable. I'm very uncomfortable with the inclusion of the language subject to the company agreement. It sounds like a very conditional waiver. We need an irrevocable unconditional admission by HCRE that

Highland owns 46.06 percent of SE Multifamily, period, full stop. If they want to keep conditions in there and make it conditional and make it subject to other things, let's please deny the motion and proceed to trial.

THE COURT: All right. Well, Mr. --

MR. GAMEROS: The equity that they own is part of the company agreement. It's not modifying the company agreement by saying.

THE COURT: Well --

MR. MORRIS: Our ownership is not subject to the agreement. We either have an ownership interest or we don't. Our rights and obligations as a member of SE Multifamily are subject to the agreement, but our ownership interest is not. And that's the ambiguity that we need to remove.

THE COURT: Okay. Well, Mr. Gameros, do you want to rephrase the question or are you not willing to make the agreement as specific as Mr. Morris says he needs it?

MR. GAMEROS: That's what I'm -- I guess I don't understand what his complaint is. If the estate owns 46 percent of the equity of SE Multifamily, it owns that subject to the company agreement. It's not a separate ownership interest. So I don't know what the problem is.

THE COURT: Okay. Let me try to phrase it as I understand it.

What I understand has been asserted in the proof of

claim is that what was set forth in the agreement was a mistake, okay. A mistake. And it sounds like you're using language that says we'll agree the agreement, you know, they have a 46 percent interest pursuant to the agreement. But that doesn't change -- that does not really zero in on the argument made in the proof of claim that there was a mistake in the agreement, right?

So you'd have to go broader to completely resolve the issues raised in your proof of claim and say we agree, Highland has a 46.06 interest in SE Multifamily and we agree that is correct and we waive any right to challenge it in the future and we waive any right to appeal this order.

MR. GAMEROS: And, Your Honor, if that's the condition, I guess my concern is that the 46 percent is still part of the company agreement. We agree not to challenge it on the basis of anything asserted in the proof of claim, that being mistake, lack of consideration, or failure of consideration. Their 46 percent is their ownership interest in SE Multifamily and HCRE won't challenge that.

Is that sufficient?

THE COURT: Well, I need to hear from your client. I mean he needs to be asked every which way from Sunday whether he is waiving the right to challenge Highland's 46.06 interest from now until eternity, okay. That's basically, you know, we either have that agreement or we'll just have a trial.

CONTINUED DIRECT EXAMINATION

BY MR. GAMEROS:

Q Mr. Dondero, do you agree that NexPoint Real Estate Partners will not challenge in any way the estate's interest in SE Multifamily, its 46-point whatever percent interest that is?

A I think the nuance is that agreement is okay in current as of today. But it's part of an operating agreement, and that percentage ownership can change due to capital calls and other things. And it could change over time. It's never in a partnership agreement fixed into perpetuity. And so no businessman can agree to that.

If the Court wants it fixed into perpetuity, that would be very odd.

MR. MORRIS: Can we go to trial, Your Honor? Can we just deny the motion and go to trial? Let me have my depositions and go to trial. This is -- if Mr. Dondero wants to take that position, he's welcome to do that. But I'm entitled to finality, and I'd like to get there.

THE COURT: All right. Well, Mr. Gameros, anything else you want to ask your client that you think might be helpful?

BY MR. GAMEROS:

Q Mr. Dondero, you desire to withdraw the proof of claim. Correct?

A Yes.

Q And you agree to an order denying the proof of claim with prejudice. Correct?

A Yes.

Q And can you agree that HCRE will not challenge the equity ownership of its member in SE Multifamily of the estate?

A Yes.

MR. GAMEROS: Your Honor, I think there it is.

THE COURT: Mr. Morris, do you have any --

MR. GAMEROS: He agrees.

THE COURT: -- do you have any follow-up questions --

MR. MORRIS: The waiver of the right to --

THE COURT: -- Mr. Dondero?

MR. MORRIS: The waiver of the right to any appeal whatsoever. And I do have -- you know, there are the other conditions that we mentioned earlier, right? Either they have to also agree that Mr. Seery's deposition transcript shall never be used for any purpose at any time or they need to level the playing field and submit their witnesses to examination.

The playing field needs to be level here. Either if they want to use that deposition transcript for some purpose, I have no problem with that. Just let me take my depositions. If they don't want to submit their witnesses to depositions, then they also have to agree that that transcript will never be used for any other purpose. It's as if this proof of claim has never been filed, right, for that purpose, right. Because

that's just not fair. That's the legal prejudice.

How do you take my client's deposition on Wednesday and file this motion on Friday knowing your client's supposed to be deposed on Tuesday? Level the playing field. That's conditional number two.

And condition number three, frankly, Your Honor, this proof of claim was fraudulent. I mean my client has been damaged. My client has spent an enormous amount of money on this, and I'd like them to agree to if not make us whole, you know, do something because it's wrong. It's just wrong that Mr. Dondero files proofs of claim under penalty of perjury that have absolutely no basis in fact.

It's distressing. I'd like those two last issues addressed, as well.

MR. GAMEROS: Your Honor, in terms of the Court's questions in terms of finality with respect to the membership interest in SE Multifamily, Mr. Dondero agrees with the Court. He's already said that he won't waive -- that he waives, rather -- I'm sorry, let me start again.

He has said very clearly that he has waived appeal of this order allowing the withdrawal of the proof of claim with the conditions that you asked for. I think you should grant the motion to withdraw and we can put an end to all of this.

THE COURT: Okay.

MR. MORRIS: Here's the thing, Your Honor. We know

there's going to be more litigation with HCRE. We know they've breached the contract. We know because the evidence is in the record. We know that Highland demanded access to books and records as is its contractual right back in June. We know that that notice was sent to all of Mr. Dondero's lawyers and HCRE's lawyers. And we know that that request has been absolutely categorically ignored. Okay?

We are going to --

MR. GAMEROS: This has nothing to do with the proof of claim.

MR. MORRIS: We are going to get -- well, no.

To be clear, Your Honor, that is what's driving this concern is because we know that there's going to be additional litigation. We know the tax forms are not accurate. We know there's already an existing breach of contract.

And what we're trying to make sure is that HCRE is not able to resurrect this concept that we don't have an ownership interest, that it's not 46.06 percent, that Mr. Seery made some admission that they're going to use in some future litigation. That's the prejudice, okay.

So I think step one is (indiscernible), but then we need either an agreement that the transcript isn't going to be used elsewhere or that I get the deposition of the HCRE witnesses because it's unfair prejudice to use this process to take that deposition on Wednesday, August 10th and to file this

motion on Friday, August 12th. That is unfair prejudice for them to have taken my client's sworn testimony and then shut it down before I could take theirs.

So either eliminate it all or let it all in, right? It can't be. They can't possibly benefit from this.

THE COURT: Let me understand something, Mr. Morris, you just said. We know we're going to have future litigation. I mean I'm not asking for revelation of attorney-client privilege, but -- communications, but you kind of dangled it out there.

You're saying that the reorganized debtor intends to file litigation against HCRE because of what you think are breaches by it as manager of SE Multifamily of the existing agreement.

MR. MORRIS: The evidence is already in the record, Your Honor. We have -- Highland as a member of SE Multifamily has the contractual right to obtain access to inspect and copy -- those are the words, inspect and copy SEC *[sic]* Multifamily's books and records.

We made that request at the end of June. It's one of the exhibits that's attached that's in the record now. I made probably three different follow-up emails, and it's been completely ignored, okay.

HCRE is the manager of SE Multifamily, right. They're in control. They're the ones who dictate how the

accounting is done. They're the ones who dictate how distributions are made. They're the ones who dictate how tax forms are prepared. They have an obligation under the amended and restated agreement to cause SE Multifamily to prepare the tax returns. They're the ones who are in direct contact with Barker Vigotto.

There's a whole host of issues we're going to examine, but the one thing that I do know for certain, Your Honor, is that they are in breach of the agreement today because they have refused for three months now to give us what we're entitled to. And that is access to inspect and copy SE Multifamily's books and records.

So unless they agree to do that, and I mean pretty soon, we're not going to have any alternative. If you recall, Your Honor, Mr. Dondero's trust, the Dugaboy Trust, filed this valuation motion which we'll address in due course. I don't know where they got the number, but according to Mr. Dondero's trust, Highland's interest in SE Multifamily is worth $20 million. This is not a small asset. This is not harassment.

But they're not complying with their contractual obligation to give us access to inspect and copy SE Multifamily's books and records. For a $20-million asset where it's -- I mean they're conceding now that we're the owner of those membership interest. How can they deny us access?

And if they don't give us that access so that we can

verify the value of this asset, so that we can verify whether or not we've gotten the distributions that we're entitled to, so that we can verify that the profits and losses that have been allocated to Highland were actually proper and consistent with the agreement, I'm afraid that there will be further litigation, and that's why we need to -- we need to nail this down right now because I don't want to get a counterclaim that says we left the deal open to challenging Highland's interest in SE Multifamily. That door needs to close today.

THE COURT: Okay. All right. Well, I'm going to start out by saying we're in a very unusual procedural posture.

Before I forget, Mr. Gameros, I meant to mention this at the very beginning. The motion to withdraw the proof of claim of your client, you had an odd way of signing it. I wonder if this was a mistake or you always sign this way. You signed the pleading signature Charles W. Gameros, Jr., PC.

Is that -- was that inadvertent or do you always sign that way? I mean a lawyer's supposed to personally sign under Rule 11 a pleading. Was that just inadvertent or do you think that's fine?

MR. GAMEROS: I've used that signature block for over 20 years, and I've never -- no one has ever asked. I thought it was fine.

THE COURT: Okay. Well, no one's ever asked and you think it's fine. I think you need to go back and do some

research on that, okay. I'm not sure it's fine. I'm not sure it's fine.

I mean you would agree that you're personally bound under Rule 11 when you file a pleading, right?

MR. GAMEROS: Yes, Your Honor.

THE COURT: I mean I know it feels a little different if you're -- well, I don't know. You're not a -- you have a firm, Hoge & Gameros, L.L.P. I mean it wouldn't be appropriate for Mr. Morris to sign a pleading Pachulski Stang, right? He has to sign his name personally on a pleading, right?

MR. GAMEROS: Your Honor, I'll make that change.

THE COURT: Okay.

Well, so we're in an unusual procedural context. We I think all agree that Bankruptcy Rule 3006 is the applicable authority, and it provides that, you know, a creditor can't just withdraw a claim when there's been an objection filed to it. There has to be notice and an order from the Court.

And so we don't run into this situation very often, but I have seen it before. And as someone or both correctly noted, it is a rule that sort of goes to the integrity of the system. Filing a proof of claim is obviously a very significant act in the context of a bankruptcy case.

You file a proof of claim under penalty of perjury so it's a big deal from, you know, a criminal exposure standpoint

but it's also a big deal because we want to make sure only parties with legitimate claims are given a seat at the table, so to speak, in bankruptcy as far as, you know, their right to a distribution, their right to be heard in a case.

So, you know, that's the reason for the rule. We don't see it come into play very often, but it's there because we want to make sure that we protect the integrity of the bankruptcy process. And if someone files a proof of claim and it's pending and, you know, activity happens in the bankruptcy case as a result of it, that we don't just let a party say never mind.

So the Manchester case, which you both cited in your pleadings, has set forth fact-intensive factors -- fact-intensive inquiry. And, again, I'm just looking at HCRE's motion, Page 7. There was a chart and it sets forth the Manchester factors. Factor number one, diligence in bringing the motion to withdraw the proof of claim.

In Mr. Gameros' chart, his response to that factor is that HCRE brought its motion to withdraw immediately after conferring with debtor's counsel. I don't even know what that means, okay. But what I do know is in looking at diligence of bringing the motion, the proof of claim was filed April 8th, 2020. It was objected to, the proof of claim, July 30th, 2020. And then on August 12th, 2022, this motion to withdraw the proof of claim was filed.

So two years and one month after the objection was filed to the proof of claim HCRE withdraws it. So that doesn't seem very diligent. It's not diligent at all, to be honest.

Your second factor, you cited, Mr. Gameros, undue vexatiousness, and you say HCRE has not been vexatious in pursuing its proof of claim. And outside the motion to disqualify previous counsel, which is not substantive, everything in the matter has proceeded by agreement and there have been no hearings set or held.

Okay. Well, debtor has represented in its pleadings and today through counsel on the record that it has spent hundreds of thousands of dollars litigating this. It has mentioned that four depositions have been taken. It was Mr. Mark Patrick. It was the tax accounting firm. We had the B -- the entity -- BH Equities, LLC, their representative. And then Mr. Seery. So four depositions, and I'm told a lot of written discovery.

And on the day before the -- well, the day after, day or two after the Seery deposition, the motion to withdraw the proof of claim was filed after 5:00 in the evening on a Friday, August 12th, and I guess a couple of business days before the depositions were to occur of Mr. Dondero and the fellow, Mr. McGraner, and I feel like there was one other deposition. I'm losing track of those.

But --

THE CLERK: The 30(b)(6).

THE COURT: Oh, the 30(b)(6). The 30(b)(6) representative.

So on top of all of that, you know, Highland argues there was just simply no good-faith basis for the proof of claim. Proof of claim asserted the membership interest, Highland's 46.06 interest, set forth in the Multifamily LLC agreement were the result of mistake.

Mr. Dondero signed the agreement for both parties, HCRE and Highland. And then now the motion to withdraw says something to the effect of the anticipated issues have not materialized. So anyway, the undue vexatiousness factor I think weighs -- because of these factors I've mentioned, weighs in favor of there has been undue vexatiousness.

Factor number three, according to HCRE's motion to withdraw the proof of claim, is matter's progression including trial preparation. Again, four depositions, thousands of pages of written discovery. We were days away from the last depositions occurring, those of HCRE's potential witnesses and we have trials set. We have a trial set in November. So that factor, again, seems to weigh heavily in favor of Highland's objection here.

Duplication of expense of relitigation, here's why we got Mr. Dondero on the phone or wanted to have a witness with authority. Highland is saying we are concerned about

relitigation of this ownership interest issue. And as part of its argument, Highland has said we've got claims, we've got our own claims for breach of agreement and different things that are going to cause us to have to drill down on terms of the LLC agreement.

And we can't -- we don't want to face exposure on this issue of, well, you don't have the ownership interest or the rights you say you do, Highland. So, you know, if we could get ironclad language here of, you know, we waive the right, we agree that Highland has the 46.06 interest and we waive the right to challenge that, then I don't think we'd have to worry about relitigation of the issues in the proof of claim. But it feels like we had a little bit of reluctance to say it as forcefully as we would need to have it said to avoid relitigation.

Reason for dismissal, I don't know. I don't know what the reason for dismissal. Again, to quote HCRE's pleading on Page 7, the reason for dismissal is, "The operation of the company" -- I think that means SE Multifamily -- "during the case and the anticipated issues therewith have not materialized and NREP no longer desires to proceed in the matters raised in the proof of claim."

I mean that's just not in sync with the theory espoused in the proof of claim that we think there was a mistake made in the LLC agreement. So, again, looking at these

legal factors, I do not think that the correct result is to grant the motion to withdraw the proof of claim under Rule 3006 under the Manchester factors. I will throw in that I think there is potential for prejudice here of the debtor.

I mean not even considering that hundreds of thousands of dollars have been spent over two-plus years on this issue, you know, I remember very well the disqualifying motion. And I said Wick Phillips should be disqualified. I didn't shift fees because I just wasn't sure at the time that, frankly, HCRE should be imposed with the fees attributable to its lawyers, not recognizing the conflict of interest when they saw one. It was just a little fuzzy in my mind.

But I'm just letting you know that now that we are here many years later, many months later and we have all the sudden, okay, never mind, this is just a situation where I have some regrets I didn't shift fees, to be honest. But -- so the motion is denied. The depositions shall go forward. I'm not sure, you know, if the dates that have been proposed are still workable, but if someone wants to speak up now about those deposition dates to avoid an emergency hearing, I'm willing to hear that.

I think what I heard was, well, I don't know what -- have you talked about dates at all? Probably not, Mr. Morris, in light of this hearing today.

MR. MORRIS: We have not, Your Honor. But I do think

that Counsel and I can work that out. I'm not available until the week of the 26th. So it won't be early that week but sometime between let's say the 28th of September and the 7th of October, I'll be prepared to take these depositions. And I would respectfully request, and we can work with Ms. Ellison to try to find a trial date sometime the last week of October, first week of November so we can get this finished.

THE COURT: Okay. Did I dream up that there was a trial set already in November?

MR. MORRIS: You know what?

You know what, let's just keep that date, Your Honor. Let's just keep that date.

THE COURT: All right. Traci, are you still on the line? Can you confirm my memory? I thought we had a two-day trial set aside for this in November.

MS. ELLISON: Is this on the merits of HCRE's claims, Judge Jernigan? I have a note holding November 1 and 2.

THE COURT: Okay.

MR. MORRIS: Yeah.

THE COURT: So we'll go ahead and mark that down.

Now the last -- so you'll work on an a mutually agreeable date for these three remaining depositions sometime, you know, late September, early October. And I trust you will --

MR. MORRIS: Yeah. I would respectfully request that

Counsel just propose dates for the depositions. I'll wait to hear from him. But I think -- I'm representing to the Court that any time between September 28th and let's just give it two full weeks, October 12th. That's plenty of time in advance of the trial.

THE COURT: All right. Mr. Gameros, anything you want to add on that?

MR. GAMEROS: No, Your Honor. I'm sure we can work with Mr. Morris to get those scheduled.

THE COURT: All right. And here's actually the last thing I wanted to say.

You know, I had thought about, you know, waiting 24 hours to give you a ruling on this motion to withdraw the proof of claim and directing you all to kind of talk and see if maybe you could work out language, you know, without the pressure of the Court hovering over you that could make both of your clients satisfied.

I still encourage you to do that, but I'm going to pick on our U.S. Trustee. I see she's observing today, and I'm not going to ask you to say anything, Ms. Lambert. But if you all do agree, if you all in the next, you know, 24 hours come to some sort of agreement, I don't mean to be alarming, but I want it run by the U.S. Trustee because, you know, I've heard some things that have troubled me about the, you know, lack of good faith with regard to the proof of claim and, you know,

alleged gamesmanship.

And, you know, I talked earlier about this goes to the integrity of the system, you know, filing a proof of claim under penalty of perjury. Anyway, I'm feeling a little bit uncomfortable about signing off on an agreed order where there may be quid pro quos that went back and forth in connection with withdrawing a proof of claim. I mean at some point -- well, that's why we have scrutiny of these things under Rule 3006, right?

Again, there are integrity issues. And so I just -- you know, if you were to work out language, I want you to run it by Ms. Lambert and I want to hear that either she was okay with it or she wasn't okay with it or maybe she declines to comment. You know, I'm not going to tell her how to do her job, but I feel like that needs to happen, okay?

It's just something uncomfortable going on in my brain about, you know, again a proof of claim being on file two, almost two and a half years and then, you know, okay, never mind, okay, I agree to never mind as long as you agree to XYZ.

And I have no idea what's in the Seery transcript. I don't have it before me. But, you know, I don't even know what that's all about. I don't even know if I care what that's all about. I just know if there are quid pro quos I feel like, you know, maybe I need to have the U.S. Trustee, you know, not per

se signing off on any agreed order but at least kind of looking at it and telling me either U.S. Trustee's fine with it, U.S. Trustee is not fine with it, or U.S. Trustee declines to comment. Just I know that I've gone through the drill, okay?

So just letting you know I am still, you know, all open to an agreed resolution of this, okay. But we're going forward as if you can't get there, okay?

All right. I'll look for -- what am I going to look for? I'm going to look for an order denying the motion to withdraw proof of claim. I'm going to look for an order granting the -- well, an order resolving the objection to motion to quash and cross-motion for subpoenas saying that these three witnesses are going to appear at a mutually agreeable time either late September or early October.

All right. We're adjourned.

THE CLERK: All rise.

MR. MORRIS: Thank you, Your Honor.

(Proceedings concluded at 11:35 a.m.)

* * * * *

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

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS DATE: September 13, 2022

BEN SELMAN - 9/17/2021

A. Yes.

Q. Okay. Good enough. And do you acknowledge that Wick Phillips represented both HCRE and Highland along with other borrowers in connection with the bridge loan agreement?

A. Yes.

Q. Okay. So I'm going to go through this designation that identifies the opinions that you are going -- that your counsel has indicated you're going to testify to at the hearing.

So it says, Mr. Selman may testify and offer opinions regarding the allegations underlying the debtor's motion to compel disqualification of Wick Phillips as counsel for HCRE, the DQ motion.

So what opinion -- that's letter A. So with respect to letter A of this designation, what opinion are you going to express at the hearing?

A. Well, I believe that the sentence indicates both testimony and the offering of opinions. I intend to testify about any of the allegations contained in both motion and I

BEN SELMAN - 9/17/2021

believe restated motion to -- or additional motion to disqualify and the motion or motions in opposition to the motion and its restatement to disqualify.

And I intend to answer questions regarding what those allegations mean or don't mean. I'm not terribly sure that my opinions regarding other folks' drafting is terribly relevant to the Court's consideration, but I'm accepting the allegations both in the motion to disqualify and in the responsive motions as being factually based in provable form.

Q. I'm interested in your opinions that you're going to testify to at the hearing. This designation says, Mr. Selman may testify -- so it's -- and offer opinions regarding, A, the allegations underlying the debtor's motion to compel disqualification of Wick Phillips. Okay.

What opinions are you -- have you currently formed and you intend to testify to at the hearing on that subject?

A. And this may be a matter of semantics. I intend to address the allegations in both A and B, but specifically with A to the

BEN SELMAN - 9/17/2021

extent that those would be grounded and provable facts and do that from an assumption standpoint. That would be the opinion that I would offer ultimately in regard to A and B.

Q. What is the opinion that you will express with regard to A and B?

A. I'm sorry. I interrupted you. I apologize.

Q. Sorry. I think I may have interrupted you. But I'm entitled to have the opinions that you are going to testify to at the hearing, and so far you haven't told me what they are.

So are you going to tell me what your opinions are in this deposition?

MS. DRAWHORN: Objection. Asked and answered. He explained what his opinions were -- how he was going to testify regarding A and B.

A. Yes.

Q. Okay. Let's --

A. My answer to your question is yes.

Q. I'm not sure what the question you're answering now is?

BEN SELMAN - 9/17/2021

A. Am I going to testify and give opinions is my understanding of the last question. And I hope I understood it correctly, but if that's the last question you asked, then my answer to that question is yes.

Q. Have you formed opinions?

A. I have.

Q. Okay. Please tell me what your opinions are.

A. My opinions are that the Wick Phillips firm represented both Highland and NREP together with other borrowers in regard to the bridge loan; that the bridge loan was consummated by execution on September 25, 2018, showing an effective date of September 26, 2018.

My opinion is that Wick Phillips' representation of all parties ceased at that point, and that representation was limited on the part of Wick Phillips with regard to the named parties in regard to the bridge loan as of the time of the execution, perhaps a bit earlier, but I don't really have a way to isolate that.

My opinion is further that some six months after the bridge loan was consummated, the

BEN SELMAN - 9/17/2021

SE Multi-Family Company restated itself, and in doing so presented a contestable matter that bore no relationship of any materiality or of any substance to the bridge loan.

I believe the fact is that Wick Phillips began representation of NREP in regard to that narrow issue in a contested matter in the bankruptcy proceeding, and that this motion to disqualify and responsive motions about which we're talking today resulted from Wick Phillips' representation of NREP in a matter that is almost wholly dissimilar to the bridge loan. But that it certainly bears no same relationship to the bridge loan and appears to bear no substantial relationship to the bridge loan.

I haven't yet formulated but I will formulate at some point an opinion with regard to the document that we talked about earlier, the release from loan agreement document that I've recently received and needs to be studied.

I've reviewed it three or four times and I still have questions that need to be looked at before I'll have an opinion on it. But it is

BEN SELMAN - 9/17/2021

my opinion based on the plain language of the release document that the bridge loan as a result of the release agreement between Highland Capital and the bridge loan lenders are between Highland Capital and two other allied companies appears to even further isolate the bridge loan from the instant contested matter litigation.

That having been said, there appears to be no discernible violation of Rule 1.9 of the ABA Model Rules or of 1.7 of the ABA Model Rules or of 1.06 of the Texas Disciplinary Rules of Professional Conduct or Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct by or through Wick Phillips' present representation of NREP in regard to the amended and restated SE Multi-Family Holdings, LLC.

Q. Sorry. You broke up on that last. Could you repeat the last thing you said, Mr. Selman?

A. Yes. The amended and restated SE Multi-Family Holdings, LLC.

Q. Before that. Go back -- could you repeat that entire last thought.

A. Not without a great deal of

BEN SELMAN - 9/17/2021

assistance. If the court reporter got it --

MR. BROWN: Yeah. Can the court reporter read back, you know, the last, say, minute of testimony.

(Requested portion was read.)

MR. BROWN: Okay. Okay.

Q. (BY MR. BROWN) Mr. Selman, do you have -- is that the entirety of the opinion that you've currently formed in this matter?

A. To the best of my ability, yes.

Q. Okay.

MR. BROWN: Can we take a -- about a five-minute break and we'll come back?

MS. DRAWHORN: Sure.

THE WITNESS: Absolutely.

(Break from 3:40 p.m. to 3:49 p.m.)

Q. (BY MR. BROWN) So, Mr. Selman, you understand you're still under oath?

A. Yes.

Q. Okay. You just presented or testified to the opinion that you've said you would be offering at the hearing on this matter.

And can you now tell me the basis for your conclusion that there is no basis for a

BEN SELMAN - 9/17/2021

violation of any of the Texas Rules of Professional Conduct or the Model Rules?

A. There is no discernible similarity between the services that were rendered by Wick Phillips on the bridge loan and the services that are being rendered by Wick Phillips in regard to the Amended and Restated SE Multi-Family Holdings, LLC.

They are not the same actions. They don't involve substantially similar issues, and in the event this release document means what it appears to say, then the bridge loan appears to be even further isolated away from the Amended and Restated SE Family Holdings -- excuse me -- Multi-Family Holdings, LLC contested matter presents in issues of both fact and law.

That aside, I am of the opinion that there is no discernible material similarity between the two representations and that thereby -- and they're certainly not the same representations, thereby there is no presentable violation of the either the ABA Model Rules or the Texas Disciplinary Rules of Professional Conduct that bear on this issue, which I

Excerpts From November 1, 2022, Hearing Transcript
[Pages 54-55, 59-62, 74-75, 109, and 110]

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, CHIEF JUDGE

In Re:	) Case No. 19-34054-sgj11
	)
	) TRANSCRIPT of the HEARING
HIGHLAND CAPITAL MANAGEMENT, L.P.,	) on DEBTOR'S OBJECTION to
	) HCRE's PROOF Of CLAIM
	)
Debtor.	)
	) November 1, 2022
	) Dallas, Texas

Appearances:

For the Debtor:	John A. Morris Hayley Winograd Pachulski Stang Ziehl & Jones LLP 780 Third Avenue, 39th Floor New York, New York 10017-2024 Zachery Z. Annable Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231
For Creditor and Claimant NexPoint Real Estate Partners, also known as HCRE:	C. William "Bill" Gameros, Jr. D. Wade Carvell Hoge & Gameros, L.L.P. 6116 N. Central Expressway, Suite 1400 Dallas, Texas 75206
Digital Court Reporter:	United States Bankruptcy Court Michael F. Edmond Sr., Judicial Support Specialist 1100 Commerce Street, Room 1254 Dallas, Texas 75242
Certified Electronic Transcriber:	Susan Palmer Palmer Reporting Services

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

was going to obtain six percent of the SE Multifamily's membership interests, correct?

A. That B&H was going to take — yes, get six percent, correct —

Q. That's right. And you may not have known exactly how much Highland was going to get, but you — you do admit that you knew and understood at the time you signed this document that Highland was going to get a significant majority of the interests, correct?

A. That there would be a dilution for B&H coming in, but the percentages would be similar to the original —

Q. Okay.

A. — agreement, and I guess is what I knew in general.

Q. Right. So it was your understanding when you signed this document that Highland's 49-percent interest was going to be diluted by the six percent that was being granted to BH Equities, correct?

A. Generally, yes.

Q. Okay. So even though you didn't read Schedule A before signing the agreement, the schedule comports with your expectations when you signed the agreement on behalf of Highland and HCRE, correct?

A. Generally, yes.

Q. Okay. Let's just cut to the chase with the proof of claim. That's Exhibit 8. Do you have that in front of you, sir?

A. Yes.
Q. Okay. Your electronic signature is on the proof of claim, correct?
A. It — I'll — I'll stipulate to that, I guess, on —
Q. It's on the bottom of the page wherein the top left it says number 12.
A. Okay.
Q. Do you see your electronic signature?
A. Ye- — yes.
Q. Okay. And you authorized your electronic signature to be affixed to this document, correct?
A. Yes.
Q. And you authorized this document to be filed on behalf of HCRE, correct?
A. Yes.
Q. You didn't review this document before it was filed, correct?
A. Correct.
Q. And so you didn't review Exhibit A, which is the last page of the exhibit, you didn't review that before it was filed, correct?
A. Not that I recall.
Q. You can't identify — now this agreement was prepared by Bonds Ellis; do I have that right?
A. Correct.

correct?

A. I did not believe I needed to.

MR. MORRIS: Okay, I have no further questions, Your Honor.

THE COURT: Redirect.

MR. GAMEROS: Very briefly, Your Honor, I've only got a couple of questions.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. GAMEROS:

Q. Mr. Dondero, you testified about the process for signing the LLC agreements, the KeyBank loan, and even the proof of claim. Would you please tell the Judge what the process is?

A. Well, it's different in everything, but any significant transaction goes through compliance and any significant transaction that includes multiple entities goes through rigorous compliance whereby, by compliance, without direct input of the investment people, investigate the basis of the transaction in the fairness of tr- — of the transaction and then sign off on that transaction. You know, so on any kind of investment, a normal — I know it's changed in the new Highland, but — but a normally-compliant advisor goes through a rigid, rigorous process regarding any sale of an asset.

As far as bankruptcy and the complexities of a bankruptcy that takes odd twists and turns, and just the

complexities of this bankruptcy in particular and the betrayal of the estate by insiders, you know, et cetera, you have to rely on outside counsel and you have to rely on — you have to rely on outside counsel and you have to rely on their expertise in the bankruptcy process.

Q. So —

MR. MORRIS: Your Honor, I move to strike the portions of the answer that refer to the new Highland's practices because the witness has no personal knowledge. I move to strike his reference to the betrayal of the estate as being outrageous. It's got absolutely nothing to do with his inability to review documents before he signs them.

THE COURT: Your response.

MR. GAMEROS: Your Honor, the witness was asked about the process, and that was one of the views that he had in terms of how he deals with external events, transactions. That's his view of the bankruptcy proceeding. Mr. Morris may not like it and Highland may not like that characterization or new Highland may not like that characterization, but it's a fair summary of the witness' answer. It's how he feels about what's going on. I think it's wholly appropriate.

THE COURT: Okay. I overrule. It's his view of the process, he was asked about the process, so —

MR. MORRIS: Your Honor, I'm going to try one more time. He can testify to his process all he wants. This is

about the process that he followed when he signed the document. It has absolutely nothing to do with postbankruptcy Highland. This is his document that he signed. He can talk about his process all you want, but he shouldn't be able to talk about the process that Highland follows today that he has no personal knowledge of. And if he's going to start disparaging the new Highland, it's going to be a longer day than I thought. He shouldn't be allowed to do that. It's gratuitous.

THE COURT: All right. Well, —

MR. GAMEROS: Your Honor, it's a couple sentences. My question was describe the process. I think it's an appropriate answer. He may not like the answer, but it's an appropriate answer.

THE COURT: You can cross-examine if you choose to, but I overrule the objection.

MR. GAMEROS: Thank you.

THE COURT: Um-hum.

BY MR. GAMEROS:

Q. Mr. Dondero, let's take a look at the proof of claim and talk about how is that on your desk or did it even get on your desk. So the exhibit is the proof of claim. I can give you a monitor, you can use this —

A. No, I get — okay. Well, what — what tab was it??

Q. Exhibit 8, his Exhibit 8.

MR. GAMEROS: Your Honor, may I approach over there

and just grab my notebook.

THE COURT: You may, um-hum.

MR. GAMEROS: Thank you.

THE WITNESS: I got it. Oh, the — what —

MR. GAMEROS: That's Exhibit 8.

BY MR. GAMEROS:

Q. That's Highland's Exhibit 8, the proof of claim.

A. Yes.

Q. You relied on Bonds Ellis to draft the proof of claim, correct?

A. Yes.

Q. Did you do anything to interfere with Bonds Ellis' access to anyone at Highland or HCRE for drafting — Highland, I'm sorry — anyone at HCRE for drafting a proof of claim?

A. No.

Q. Did they ever talk to you about the proof of claim?

A. No. I mean knew generally we were filing a bunch of proofs of claims at the time, but not specifically.

MR. GAMEROS: All right. Thank you. I have no other questions, Your Honor.

THE COURT: Recross.

MR. MORRIS: I have nothing, Your Honor.

THE COURT: All right. Mr. Dondero, you're excused from the witness box.

THE WITNESS: Thank you.

with the DSI folks, Caruso, Fred Caruso, and my team.
Q. Okay. Who is DSI, just so the Court's clear on that?
A. I don't know what — I think they were the CRO, the chief reorg- — but this is the only part I really touched with them. And so the couple conversations I had with Fred were I think we both agreed that we're — it was going to be futile.
Q. Okay. And Mr. Caruso works for DSI?
A. I believe so.
Q. All right. Did HCRE try to pay back Highlands Capital?
A. I think so.
Q. Okay. What happened?
MR. MORRIS: I apologize, Your Honor. I didn't hear the answer.
THE WITNESS: I think so.
MR. MORRIS: Thank you.
THE COURT: Okay.
THE WITNESS: You bet.
BY MR. GAMEROS:
Q. What happened?
A. I — I was told it was returned.
Q. Okay. Do you know why?
A. I don't.
Q. All right. Why did HCRE file a proof of claim?
A. I think we were trying to protect our interests, advice of counsel. Again, the important point is my partners weren't my

partners, you know, in March of 2019. And then when the bankruptcy started, it kind of took on a life of its own.

Q. Do you know the proof of claim worked through the HCRE side of the house before it was filed?

A. Yeah. I mean our internal counsel at NexPoint, external counsel, you know, came to me and said that they thought it would be a good idea and generally told me what it was about, and I said okay.

MR. GAMEROS: Pass the witness, Your Honor.

THE COURT: Okay. Cross.

CROSS-EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. McGraner.

A. Good morning, Mr. Morris.

MR. MORRIS: So may I just approach the witness to clean up the exhibits?

THE COURT: You may.

THE WITNESS: These are yours.

BY MR. MORRIS:

Q. Let's just do a little background here, Mr. McGraner. Since the time HCRE was formed, it's only been owned by you, Mr. Dondero, and Mr. Scott Ellington, correct?

A. Yes.

Q. And Mr. Dondero owns 70 percent, you own 25 percent, and Mr. Ellington owns five percent, correct?

A. I had good partners —
Q. — perspective, this dispute is really just a consequence of Highland's bankruptcy filing; isn't that right?
A. I think it's an unintended consequence, yeah.
Q. Let's talk about the proof of claim for a moment.
A. Okay.
Q. If we can go to Exhibit 8. You mentioned D. C. Sauter earlier. Did I hear that correctly?
A. Sure.
Q. And Mr. Sauter at the time the original LLC agreement was prepared and at the time the KeyBank loan was prepared and at the time the amended and restate LLC agreement was prepared, he was at Wick Phillips, right?
A. I think so.
Q. And then in the fall of 2019, or thereabouts, he came over to NexPoint; do I have that right?
A. I think so.
Q. Okay. And when he was at Wick Phillips he worked on Project Unicorn, didn't he?
A. Yeah.
Q. Yeah. And he is the one who showed you this proof of claim before it was filed on behalf of HCRE, correct?
A. I think so.
Q. Um-hum. You weren't given an opportunity to provide any comments to the document before it was filed, correct?

A. I think we — we spoke about it generally, conceptually.
Q. You — you weren't given the opportunity to provide any comments to the document before it was filed, correct?
A. I didn't think I needed to. I'm not a bankruptcy attorney, I don't know the process or what should be said. We relied on our counsel for that.
Q. Okay. So a simple question: You weren't given the opportunity to provide any comments to the document before it was filed, correct?
A. My answer is I was deferential to — to our counsel.
Q. You never gave Mr. Sauter any documents in connection with the proof of claim, correct?
A. Correct.
Q. You don't know whether Mr. Sauter ever gave any documents to Bonds Ellis in connection with this proof of claim, correct?
A. I don't know.
Q. You — you don't know, right? You have no personal knowledge —
A. I don't know —
Q. — of Mr. Sauter giving any documents to Bonds Ellis in connection with the proof of claim, correct?
A. Correct.
Q. You never discussed this document with Mr. Dondero, correct?
A. Correct.
Q. You never discussed this document with anybody at Bonds

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

Signed April 28, 2023

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER SUSTAINING DEBTOR'S OBJECTION TO, AND DISALLOWING, PROOF OF CLAIM NUMBER 146 [Dkt. No. 906]

I. INTRODUCTION

Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor") is the reorganized debtor under its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan")[1] and has objected to the allowance of the proof of claim ("Proof of Claim") filed by NexPoint Real Estate Partners, LLC, f/k/a HCRE

[1] Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order")[Dkt. No. 1943].

Partners, LLC ("HCRE") on April 8, 2020. An evidentiary hearing ("Trial") was held on the Debtor's objection on November 1, 2022. Thereafter, the parties submitted post-Trial briefing. After consideration of the Proof of Claim, the Debtor's objection, the pleadings filed in this contested matter, the evidence submitted and arguments of counsel at Trial, the court makes the following findings of fact and conclusions of law as required by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure in a contested matter.[2]

II. JURISDICTION

This court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Objection is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A), (B), and (O), and this court has statutory and Constitutional authority to enter final orders and judgments in this proceeding.

III. PROCEDURAL HISTORY

A. The Parties

Highland, a Dallas-based investment firm that managed billion-dollar investment portfolios and assets, was co-founded in 1993 by James D. Dondero ("Mr. Dondero") and Mark Okada. Highland's equity interest holders included Hunter Mountain Investment Trust (99.5%); The Dugaboy Investment Trust, Dondero's family trust (0.1866%); Mark Okada, personally and through trusts (0.0627%); and Strand Advisors, Inc., which was wholly owned by Mr. Dondero and the only general partner of Highland (0.25%). Mr. Dondero was the president and chief

[2] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

executive officer of Highland. On October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, which was transferred to the Northern District of Texas, Dallas Division on December 4, 2019.[3] Highland continued in possession of its property and operating and managing its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

The claimant, HCRE, was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Mr. Dondero was the president and sole manager of HCRE, and Matt McGraner ("Mr. McGraner") was HCRE's vice president and secretary. HCRE had no employees of its own and relied on Highland's employees (and employees of other entities controlled by Mr. Dondero) to conduct business on its behalf.

B. HCRE's Proof of Claim and Debtor's Objection Thereto

On March 2, 2020, this court entered an *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof*,[4] setting April 8, 2020, as the general deadline for filing proofs of claim. The Debtor's claims register was prepared and maintained by the Debtor's claims agent. On April 8, 2020, HCRE filed its Proof of Claim on Official Form 410.[5] HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[6]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant

[3] Dkt. No. 186.

[4] Dkt. No. 488.

[5] Claim No. 146. *See* HCRE's Tr. Ex. 3 and Debtor's Tr. Ex. 8.

[6] *Id.*

> contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not][7] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

Mr. Dondero signed and executed the Proof of Claim as the "person who is completing and signing this claim," checking the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[8] Yet, Mr. Dondero testified at Trial that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed."[9] He did not, prior to authorizing HCRE's law firm (Bonds Ellis) to affix his electronic signature on and to file the Proof of Claim (which was prepared by Bonds Ellis), review or provide comments to the Proof of Claim or its Exhibit A, or review the Amended LLC Agreement (defined below) or any documents.[10] Moreover, he did not know whose idea it was to file the Proof of Claim,[11] who at HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever

---

[7] HCRE's Proof of Claim states that "all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily ***does belong*** to the Debtor or may be the property of Claimant" (emphasis added), apparently leaving out the word "not" (because the claim would not make sense if HCRE were stating that these interests ***did*** belong to the Debtor). HCRE's Tr. Ex. 3; Debtor's Tr. Ex. 8, Ex. A.

[8] HCRE's Tr. Ex. 3, at 3; Debtor's Tr. Ex. 8, at 3.

[9] Trial Tr. 56:20-23.

[10] Trial Tr. 55:10-22, 56:15-57:6.

[11] Trial Tr. 57:7-9.

communicated with anybody in the real estate group regarding [the Proof of Claim]."[12] Mr. Dondero "never specifically asked anyone in the real estate group if [the Proof of Claim] was truthful and accurate before [he] authorized it to be filed."[13] Rather, Mr. Dondero testified that he relied on counsel and on "systems and processes" and only assumed that "the Bonds Ellis people dealt with whoever they thought were the appropriate people in our organization" because "[i]t wasn't with my input" and "[Bonds Ellis] would have had to get input from somebody and have rationale from somebody."[14] Mr. Dondero admitted that he "didn't check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it" or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of HCRE," even though he signed the Proof of Claim that contained "a statement . . . that says a person who files a fraudulent claim could be fined up to $500,000, imprisoned up to five years, or both," stating "I sign a lot of high-risk documents and I have to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this is another one of those items."[15]

On July 30, 2020, the Debtor objected to the allowance of HCRE's Proof of Claim in the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection"),[16] contending it had no liability under HCRE's Claim. In

[12] Trial Tr. 56:1-14.

[13] Trial Tr. 57:10-13.

[14] Trial Tr. 57:17-24.

[15] Trial Tr. 57:25-59:2.

[16] Dkt. No. 906. *See* Objection, 7-8, Ex. A (Proposed Order), Schedule 5 (a schedule of "No Liability Claims," listing 37 proofs of claim, including HCRE's Proof of Claim).

connection with its objection to allowance of the claims listed on Schedule 5, the Debtor noted, in an apparent reference to at least HCRE's Proof of Claim:

> Certain claims listed on Schedule 5 to the Objection appear to be protective claims for claimants asserting claims related to agreements with the Debtor. No amount is asserted on these claims and, although the claimants have indicated they would supplement the claims within ninety (90) days, that time has passed and no amendment or supplement has been filed and no additional documentation has been provided to support the claims.

On October 19, 2020, HCRE responded to the Debtor's Objection ("Response"). The Response was filed by the law firm of Wick Phillips Gould & Martin, LLP ("Wick Phillips") and provided a somewhat more fleshed-out statement of HCRE's claim against the Debtor:[17]

> After reviewing what documentation is available to [HCRE] with the Debtor, [HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

HCRE requested that the court "enter a scheduling order allowing for formal discovery and set an evidentiary hearing after such discovery has occurred."[18]

C. Debtor's Motion to Disqualify HCRE's Counsel

During the course of discovery, the Debtor became aware that Wick Phillips had jointly represented HCRE and Highland in connection with at least some of the underlying transactions that were the subject of HCRE's Proof of Claim. On April 14, 2021, the Debtor moved to

[17] Response, 2-3, ¶¶ 5-6.

[18] *Id.*, at 3, ¶ 6.

disqualify Wick Phillips ("Original Disqualification Motion"),[19] and on May 6, 2021, HCRE filed its opposition[20] to the Disqualification Motion. On October 1, 2021, the Debtor filed a supplemental disqualification motion[21] ("Supplemental Disqualification Motion" and with the Original Disqualification Motion, the "Disqualification Motion"). In both the Original Disqualification Motion and the Supplemental Disqualification Motion, the Debtor sought the entry of an order pursuant to the bankruptcy court's general equitable powers under Bankruptcy Code § 105(a), directing the disqualification of Wick Phillips and granting related relief, including, *inter alia*, "directing HCRE to [ ] reimburse the Debtor all costs and fees incurred in making the [Disqualification Motion], including reasonable attorneys' fees."[22] The Disqualification Motion was heavily contested, and the parties engaged in extensive discovery over the next five months, including expert discovery. Following a November 30, 2021 lengthy hearing on the Disqualification Motion, on December 10, 2021, this court entered an *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[23] resolving the Disqualification Motion by, among other things, disqualifying Wick Phillips from representing HCRE in the contested matter concerning HCRE's Proof of Claim, but specifically denying "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the [Disqualification Motion], including reasonable attorneys' fees."[24]

[19] Dkt. Nos. 2196-2198.

[20] Dkt. Nos. 2278 and 2279.

[21] Dkt. No. 2893.

[22] Original Disqualification Motion, 2; Supplemental Disqualification Motion, 2.

[23] Dkt. No. 3106.

[24] Disqualification Order, 4.

D. Debtor's Plan Is Confirmed

Meanwhile—actually just prior to and during this disqualification controversy—the Plan was confirmed, on February 22, 2021, over the objections of Mr. Dondero and his related entities (including HCRE).[25] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan. Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including the Debtor's 46.06% membership interest in SE Multifamily. In addition, the Plan included a list of executory contracts to be assumed under the Plan and provided that any executory contract of the Debtor that was not on the list would be deemed rejected pursuant to Bankruptcy Code § 365.[26] The Amended LLC Agreement was not listed in the Plan or any Plan Supplement as an executory contract to be assumed, and it is undisputed that the Amended LLC Agreement was never identified in the Debtor's Schedule G of Executory Contracts and Unexpired Leases filed in the Bankruptcy Case. Mr. Dondero and some of the Dondero-related entities that had objected to confirmation of the Plan (but not HCRE) appealed the Confirmation Order directly to the Fifth Circuit. On August 19, 2022, the Fifth Circuit entered its original order in which it "affirm[ed] the confirmation order in large part" and "revers[ed] only insofar as the plan exculpates certain non-debtors in violation of 11 U.S.C. § 524(e), strik[ing] those few parties from the plan's exculpation, and affirm[ed] on all remaining grounds." *In re Highland Capital Management, L.P.*, No. 21-10449, 2022 WL 3571094, at *1 (5th Cir. Aug, 19, 2022).[27]

---

[25] HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* [Dkt. No. 1673] on January 5, 2021.

[26] Plan, Art. V.A.

[27] On September 7, 2022, the Fifth Circuit withdrew its original opinion and replaced it with its opinion reported at *In re Highland Capital Management, L.P.*, 48 F.4th 419 (5th Cir. 2022), which made one clarification in substituting

E. Parties Participate in Extensive Second Round of Discovery, and HCRE Files Motion to Withdraw its Proof of Claim (Which Is Denied)

On January 14, 2022, HCRE's new law firm, Hoge & Gameros, LLP ("Hoge & Gameros") filed a notice of appearance on behalf of HCRE.[28] Over five months later, on June 9, 2022, the parties filed a proposed amended scheduling order ("Amended Scheduling Order") that this court subsequently approved.[29] Pursuant to the Amended Scheduling Order, the parties exchanged a second round of written discovery and document production and served various deposition notices and subpoenas. On August 12, 2022, just two business days after HCRE completed the depositions of the Reorganized Debtor's witnesses with the deposition of Mr. Seery, and a day after HCRE made a supplemental production of more than 4,000 pages of documentation, and 2 business days before consensually scheduled depositions of HCRE's witnesses (Mr. Dondero, Matt McGraner, and HCRE's Rule 30(b)(6) witness) were set to occur on August 16 and 17,[30] HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[31] HCRE noticed its Motion to Withdraw for hearing on September 12, 2022. Counsel for HCRE informed counsel for Highland, on August

---

the sentence – "We now turn to the Plan's injunction and gatekeeper provisions." – for the following sentence from the original opinion: "The injunction and gatekeeper provisions are, on the other hand, perfectly lawful." In all other respects, the Fifth Circuit panel's original ruling remained unchanged. On February 27, 2023, this court entered a memorandum opinion and order granting the Reorganized Debtor's motion to conform the Plan to the Fifth Circuit's mandate. Dkt. Nos. 3671 and 3672. Two Dondero-related entities – Highland Capital Management Advisors, L.P. and NexPoint Advisors, L.P. (together, the "Advisors") – filed a notice of appeal to the district court of the order on the Debtor's motion to conform on March 13, 2023. Dkt. No. 3682. On March 22, 2023, the Reorganized Debtor joined the Advisors in filing a *Joint Motion for Certification of Direct Appeal to the Fifth Circuit of Order on Reorganized Debtor's Motion to Conform Plan*. Dkt. No. 3688. On March 28, 2023, this court entered an *Order Certifying Direct Appeal to the Fifth Circuit Court of Appeals of Order on Reorganized Debtor's Motion to Conform Plan*. Dkt. No. 3696.

[28] Dkt. No. 3181.

[29] Dkt. Nos. 3356 and 3368.

[30] HCRE's counsel had accepted service of subpoenas on behalf of Mr. Dondero and Mr. McGraner (the "Original Subpoenas") and a Rule 30(b)(6) notice for HCRE ("Original HCRE Deposition Notice" and together with the Original Subpoenas, the "Original Notices"). *See Declaration of John A. Morris in Support of Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition* ("Morris Dec.") [Dkt. No. 3465], Ex. 1.

[31] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

15, 2022, that HCRE would not produce Mr. Dondero, Mr. McGraner, or HCRE for the consensually scheduled depositions on August 16 and 17.[32] Highland issued subpoenas and a Rule 30(b)(6) notice for the depositions of HCRE's witnesses regarding its Proof of Claim on August 15, 2022. HCRE then filed a *Motion to Quash and for Protection* ("Motion to Quash")[33] on August 23, 2022, the day before the depositions were to begin, but did not request an emergency hearing on it or otherwise notice it for hearing. On September 2, 2022, Highland filed an objection to HCRE's Motion to Withdraw ("Objection to Motion to Withdraw")[34] and an objection to HCRE's Motion to Quash and cross-motion to enforce the deposition subpoenas and compel the Rule 30(b)(6) deposition of HCRE. Highland filed a notice of hearing on its cross-motion for the September 12, 2022 setting.[35] Following the September 12 hearing, the court entered an order denying HCRE's Motion to Withdraw, for the reasons set forth on the record,[36] and directing the

[32] *See Reorganized Debtor's (A) Objection to Motion to Quash and for Protection [Docket 3464] and (B) Cross-Motion to Enforce Subpoenas and to Compel a Deposition* ("Objection to Motion to Quash and Cross-Motion to Compel") [Dkt. No. 3484], 8 at ¶19.

[33] Dkt. No. 3464.

[34] Dkt. No. 3487.

[35] Dkt. No. 3499.

[36] The court notes that, under Fed. R. Bankr. P. 3006, a creditor does not have an absolute right to withdraw a proof of claim "[i]f after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession . . . . The order of the court shall contain such terms and conditions as the court deems proper." Here, the Debtor timely objected to allowance of HCRE's proof of claim, and years of litigation ensued. HCRE has also "participated significantly in the case" by, among other things: actively objecting to the Debtor's proposed Plan; vigorously defending, along with other Dondero-related entities, the Debtor's suits on promissory notes (which suits are now pending at the district court on this court's report and recommendation that it grant the Reorganized Debtor's motion for summary judgment and to which HCRE has objected); opposing the Debtor's Disqualification Motion; and conducting several rounds of discovery, including depositions of the Debtor's witnesses--until abruptly filing its motion to withdraw its Proof of Claim just days prior to the consensually scheduled depositions of HCRE's witnesses. The court entered its order denying HCRE's motion to withdraw its Proof of Claim only after HCRE was not willing to agree, at the hearing, to language in an order allowing it to withdraw its Proof of Claim stating, unequivocally, that HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily. In announcing its ruling from the bench, the court noted its concerns regarding the integrity of the bankruptcy system and claims process if it allowed HCRE to withdraw its Proof of Claim after two and a half years of litigation, causing the Debtor to spend hundreds of thousands of dollars litigating its Objection to a proof of claim The court expressed concerns about gamesmanship, but, at the same time, assured the parties that it

parties to "confer in good faith to complete the depositions of Mr. James Dondero, Mr. Matt McGraner, and HCRE at mutually convenient times between September 28 and October 12, 2022" and to "otherwise comply with certain items in the *Order Approving Amended Stipulation and Proposed Scheduling Order Concerning Proof of Claim 146 Filed by HCRE Partners, LLC* [Docket No. 3368], including appearing for an evidentiary hearing on November 1 and 2, 2002."[37]

F. Evidentiary Hearing Held and Post-Trial Briefing Filed by Parties on Executory Contract Issue

The Trial on HCRE's Proof of Claim and the Objection thereto was held on November 1, 2022. The court admitted into evidence HCRE's Exhibits 1-6, 17-20, and the Reorganized Debtor's Exhibits 1-65, 70-71, 75-96, and 103.[38] At the conclusion of the Hearing, HCRE asked the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[39] The Reorganized Debtor requested that the court enter an order disallowing HCRE's Proof of Claim and to include specific findings and conclusions that (1) HCRE had not met its burden of proof regarding its claims for reformation, rescission, and/or modification of the Amended LLC Agreement to re-allocate HCRE's and the Reorganized Debtor's membership percentages under the Amended LLC Agreement; and (2) HCRE filed its Proof of Claim in bad faith and awarding the Reorganized Debtor its "costs."[40] This was the Reorganized Debtor's first time, in this contested matter, to request reimbursement of its costs

---

was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw [Dkt. No. 3519] 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at Dkt. No. 3525 that had been uploaded by Highland following the hearing denying HCRE's motion to withdraw its Proof of Claim .

[37] Dkt. No. 3525.

[38] *See* Dkt. No. 3611.

[39] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 179:23-25; 180:8-9.

[40] Trial Tr. 196:10-22.

incurred by it in objecting to HCRE's Proof of Claim allegedly filed in bad faith, and counsel did not indicate whether the Reorganized Debtor was requesting reimbursement of attorneys' fees as part of its "costs" or the statutory basis for its request.[41] To be clear, Highland had not made the request in any written pleading filed before the Hearing,[42] and the Reorganized Debtor did not make such a request in its post-trial briefs (see below). At Trial, HCRE's counsel objected to the Reorganized Debtor's attempt to seek reimbursement of its costs in litigating the Objection based on HCRE's alleged bad-faith filing of its proof of claim. HCRE's counsel also argued that the issues of reformation, rescission, and modification of the Amended LLC Agreement were not before the court and that, if the court were to grant the Reorganized Debtor's Objection, it should enter only a simple order denying the claim, without making any findings.[43] Following the Trial, the court took the matter under advisement.

On November 10, 2022, the Reorganized Debtor filed a motion for leave to file a post-trial brief on an issue raised by HCRE for the first time at Hearing: whether the amended limited liability company operating agreement at issue was an executory contract that had been rejected by the Debtor upon confirmation of the Plan.[44] The Reorganized Debtor filed its *Post-Trial Brief*

[41] The Reorganized Debtor's only request for reimbursement of its "costs" related to HCRE's allegedly bad-faith filing of its proof of claim occurred during counsel's closing argument: "And we want a finding of bad faith. We shouldn't have been put through this. We want our costs. I think the Court has the ability, has the authority to award costs for a bad faith filing." Trial Tr. 196:17-22.

[42] The Debtor did make a written request for reimbursement of its costs, including attorneys' fees, in prosecuting its Disqualification Motion. *See* Original Disqualification Motion, 2; Supplemental Disqualification Motion, 2. That request was denied by this Court in its December 10, 2021 Disqualification Order. *See supra* note 24 and accompanying text.

[43] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

[44] Dkt. No. 3619. The court entered an order granting the Reorganized Debtor's motion for leave to file post-trial briefs on November 22, 2022. *See* Dkt. No. 3634.

Addressing HCRE's Executory Contract Defense ("Post-Trial Brief")[45] on November 22, 2022. HCRE filed its *Response to Debtor's Post-Hearing Brief* ("Response to Post-Trial Brief"),[46] arguing that the court should not "consider[ ] or give[ ] any weight" to the Reorganized Debtor's post-trial briefing because "the issue of whether or not the LLC Agreement is an executory contract – and if it was rejected – is not before the Court, if for no other reason than because the Debtor chose not to assume it" and "Debtor's supplemental brief is an attempt to reopen the evidence, to relitigate issues and Orders already entered (*e.g.*, the Order denying its earlier request for fees), and to add additional time, burden, and attorneys' fees to a matter that could have been resolved before hearing."[47]

The Reorganized Debtor filed its *Reply to HCRE's Post-Trial Brief* ("Reply to HCRE's Post-Trial Brief")[48] on December 7, 2022, arguing that the executory contract issue ***is*** properly before the court because counsel for HCRE specifically argued, during the Trial, that the Amended LLC Agreement at issue is an executory contract that had been rejected under the terms of the Plan and that "[a]ll [Highland] ha[s] left is an economic interest . . . , but they're not a member anymore."[49] The Reorganized Debtor also noted HCRE's previous "disingenuous[ ]" contention by its counsel's during the Trial that, despite pleading, in support of its Proof of Claim, that the SE Multifamily organizational documents "improperly allocate[] the ownership percentages of the members thereof due to mutual mistake, lack or consideration and/or failure of consideration" and that "[a]s such, [HCRE] has a claim to reform, rescind and/or modify the Agreement," the court

[45] Dkt. No. 3635.

[46] Dkt. No. 3641.

[47] Response to Post-Trial Brief, at 4, 5.

[48] Dkt. No. 3644.

[49] Reply to HCRE's Post-Trial Brief, at 2; Trial Tr. 181:11-182:22.

could not make specific findings and conclusions regarding such issues in the context of ruling on the HCRE Proof of Claim and the Reorganized Debtor's Objection.[50]

HCRE specifically asked the court, in pleadings and proceedings in connection with HCRE's Proof of Claim, to allow its claim against the Debtor and "reallocate the equity [in SE Multifamily] based on the capital contribution[s]"[51] pursuant to HCRE's alleged right of reformation, rescission, and/or modification of the Amended LLC Agreement due to alleged mutual mistake, lack of consideration, and/or failure of consideration and, at least in part, based upon HCRE's argument that the Amended LLC Agreement was an executory contract that had been rejected by the Debtor under the terms of the confirmed Plan. As such, these issues are properly before the court and may be determined in connection the court's adjudication of this contested matter.

As to the Reorganized Debtor's oral request during the Trial for sanctions against HCRE in the form of reimbursement of the Debtor's costs incurred in objecting to HCRE's Proof of Claim that it alleges was filed and prosecuted in bad faith, the court finds that the Reorganized Debtor's request for sanctions is procedurally defective and, thus, not properly before the court for its consideration.[52] Thus, the court will not address or make any determination regarding the Reorganized Debtor's request for sanctions in the form of reimbursement of the Reorganized Debtor's costs other than to deny the request, without prejudice, as being procedurally defective.

[50] Reply to HCRE's Post-Trial Brief, at 2 n.3.

[51] Trial Tr. 179:23-25; *see also* Trial Tr. 180:8-9.

[52] The court will address the improper procedural posture of the Reorganized Debtor's request below.

IV. FINDINGS OF FACT

A. Project Unicorn, the Formation of SE Multifamily Holdings, LLC, and the KeyBank Loan

In the summer of 2018, HCRE and Highland began moving forward with a plan to purchase a portfolio of 26 multifamily properties with an estimated value of $1.1 billion, which was referred to as Project Unicorn.[53] Highland and HCRE entered into that certain *Limited Liability Company Agreement* for SE Multifamily Holdings LLC ("SE Multifamily"), dated as of August 23, 2018 ("Original LLC Agreement")[54] for the purpose of implementing Project Unicorn.[55] Mr. Dondero signed the Original LLC Agreement on behalf of both HCRE and Highland.[56] The Original LLC Agreement allocated 51% of SE Multifamily's membership interests to HCRE and 49% to Highland, with capital contributions by HCRE and Highland of $51 and $49, respectively.[57] Mr. McGraner (a minority owner and vice president and secretary of HCRE), who described himself as the "quarterback of Project Unicorn . . . [who] made sure that the original LLC agreement was created for the purpose of creating SE Multifamily," agreed, on cross-examination, that he "personally reviewed the allocation of ownership interests in the document before it was signed" and "at the time the original agreement was signed, [he] didn't believe there were any mistakes in the allocation of membership interests" or "have [any] reason to believe that the original LLC

[53] Trial Tr. 34:1-15.

[54] HCRE's Tr. Ex. 1; Debtor's Tr. Ex. 5.

[55] Trial Tr. 34:11-16.

[56] Trial Tr. 37:21-38:19; Original LLC Agreement, at 17. Mr. Dondero testified at Trial that he signed the Original LLC Agreement without having participated in any negotiations or drafting of the agreement or having read the document prior to signing, and, further, that he did not (1) know who drafted the Original LLC Agreement, (2) have a recollection "of anybody explaining to [him] the terms or conditions of this agreement," (3) receive legal advice from anyone regarding the agreement, or (4) ever speak with anyone in Highland's compliance department prior to signing the agreement. *See* Trial Tr. 43:22-45:7.

[57] Schedule A to Original LLC Agreement, at 18.

agreement didn't fail to reflect the intent of the parties to that agreement."[58] Under the terms of the Original LLC Agreement, HCRE had "the exclusive right to appoint the Manager and the Manager [had] unfettered control over all aspects of the business and operations of the Company and . . . exclusive rights to appoint management personnel and exclusive voting rights, as further specified under [the] Agreement."[59] Mr. Dondero "in his capacity as an officer of HCRE," was identified as the initial manager of SE Multifamily, with "[t]he management, control and direction of the Company and its operations, business and affairs [vesting] exclusively in the Manager."[60] In addition, the Original LLC Agreement contained a provision that outlined the specific procedures for the parties amending or waiving any provisions under the agreement:[61]

> 10.1 Amendments and Waivers. This Agreement may be modified or amended, or any provision hereof waived, only with the prior written consent of the Manager and all the Members (a copy of which shall be promptly sent by the Manager to all the Members). For the sake of clarity, no such amendment shall without a Member's consent (a) reduce the amounts distributable to, timing of distributions to, or expectations to distributions of, such Member, (b) increase the obligations or liabilities of such Member, (c) change the purpose of the Company as set forth in Section 1.3, (d) change any provision of this Agreement requiring the approval of all the Members or reduce such approval requirement, (e) borrow funds or otherwise commit the credit of the Company, (f) sell the Company or sell all or substantially all assets of the Company, or (g) otherwise materially and disproportionally impair the rights of such Member under this Agreement.

To finance the acquisition of the real estate in connection with Project Unicorn, HCRE and Highland, among other borrowers (the "Borrowers")[62] entered into that certain *Bridge Loan Agreement* ("Loan Agreement")[63] with KeyBank, N.A. ("KeyBank"), as of September 26, 2018,

---

[58] Trial Tr. 82:13-83:10.

[59] Original LLC Agreement, §1.6, at 3.

[60] *Id.*, §§3.1 and 3.2, at 6.

[61] *Id.*, §10.1, at 15.

[62] Notably, SE Multifamily, itself, was not a "Borrower."

[63] Debtor's Tr. Ex. 6.

pursuant to which the Borrowers obtained a secured loan from KeyBank.[64] Pursuant to the terms of the Loan Agreement, KeyBank provided up to $556,275,000 in secured loans to the Borrowers, including Highland and HCRE, and the Borrowers (including Highland) were jointly and severally liable for all amounts owed under the Loan Agreement,[65] but HCRE was the "Lead Borrower" with the sole authority to request and obtain borrowings and to determine how the loan proceeds would be distributed among the Borrowers.[66] Mr. Dondero confirmed that he did not read the Loan Agreement or personally obtain any legal advice prior to signing it on behalf of Highland but, instead, relied on "the process of a transaction going through internal counsel, external counsel, compliance every step along the way, and then being put in front of me."[67] Consequently, Mr. Dondero was not "specifically aware that Highland was agreeing to be jointly and severally liable for the obligations at KeyBank" when he signed the Loan Agreement on behalf of Highland, and, in fact "never asked anyone what Highland's rights and obligations were under the KeyBank loan agreement before [he] signed it on [Highland's] behalf."[68] Notwithstanding this testimony,

---

[64] *See id.*, § 2.02(a) and (b), at 26 (providing that the purpose of the financing was "to finance the acquisition cost of the Mortgaged Properties" and "to finance a portion of the acquisition cost of the Portfolio Properties . . . ."); Trial Tr. 45:18-22.

[65] Debtor's Tr. Ex. 6, § 9.17, at 88.

[66] *Id.*, § 1.05(a) and (b), at 25-26.

[67] Trial Tr. 46:20-47:11

[68] Trial Tr. 47:12-20. Mr. Dondero testified that he did not believe he needed to know what Highland's rights and obligations were under the Loan Agreement before signing it because it had gone through a "rigorous process" before he was asked to sign it:

> Q: Okay. In fact, you never asked anyone what Highland's rights and obligations were under the KeyBank loan agreement before you signed it on its behalf, correct?
>
> A: Correct.
>
> Q: And that's because you didn't believe you needed to know what Highland's rights and obligations were under the KeyBank agreement, correct?
>
> A: I – I believed it was appropriately handled by the process and compliance and the relevant business people and their various expert – experts and expertise internally and externally. It wouldn't have been appropriate for me to secondguess [sic] everything.
>
> . . .

he testified that he personally made the decision on behalf of Highland to participate in Project Unicorn and become a member of SE Multifamily because (1) Highland's participation as an obligor on the KeyBank loan was a necessary part of the KeyBank transaction,[69] (2) there would be tax advantages in including Highland "as a result of the fact that Highland's income was largely sheltered,"[70] and (3) "HCRE relied on Highland's human resources to execute Project Unicorn."[71] Mr. McGraner agreed, during cross-examination, that among the reasons for including Highland as a member of SE Multifamily included that "KeyBank insisted on Highland being a coborrower [under the KeyBank loan]" because "HCRE did not have the ability to close on the KeyBank loan based on its own financial wherewithal" and that including Highland as a member of SE Multifamily gave Project Unicorn "capital flexibility and expected tax benefits."[72]

During the month between the formation of SE Multifamily on August 23, 2018, and the closing of the KeyBank loan transaction on September 26, 2018, an entity known as BH Equities, LLC ("BH Equities"), which was in the business of investing and sourcing investment opportunities in real estate partnerships and managing multifamily properties, specifically worked

---

> Q: And you as the control person of Highland didn't believe you needed to know what Highland's rights and obligations were under the KeyBank loan before you signed, it, correct?
>
> A: Specifically, I did not need to know.

Trial Tr. 47:17-48:3, 48:13-16.

[69] Trial Tr. 38:20-43:1. When asked by counsel for Highland if he had made the decision on behalf of Highland to participate as a member of SE Multifamily to participate in Project Unicorn "because [Highland] was going to provide a guaranty to KeyBank and the guaranty was a necessary part of the transaction," Trial Tr. 38:25-394, Mr. Dondero didn't recall that he understood at the time that Highland was going to provide a guaranty to KeyBank or that he had testified at his deposition, less than a month before the Trial, that Highland was included as a member of SE Multifamily because it was going to provide a guaranty to KeyBank and that "the guaranty was a necessary part of the transaction, so they needed – they needed to be involved," until counsel for Highland refreshed his recollection with his deposition testimony. Trial Tr. 41:1-19 (reading portions of Mr. Dondero's October 4, 2022 Deposition Transcript, Debtor's Trial Ex. 70, 25:18-26:11, into the record). Mr. Dondero admitted that had been his deposition testimony but noted that "[w]e have established that [there was no guaranty]" before admitting that Highland was a coborrower instead of being a guarantor. Trial Tr. 41:17-42:25.

[70] Trial Tr. 43:2-14.

[71] Trial Tr. 43:15-18. Mr. Dondero also affirmed that "SE Multifamily relied on Highland's human resources at least until 2020." Trial Tr. 43:19-21.

[72] Trial Tr. 83:13-85:4.

with Highland and HCRE in connection with Project Unicorn in anticipation of becoming a member of SE Multifamily.[73] Prior to becoming a member of SE Multifamily and without any formal agreement in place, BH Equities contributed approximately $21 million in capital to SE Multifamily to fund Project Unicorn expenses leading up to the closing of the KeyBank loan (which facilitated the acquisition of the real estate).[74]

B. Negotiation and Execution of an Amended LLC Agreement in March 2019

Following the closing of the KeyBank loan transaction and acquisition of the Project Unicorn properties and "as intended in the fall of 2018, Highland and BH Equities continued their discussions over the terms on which BH Equities would become a member of SE Multifamily."[75] Dustin Thomas ("Mr. Thomas"), managing director of capital markets and investor relations at BH Equities, described the discussions as "bilateral" negotiations between BH Equities, on one side, and the Highland-related entities (Highland, HCRE, and another Highland-related entity that was added as a member of SE Multifamily, Liberty CLO HoldCo, Ltd. ("Liberty")), on the other.[76] In addition, since the closing of the KeyBank loan transaction and notwithstanding the joint and several liability of the Borrowers under the Loan Agreement, Mr. Dondero had determined that approximately $250 million of the KeyBank loan proceeds would be allocated as a capital contribution ***by HCRE*** to SE Multifamily.[77] Mr. Dondero had credited another approximately $40

[73] Debtor's Trial Ex. 3, Deposition Excerpts of Dustin Thomas (BH Equities, LLC 8/4/22 Deposition), 33:9-16 ("Q: Did there come a time when BH Equities began to negotiate with Highland about a potential participation interest in SE Multifamily? A: Yeah, it was always expected we would participate in the – in the LLC through capital and, you know, sharing of return of capital and profits and things, yes.").

[74] *Id.* at 34:5-36:10.

[75] Trial Tr. 49:22-50:7.

[76] Debtor's Trial Ex. 3, 26:13-22 ("Q: From BH Equities' perspective as you were negotiating this agreement, did BH Equities form a view that [Highland] and HCRE and Liberty were related parties? A: Yes. Q: And did – was this more of a bilateral negotiation between BH Equities on the one hand and [Highland] and HCRE and Liberty on the other hand? A: Yes.").

[77] Testimony of Matt McGraner on Cross-Examination, Trial Tr. 89:12-92:24.

million that been borrowed from a Dondero-related entity as a capital contribution ***by HCRE*** to SE Multifamily, for a total of over $291 million credited as an HCRE capital contribution to SE Multifamily, none of which came "out of its own pocket."[78] Highland had made a $49,000 cash capital contribution to SE Multifamily.

Six months after the KeyBank loan transaction closed, the parties executed a *First Amended and Restated Limited Liability Agreement* for SE Multifamily Holdings, LLC, dated as of March 15, 2019, to be effective as of August 23, 2018 ("Amended LLC Agreement")[79] to add BH Equities and Liberty as members of SE Multifamily and "to set forth certain agreements among themselves relating to the capitalization and governance of the Company and granting certain rights and imposing certain restrictions on themselves as set forth herein."[80] On March 8, 2019, Mark Patrick (tax counsel for Highland) sent an email to Paul Broaddus, a Highland employee in its tax department who, "as part of th[e] process of negotiations with BH Equities, . . . was working to update the contribution schedule to include the actual contribution numbers,"[81] telling him that "[t]he contribution provision schedule should reflect the equity capital from the debt bridge. So you will need to drop that amount into Schedule A. The percentage interest can remain."[82] On March 15, 2019, Mr. Broaddus emailed Mr. Thomas and Ben Roby at BH Management the revised contribution schedule, "updated with the actual contribution numbers."[83] The updated Schedule

[78] *Id.* at 89:20-22, 92:25-93:23.

[79] HCRE's Trial Ex. 2; Debtor's Trial Ex. 7. Mr. McGraner testified that the parties needed to execute the Amended LLC Agreement by March 15, 2019, so that it could be retroactive to August 23, 2018, the date of the Original LLC Agreement.

[80] *Id.* at 2.

[81] Trial Tr. 86:24-87:3.

[82] Debtor's Trial Ex. 19.

[83] Debtor's Trial Ex. 30.

A identified each of the parties' capital contributions and respective percentage ownership interests as follows:

Member Name	Capital Contribution	Percentage Interest
HCRE Partners, LLC	$291,146,036	47.94%
Highland Capital Management, L.P.	$49,000	46.06%
BH Management	$21,213,721	6.00%

and Liberty obtained 100% of newly issued "Class A Preferred Interests" in exchange for a capital contribution of $5,808,603.[84] Schedule A to the Amended LLC Agreement reflected all of the capital contributions that had been made, or credited as having been made, to SE Multifamily between the date of the Original LLC Agreement (August 23, 2018) and March 15, 2019, the date the parties executed the Amended LLC Agreement.

Mr. Dondero signed the Amended LLC Agreement on behalf of HCRE and Highland, and, again, did so without having first reviewed or read it or any drafts of it and without having obtained any legal advice before he signed it, instead, relying on "a robust and normal process."[85] However, as brought out in testimony at Trial, Mr. Dondero was aware, prior to signing, that "HCRE and Highland and BH Equities . . . had all either made the capital contributions or all of the capital contributions, [sic] they were going to get credited with having been made" with "no expectation that any of the members would put in any additional capital after the agreement was amended in March of 2019."[86] And, even though Mr. Dondero did not read Schedule A to the Amended LLC Agreement with its table of capital contributions attributed to HCRE, Highland, and BH Equities and their respective percentages of membership interests in SE Multifamily, Mr. Dondero agreed

[84] *Id.*, Sch. A.

[85] Trial Tr. 52:19-53:15.

[86] Trial Tr. 51:11-52:3. Mr. Dondero further testified that he did not have any awareness of any of the members ever putting in additional capital after March 2019, Trial Tr. 52:4-6, and agreed that during six months between the closing of the KeyBank loan transaction, "he and Mr. McGraner and everybody working on behalf of HCRE . . . knew exactly what Highland's role was with respect to KeyBank . . . that they were a coborrower." Trial Tr. 52:15-21.

that the schedule comported with his expectations when he signed the Amended LLC Agreement on behalf of HCRE and Highland, including his expectation that Highland's 49% interest was going to be diluted by the 6% interest being granted to BH Equities.[87] Mr. McGraner testified that he had reviewed the proposed Schedule A on March 15, 2019, prior to the execution of the Amended LLC Agreement, and he "could see that Highland is shown as having made a $49,000 capital contribution and was being given a 46.06-percent interest in SE Multifamily."[88] He further testified that, at the time the Amended LLC Agreement was signed (later that day), "Schedule A reflected [his] understanding of the terms between Highland and HCRE" and that "[a]fter receiving the schedule, [he] never told anybody that [he] thought there was a mistake," even though he "knew exactly what Highland was credited as having contributed and . . . exactly what percentage interest it was getting,"[89] Specifically with respect to the allocations of membership interests contained in Schedule A, Mr. Thomas (of BH Equities) testified in his prior deposition, that "BH Equities agreed that [Highland] would hold a 46.06 percentage interest in SE Multifamily while making a capital contribution of $49,000" and "believed Schedule A accurately reflected the intent of the parties" and, further, that BH Equities "[n]ever hear[d] from anybody acting on behalf of Highland that Highland believed Schedule A was inaccurate in any way."[90] Mr. Thomas testified in his deposition, more generally regarding the intent of the parties in executing the Amended LLC Agreement in March 2019, that (1) BH Equities understood, at the time the parties executed the

[87] Trial Tr. 53:12-54:23.

[88] Trial Tr. 93:24-94:5.

[89] Trial Tr. 94:2-20; *see also* Trial Tr. 101:3-21 (where Mr. McGraner testified, on cross-examination, that the revised draft of Schedule A setting forth the updated capital contributions of HCRE, Highland, and BH Equities was the version that was to be included in the final version of the Amended LLC Agreement, that there was nothing ambiguous about the information contained in Schedule A, and that, "to the best of [his] knowledge and understanding, Schedule A as set forth in the executed and amended restated agreement reflected the parties' intent at the time it was signed.").

[90] Debtor's Trial Ex. 3, Deposition Excerpts of Dustin Thomas (BH Equities, LLC 8/4/22 Deposition), 52:4-53:4, 54:4-19.

Amended LLC Agreement that they were getting a 6% residual interest in SE Multifamily "that could only be changed if the parties agreed in the future to amend the agreement," (2) he was not aware of anybody acting on behalf of the Highland entities ever having informed BH Equities that "any aspect of the amended agreement was inconsistent with Highland's intent," and (3) BH Equities had "[no] reason to believe that the agreement did not reflect the intent of all of the members of [SE Multifamily] . . . [or] that the amended agreement contained any errors or mistakes."[91]

Section 1.7 of the Amended LLC Agreement identified the same percentage ownership interests in SE Multifamily—47.94% to HCRE, 46.06% to Highland, and 6% to BH Equities—that had been identified in the updated and revised Schedule A, which represented a reduction of HCRE's and Highland's previous ownership interests of 51% and 49% to reflect a dilution of their original interests by BH Equities' new 6% ownership interest.[92] Mr. McGraner testified that (1) he was aware, before the Amended LLC Agreement was signed, that the provisions of section 1.7 that specifically allocated a 46.06% ownership interest in SE Multifamily to Highland were going to be included in the final version of the agreement, (2) there was nothing about section 1.7 that was ambiguous at the time it was signed, and (3) "[a]t the time the agreement was signed, HCRE understood that Section 1.7 accurately reflected the parties' intent."[93]

Shortly before the Amended LLC Agreement was executed, BH Equities expressed concerns over the priority of distributions under the "waterfall" provisions in section 6.1 of the

---

[91] *See, id.*, 46:3-51:7.

[92] *See id.*, §1.7, at 3 and Sch. A. Liberty obtained 100% of newly issued "Class A Preferred Interests" in exchange for a capital contribution of $5,808,603.

[93] Trial Tr. 101:22-102:11, 103:17-20.

agreement and made a proposal regarding the waterfall.[94] The people acting on behalf of HCRE and Highland rejected BH Equities' proposal and made a counterproposal.[95] In response to Mr. Thomas' email, Mr. Broaddus forwarded to Mr. Thomas new waterfall provisions that had been prepared by Freddy Chang (counsel in Highland's legal department) that showed distribution percentages equal to the percentage membership interests identified on Schedule A: HCRE (47.94%), Highland (46.06%), and BH Equities (6%).[96] During his Trial testimony, Mr. McGraner affirmed that he believed that the distribution percentages contained in Mr. Chang's proposed waterfall provisions, including a distribution percentage of 46.06% allocated to Highland, were "fair, reasonable, and consistent with the parties' intent."[97]

Section 9.3 of the Original LLC Agreement, which provides the manner in which residual cash would be distributed to the members in the event of a SE Multifamily liquidation, was also revised and updated to show a liquidation distribution to the members under section 9.3(e) in accordance with the newly allocated percentage ownership interests of HCRE, Highland, and BH Equities of 47.94%, 46.06%, and 6%, respectively.[98] As he did with respect to section 1.7, Schedule A, and section 6.1, Mr. McGraner testified that the liquidation waterfall percentages contained in section 9.3(e) reflected the parties' intent at the time the agreement was signed and

[94] Trial Tr. 94:21-95:17; Debtor's Trial Ex. 31, Email from Mr. Thomas to Mr. Broaddus sent on March 15, 2019, at 8:59 p.m.

[95] Trial Tr. 96:24-97:6.

[96] Trial Tr. 98:10-13; Debtor's Trial Ex. 32, Email from Mr. Broaddus to Mr. Thomas sent on March 15, 2019, at 11:00 p.m.

[97] Trial Tr. 98:6-24.

[98] Section 9.3(e) of the Original LLC Agreement provided for liquidation distributions of residual cash to the members in the same percentages as HCRE's and Highland's ownership interests under Original LLC Agreement: "(e) thereafter, 51% to HCRE and 49% to [Highland]." Debtor's Trial Ex. 5, Original LLC Agreement, §9.3(e), at 14. Section 9.3(e) of the Amended LLC Agreement was revised and updated to read, "(e) thereafter, (i) 47.94% to HCRE, (ii) 46.06% to [Highland], and (iii) 6% to BH." Debtor's Trial Ex. 7, Amended LLC Agreement, § 9.3(e), at 15.

that this provision was not ambiguous[99] and, further, that the agreement had never been amended and "HCRE never asked any other party to the agreement to amend it in any way. . . . because Highland filed for bankruptcy"[100] and "[HCRE's] partners are no longer the same partners and that's the reason that we're here."[101]

Finally, SE Multifamily's tax filings for the tax years 2018-2020 confirm that the parties intended that Highland, having made a capital contribution of $49,000, owned 46.06% of the SE Multifamily membership interests. Mr. Dondero, in his capacity as an officer of HCRE, was the manager of SE Multifamily, who was charged under the terms of the Amended LLC Agreement with the preparation and filing of SE Multifamily's tax returns.[102] In preparing SE Multifamily's tax returns, the accounting firm Barker Viggato, LLC ("Barker Viggato") relied on HCRE for information concerning member contributions and distributions and the allocations of income reflected in the tax returns.[103] "Equity Rolls" that were prepared by Barker Viggato showed ownership percentages, capital contribution ratios, and distributions, for purposes of each GAAP accounting and tax accounting, in tax years 2018, 2019, and 2020, and each of those showed Highland having a 46.06% membership interest, a 0.02% capital contribution ratio, and a 94% income allocation ratio per "Section 6.4(a) of LLC Agreement."[104] Moreover, Barker Viggato

[99] Trial Tr. 107:2-22.

[100] Trial Tr. 107:23-108:2.

[101] Trial Tr. 108:18-24.

[102] Debtor's Trial Ex. 7, Amended LLC Agreement, §§3.1, 8.2, at 6, 14.

[103] Debtor's Trial Ex. 4, Deposition Excerpts of Mark Barker (Barker Viggato, LLP 8/5/22 Deposition), 23:16-24:10.

[104] Debtor's Trial Exs. 42-44. Section 6.4(a) of the Amended LLC Agreement provides for the allocation of profits and losses 94% to Highland and 6% to BH Equities, with 0% allocated to HCRE. Debtor's Trial Ex. 7, Amended LLC Agreement, §6.4(a), at 12.

fixed Highland's capital interest at 46.06% in every K-1 prepared for Highland for tax years 2018-2020.[105]

Mr. McGraner ultimately affirmed on cross-examination that "HCRE now contends that the mistake in the agreement wasn't that the allocations were wrong in the original agreement, but, that [the Amended LLC Agreement] should have provided HCRE with the ability to amend the agreement as the transaction unfolded and assets were sold."[106] But, as brought out in the cross-examination of Mr. McGraner--same as the Original LLC Agreement[107]--the Amended LLC Agreement ***does contain*** a provision for the amendment or waiver of any of the provisions under the agreement. In fact, section 10.1 had been revised and updated from the original version to change the consent requirements, so that the prior written consent of "the Manager [Mr. Dondero] and ***HCRE***" (emphasis added) would be required for any modification, amendment, or waiver or any of the provisions of the Amended LLC Agreement—as opposed to the requirement in the Original LLC Agreement of the prior written consent of "the Manager [Mr. Dondero] and ***all the Members***" (emphasis added), as reflected in the following black-lined version of section 10.1:[108]

> 10.1 Amendments and Waivers. This Agreement may be modified or amended, or any provision hereof waived, only with the prior written consent of the Manager and ~~all the Members~~ ***HCRE*** (a copy of which shall be promptly sent by the Manager to all the Members). For the sake of clarity, no such amendment shall without a Member's consent (a) reduce the amounts distributable to, timing of distributions to, or expectations to distributions of, such Member, (b) increase the obligations or liabilities of such Member, (c) change the purpose of the Company as set forth in Section 1.3, (d) change any provision of this Agreement requiring the approval of ~~all the Members~~ ***HCRE*** or reduce such approval requirement, (e) borrow funds or otherwise commit the credit of the Company, (f) sell the Company or sell all or substantially all assets of the Company, or (g)

[105] Debtor's Trial Exs. 46, 50, and 55.

[106] Trial Tr. 113:7-12.

[107] *See supra* at note 61 and accompanying text.

[108] Debtor's Trial Ex. 7, §10.1, at 15-16 (emphasis and stricken text added to show comparison of §10.1 in the Amended LLC Agreement with §10.1 in the Original LLC Agreement).

> otherwise materially and disproportionally impair the rights of such Member under this Agreement.

Mr. McGraner admitted that section 10.1 of the Amended LLC Agreement "provides for the amendment of th[e] [Amended LLC Agreement,"[109] that section 10.1 was part of the process that Mr. Dondero talked about that "got vetted by the real estate team and the lawyers and the tax folks at HCRE, at Highland . . . ,"[110] and that he was specifically aware of the prohibition in section 10.1(g) against materially and disproportionally impairing the rights of any member absent the consent of that member when the Amended LLC Agreement was signed in March 2019.[111] He could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are – that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[112] Mr. McGraner further testified that despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite "all of the fears [he] had [related to Highland's bankruptcy filing]," HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because "we didn't think it would be worth it").[113] Mr. McGraner confirmed that "[a]t no time in the history of the world did HCRE ever try to amend the restated LLC agreement" and that he "never instructed anyone to draft an amendment [to the

[109] Trial Tr. 113:14-17.

[110] Trial Tr. 114:2-13.

[111] Trial Tr. 114:16-23.

[112] Trial Tr. 114:24-115:16, 118:6-15.

[113] Trial Tr. 121:24-122:9.

agreement]."[114] Mr. McGraner also admitted (after being impeached by his prior deposition testimony) that nobody acting on behalf of HCRE ever told BH Equities that there was a mistake in the Amended LLC Agreement or that HCRE wanted to amend it to reflect a different allocation of membership interests for Highland and HCRE and that "[t]he reason HCRE made no effort to amend the agreement is because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves."[115]

V. CONCLUSIONS OF LAW

A. HCRE Has Failed To Meet Its Burden of Proof Regarding Its Claim for Reformation or Rescission of the Amended LLC Agreement to Reallocate the Membership Interests in SE Multifamily

HCRE has failed to meet its burden of proof under Delaware law[116] regarding its claim against the Debtor to reallocate the equity in SE Multifamily in accordance with the capital contributions of the members pursuant to HCRE's alleged right of reformation[117] or rescission of the Amended LLC Agreement due to alleged mutual mistake, lack of consideration, or failure of consideration. HCRE did not cite any legal authority (under Delaware law or any other law for that matter) in its briefing with the court or at Trial in support of its alleged right to reformation or rescission of the Alleged LLC Agreement. The Reorganized Debtor, on the other hand, cited legal authority at Trial that supports a conclusion that HCRE does not have a right to the relief sought

[114] Trial Tr. 122:10-19.

[115] Trial Tr. 122:20-125:21.

[116] The Amended LLC Agreement provides that it will be "governed by and construed and enforced in accordance with [Delaware law]." Debtor's Trial Ex. 7, Amended LLC Agreement, §10.5, at 16.

[117] HCRE has asserted an alleged right to "reformation, rescission, and/or modification" of the Amended LLC Agreement. While there is a distinction under the law between the concepts of reformation and rescission of an agreement, the court sees no real distinction between reformation and ***modification*** of an agreement—HCRE is asking the court to apply the legal concept of reformation of a contract when it asks the court to modify the Amended LLC Agreement.

in its Proof of Claim—the reallocation of the membership interests in SE Multifamily via reformation or rescission of the Amended LLC Agreement.

1. HCRE Is Not Entitled to Reformation of the Amended LLC Agreement

HCRE has asked the court to allow its Proof of Claim and to reallocate the SE Multifamily membership interests in accordance with the members' capital contributions pursuant to HCRE's alleged right to reformation of the Amended LLC Agreement based on alleged mutual mistake, lack of consideration, and/or failure of consideration. Under Delaware law, ordinarily, "parties who sign contracts and other binding documents . . . are bound by the obligations that those documents contain," *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 890-90 (Del. 2015) (quoting *Official Comm. of Unsecured Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, 103 A.3d 1010, 1015 (Del. 2014)),[118] and "[w]hen parties have ordered their affairs voluntarily through a binding contract, Delaware law is strongly inclined to respect their agreement." *Parke Bancorp Inc. v. 659 Chestnut LLC*, 217 A.3d 701, 715 (Del. 2019) (quoting *Libeau v. Fox*, 880 A.2d 1049, 1056-57 (Del. Ch. 2005), *rev'd on other grounds*, 892 A.2d 1068 (Del. 2006) (cited by *Nationwide Emerging Managers*, 112 A.3d at 881)). "To succeed in a claim for contract reformation, the 'plaintiff must show . . . that the parties came to a specific prior understanding that differed materially from the written agreement.'" *Parke Bancorp Inc. v. 659 Chestnut LLC*, 217 A.3d 701, 710 (Del. 2019) (quoting *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 890-91 (Del. 2015) (quoting *Cerebus Int'l, Ltd. v. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1150 (Del. 2002)). The burden of proof is by clear and

[118] The court also cited 11 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS, §31.5 (4th ed. 2003) for the proposition that "[w]hile the parties to a contract often request the courts, under the guise of interpretation or construction, to give their agreement a meaning which cannot be found in their written understanding, based entirely on direct evidence of intention, and often on hindsight, the courts properly and steadfastly reiterate the well-established principle that it is not the function of the judiciary to change the obligations of a contract which the parties have seen fit to make."

convincing evidence (and not by the lower standard of the preponderance of the evidence), which "requires evidence that produces in the mind of the trier of fact an abiding conviction that the truth of the factual contentions is highly probable." *Id.* (citing *Nationwide Emerging Managers*, 112 A.3d at 891, and quoting *Hudak v. Procek*, 806 A.2d 140, 147 (Del. 2002) (internal quotations and brackets omitted)). The plaintiff must show, by clear and convincing evidence, the "precise mistake" and "a specific meeting of the minds regarding a term that was not accurately reflected in the final, written agreement." *Fortis Advisors LLC v. Johnson & Johnson*, 2021 WL 5893997, at *19 (Del. Ch. Dec. 13, 2021) (citations omitted). Absent such a showing, a party should not be able "to escape the clear consequences of an unambiguous contract that it has willingly signed." *See Parke Bancorp*, 217 A.3d at 715.

HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement. To the contrary, the evidence overwhelmingly points to the conclusion that both Mr.

Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement.[119] Mr. Thomas of BH Equities, the SE Multifamily member who participated on the other side (from the Highland entities) of the "bilateral" negotiations of the terms of the Amended LLC Agreement, and specifically the heavily negotiated allocations of membership interests, testified in his deposition that the allocation of membership interests contained in Schedule A of the Amended LLC Agreement (and other provisions of the Amended LLC Agreement, including the percentage ownership provisions in section 1.7 and the "waterfall" distribution provisions under sections 6.1(a) and 9.3(e)) of 47.94% to HCRE, 46.06% to Highland, and 6% to BH Equities accurately reflected the intent of the parties. Moreover, SE Multifamily's tax filings made at the behest of Mr. Dondero, in his capacity as an officer of HCRE and as the Manager of SE Multifamily, after the execution of the Amended LLC Agreement, confirm that the parties intended that Highland own a 46.06% of the SE Multifamily membership interests. Finally, as did the Original LLC Agreement, the Amended LLC Agreement contains a provision (section 10.1 entitled "Amendments and Waivers") that specifically sets forth the procedures and consent requirements for amending any provision of the agreement, and that provision prohibits the Manager and HCRE from, among other things, modifying or amending any provision of the Amended LLC Agreement that reduces the amounts distributable to a member (or the timing of such distributions), increasing the liabilities or obligations of a member, or "otherwise materially

[119] While Mr. Dondero testified that he did not read the Amended LLC Agreement before he signed it on behalf of HCRE and Highland, he testified that the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland, including his expectation that Highland's 49% interest was going to be diluted by the 6% interest being granted to BH Equities. Thus, the court need not address whether Mr. Dondero's failure to read the Amended LLC Agreement before signing it precludes any claim for reformation as a matter of law.

and disproportionally impair[ing] the rights of such Member under this Agreement" without the consent of that member. The testimony of both HCRE's witness, Mr. McGraner, and BH Equities' witness, Mr. Thomas, confirmed that nobody from HCRE ever notified the other members after the Amended LLC Agreement was executed (prior to HCRE alleging "mutual mistake, lack of consideration, and/or failure of consideration" for the first time in its Response to the Objection) that HCRE believed that the 46.06% membership allocation to Highland was incorrect, a mistake, or needed to be amended. Mr. McGraner also testified that he never directed anyone at HCRE to draft an amendment to the Amended LLC Agreement and that HCRE never tried to amend the Amended LLC Agreement.

HCRE has failed to show by clear and convincing evidence (1) that the Amended LLC Agreement contained a precise mistake with respect to the 46.06% allocation of SE Multifamily membership interests to Highland and (2) that there had been a specific meeting of the minds of the parties to the Amended LLC Agreement that the allocation of SE Multifamily membership interests to Highland was ever supposed to be any percentage other than the 46.06% identified in the Amended LLC Agreement. Therefore, HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership percentages in accordance with the stated capital contributions of the respective members (or to reformation of any provision of the Amended LLC Agreement).[120]

[120] Because neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what HCRE is seeking in its Proof of Claim), the court concludes that HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration. In any event, HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. As noted above, HCRE did not cite to any legal authority in support of its Proof of Claim in its briefing or at Trial. The Reorganized Debtor, however, did point the court at Trial to Delaware law regarding the concept of lack or failure of consideration as a basis for relief from the terms of a written agreement. Under Delaware law, the courts "limit [their] inquiry into consideration to its existence and not whether it is fair or adequate," *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (internal quotations omitted), and "[a]bsent fraud or unconscionability, the

2. HCRE Has Not Sought a Rescission of the Amended LLC Agreement

Despite HCRE's use of the term "rescission" in its stated basis for its claim, the remedy sought by HCRE—allowance of its Proof of Claim and a judicial reallocation of the SE Multifamily membership interests under the Amended LLC Agreement in accordance with the members' capital contributions—is not for rescission of the Amended LLC Agreement; rather, it is reformation of the Amended LLC Agreement that HCRE seeks. As the Delaware Supreme Court explained in *Parke Bancorp*, while the concepts of rescission and reformation are similar in many ways, there are some important differences. Rescission, under Delaware law, involves an attempt to "unmake" an agreement and "return the parties to the *status quo [ante]*" while "reformation entails an attempt to 'correct[ ] an enforceable agreement's written embodiment to reflect the parties' true agreement." 217 A.3d at 710. And, while both reformation claims and rescission claims are based on the concept that the parties' basic assumption or prior understanding mistakenly is not reflected in the written agreement, "one substantive and relevant difference between the two claims . . . is that . . . while a failure to read prevents a plaintiff from proceeding with [a rescission] claim as a *prima facie* matter, a failure to read bars a reformation claim only if '[the plaintiff's] fault amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing.'" *Parke Bancorp*, 217 A.3d at 711 (citations omitted).[121] Thus, if HCRE had stated a claim for rescission of the Amended LLC Agreement (which it has not), Mr.

adequacy of consideration is not a proper subject for judicial scrutiny." *Acker v. Transurgical, Inc.*, 2004 WL 1230945 (Del. Ch. Apr. 22, 2004). "[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain." *Id.* (internal quotations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.

[121] *See id.* (where the court identified the requirements of a rescission (or avoidance) claim as proof by the plaintiff that "(1) there was a mutual mistake that relates to a basic assumption on which the contract was made, (2) the mistake has a material effect on the agreed exchange of performances, and (3) it did not bear the risk of mistake.") (citing *Hicks v. Sparks*, 2014 WL 1233698, at *2 (Del. Mar. 25, 2014)).

Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.[122]

B. The Amended LLC Agreement Is Not an Executory Contract under Bankruptcy Code § 365 That Was Deemed Rejected under the Terms of the Plan

As noted above, HCRE, for the first time during the two and a half years that the parties had been litigating the Debtor's Objection to HCRE's Proof of Claim, argued that it was entitled to allowance of its Proof of Claim and reformation of the Amended LLC Agreement to reallocate the membership interests in SE Multifamily in accordance with each member's capital contribution ratio, in part, because the Amended LLC Agreement is an executory contract that was rejected by Highland and, thus, Highland is no longer a member of SE Multifamily, but has only an "economic interest" in SE Multifamily.[123] HCRE did not cite any legal authority to support its position that the Amended LLC Agreement is an executory contract that had been rejected by Highland under

[122] See discussion of HCRE's claim of "mutual mistake" and lack of evidence by HCRE to support its reformation claim, *supra*, at 30-32.

[123] *See* Trial Tr. 181:15-182:17:

> I think this is a rejected executory contract. That's why we asked the Court to take a look at it. During the examination of Mr. Cournoyer and Mr. Klos, I pointed out some of the provisions in the agreement that require things of Highland. . . . They have an affirmative obligation under [section 1.8] and they have rejected it. By not assuming the SE Multifamily contract, they rejected it. . . . All they have left is an economic interest . . . . but they're not a member anymore. They have rejected it.

the terms of the Plan. After the Trial, the court granted the Reorganized Debtor's request for leave of the parties to submit post-trial briefing on the executory contract issue and, while the Reorganized Debtor provided extensive legal analysis containing relevant legal authority to support its contention that the Amended LLC Agreement ***is not*** an executory contract under Bankruptcy Code § 365 and, therefore, it could not have been a rejected executory contract under the terms of the Plan, HCRE, again, ***cited no legal authority whatsoever***, in its post-trial briefing on the executory contracts issue, to support its contention to the contrary – that the Amended LLC Agreement ***is*** an executory contract under Bankruptcy Code § 365 that was rejected by Highland pursuant to the terms of its Plan. Perhaps HCRE did not provide any legal support for its position because it hoped the court would not make any findings or conclusions with respect to this issue that would then be binding on HCRE, but, as noted above, HCRE placed the issue before the court in the prosecution of its Proof of Claim and in defense of the Reorganized Debtor's objection to its Proof of Claim at Trial, and, therefore, it is proper for the court to make findings of fact and conclusions of law with respect to this issue.

The Bankruptcy Code does not define the term "executory contract," but the Fifth Circuit has adopted the definition first articulated by Professor Vern Countryman, known as the "Countryman test," that "a contract is executory if 'performance remains due to some extent on both sides' and if 'at the time of the bankruptcy filing, the failure of either party to complete performance would constitute a material breach of the contract, thereby excusing the performance of the other party.'" *Matter of Falcon V, L.L.C.*, 44 F.4th 348, 352-353 (5th Cir. 2022) (quoting *In re Provider Meds*, 907 F.3d 845, 851 (5th Cir. 2018)). "A contract that only imposes remote or hypothetical duties is not an executory contract." *Ebert v. DeVries Family Farm LLC (In re DeVries)*, No. 12-04015-DML, 2014 WL 4294540, *8 (Bankr. N.D. Tex. Aug. 27, 2014) (citing

Meiburger v. Endeka Enters. LLC (In re Tsiaoushis), 383 B.R. 616, 618 (Bankr. E.D. Va. 2007)). There is no *per se* rule governing whether a limited liability company operating agreement is an executory contract; rather, "courts must look to the 'facts and circumstances of each case to determine the status of a particular operating agreement.'" 2014 WL 4294540, at *9 (citing *In re Tsiaoushis*, 383 B.R. at 618). The "[f]actors relevant in evaluating an LLC operating agreement include whether the operating agreement imposes remote or hypothetical duties, requires ongoing capital contributions, and the level of managerial responsibility imposed on the debtor." *Id.* (quoting *In re Warner*, 480 B.R. 641, 651 (Bankr. N.D. W.Va. 2012) (collecting cases)).

Here, the Debtor did not have any material unperformed obligations under Amended LLC Agreement as of the Petition Date, and, thus, the court concludes that it is not an executory contract under Bankruptcy Code § 365 that would have been deemed rejected upon confirmation of the Plan. Mr. Dondero and HCRE have exclusive managerial, operational, and voting control of SE Multifamily under the terms of the Amended LLC Agreement.[124] Highland is a passive investor in SE Multifamily with no right to manage or control SE Multifamily and no obligations as a member. For example, under section 2.1 of the Amended LLC Agreement, Members may make future capital contributions to SE Multifamily, but are not obligated to do so. And, in fact, Mr. Dondero testified on cross-examination that, at the time of the execution of the Amended LLC Agreement, he believed that HCRE, Highland, and BH Equities "had all either made the capital contributions

[124] *See, e.g.*, Debtor's Trial Ex. 7, Amended LLC Agreement, §1.6 ("HCRE shall have the exclusive right to appoint the Manager and the Manager shall have the unfettered control over all aspects of the business and operations of the Company and shall have exclusive rights to appoint management personnel and exclusive voting rights, as further specified in this Agreement."), §3.2 ("The management, control and direction of the Company and its operations, business and affairs shall be vested exclusively in the Manager, who shall have the right, power and authority, to carry out any and all purposes of the Company and to perform or refrain from performing any and all acts that the Manager may deem necessary, appropriate or desirable."), §3.7 ("The Manager may appoint and remove officers of the Company in his sole discretion."), §3.9 (if the Manager resigns for any reason, a replacement Manager may be appointed by HCRE), and §10.1 (the Amended LLC Agreement cannot be amended, modified, or waived without the prior written consent of the Manager and HCRE).

or all of the capital contributions, [sic] they were going to get credited with having been made" and that "there was no expectation that any of the members would put in any additional capital after the agreement was amended in March of 2019," and, finally, that he was not aware of any members ever putting in additional capital after the execution of the Amended LLC Agreement.[125]

At Trial and during closing argument, HCRE's counsel pointed to five provisions in the Amended LLC Agreement—sections 1.8, 4.3, 7.2, 7.4, and 10.1—that HCRE contends imposed material, affirmative obligations on the Debtor as of the Petition Date, making the Amended LLC Agreement an executory contract. In its Post-Trial Brief, Reorganized Debtor systematically addressed each of these provisions and pointed out why none of them imposed on Highland any material performance obligations as of the Petition Date, and, therefore, the Amended LLC Agreement is not an executory contract under section 365 of the Bankruptcy Code.[126] In its Response to Highland's Post-Trial Brief, HCRE chose not to address Highland's arguments, and, instead, disingenuously argued that the issue of whether the Amended LLC Agreement was an executory contract that had been rejected by Highland upon confirmation of its Plan was not before the court for its determination.[127] The court concludes, after looking at the facts and circumstances surrounding this particular agreement, and at the provisions of the Amended LLC Agreement cited, that the Amended LLC Agreement is not an executory contract under Bankruptcy Code § 365 that was subject to having been rejected or assumed under the terms of the Plan.

[125] Trial Tr. 51:18-52:6.

[126] *See*, Post-Trial Brief, 8-11.

[127] *See*, Response to Post-Trial Brief, 4.

C. The Reorganized Debtor's Request for Sanctions Against HCRE, in the Form of Reimbursement of Its Costs in Litigating the Objection to HCRE's Proof of Claim, Is Procedurally Defective

The Reorganized Debtor's oral request at Trial that the court make a finding that HCRE filed and prosecuted its proof of claim in bad faith and award the Debtor reimbursement of its costs, as a sanction for such bad-faith filing, is procedurally defective, and, therefore, it must be denied, without prejudice. "[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond." *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010). Specifically in the objection to claim context, a bankruptcy court in the Northern District of Texas denied, without prejudice, a request for sanctions that did not "articulate the legal basis for a sanctions award" that was contained in the trustee's written objection to a proof of claim and urged again during the hearing on the objection to the claim because the trustee had not provided the claimant adequate notice and an opportunity to respond. *See In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) (where the court stated, "A request for affirmative relief in the form of sanctions incorporated within an objection to claim must comply with Rule 9014, which, in turn, requires service of process in accordance with Rule 7004. . . . By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond."). Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny,

without prejudice, the Reorganized Debtor's request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Accordingly, and based on the foregoing findings of fact and conclusions of law,

IT IS ORDERED that the Reorganized Debtor's objection to the HCRE's Proof of Claim, filed by HCRE in the above-referenced bankruptcy case, Claim No. 146, **BE, AND HEREBY IS, SUSTAINED** and that such claim **BE, AND HEREBY IS, DISALLOWED** for all purposes;

IT IS FURTHER ORDERED that the Reorganized Debtor's motion at Trial for sanctions against HCRE in the form of reimbursement of the Reorganized Debtor's costs in connection with its Objection to the HCRE Proof of Claim allegedly filed in bad faith **BE, AND HEREBY IS, DENIED**, without prejudice, as being procedurally deficient.

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

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

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

HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM 146

Highland Capital Management, L.P. ("Highland"), the reorganized debtor in the above-captioned bankruptcy case, by and through its undersigned counsel, hereby files this *Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners, LLC (f/k/a*

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

HCRE Partners LLC) in Connection with Proof of Claim 146 (the "Motion") against NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("HCRE" and together with Highland, the "Parties"). In support of its Motion, Highland states as follows:

I. PRELIMINARY STATEMENT[2]

1. After two years of litigation—including two separate rounds of discovery sandwiched around a motion to disqualify HCRE's counsel and a full evidentiary hearing—the Court issued an order sustaining Highland's Objection to HCRE's Proof of Claim and denying *without prejudice* Highland's request for a bad faith finding and an award of attorneys' fees.

2. By this Motion, Highland renews its request for a bad faith finding and for an award of attorneys' fees on the ground that HCRE—and its principals, Messrs. Dondero and McGraner—lacked a good faith basis to file and prosecute its Proof of Claim. As described more fully below, the Motion is based on the following indisputable facts adduced during the Trial:

- Mr. Dondero signed the Proof of Claim on behalf of HCRE under penalty of perjury without a reasonable basis to believe the Proof of Claim was "true and correct," as required by law; and
- The Amended LLC Agreement accurately and unambiguously reflected the parties' intent such that no factual or legal basis existed to support HCRE's contentions that the Amended LLC Agreement "improperly allocate[d] the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration," or its "claim to reform, rescind and/or modify" the Amended LLC Agreement.

3. This entire proceeding was a complete waste of judicial resources and of the Claimant Trust's assets; the relief sought therefore constitutes reasonable and appropriate remedies. Moreover, a bad faith finding and an award of attorneys' fees and related expenses in

[2] Capitalized terms not defined in this Preliminary Statement shall have the meanings ascribed to them below.

the aggregate amount of $825,940.55 should be imposed to (hopefully) deter Mr. Dondero and his affiliated entities and lawyers from filing further frivolous claims and pursuing meritless litigation.

II. RELEVANT BACKGROUND

A. HCRE Files the Proof of Claim, Highland Objects, and a Contested Matter Is Initiated

4. On April 8, 2020, James Dondero ("Mr. Dondero") signed and caused HCRE to file a proof of claim that was denoted by Highland's claims agent as proof of claim number 146 (the "Proof of Claim"). Morris Dec. Ex. A (at Ex. A).[3] In its Proof of Claim, HCRE asserted, among other things, that:

> [HCRE] may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor.[4] Additionally, [HCRE] contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of [HCRE]. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

Id.

5. On July 30, 2020, Highland objected to HCRE's Proof of Claim (the "Objection"), contending it had no liability thereunder. Morris Dec. Ex. B.

6. On October 19, 2020, HCRE filed its response to the Objection (the "Response"), stating, among other things, as follows:

> After reviewing what documentation is available to [HCRE] with the Debtor, [HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") ***improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of***

[3] Citations to "Morris Dec. Ex. __" refer to the *Declaration of John A. Morris in Support of Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* being filed concurrently with the Motion.

[4] "Debtor" is used interchangeably with Highland, as applicable.

> ***consideration, and/or failure of consideration. As such, [HCRE] has a claim to reform, rescind and/or modify the agreement.*** However, [HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

Morris Dec. Ex. C ¶ 5 (emphasis added).

B. The Parties Engage in Two Rounds of Discovery Sandwiched Around Highland's Motion to Disqualify HCRE's Counsel

7. Consistent with a Court-approved pre-trial schedule entered on December 14, 2020 [Docket No. 1568], the Parties engaged in a first round of discovery by (a) serving deposition notices and subpoenas, (b) exchanging discovery demands and written responses, and (c) searching for and producing voluminous documents. *See, e.g.*, Docket Nos. 1898, 1918, 1964, 1965, 1995, 1996, 2118, 2119, 2134, 2135, 2136, and 2137.

8. During the course of discovery, Highland became aware that HCRE's counsel, Wick Phillips Gould & Martin, LLP ("Wick Phillips"), had jointly represented the Parties in connection with the underlying transactions. Highland timely moved (a) to disqualify Wick Phillips from representing HCRE in connection with the Proof of Claim litigation (the "Disqualification Motion"), and (b) for an award of costs and fees incurred in bringing the Disqualification Motion. On December 10, 2021, following a lengthy hearing, the Court issued an order disqualifying Wick Phillips from representing HCRE in this matter but denying Highland's fee request. Morris Dec. Ex. D at 6-7 (citing to Docket No. 3106).

9. After HCRE retained new counsel, Hoge & Gameros, the Parties amended the pre-trial schedule (Docket Nos. 3356 and 3368), and participated in an extensive second round of discovery, including exchanging another set of written discovery requests and document productions, serving deposition notices and subpoenas, and taking and defending multiple depositions. Morris Dec. Ex. D at 9.

C. Just Before Its Witnesses Were to Be Deposed, HCRE Abruptly Moves to Withdraw Its Proof of Claim

10. On August 12, 2022, as the Parties were nearing the completion of discovery, and just days before Highland was scheduled to depose HCRE's witnesses, HCRE abruptly filed its *Motion to Withdraw Proof of Claim* [Docket No. 3442] (the "Motion to Withdraw"), in which HCRE sought leave from the Court to withdraw its Proof of Claim. HCRE filed its Motion to Withdraw (a) two business days after HCRE completed the depositions of Highland's witnesses, (b) one day after HCRE produced more than 4,000 pages of documents, and (c) two business days before consensually-scheduled depositions of HCRE's witnesses were set to begin. Shortly thereafter, HCRE unilaterally cancelled the depositions of its witnesses.[5]

11. On September 2, 2022, Highland objected to HCRE's Motion to Withdraw [Docket No. 3487] (the "Objection to Motion to Withdraw"), and to HCRE's Motion to Quash, and cross-moved to compel the depositions of Mr. Dondero, Mr. McGraner, and HCRE's Rule 30(b)(6) witness. [Docket No. 3483] (the "Objection to Motion to Quash and Cross-Motion to Compel, and together with the Motion to Withdraw and Motion to Quash, the "Motions").

12. On September 12, 2022, following argument on the Motions, the Court denied the Motion to Withdraw after HCRE failed to unambiguously represent that by withdrawing the Proof of Claim with prejudice, HCRE was also waiving and relinquishing any right to re-litigate or challenge Highland's ownership interest in SE Multifamily. *See* Morris Dec. Ex. D n.36. *See also Amended Order Denying Motion to Withdraw Proof of Claim* [Docket No. 3525] (denying Motion to Withdraw and directing the Parties to (a) confer in good faith to complete the

[5] In response, on August 16, 2022, Highland filed subpoenas directed to Messrs. Dondero and McGraner [Docket Nos. 3451 and 3452] and a Rule 30(b)(6) deposition notice directed to HCRE [Docket No. 3453], calling for the witnesses to sit for depositions on August 24 and 25, 2022. On August 23, 2022, the day before the depositions were to begin, HCRE filed a *Motion to Quash and for Protection* [Docket No. 3464] (the "Motion to Quash"), seeking to quash the subpoenas and deposition notice.

depositions of Mr. Dondero, Mr. McGraner, and HCRE; (b) otherwise comply with the Amended Scheduling Order; and (c) appear for an evidentiary hearing on the Proof of Claim on November 1 and 2, 2022).

D. A Trial Is Held on the Proof of Claim and the Court Issues Its Order

13. On November 1, 2022, after discovery was (finally) completed, the Court held an evidentiary hearing on the Proof of Claim and the Objection (the "Trial"). *See* Morris Dec. Ex. E.

1. Mr. Dondero Had No Basis to Swear Under Penalty of Perjury that the Proof of Claim Was True and Correct

14. Mr. Dondero signed and executed HCRE's Proof of Claim under penalty of perjury, purportedly attesting to its truth and accuracy. Yet, as the Court has already found and determined, Mr. Dondero lacked any basis to believe that the information in the Proof of Claim was "true and correct." On cross-examination, Mr. Dondero admitted that he:

- could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed;"
- did not review or provide comments to the Proof of Claim or its Exhibit A before it was filed;
- did not review the applicable agreements or any other documents before signing the Proof of Claim;
- did not know (a) whose idea it was to file the Proof of Claim, (b) who at HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, (c) what information was given to Bonds Ellis to formulate the Proof of Claim, or (d) whether "Bonds Ellis ever communicated with anybody in the real estate group regarding" the Proof of Claim;
- "never specifically asked anyone in the real estate group if [the Proof of Claim] was truthful and accurate before [he] authorized it to be filed;
- "didn't check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it;" and

- failed to do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of HCRE."

Morris Dec. Ex. D at 4-5 (citing evidence). In a feeble attempt to excuse his failure to do *anything* to confirm that the Proof of Claim was "truthful and accurate" before authorizing his electronic signature to be affixed and filed on behalf of HCRE, Mr. Dondero vaguely testified that he relied on some unidentified "process" in choosing to proceed. Morris Dec. Ex. E at 58:4-59:2.

15. Mr. Dondero cannot hide behind an unidentified "process" (assuming a "process" actually existed) that completely failed to uncover the indisputable evidence (including Mr. McGraner's unqualified admissions) that the Amended LLC Agreement accurately reflected the Parties' intentions concerning capital contributions and the allocation of membership interests. Based on his own testimony, and this Court's findings of fact, Mr. Dondero signed the Proof of Claim on HCRE's behalf in bad faith.

2. <u>The Evidence Established that the Amended LLC Agreement Accurately and Unambiguously Reflected the Parties' Intent Leaving No Factual or Legal Basis for HCRE to File or Pursue the Proof of Claim</u>

16. The evidence at Trial, including documentary evidence and the testimony of Mr. Dondero, Mr. McGraner, and BH Equities (a third-party signatory to the Amended LLC Agreement), proves that HCRE filed its Proof of Claim in bad faith.

17. Specifically, the evidence indisputably and definitively established that the Amended LLC Agreement accurately and unambiguously reflected the signatories' intent concerning their respective capital contributions and the allocation of memberships interests in SE Multifamily:

- Representatives of the signatories exchanged views and drafts concerning capital contributions and ownership interests that were consistent with the final,

executed version of the Amended LLC Agreement (Morris Dec. Ex. D at 20-21 (citing evidence));

- Mr. Dondero "agreed that [Schedule A] comported with his expectations when he signed the Amended LLC Agreement on behalf of HCRE and Highland, including his expectation that Highland's 49% interest was going to be diluted by the 6% being granted to BH Equities." (*Id*. at 21-22 (citing evidence));

- Mr. McGraner (a) reviewed Schedule A before the Amended LLC Agreement was executed, (b) saw that it showed Highland made a capital contribution of $49,000 and was receiving a 46.06% interest in SE Multifamily, and (c) concluded that this allocation reflected his understanding of the terms between HCRE and Highland (*Id*. at 22 (citing evidence));

- BH Equities' corporate representative also acknowledged during his deposition that "'BH Equities agreed that [Highland] would hold a 46.06 percentage interest in SE Multifamily while making a capital contribution of $49,000' and 'believed Schedule A accurately reflected the intent of the parties.'" (*Id*. (citing evidence));

- Numerous other provisions in the Amended LLC Agreement ratified the allocation of membership interests set forth in Schedule A (*Id*. at 23-25 (citing evidence)); and

- Based on information provided by HCRE, SE Multifamily's tax returns "confirm that the parties intended that Highland, having made a capital contribution of $49,000, owned 46.06% of the SE Multifamily membership interests." (*Id*. at 25-26 (citing evidence)).

18. At the conclusion of the Hearing, HCRE requested that the Court "grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[6] *Id*. at 11. Highland requested that the Court enter an order (i) disallowing HCRE's Proof of Claim and (ii) finding that HCRE filed its Proof of Claim in bad faith and awarding the Reorganized Debtor its "costs." *Id.*

[6] Despite (a) the explicit claims asserted in HCRE's own Response (Morris Dec. Ex. B ¶ 5), and (b) the Court's concerns of "gamesmanship" expressed in connection with HCRE's Motion to Withdraw (*see*, *e.g.*, Morris Dec. Ex. D at n.36), HCRE's counsel persisted—in yet another act of bad faith—to attempt to preserve the very claims that formed the basis of HCRE's Proof of Claim: "HCRE's counsel also argued that the issues of reformation, rescission, and modification, of the Amended LLC Agreement were not before the court and that, if the court were to grant the Reorganized Debtor's Objection, it should enter only a simple order denying the claim, without making any findings." Morris Dec. Ex. D at 12.

19. On April 28, 2023, the Court issued its *Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* (the "Order"), Morris Dec. Ex. D, in which the Court sustained Highland's Objection to the Proof of Claim, and disallowed the Proof of Claim for all purposes. The Court denied, without prejudice, Highland's oral request for a bad faith finding and for sanctions against HCRE in the form of reimbursement of Highland's attorney's fees and costs because HCRE did not have an opportunity to respond to such requests. *Id*. at 38-39.

III. ARGUMENT

A. HCRE's Proof of Claim Was Filed in Bad Faith

20. The undisputed documentary and testimonial evidence adduced at Trial establishes that HCRE filed and prosecuted the Proof of Claim in bad faith.

21. As the Court has already found and determined, Mr. Dondero failed to conduct any due diligence before signing HCRE's Proof of Claim and otherwise lacked ***any*** basis (let alone a reasonable basis) to believe that the Proof of Claim was truthful. Indeed, had Mr. Dondero simply asked Mr. McGraner, he would have learned that the Amended LLC Agreement accurately and unambiguously reflected the Parties' intent—and that there was therefore no basis to "reform, rescind and/or modify" the Amended LLC Agreement. *See* Morris Dec. Ex. D at 3-5.

22. That is what Highland established during the Trial. Mr. McGraner, the "quarterback" of Project Unicorn, admitted that at the time he reviewed the ownership allocations in SE Multifamily before the operative documents were signed, he had no reason to believe there was any "mistake." The Court made numerous other factual findings that prove there was no "dispute" concerning the Parties' respective membership interests in SE Multifamily. Morris Dec. Ex. D at 19-26 (citing to substantial documentary and testimonial evidence); *see also supra* ¶ 17.

23. Based on the foregoing, the Court should find that HCRE's Proof of Claim was filed and prosecuted in bad faith.

B. Highland Is Entitled to Attorneys' Fees from HCRE for Costs Incurred in Connection with the Bad Faith Filing of the Proof of Claim

24. HCRE should be sanctioned for its bad faith filing and prosecution of the Proof of Claim by reimbursing Highland for attorneys' fees and expenses incurred in connection with litigating the Proof of Claim.

25. Bankruptcy courts possess inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith. *See In re Yorkshire, LLC*, 540 F3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's imposition of sanctions for bad faith filing "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Brown*, 444 B.R. 691, 695 (E.D. Tex. 2009) (issuing sanctions against party and their counsel, and relying on section 105(a) of the Bankruptcy Code as a basis for awarding attorney's fees against parties for acting "with reckless disregard of their duty to this Court"); *In re Paige*, 365 BR 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same).

26. Here, the Bankruptcy Court should award sanctions against HCRE in the form of attorneys' fees and expenses incurred by Highland in connection with the bad faith filing and prosecution of the Proof of Claim, in the aggregate amount of $825,940.55. Morris Dec. ¶¶ 10-17, Morris Dec. Exs. F-I.

CONCLUSION

WHEREFORE, for the foregoing reasons, Highland respectfully requests that the Court enter an order (a) finding that HCRE filed and prosecuted the Proof of Claim in bad faith, (b) entering sanctions against HCRE in the form of reimbursement to Highland of Highland's costs and expenses incurred in objecting to HCRE's Proof of Claim in the aggregate amount of $825,940.55; and (c) granting such other and further relief that the Court deems just and proper under the circumstances.

Dated: June 16, 2023

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail:jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

- and -

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

CERTIFICATE OF CONFERENCE

I hereby certify that, on June 16, 2023, Mr. John A. Morris, counsel for Highland Capital Management, L.P., corresponded with Ms. Amy Ruhland and Mr. William Gameros, counsel for HCRE, regarding the relief requested in the foregoing Motion. As of the filing of this Motion, counsel for HCRE had not responded to Mr. Morris' correspondence; however, given the nature of the relief requested in the Motion, it is presumed that HCRE is **OPPOSED** to such requested relief.

/s/ Zachery Z. Annable
Zachery Z. Annable

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

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

ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM 146

Having considered (a) the *Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners LLC) in Connection with Proof of Claim 146* (the "Motion")[2] filed by Highland Capital Management, L.P. ("Highland"), the reorganized debtor in the above-captioned bankruptcy case (the "Bankruptcy Case"), (b) the

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

[2] Capitalized terms not otherwise defined in this Order shall have the meanings set forth in the Motion.

evidence set forth in the *Declaration of John A. Morris in Support of Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* (the "Morris Declaration"), and (c) the record of proceedings in this Bankruptcy Case, the Court finds and concludes that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) notice of the Motion was sufficient under the circumstances; (iv) NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC ("HCRE") filed and prosecuted proof of claim number 146 (the "Proof of Claim") in bad faith; and (v) as a sanction for HCRE's bad-faith conduct in filing and prosecuting the Proof of Claim, HCRE should be required to reimburse Highland's costs and expenses incurred in objecting to HCRE's Proof of Claim. Accordingly, it is therefore

ORDERED that HCRE reimburse Highland's costs and expenses incurred in objecting to HCRE's Proof of Claim in the aggregate amount of $825,940.55; and it further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

End of Order

EXHIBIT F

Month	Invoice #	Total Invoice	Misapplied Fees (If any)	Adjusted Invoice
August 2021 (MFCO)	128567	$285.00	($95.00)	$190.00
April 2022 (MFCO)	130114	$3,015.00	$0.00	$3,015.00
May 2022 (MFCO)	130358	$36,317.50	$0.00	$36,317.50
June 2022 (MFCO)	130483	$36,309.50	($1,642.50)	$34,667.00
July 2022 (MFCO)	130587	$124,174.50	($4,191.00)	$119,983.50
August 2022 (MFCO)	130890	$245,874.00	($75.00)	$245,799.00
September 2022 (MFCO)	131065	$76,136.50	($75.00)	$76,061.50
October 2022 (MFCO and NT)	131290	$177,291.25	($633.00)	$176,658.25
November 2022 (MFCO and NT)	131454	$89,784.75	$0.00	$89,784.75
December 2022 (MFCO)	131566	$11,434.50	($697.50)	$10,737.00
TOTAL DUE		**$800,622.50**	**($7,409.00)**	**$782,476.50**

AUGUST 2021 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

August 31, 2021
Invoice 128567
Client 36027
Matter 00003
JNP

Board of Directors
Highland Capital Management LP
300 Crescent Court ste. 700
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 08/31/2021

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 128567
August 31, 2021

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]	[redacted]	[redacted]	[redacted]
MFCO	Muli Family Obj to Claims	0.30	$285.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 34
Invoice 128567
August 31, 2021

				Hours	Rate	Amount
Muli Family Obj to Claims						
[redacted]				0.10	950.00	$95.00
08/23/2021	GVD	MFCO	Correspondence with PSZJ working group re status of review of claim objection	0.20	950.00	$190.00
				0.30		**$285.00**
[redacted]						
[redacted]						

AUGUST 2021

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/23/2021	GVD	MFCO	Correspondence with PSZJ working group re status of review of claim objection	0.20	$950.00	$190.00
			TOTAL	**0.20**		**$190.00**

APRIL 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

April 30, 2022
Invoice 130114
Client 36027
Matter 00003
JNP

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 04/30/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 130114
April 30, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]	[redacted]	[redacted]	[redacted]
MFCO	Multi Family Obj to Claims	2.30	$3,015.00
[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 30
Invoice 130114
April 30, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

04/05/2022	JAM	MFCO	Tel c. w/ HCRE's counsel re: scheduling order (0.1).	0.10	1395.00	$139.50
04/28/2022	JAM	MFCO	Begin drafting scheduling order for HCRE (0.8).	0.80	1395.00	$1,116.00
04/29/2022	JAM	MFCO	Complete draft Scheduling Order (0.4); e-mail to J. Seery, D. Klos, G. Demo, H. Winograd re: draft Scheduling Order (0.2); review docket and send e-mail to G. Demo, H. Winograd, L. Canty re: discovery in HCRE claim litigation (0.5).	1.10	1395.00	$1,534.50
04/29/2022	HRW	MFCO	Review email from J. Morris and L. Canty re: HCRE discovery (0.2).	0.20	750.00	$150.00
04/29/2022	HRW	MFCO	Review email from J. Morris re: HCRE Scheduling Order (0.1).	0.10	750.00	$75.00
				2.30		**$3,015.00**

[redacted]

APRIL 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/5/2022	JAM	MFCO	Tel c. w/ HCRE's counsel re: scheduling order (0.1).	0.10	$1,395.00	$139.50
4/28/2022	JAM	MFCO	Begin drafting scheduling order for HCRE (0.8).	0.80	$1,395.00	$1,116.00
4/29/2022	JAM	MFCO	Complete draft Scheduling Order (0.4); e-mail to J. Seery, D. Klos, G. Demo, H. Winograd re: draft Scheduling Order (0.2); review docket and send e-mail to G. Demo, H. Winograd, L. Canty re: discovery in HCRE claim litigation (0.5).	1.10	$1,395.00	$1,534.50
4/29/2022	HRW	MFCO	Review email from J. Morris and L. Canty re: HCRE discovery (0.2).	0.20	$750.00	$150.00
4/29/2022	HRW	MFCO	Review email from J. Morris re: HCRE Scheduling Order (0.1).	0.10	$750.00	$75.00
			TOTAL	**2.30**		**$3,015.00**

MAY 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

May 31, 2022
Invoice 130358
Client 36027
Matter 00003
JNP

James P. Secry, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 05/31/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 130358
May 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]	[redacted]	[redacted]	[redacted]
MFCO	Multi Family Obj to Claims	37.60	$36,317.50
[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 34
Invoice 130358
May 31, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

04/29/2022	LSC	MFCO	Research, retrieve, and transmit background documents at the request of J. Morris.	0.20	495.00	$99.00
05/02/2022	BEL	MFCO	Review previous HCRE discovery.	0.40	1045.00	$418.00
05/02/2022	JAM	MFCO	Review documents re: HCRE claim (1.1); e-mail to J. Seery, D. Klos, H. Winograd re: HCRE claim and discovery (0.3); revise/complete draft Scheduling Order (0.6); e-mail to HCRE counsel re: draft Scheduling Order (0.1).	2.10	1395.00	$2,929.50
05/02/2022	HRW	MFCO	Review email from J. Morris re: HCRE claim issues (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	MFCO	Review email from J. Morris re: HCRE scheduling (0.1).	0.10	750.00	$75.00
05/02/2022	HRW	MFCO	Email B. Levine re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	MFCO	Call with L. Canty re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	MFCO	Review email from L. Canty re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	MFCO	Review email from B. Levine re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/02/2022	HRW	MFCO	Review pleadings and documents re: HCRE claim (0.5).	0.50	750.00	$375.00
05/02/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.1).	0.10	750.00	$75.00
05/03/2022	JAM	MFCO	Tel c. w/ D. Klos re: background (0.4).	0.40	1395.00	$558.00
05/05/2022	JAM	MFCO	E-mail to HCRE's counsel re: scheduling order and discovery (0.2).	0.20	1395.00	$279.00
05/05/2022	HRW	MFCO	Review email from J. Morris re: HCRE scheduling (0.1).	0.10	750.00	$75.00
05/06/2022	JAM	MFCO	Review documents and communications w/ D. Klos, H. Winograd re: same (0.8).	0.80	1395.00	$1,116.00
05/06/2022	GVD	MFCO	Attend conference re discovery issues	0.40	1095.00	$438.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 35
Invoice 130358
May 31, 2022

				Hours	Rate	Amount
05/06/2022	HRW	MFCO	Review emails from J. Morris re: HCRE discovery (0.1).	0.10	750.00	$75.00
05/06/2022	HRW	MFCO	Review HCRE discovery and related documents (0.6).	0.60	750.00	$450.00
05/06/2022	HRW	MFCO	Communicate with L. Canty re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/06/2022	HRW	MFCO	Call with J. Morris, J. Seery, G. Demo re: HCRE claim (0.5).	0.50	750.00	$375.00
05/09/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: scheduling order and discovery (0.2).	0.20	1395.00	$279.00
05/09/2022	HRW	MFCO	Review email from W. Carvell re: HCRE scheduling (0.1).	0.10	750.00	$75.00
05/10/2022	JAM	MFCO	Review docket and prior discovery and e-mails w/ HCRE's counsel re: discovery and scheduling order (0.4); tel c. w/ H. Winograd, L. Canty re: discovery (0.1); review documents and prepare discovery requests (1.5).	2.00	1395.00	$2,790.00
05/10/2022	HRW	MFCO	Review HCRE discovery (0.2).	0.20	750.00	$150.00
05/10/2022	HRW	MFCO	Email J. Morris and L. Canty re: HCRE discovery (0.1).	0.10	750.00	$75.00
05/10/2022	HRW	MFCO	Call with J. Morris and L. Canty re: HCRE discovery (0.1).	0.10	750.00	$75.00
05/10/2022	HRW	MFCO	Review email from J. Morris re: HCRE discovery (0.1).	0.10	750.00	$75.00
05/10/2022	HRW	MFCO	Review email from L. Canty re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/10/2022	HRW	MFCO	Review email from W. Carvell re: HCRE scheduling (0.1).	0.10	750.00	$75.00
05/10/2022	HRW	MFCO	Review email from J. Morris re: HCRE scheduling (0.1).	0.10	750.00	$75.00
05/11/2022	JAM	MFCO	Meet w/ H. Winograd re: discovery (0.4).	0.40	1395.00	$558.00
05/11/2022	LSC	MFCO	Preparation of prior production files and transmit same to opposing counsel.	2.80	495.00	$1,386.00
05/11/2022	HRW	MFCO	Meeting with J. Morris re: HCRE discovery (0.5).	0.50	750.00	$375.00
05/11/2022	HRW	MFCO	Draft HCRE discovery requests (1.0).	1.00	750.00	$750.00
05/12/2022	JAM	MFCO	E-mails w/ W. Carvell, others re: scheduling order and communications with Court (0.5).	0.50	1395.00	$697.50
05/13/2022	JAM	MFCO	Review document production to date (0.6); e-mails w/ W. Carvell and others re: discovery (0.3).	0.90	1395.00	$1,255.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 130358
May 31, 2022

				Hours	Rate	Amount
05/16/2022	JAM	MFCO	Communications with court and adversary re: scheduling order (0.2).	0.20	1395.00	$279.00
05/16/2022	HRW	MFCO	Draft HCRE discovery requests (1.5).	1.50	750.00	$1,125.00
05/17/2022	HRW	MFCO	Draft HCRE discovery requests (1.5).	1.50	750.00	$1,125.00
05/18/2022	JAM	MFCO	Review/revise draft discovery requests to HCRE (0.9); e-mails w/ H. Winograd re: discovery requests to HCRE (0.2); e-mail to J. Seery, D, Klos, G. Demo re: discovery requests for HCRE (0.1); review/revise subpoena for BH Equities (0.4); e-mails w/ H. Winograd re: BH Equities subpoena (0.2); e-mails w/ W. Carvell, others re: scheduling Order (0.1).	1.90	1395.00	$2,650.50
05/18/2022	HRW	MFCO	Communicate with L. Canty re: discovery (0.3).	0.30	750.00	$225.00
05/18/2022	HRW	MFCO	Draft and review subpoena and discovery requests (3.8).	3.80	750.00	$2,850.00
05/18/2022	HRW	MFCO	Email J. Morris re: discovery requests (0.5).	0.50	750.00	$375.00
05/18/2022	HRW	MFCO	Review emails from J. Morris re: discovery requests (0.3).	0.30	750.00	$225.00
05/19/2022	HRW	MFCO	Draft BH Equities deposition subpoena (2.0).	2.00	750.00	$1,500.00
05/19/2022	HRW	MFCO	Email J. Morris re: BH Equities deposition subpoena (0.2).	0.20	750.00	$150.00
05/19/2022	HRW	MFCO	Review email from W. Carvell re: HCRE scheduling (0.1).	0.10	750.00	$75.00
05/20/2022	HRW	MFCO	Review email from J. Morris re: HCRE discovery (0.1).	0.10	750.00	$75.00
05/23/2022	JAM	MFCO	E-mails w/ W. Carvell re: scheduling order, discovery (0.2); review/revise discovery requests for HCRE and BH Equities (0.4); e-mails w/ J. Seery, D. Klos, H. Winograd re: discovery requests (0.1).	0.70	1395.00	$976.50
05/23/2022	HRW	MFCO	Review email from J. Morris and W. Carvell re: request for setting (0.1).	0.10	750.00	$75.00
05/23/2022	HRW	MFCO	Review email from J. Morris re: HCRE and BH Equities discovery (0.1).	0.10	750.00	$75.00
05/24/2022	JAM	MFCO	E-mails w/ T. Ellison, HCRE counsel re: scheduling order (0.1); tel c. w/ J. Seery, D. Klos, G. Demo, H. Winograd re: discovery requests (0.7); review/revise discovery requests for HCRE and BH Equities (0.6).	1.40	1395.00	$1,953.00
05/24/2022	GVD	MFCO	Attend conference re HCRE/SEMF discovery issues	0.70	1095.00	$766.50
05/24/2022	HRW	MFCO	Call with J. Morris, G. Demo, J. Seery, D. Klos re: discovery requests (0.6).	0.60	750.00	$450.00
05/24/2022	HRW	MFCO	Review email from J. Morris to Court re: request for	0.10	750.00	$75.00

				Hours	Rate	Amount
			setting (0.1).			
05/24/2022	HRW	MFCO	Review email from W. Carvell and J. Morris re: request for setting (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	MFCO	Review email from W. Carvell re: discovery (0.1).	0.10	750.00	$75.00
05/24/2022	HRW	MFCO	Review emails from J. Morris and D. Klos re: SE Multifamily (0.1).	0.10	750.00	$75.00
05/25/2022	JAM	MFCO	Finalize discovery requests and communications w/ J. Seery, D. Klos re: same (0.2).	0.20	1395.00	$279.00
05/27/2022	JAM	MFCO	Review/serve discovery requests on HCRE (0.2); review/serve subpoena on BH Equities (0.2); e-mails w/ H. Winograd, BH Equities' counsel re: subpoena (0.1).	0.50	1395.00	$697.50
05/27/2022	HRW	MFCO	Review email from J. Morris re: discovery requests (0.2).	0.20	750.00	$150.00
05/27/2022	HRW	MFCO	Email J. Morris re: discovery requests (0.1).	0.10	750.00	$75.00
05/27/2022	HRW	MFCO	Draft notice of subpoena directed to BH Equities (0.3).	0.30	750.00	$225.00
05/27/2022	HRW	MFCO	Email Z. Annable re: notice of subpoena directed to BH Equities (0.1).	0.10	750.00	$75.00
05/27/2022	HRW	MFCO	Review email from Z. Annable re: notice of subpoena directed to BH Equities (0.1).	0.10	750.00	$75.00
05/31/2022	JAM	MFCO	Communications w/ W. Carvell, other defense counsel, H. Winograd re: setting date and scheduling order (0.1); e-mails w/ Court re: setting date (0.1); review/revise draft Scheduling Order (0.1); e-mails /w C. Doherty re: BH Equities subpoena (0.1); review HCRE's discovery demands (0.2).	0.60	1395.00	$837.00
05/31/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE discovery (0.2).	0.20	750.00	$150.00
05/31/2022	HRW	MFCO	Draft responses and objections to HCRE discovery requests (1.0).	1.00	750.00	$750.00
05/31/2022	HRW	MFCO	Review email from the Court re: HCRE requests for setting (0.1).	0.10	750.00	$75.00
05/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE requests for setting (0.2).	0.20	750.00	$150.00
05/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE final scheduling order (0.1).	0.10	750.00	$75.00
05/31/2022	HRW	MFCO	Review email from the Court re: HCRE requests for setting (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 38
Invoice 130358
May 31, 2022

				Hours	Rate	Amount
05/31/2022	HRW	MFCO	Review emails from C. Doherty re: BH Equities subpoena (0.1).	0.10	750.00	$75.00
05/31/2022	HRW	MFCO	Review email from J. Morris re: BH Equities subpoena (0.1).	0.10	750.00	$75.00
				37.60		**$36,317.50**

[redacted]

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
4/29/2022	LSC	MFCO	Research, retrieve, and transmit background documents at the request of J. Morris.	0.20	$495.00	$99.00
5/2/2022	BEL	MFCO	Review previous HCRE discovery.	0.40	$1,045.00	$418.00
5/2/2022	JAM	MFCO	Review documents re: HCRE claim (1.1); e-mail to J. Seery, D. Klos, H. Winograd re: HCRE claim and discovery (0.3); revise/complete draft Scheduling Order (0.6); e-mail to HCRE counsel re: draft Scheduling Order (0.1).	2.10	$1,395.00	$2,929.50
5/2/2022	HRW	MFCO	Review email from J. Morris re: HCRE claim issues (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW	MFCO	Review email from J. Morris re: HCRE scheduling (0.1).	0.10	$750.00	$75.00
5/2/2022	HRW	MFCO	Email B. Levine re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW	MFCO	Call with L. Canty re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW	MFCO	Review email from L. Canty re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW	MFCO	Review email from B. Levine re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/2/2022	HRW	MFCO	Review pleadings and documents re: HCRE claim (0.5).	0.50	$750.00	$375.00
5/2/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.1).	0.10	$750.00	$75.00
5/3/2022	JAM	MFCO	Tel c. w/ D. Klos re: background (0.4).	0.40	$1,395.00	$558.00
5/5/2022	JAM	MFCO	E-mail to HCRE's counsel re: scheduling order and discovery (0.2).	0.20	$1,395.00	$279.00
5/5/2022	HRW	MFCO	Review email from J. Morris re: HCRE scheduling (0.1).	0.10	$750.00	$75.00
5/6/2022	JAM	MFCO	Review documents and communications w/ D. Klos, H. Winograd re: same (0.8).	0.80	$1,395.00	$1,116.00
5/6/2022	GVD	MFCO	Attend conference re discovery issues	0.40	$1,095.00	$438.00
5/6/2022	HRW	MFCO	Review emails from J. Morris re: HCRE discovery (0.1).	0.10	$750.00	$75.00
5/6/2022	HRW	MFCO	Review HCRE discovery and related documents (0.6).	0.60	$750.00	$450.00
5/6/2022	HRW	MFCO	Communicate with L. Canty re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/6/2022	HRW	MFCO	Call with J. Morris, J. Seery, G. Demo re: HCRE claim (0.5).	0.50	$750.00	$375.00
5/9/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: scheduling order and discovery (0.2).	0.20	$1,395.00	$279.00
5/9/2022	HRW	MFCO	Review email from W. Carvell re: HCRE scheduling (0.1).	0.10	$750.00	$75.00
5/10/2022	JAM	MFCO	Review docket and prior discovery and e-mails w/ HCRE's counsel re: discovery and scheduling order (0.4); tel c. w/ H. Winograd, L. Canty re: discovery (0.1); review documents and prepare discovery requests (1.5).	2.00	$1,395.00	$2,790.00
5/10/2022	HRW	MFCO	Review HCRE discovery (0.2).	0.20	$750.00	$150.00
5/10/2022	HRW	MFCO	Email J. Morris and L. Canty re: HCRE discovery (0.1).	0.10	$750.00	$75.00
5/10/2022	HRW	MFCO	Call with J. Morris and L. Canty re: HCRE discovery (0.1).	0.10	$750.00	$75.00
5/10/2022	HRW	MFCO	Review email from J. Morris re: HCRE discovery (0.1).	0.10	$750.00	$75.00
5/10/2022	HRW	MFCO	Review email from L. Canty re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/10/2022	HRW	MFCO	Review email from W. Carvell re: HCRE scheduling (0.1).	0.10	$750.00	$75.00
5/10/2022	HRW	MFCO	Review email from J. Morris re: HCRE scheduling (0.1).	0.10	$750.00	$75.00
5/11/2022	JAM	MFCO	Meet w/ H. Winograd re: discovery (0.4).	0.40	$1,395.00	$558.00
5/11/2022	LSC	MFCO	Preparation of prior production files and transmit same to opposing counsel.	2.80	$495.00	$1,386.00

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/11/2022	HRW	MFCO	Meeting with J. Morris re: HCRE discovery (0.5).	0.50	$750.00	$375.00
5/11/2022	HRW	MFCO	Draft HCRE discovery requests (1.0).	1.00	$750.00	$750.00
5/12/2022	JAM	MFCO	E-mails w/ W. Carvell, others re: scheduling order and communications with Court (0.5).	0.50	$1,395.00	$697.50
5/13/2022	JAM	MFCO	Review document production to date (0.6); e-mails w/ W. Carvell and others re: discovery (0.3).	0.90	$1,395.00	$1,255.50
5/16/2022	JAM	MFCO	Communications with court and adversary re: scheduling order (0.2).	0.20	$1,395.00	$279.00
5/16/2022	HRW	MFCO	Draft HCRE discovery requests (1.5).	1.50	$750.00	$1,125.00
5/17/2022	HRW	MFCO	Draft HCRE discovery requests (1.5).	1.50	$750.00	$1,125.00
5/18/2022	JAM	MFCO	Review/revise draft discovery requests to HCRE (0.9); e-mails w/ H. Winograd re: discovery requests to HCRE (0.2); e-mail to J. Seery, D, Klos, G. Demo re: discovery requests for HCRE (0.1); review/revise subpoena for BH Equities (0.4); e-mails w/ H. Winograd re: BH Equities subpoena (0.2); e-mails w/ W. Carvell, others re: scheduling Order (0.1).	1.90	$1,395.00	$2,650.50
5/18/2022	HRW	MFCO	Communicate with L. Canty re: discovery (0.3).	0.30	$750.00	$225.00
5/18/2022	HRW	MFCO	Draft and review subpoena and discovery requests (3.8).	3.80	$750.00	$2,850.00
5/18/2022	HRW	MFCO	Email J. Morris re: discovery requests (0.5).	0.50	$750.00	$375.00
5/18/2022	HRW	MFCO	Review emails from J. Morris re: discovery requests (0.3).	0.30	$750.00	$225.00
5/19/2022	HRW	MFCO	Draft BH Equities deposition subpoena (2.0).	2.00	$750.00	$1,500.00
5/19/2022	HRW	MFCO	Email J. Morris re: BH Equities deposition subpoena (0.2).	0.20	$750.00	$150.00
5/19/2022	HRW	MFCO	Review email from W. Carvell re: HCRE scheduling (0.1).	0.10	$750.00	$75.00
5/20/2022	HRW	MFCO	Review email from J. Morris re: HCRE discovery (0.1).	0.10	$750.00	$75.00
5/23/2022	JAM	MFCO	E-mails w/ W. Carvell re: scheduling order, discovery (0.2); review/revise discovery requests for HCRE and BH Equities (0.4); e-mails w/ J. Seery, D. Klos, H. Winograd re: discovery requests (0.1).	0.70	$1,395.00	$976.50
5/23/2022	HRW	MFCO	Review email from J. Morris and W. Carvell re: request for setting (0.1).	0.10	$750.00	$75.00
5/23/2022	HRW	MFCO	Review email from J. Morris re: HCRE and BH Equities discovery (0.1).	0.10	$750.00	$75.00
5/24/2022	JAM	MFCO	E-mails w/ T. Ellison, HCRE counsel re: scheduling order (0.1); tel c. w/ J. Seery, D. Klos, G. Demo, H. Winograd re: discovery requests (0.7); review/revise discovery requests for HCRE and BH Equities (0.6).	1.40	$1,395.00	$1,953.00
5/24/2022	GVD	MFCO	Attend conference re HCRE/SEMF discovery issues	0.70	$1,095.00	$766.50
5/24/2022	HRW	MFCO	Call with J. Morris, G. Demo, J. Seery, D. Klos re: discovery requests (0.6).	0.60	$750.00	$450.00
5/24/2022	HRW	MFCO	Review email from J. Morris to Court re: request for setting (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW	MFCO	Review email from W. Carvell and J. Morris re: request for setting (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW	MFCO	Review email from W. Carvell re: discovery (0.1).	0.10	$750.00	$75.00
5/24/2022	HRW	MFCO	Review emails from J. Morris and D. Klos re: SE Multifamily (0.1).	0.10	$750.00	$75.00
5/25/2022	JAM	MFCO	Finalize discovery requests and communications w/ J. Seery, D. Klos re: same (0.2).	0.20	$1,395.00	$279.00

MAY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
5/27/2022	JAM	MFCO	Review/serve discovery requests on HCRE (0.2); review/serve subpoena on BH Equities (0.2); e-mails w/ H. Winograd, BH Equities' counsel re: subpoena (0.1).	0.50	$1,395.00	$697.50
5/27/2022	HRW	MFCO	Review email from J. Morris re: discovery requests (0.2).	0.20	$750.00	$150.00
5/27/2022	HRW	MFCO	Email J. Morris re: discovery requests (0.1).	0.10	$750.00	$75.00
5/27/2022	HRW	MFCO	Draft notice of subpoena directed to BH Equities (0.3).	0.30	$750.00	$225.00
5/27/2022	HRW	MFCO	Email Z. Annable re: notice of subpoena directed to BH Equities (0.1).	0.10	$750.00	$75.00
5/27/2022	HRW	MFCO	Review email from Z. Annable re: notice of subpoena directed to BH Equities (0.1).	0.10	$750.00	$75.00
5/31/2022	JAM	MFCO	Communications w/ W. Carvell, other defense counsel, H. Winograd re: setting date and scheduling order (0.1); e-mails w/ Court re: setting date (0.1); review/revise draft Scheduling Order (0.1); e-mails /w C. Doherty re: BH Equities subpoena (0.1); review HCRE's discovery demands (0.2).	0.60	$1,395.00	$837.00
5/31/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE discovery (0.2).	0.20	$750.00	$150.00
5/31/2022	HRW	MFCO	Draft responses and objections to HCRE discovery requests (1.0).	1.00	$750.00	$750.00
5/31/2022	HRW	MFCO	Review email from the Court re: HCRE requests for setting (0.1).	0.10	$750.00	$75.00
5/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE requests for setting (0.2).	0.20	$750.00	$150.00
5/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE final scheduling order (0.1).	0.10	$750.00	$75.00
5/31/2022	HRW	MFCO	Review email from the Court re: HCRE requests for setting (0.1).	0.10	$750.00	$75.00
5/31/2022	HRW	MFCO	Review emails from J. Morris re: HCRE final scheduling order (0.1).	0.10	$750.00	$75.00
5/31/2022	HRW	MFCO	Review email from the Court re: HCRE requests for setting (0.1).	0.10	$750.00	$75.00
			TOTAL	**37.60**		**$36,317.50**

JUNE 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

June 30, 2022
Invoice 130483
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 06/30/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 130483
June 30, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]	[redacted]	[redacted]	[redacted]
MFCO	Multi Family Obj to Claims	36.60	$36,309.50
[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 25
Invoice 130483
June 30, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

06/01/2022	BEL	MFCO	Attend to document production issues.	0.60	1045.00	$627.00
06/01/2022	JAM	MFCO	Review HCRE discovery requests (0.4); tel c. w/ H. Winograd re: HCRE discovery requests (0.5); tel c. w/ T. Surgent, D. Klos, H. Winograd re: discovery (0.7); communications w/ H. Winograd re: discovery (0.2).	1.80	1395.00	$2,511.00
06/01/2022	HRW	MFCO	Call with J. Morris, D. Klos, T. Surgent re: HCRE discovery requests (0.7).	0.70	750.00	$525.00
06/01/2022	HRW	MFCO	Calls with J. Morris re: HCRE discovery requests (0.8).	0.80	750.00	$600.00
06/01/2022	HRW	MFCO	Email B. Levine and C. Mackle re: HCRE production (0.2).	0.20	750.00	$150.00
06/01/2022	HRW	MFCO	Review HCRE discovery requests (0.3).	0.30	750.00	$225.00
06/01/2022	HRW	MFCO	Email L. Canty re: HCRE production (0.1).	0.10	750.00	$75.00
06/01/2022	HRW	MFCO	Review email from J. Morris re: custodians and search terms for HCRE discovery (0.1).	0.10	750.00	$75.00
06/01/2022	HRW	MFCO	Review email from B. Levine re: HCRE production (0.2).	0.20	750.00	$150.00
06/02/2022	JAM	MFCO	E-mails w/ T. Surgent, D. Klos, H. Winograd re: search terms for document production (0.2).	0.20	1395.00	$279.00
06/03/2022	JAM	MFCO	E-mail to DWC, H. Winograd re: Scheduling stipulation (0.1).	0.10	1395.00	$139.50
06/06/2022	JAM	MFCO	Tel c. w/ BH Equities' counsel, H. Winograd re: background, subpoena (0.5).	0.50	1395.00	$697.50
06/06/2022	LSC	MFCO	Research, retrieval of documents, and	0.70	495.00	$346.50

				Hours	Rate	Amount
			correspondence regarding MultiFamily documents for H. Winograd.			
06/06/2022	HRW	MFCO	Call with J. Morris and C. Doherty re: BH Equities subpoena (0.5).	0.50	750.00	$375.00
06/06/2022	HRW	MFCO	Prepare for call with J. Morris and C. Doherty re: BH Equities subpoena (0.2).	0.20	750.00	$150.00
06/06/2022	HRW	MFCO	Review LLC Agreements and related documents (1.5).	1.50	750.00	$1,125.00
06/06/2022	HRW	MFCO	Communicate with L. Canty re: LLC Agreements and related documents (0.1).	0.10	750.00	$75.00
06/07/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: scheduling order (0.1); tel c. w/ H. Winograd re: discovery responses (0.3).	0.40	1395.00	$558.00
06/07/2022	HRW	MFCO	Call with J. Morris re: HCRE SE Multifamily claim (0.3).	0.30	750.00	$225.00
06/07/2022	HRW	MFCO	Review Agreements and related documents (0.5).	0.50	750.00	$375.00
06/07/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities subpoena (0.1).	0.10	750.00	$75.00
06/07/2022	HRW	MFCO	Review email from J. Morris to W. Carvell (0.1).	0.10	750.00	$75.00
06/08/2022	LSC	MFCO	Retrieve and transmit pleadings in connection with prosecution of HCRE claim dispute for H. Winograd.	0.60	495.00	$297.00
06/08/2022	HRW	MFCO	Review email from L. Canty re: HCRE documents (0.1).	0.10	750.00	$75.00
06/08/2022	HRW	MFCO	Draft responses to HCRE discovery (1.2).	1.20	750.00	$900.00
06/09/2022	JMF	MFCO	Review HCRE scheduling order and open claims.	0.40	1145.00	$458.00
06/09/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: scheduling order (0.1); e-mails w/ Z. Annable re: scheduling order (0.1); e-mail to T. Surgent, D. Klos, H. Winograd re: document production, search terms, and custodians (0.6).	0.80	1395.00	$1,116.00
06/09/2022	HRW	MFCO	Review emails from Z. Annable re: scheduling order and stipulation (0.2).	0.20	750.00	$150.00
06/09/2022	HRW	MFCO	Review email from J. Morris re: scheduling order and stipulation (0.2).	0.20	750.00	$150.00
06/10/2022	HRW	MFCO	Call with J. Morris and C. Doherty re: BH Equities subpoena (0.3).	0.30	750.00	$225.00
06/13/2022	HRW	MFCO	Review emails from J. Morris and C. Doherty re: BH Equities deposition (0.1).	0.10	750.00	$75.00
06/13/2022	HRW	MFCO	Email J. Morris re: BH Equities deposition (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 27
Invoice 130483
June 30, 2022

				Hours	Rate	Amount
06/14/2022	JAM	MFCO	Tel c. w/ H. Winograd re: discovery (0.1).	0.10	1395.00	$139.50
06/14/2022	HRW	MFCO	Call with J. Morris re: HCRE discovery (0.1).	0.10	750.00	$75.00
06/14/2022	HRW	MFCO	Review emails from J. Morris and C. Doherty re: BH Equities discovery (0.2).	0.20	750.00	$150.00
06/14/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities agreement (0.1).	0.10	750.00	$75.00
06/14/2022	HRW	MFCO	Review email from W. Carvell re: BH Equities discovery (0.1).	0.10	750.00	$75.00
06/15/2022	JAM	MFCO	Communications w/ C. Doherty re: BH Equities subpoena (0.2).	0.20	1395.00	$279.00
06/15/2022	HRW	MFCO	Review email from J. Morris re: BH Equities subpoena (0.1).	0.10	750.00	$75.00
06/16/2022	JAM	MFCO	Communications w/ C. Doherty re: BH Equities subpoena (0.2); review Amended subpoena and notice and communications w/ Z. Annable, L. Canty re: same (0.2).	0.40	1395.00	$558.00
06/16/2022	LSC	MFCO	Prepare amended notice and subpoena to BH Equities for J. Morris.	0.30	495.00	$148.50
06/16/2022	HRW	MFCO	Review emails from C. Doherty and J. Morris re: BH Equities subpoena (0.2).	0.20	750.00	$150.00
06/16/2022	HRW	MFCO	Review email from L. Canty re: amended subpoena (0.1).	0.10	750.00	$75.00
06/16/2022	HRW	MFCO	Review email from J. Morris re: amended subpoena (0.2).	0.20	750.00	$150.00
06/17/2022	HRW	MFCO	Draft responses to HCRE discovery (1.8).	1.80	750.00	$1,350.00
06/17/2022	HRW	MFCO	Call with D. Klos re: HCRE discovery (0.1).	0.10	750.00	$75.00
06/17/2022	HRW	MFCO	Email D. Klos re: HCRE discovery (0.1).	0.10	750.00	$75.00
06/17/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.2).	0.20	750.00	$150.00
06/21/2022	JAM	MFCO	Review/revise draft responses to HCRE's draft discovery requests (1.9); e-mail to H. Winograd re: revisions to draft responses to HCRE's discovery requests (0.1); e-mail to J. Seery, T. Surgent, D. Klos, G. Demo, H. Winograd re: draft responses to HCRE's discovery requests (0.1).	2.10	1395.00	$2,929.50
06/22/2022	JAM	MFCO	E-mails w/ T. Surgent re: search terms and document production (0.2).	0.20	1395.00	$279.00
06/23/2022	JAM	MFCO	Tel c. w/ C. Mackle re: document production (0.1); e-mails w/ T. Surgent, C. Mackle, H. Winograd re: document production (0.1); tel c. w/ J. Seery, T. Surgent, D. Klos, G. Demo, H. Winograd re:	1.00	1395.00	$1,395.00

				Hours	Rate	Amount
			responses to written discovery (0.8).			
06/23/2022	HRW	MFCO	Call with J. Morris, J. Seery, D. Klos, T. Surgent re: HCRE discovery (0.9).	0.90	750.00	$675.00
06/24/2022	HRW	MFCO	Review emails from J. Seery and D. Klos re: SE Multifamily (0.2).	0.20	750.00	$150.00
06/27/2022	JAM	MFCO	Review Amended LLC agreement (0.2); review revised responses to HCRE discovery and e-mails w/ H. Winograd re: same (0.2); tel c. w/ J. Seery, HCMLP team, G. Demo re: HCRE offer to return capital (0.4); e-mails w/ C. Doherty re: BH Equities response to subpoena (0.1).	0.90	1395.00	$1,255.50
06/27/2022	LSC	MFCO	Revise BH Equities subpoena and notice.	0.20	495.00	$99.00
06/27/2022	GVD	MFCO	Conference with PSZJ and HCMLP working groups re SE Multi Family capital contribution issues	0.40	1095.00	$438.00
06/27/2022	HRW	MFCO	Edit responses to HCRE discovery (0.5).	0.50	750.00	$375.00
06/27/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.2).	0.20	750.00	$150.00
06/27/2022	HRW	MFCO	Review emails from J. Morris re: HCRE discovery (0.2).	0.20	750.00	$150.00
06/27/2022	HRW	MFCO	Email J. Seery re: HCRE discovery (0.2).	0.20	750.00	$150.00
06/27/2022	HRW	MFCO	Email HCRE counsel re: responses to HCRE discovery (0.1).	0.10	750.00	$75.00
06/27/2022	HRW	MFCO	Draft Barker Viggato LLP subpoena (0.8).	0.80	750.00	$600.00
06/27/2022	HRW	MFCO	Communicate with L. Canty re: Barker Viggato LLP subpoena (0.2).	0.20	750.00	$150.00
06/28/2022	JAM	MFCO	Review HCRE's written responses to discovery and e-mail to HCRE's counsel concerning the same (0.7); e-mail to T. Surgent, C. Mackle, H. Winograd re: search terms (0.2); review/revise letter to HCRE's counsel re: return of capital (0.2).	1.10	1395.00	$1,534.50
06/28/2022	GVD	MFCO	Review operating agreements and draft response letter re SEMF return of capital	1.50	1095.00	$1,642.50
06/28/2022	GVD	MFCO	Conference with J. Morris re revisions to letter to SEMF re capital contributions	0.20	1095.00	$219.00
[redacted]	[redacted]	[redacted]	[redacted]	1.50	1095.00	$1,642.50
06/28/2022	HRW	MFCO	Draft Barker Viggato LLP subpoena (0.2).	0.20	750.00	$150.00
06/28/2022	HRW	MFCO	Review letter re: SEMF (0.2).	0.20	750.00	$150.00
06/28/2022	HRW	MFCO	Review email from J. Morris re: HCRE discovery responses (0.2).	0.20	750.00	$150.00

				Hours	Rate	Amount
06/28/2022	HRW	MFCO	Review HCRE discovery responses (0.2).	0.20	750.00	$150.00
06/29/2022	HRW	MFCO	Review email from J. Morris re: meet and confer (0.1).	0.10	750.00	$75.00
06/30/2022	JAM	MFCO	Communications w/ T. Surgent, C. Mackle, H. Winograd re: search terms (0.6); review/revise draft subpoena for Barker Viggato (0.4); communications w/ J. Seery, T. Surgent, D. Klos, Z. Annable, H. Winograd re: subpoena for Barker Viggato (0.7); e-mail to H. Winograd re: Rule 30(b)(6) topics (0.4); tel c. w/ C. Doherty re: BH Equities response to subpoena/document production (0.1); communications w/ H. Winograd re: Barker Viggato subpoena, document production and related matters (0.2).	2.40	1395.00	$3,348.00
06/30/2022	LSC	MFCO	Assist with preparation of subpoena and revise and finalize same.	0.50	495.00	$247.50
06/30/2022	HRW	MFCO	Review email from J. Seery re: tax subpoena (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Review emails from J. Morris re: tax subpoena (0.2).	0.20	750.00	$150.00
06/30/2022	HRW	MFCO	Email J. Morris and L. Canty re: tax subpoena (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Email Z. Annable re: tax subpoena (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Review emails from Z. Annable re: tax subpoena (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Draft and edit tax subpoena (0.8).	0.80	750.00	$600.00
06/30/2022	HRW	MFCO	Communicate with L. Canty re: tax subpoena (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Email D. Klos re: HCRE production (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Email L. Canty and J. Morris re: HCRE production (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Review email from D. Klos re: HCRE production (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Review email from B. Gameros re: meet and confer (0.1).	0.10	750.00	$75.00
06/30/2022	HRW	MFCO	Call with J. Morris, C. Mackle, T. Surgent re: HCRE production (0.2).	0.20	750.00	$150.00
				36.60		**$36,309.50**

[redacted]

JUNE 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/1/2022	BEL	MFCO	Attend to document production issues.	0.60	$1,045.00	$627.00
6/1/2022	JAM	MFCO	Review HCRE discovery requests (0.4); tel c. w/ H. Winograd re: HCRE discovery requests (0.5); tel c. w/ T. Surgent, D. Klos, H. Winograd re: discovery (0.7); communications w/ H. Winograd re: discovery (0.2).	1.80	$1,395.00	$2,511.00
6/1/2022	HRW	MFCO	Call with J. Morris, D. Klos, T. Surgent re: HCRE discovery requests (0.7).	0.70	$750.00	$525.00
6/1/2022	HRW	MFCO	Calls with J. Morris re: HCRE discovery requests (0.8).	0.80	$750.00	$600.00
6/1/2022	HRW	MFCO	Email B. Levine and C. Mackle re: HCRE production (0.2).	0.20	$750.00	$150.00
6/1/2022	HRW	MFCO	Review HCRE discovery requests (0.3).	0.30	$750.00	$225.00
6/1/2022	HRW	MFCO	Email L. Canty re: HCRE production (0.1).	0.10	$750.00	$75.00
6/1/2022	HRW	MFCO	Review email from J. Morris re: custodians and search terms for HCRE discovery (0.1).	0.10	$750.00	$75.00
6/1/2022	HRW	MFCO	Review email from B. Levine re: HCRE production (0.2).	0.20	$750.00	$150.00
6/2/2022	JAM	MFCO	E-mails w/ T. Surgent, D. Klos, H. Winograd re: search terms for document production (0.2).	0.20	$1,395.00	$279.00
6/3/2022	JAM	MFCO	E-mail to DWC, H. Winograd re: Scheduling stipulation (0.1).	0.10	$1,395.00	$139.50
6/6/2022	JAM	MFCO	Tel c. w/ BH Equities' counsel, H. Winograd re: background, subpoena (0.5).	0.50	$1,395.00	$697.50
6/6/2022	LSC	MFCO	Research, retrieval of documents, and correspondence regarding MultiFamily documents for H. Winograd.	0.70	$495.00	$346.50
6/6/2022	HRW	MFCO	Call with J. Morris and C. Doherty re: BH Equities subpoena (0.5).	0.50	$750.00	$375.00
6/6/2022	HRW	MFCO	Prepare for call with J. Morris and C. Doherty re: BH Equities subpoena (0.2).	0.20	$750.00	$150.00
6/6/2022	HRW	MFCO	Review LLC Agreements and related documents (1.5).	1.50	$750.00	$1,125.00
6/6/2022	HRW	MFCO	Communicate with L. Canty re: LLC Agreements and related documents (0.1).	0.10	$750.00	$75.00
6/7/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: scheduling order (0.1); tel c. w/ H. Winograd re: discovery responses (0.3).	0.40	$1,395.00	$558.00
6/7/2022	HRW	MFCO	Call with J. Morris re: HCRE SE Multifamily claim (0.3).	0.30	$750.00	$225.00
6/7/2022	HRW	MFCO	Review Agreements and related documents (0.5).	0.50	$750.00	$375.00
6/7/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities subpoena (0.1).	0.10	$750.00	$75.00
6/7/2022	HRW	MFCO	Review email from J. Morris to W. Carvell (0.1).	0.10	$750.00	$75.00
6/8/2022	LSC	MFCO	Retrieve and transmit pleadings in connection with prosecution of HCRE claim dispute for H. Winograd.	0.60	$495.00	$297.00
6/8/2022	HRW	MFCO	Review email from L. Canty re: HCRE documents (0.1).	0.10	$750.00	$75.00
6/8/2022	HRW	MFCO	Draft responses to HCRE discovery (1.2).	1.20	$750.00	$900.00
6/9/2022	JMF	MFCO	Review HCRE scheduling order and open claims.	0.40	$1,145.00	$458.00
6/9/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: scheduling order (0.1); e-mails w/ Z. Annable re: scheduling order (0.1); e-mail to T. Surgent, D. Klos, H. Winograd re: document production, search terms, and custodians (0.6).	0.80	$1,395.00	$1,116.00
6/9/2022	HRW	MFCO	Review emails from Z. Annable re: scheduling order and stipulation (0.2).	0.20	$750.00	$150.00
6/9/2022	HRW	MFCO	Review email from J. Morris re: scheduling order and stipulation (0.2).	0.20	$750.00	$150.00

JUNE 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/10/2022	HRW	MFCO	Call with J. Morris and C. Doherty re: BH Equities subpoena (0.3).	0.30	$750.00	$225.00
6/13/2022	HRW	MFCO	Review emails from J. Morris and C. Doherty re: BH Equities deposition (0.1).	0.10	$750.00	$75.00
6/13/2022	HRW	MFCO	Email J. Morris re: BH Equities deposition (0.1).	0.10	$750.00	$75.00
6/14/2022	JAM	MFCO	Tel c. w/ H. Winograd re: discovery (0.1).	0.10	$1,395.00	$139.50
6/14/2022	HRW	MFCO	Call with J. Morris re: HCRE discovery (0.1).	0.10	$750.00	$75.00
6/14/2022	HRW	MFCO	Review emails from J. Morris and C. Doherty re: BH Equities discovery (0.2).	0.20	$750.00	$150.00
6/14/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities agreement (0.1).	0.10	$750.00	$75.00
6/14/2022	HRW	MFCO	Review email from W. Carvell re: BH Equities discovery (0.1).	0.10	$750.00	$75.00
6/15/2022	JAM	MFCO	Communications w/ C. Doherty re: BH Equities subpoena (0.2).	0.20	$1,395.00	$279.00
6/15/2022	HRW	MFCO	Review email from J. Morris re: BH Equities subpoena (0.1).	0.10	$750.00	$75.00
6/16/2022	JAM	MFCO	Communications w/ C. Doherty re: BH Equities subpoena (0.2); review Amended subpoena and notice and communications w/ Z. Annable, L. Canty re: same (0.2).	0.40	$1,395.00	$558.00
6/16/2022	LSC	MFCO	Prepare amended notice and subpoena to BH Equities for J. Morris.	0.30	$495.00	$148.50
6/16/2022	HRW	MFCO	Review emails from C. Doherty and J. Morris re: BH Equities subpoena (0.2).	0.20	$750.00	$150.00
6/16/2022	HRW	MFCO	Review email from L. Canty re: amended subpoena (0.1).	0.10	$750.00	$75.00
6/16/2022	HRW	MFCO	Review email from J. Morris re: amended subpoena (0.2).	0.20	$750.00	$150.00
6/17/2022	HRW	MFCO	Draft responses to HCRE discovery (1.8).	1.80	$750.00	$1,350.00
6/17/2022	HRW	MFCO	Call with D. Klos re: HCRE discovery (0.1).	0.10	$750.00	$75.00
6/17/2022	HRW	MFCO	Email D. Klos re: HCRE discovery (0.1).	0.10	$750.00	$75.00
6/17/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.2).	0.20	$750.00	$150.00
6/21/2022	JAM	MFCO	Review/revise draft responses to HCRE's draft discovery requests (1.9); e-mail to H. Winograd re: revisions to draft responses to HCRE's discovery requests (0.1); e-mail to J. Seery, T. Surgent, D. Klos, G. Demo, H. Winograd re: draft responses to HCRE's discovery requests (0.1).	2.10	$1,395.00	$2,929.50
6/22/2022	JAM	MFCO	E-mails w/ T. Surgent re: search terms and document production (0.2).	0.20	$1,395.00	$279.00
6/23/2022	JAM	MFCO	Tel c. w/ C. Mackle re: document production (0.1); e-mails w/ T. Surgent, C. Mackle, H. Winograd re: document production (0.1); tel c. w/ J. Seery, T. Surgent, D. Klos, G. Demo, H. Winograd re: responses to written discovery (0.8).	1.00	$1,395.00	$1,395.00
6/23/2022	HRW	MFCO	Call with J. Morris, J. Seery, D. Klos, T. Surgent re: HCRE discovery (0.9).	0.90	$750.00	$675.00
6/24/2022	HRW	MFCO	Review emails from J. Seery and D. Klos re: SE Multifamily (0.2).	0.20	$750.00	$150.00
6/27/2022	JAM	MFCO	Review Amended LLC agreement (0.2); review revised responses to HCRE discovery and e-mails w/H. Winograd re: same (0.2); tel c. w/ J. Seery, HCMLP team, G. Demo re: HCRE offer to return capital (0.4); e-mails w/ C. Doherty re: BH Equities response to subpoena (0.1).	0.90	$1,395.00	$1,255.50
6/27/2022	LSC	MFCO	Revise BH Equities subpoena and notice.	0.20	$495.00	$99.00
6/27/2022	GVD	MFCO	Conference with PSZJ and HCMLP working groups re SE Multi Family capital contribution issues	0.40	$1,095.00	$438.00
6/27/2022	HRW	MFCO	Edit responses to HCRE discovery (0.5).	0.50	$750.00	$375.00

JUNE 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
6/27/2022	HRW	MFCO	Email J. Morris re: HCRE discovery (0.2).	0.20	$750.00	$150.00
6/27/2022	HRW	MFCO	Review emails from J. Morris re: HCRE discovery (0.2).	0.20	$750.00	$150.00
6/27/2022	HRW	MFCO	Email J. Seery re: HCRE discovery (0.2).	0.20	$750.00	$150.00
6/27/2022	HRW	MFCO	Email HCRE counsel re: responses to HCRE discovery (0.1).	0.10	$750.00	$75.00
6/27/2022	HRW	MFCO	Draft Barker Viggato LLP subpoena (0.8).	0.80	$750.00	$600.00
6/27/2022	HRW	MFCO	Communicate with L. Canty re: Barker Viggato LLP subpoena (0.2).	0.20	$750.00	$150.00
6/28/2022	JAM	MFCO	Review HCRE's written responses to discovery and e-mail to HCRE's counsel concerning the same (0.7); e-mail to T. Surgent, C. Mackle, H. Winograd re: search terms (0.2); review/revise letter to HCRE's counsel re: return of capital (0.2).	1.10	$1,395.00	$1,534.50
6/28/2022	GVD	MFCO	Review operating agreements and draft response letter re SEMF return of capital	1.50	$1,095.00	$1,642.50
6/28/2022	GVD	MFCO	Conference with J. Morris re revisions to letter to SEMF re capital contributions	0.20	$1,095.00	$219.00
6/28/2022	HRW	MFCO	Draft Barker Viggato LLP subpoena (0.2).	0.20	$750.00	$150.00
6/28/2022	HRW	MFCO	Review letter re: SEMF (0.2).	0.20	$750.00	$150.00
6/28/2022	HRW	MFCO	Review email from J. Morris re: HCRE discovery responses (0.2).	0.20	$750.00	$150.00
6/28/2022	HRW	MFCO	Review HCRE discovery responses (0.2).	0.20	$750.00	$150.00
6/29/2022	HRW	MFCO	Review email from J. Morris re: meet and confer (0.1).	0.10	$750.00	$75.00
6/30/2022	JAM	MFCO	Communications w/ T. Surgent, C. Mackle, H. Winograd re: search terms (0.6); review/revise draft subpoena for Barker Viggato (0.4); communications w/ J. Seery, T. Surgent, D. Klos, Z. Annable, H. Winograd re: subpoena for Barker Viggato (0.7); e-mail to H. Winograd re: Rule 30(b)(6) topics (0.4); tel c. w/ C. Doherty re: BH Equities response to subpoena/document production (0.1); communications w/ H. Winograd re: Barker Viggato subpoena, document production and related matters (0.2).	2.40	$1,395.00	$3,348.00
6/30/2022	LSC	MFCO	Assist with preparation of subpoena and revise and finalize same.	0.50	$495.00	$247.50
6/30/2022	HRW	MFCO	Review email from J. Seery re: tax subpoena (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Review emails from J. Morris re: tax subpoena (0.2).	0.20	$750.00	$150.00
6/30/2022	HRW	MFCO	Email J. Morris and L. Canty re: tax subpoena (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Email Z. Annable re: tax subpoena (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Review emails from Z. Annable re: tax subpoena (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Draft and edit tax subpoena (0.8).	0.80	$750.00	$600.00
6/30/2022	HRW	MFCO	Communicate with L. Canty re: tax subpoena (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Email D. Klos re: HCRE production (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Email L. Canty and J. Morris re: HCRE production (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Review email from D. Klos re: HCRE production (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Review email from B. Gameros re: meet and confer (0.1).	0.10	$750.00	$75.00
6/30/2022	HRW	MFCO	Call with J. Morris, C. Mackle, T. Surgent re: HCRE production (0.2).	0.20	$750.00	$150.00

JUNE 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
			TOTAL	**35.10**		**$34,667.00**

JULY 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

July 31, 2022
Invoice 130587
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 07/31/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 130587
July 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]			
MFCO	Multi Family Obj to Claims	150.40	$124,174.50
[redacted]			

[redacted]

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

07/01/2022	JAM	MFCO	Review notes to prepare for "meet and confer" call (0.2); tel c. w/ H. Winograd, HCRE's counsel re: "meet and confer" over discovery (0.5); tel c. w/ H. Winograd re: meet and confer call (0.2).	0.90	1395.00	$1,255.50
07/01/2022	LSC	MFCO	Preparation of document production to HCRE and correspondence with H. Winograd regarding the same.	2.90	495.00	$1,435.50
07/01/2022	HRW	MFCO	Meet and confer with J. Morris and opposing counsel re: HCRE discovery responses (0.5).	0.50	750.00	$375.00
07/01/2022	HRW	MFCO	Prepare for meet and confer re: HCRE discovery responses (0.2).	0.20	750.00	$150.00
07/01/2022	HRW	MFCO	Call with J. Morris re: HCRE meet and confer (0.1).	0.10	750.00	$75.00
07/01/2022	HRW	MFCO	Communicate with L. Canty re: Highland production (0.1).	0.10	750.00	$75.00
07/01/2022	HRW	MFCO	Email HCRE counsel re: Highland production (0.1).	0.10	750.00	$75.00
07/03/2022	JAM	MFCO	Draft e-mails to HCRE's counsel re: discovery (0.8); e-mails w/ J. Seery, T. Surgent, C. Mackle, H. Winograd re: discovery (0.2); e-mails w/ H. Winograd, L. Canty re: discovery (0.2); review HCRE document production (0.2).	1.40	1395.00	$1,953.00
07/03/2022	HRW	MFCO	Review emails from J. Morris re: meet and confer (0.2).	0.20	750.00	$150.00
07/03/2022	HRW	MFCO	Email J. Morris re: meet and confer (0.1).	0.10	750.00	$75.00
07/03/2022	HRW	MFCO	Email J. Morris re: 30(b)(6) deposition notice (0.1).	0.10	750.00	$75.00
07/03/2022	HRW	MFCO	Draft 30(b)(6) deposition notice (1.0).	1.00	750.00	$750.00
07/04/2022	LSC	MFCO	Retrieve and review document production from HCRE for J. Morris.	0.60	495.00	$297.00
07/05/2022	JAM	MFCO	Review/revise Rule 30(b)(6) deposition notice (0.4); communications w/ C. Mackle, H. Winograd re:	0.80	1395.00	$1,116.00

				Hours	Rate	Amount
			supplemental document production (0.2); e-mails to HCRE's counsel re: search terms, custodians, and Rule 30(b)(6) notice (0.2).			
07/05/2022	LSC	MFCO	Preparation of supplemental document production to HCRE and correspondence regarding the same.	1.40	495.00	$693.00
07/05/2022	LSC	MFCO	Retrieve HCRE's document production.	0.40	495.00	$198.00
07/05/2022	HRW	MFCO	Review email from J. Morris re: deposition notice (0.2).	0.20	750.00	$150.00
07/05/2022	HRW	MFCO	Email J. Morris re: deposition notice (0.1).	0.10	750.00	$75.00
07/05/2022	HRW	MFCO	Draft deposition notice (0.2).	0.20	750.00	$150.00
07/05/2022	HRW	MFCO	Review email from L. Canty re: discovery (0.1).	0.10	750.00	$75.00
07/05/2022	HRW	MFCO	Review email from C. Mackle re: discovery (0.1).	0.10	750.00	$75.00
07/05/2022	HRW	MFCO	Email HCRE counsel re: supplemental production (0.1).	0.10	750.00	$75.00
[redacted]				0.10	495.00	$49.50
07/06/2022	JAM	MFCO	[redacted] e-mail to H. Winograd re: amended Rule 30(b)(6) notice (0.2); review/revise amended Rule 30(b)(6) notice and e-mails w/ H. Winograd, Z. Annable re: same (0.3); e-mails to HCRE's counsel, H. Winograd re: discovery (0.1).	0.80	1395.00	$1,116.00
[redacted]				0.70	1095.00	$766.50
07/06/2022	GVD	MFCO	Conference with J. Morris re HCRE discovery issues	0.20	1095.00	$219.00
07/06/2022	HRW	MFCO	Draft amended deposition notice (0.2).	0.20	750.00	$150.00
07/06/2022	HRW	MFCO	Review email from J. Morris re: amended deposition notice (0.1).	0.10	750.00	$75.00
07/06/2022	HRW	MFCO	Email J. Morris re: amended deposition notice (0.1).	0.10	750.00	$75.00
07/06/2022	HRW	MFCO	Draft deposition subpoenas (0.9).	0.90	750.00	$675.00
07/06/2022	HRW	MFCO	Email J. Morris re: deposition subpoenas (0.1).	0.10	750.00	$75.00
[redacted]				0.20	750.00	$150.00
[redacted]				0.10	750.00	$75.00
[redacted]				0.10	750.00	$75.00
[redacted]				0.20	750.00	$150.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 29
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/07/2022	JAM	MFCO	[redacted] review/revise subpoenas and deposition notices for Dondero, Patrick, and McGraner (0.3); e-mail to H. Winograd, L. Canty, Z. Annable re: subpoenas and deposition notices (0.2); e-mail to H. Winograd re: revised Notices of Subpoena (0.1); [redacted] e-mail to HCRE counsel re: service of subpoena (0.1); review documents re: Barker Vittago (0.7).	2.60	1395.00	$3,627.00
[redacted]			[redacted]	0.30	1095.00	$328.50
07/07/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/07/2022	HRW	MFCO	Review deposition subpoenas (0.2).	0.20	750.00	$150.00
07/07/2022	HRW	MFCO	Review email from Z. Annable re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/07/2022	HRW	MFCO	Review email from J. Hanson re: BH Equities production (0.1).	0.10	750.00	$75.00
07/07/2022	HRW	MFCO	Review email from J. Morris to B. Gameros and W. Carvell re: service of deposition subpoenas (0.1).	0.10	750.00	$75.00
[redacted]			[redacted]	0.20	750.00	$150.00
07/08/2022	JAM	MFCO	E-mails w/ D. Dandeneau, HCRE's counsel re: Patrick deposition (0.2); e-mail to HCRE re: outstanding discovery issues (0.3); review discovery responses (0.3).	0.80	1395.00	$1,116.00
07/08/2022	HRW	MFCO	Review amended discovery responses (0.3).	0.30	750.00	$225.00
07/08/2022	HRW	MFCO	Review email re: HCRE production (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	MFCO	Review email from J. Morris re: HCRE production (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	MFCO	Review email from W. Carvell re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	MFCO	Review email from J. Morris to B. Gameros and W. Carvell re: discovery communications (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	MFCO	Review email from J. Morris re: M. Patrick deposition (0.1).	0.10	750.00	$75.00
07/08/2022	HRW	MFCO	Review email from D. Dandeneau re: M. Patrick deposition (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 30
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/11/2022	HRW	MFCO	Review HCRE production (0.5).	0.50	750.00	$375.00
07/11/2022	HRW	MFCO	Email L. Canty re: HCRE production (0.1).	0.10	750.00	$75.00
07/11/2022	HRW	MFCO	Review emails from L. Canty re: HCRE production (0.1).	0.10	750.00	$75.00
07/12/2022	JAM	MFCO	E-mails w/ court reporter re: depositions (0.2); e-mails to HCRE's counsel, H. Winograd re: deposition schedule (0.3); review document productions (2.2).	2.70	1395.00	$3,766.50
07/12/2022	LSC	MFCO	Follow up and correspondence regarding upcoming depositions.	0.50	495.00	$247.50
07/12/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities production (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities production (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	MFCO	Email C. Doherty re: BH Equities production (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	MFCO	Prepare for call with C. Doherty re: BH Equities production (0.3).	0.30	750.00	$225.00
07/12/2022	HRW	MFCO	Call with C. Doherty re: BH Equities production (0.2).	0.20	750.00	$150.00
07/12/2022	HRW	MFCO	Call with J. Morris re: call with C. Doherty (0.2).	0.20	750.00	$150.00
07/12/2022	HRW	MFCO	Communicate with L. Canty re: deposition schedule (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	MFCO	Review email from BH Equities' counsel re: production (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	MFCO	Review email from J. Morris re: BH Equities production (0.1).	0.10	750.00	$75.00
07/12/2022	HRW	MFCO	Review emails from J. Morris and L. Canty re: deposition schedule (0.1).	0.10	750.00	$75.00
07/13/2022	JAM	MFCO	Tel c. w/ C. Doherty re: BH Equities (0.4); e-mail to C. Doherty, H. Winograd re: BH Equities (0.3); review BH Equities document production (2.5); e-mail to J. Seery, D. Klos, H. Winograd re: BH Equities document production (0.4); tel c. w/ H. Winograd re: BYH Equities and related matters (0.2).	3.80	1395.00	$5,301.00
07/13/2022	LSC	MFCO	Retrieve and review document productions received from BH Equities and correspond with J. Morris and H. Winograd regarding the same (1.6); update document production chart (.2).	1.90	495.00	$940.50
07/13/2022	GVD	MFCO	Multiple conferences with J. Morris re HCRE discovery issues	0.60	1095.00	$657.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 31
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/13/2022	HRW	MFCO	Review email from J. Morris to C. Doherty re: BH Equities issues (0.1).	0.10	750.00	$75.00
07/13/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities issues (0.1).	0.10	750.00	$75.00
07/13/2022	HRW	MFCO	Communicate with L. Canty re: BH Equities productions (0.1).	0.10	750.00	$75.00
07/13/2022	HRW	MFCO	Review email from J. Morris re: BH Equities productions (0.2).	0.20	750.00	$150.00
07/13/2022	HRW	MFCO	Call with J. Morris re: BH Equities productions (0.2).	0.20	750.00	$150.00
07/13/2022	HRW	MFCO	Review emails from D. Perez and C. Taylor re: demand for SEMF records (0.1).	0.10	750.00	$75.00
07/13/2022	HRW	MFCO	Review email from J. Morris re: SEMF records (0.1).	0.10	750.00	$75.00
07/13/2022	HRW	MFCO	Review email from Z. Annable re: BH Equities subpoena (0.1).	0.10	750.00	$75.00
07/14/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: discovery (0.2); review documents (1.1).	1.30	1395.00	$1,813.50
07/14/2022	HRW	MFCO	Call with J. Morris re: deposition scheduling (0.1).	0.10	750.00	$75.00
07/14/2022	HRW	MFCO	Review email from J. Morris re: deposition scheduling (0.1).	0.10	750.00	$75.00
07/15/2022	JAM	MFCO	E-mail to HCRE's counsel re: discovery (0.2).	0.20	1395.00	$279.00
07/20/2022	HRW	MFCO	Review email from B. Gameros re: deposition scheduling (0.1).	0.10	750.00	$75.00
07/20/2022	HRW	MFCO	Review emails from J. Morris and L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
07/21/2022	LSC	MFCO	Coordinate rescheduling of depositions (.3) and prepare notices of amended subpoena and amended subpoenas (.5).	0.80	495.00	$396.00
07/22/2022	JAM	MFCO	E-mail to HCRE's counsel re: motion for protective order and other discovery matters (0.4); [redacted] tel c. w/ H. Winograd re: depositions, strategy (0.6).	1.30	1395.00	$1,813.50
07/22/2022	LSC	MFCO	Prepare notice of amended subpoena and subpoena for M. Patrick (.3); update same with Court Reporter (.1).	0.40	495.00	$198.00
07/22/2022	HRW	MFCO	Call with J. Morris to discuss depositions and strategy (0.6).	0.60	750.00	$450.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 32
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/22/2022	HRW	MFCO	Review email from M. Roberts re: Barker Viggato production (0.1).	0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato production (0.1).	0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Email M. Roberts re: Barker Viggato production (0.1).	0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Call with L. Canty re: Barker Viggato production (0.1).	0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Email D. Klos re: deposition prep (0.1).	0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Review HCRE's motion for protective order (0.2).	0.20	750.00	$150.00
07/22/2022	HRW	MFCO	Review email from J. Morris re: HCRE's motion for protective order (0.1).	0.10	750.00	$75.00
[redacted]				0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Review email from L. Canty re: Patrick deposition scheduling (0.1).	0.10	750.00	$75.00
07/22/2022	HRW	MFCO	Review email from J. Morris re: Patrick deposition scheduling (0.1).	0.10	750.00	$75.00
07/23/2022	JAM	MFCO	Review documents and begin preparing for depositions (4.2).	4.20	1395.00	$5,859.00
07/24/2022	HRW	MFCO	Review email from Z. Annable re: deposition subpoena (0.1).	0.10	750.00	$75.00
07/24/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoena (0.1).	0.10	750.00	$75.00
07/24/2022	HRW	MFCO	Review Patrick deposition subpoena (0.1).	0.10	750.00	$75.00
07/25/2022	JAM	MFCO	Tel c. w/ H. Winograd re: facts, strategy (0.3); tel c. w/ H. Winograd, M. Roberts re: Barker Vittago subpoena (0.2); review draft motion for protective order (0.2); tel c. w/ H. Winograd re: response to BV draft motion (0.2); tel c. w/ D. Dandeneau re: M. Patrick deposition (0.2); e-mails w/ D. Dandeneau re: M. Patrick subpoena (0.1); e-mail to HCRE's counsel, M. Roberts, H. Winograd re: BV subpoena and client approval (0.5).	1.70	1395.00	$2,371.50
07/25/2022	LSC	MFCO	Research and review various document productions in connection with HCRE contested matter and transmit same for H. Winograd and J. Morris.	3.70	495.00	$1,831.50
07/25/2022	HRW	MFCO	Call with J. Morris re: deposition prep (0.2).	0.20	750.00	$150.00
07/25/2022	HRW	MFCO	Call with J. Morris re: Barker Viggato subpoena (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 33
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/25/2022	HRW	MFCO	Meet and confer with J. Morris and M. Roberts re: Barker Viggato subpoena (0.2).	0.20	750.00	$150.00
07/25/2022	HRW	MFCO	Review email from M. Roberts re: Barker Viggato subpoena (0.1).	0.10	750.00	$75.00
07/25/2022	HRW	MFCO	Review motion for protective order from Barker Viggato (0.3).	0.30	750.00	$225.00
07/25/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato subpoena (0.2).	0.20	750.00	$150.00
07/25/2022	HRW	MFCO	Email J. Morris re: Barker Viggato subpoena (0.1).	0.10	750.00	$75.00
07/25/2022	HRW	MFCO	Review email from B. Gameros re: Barker Viggato subpoena (0.1).	0.10	750.00	$75.00
07/25/2022	HRW	MFCO	Communicate with L. Canty re: deposition prep (0.8).	0.80	750.00	$600.00
07/25/2022	HRW	MFCO	Review operative agreements in preparation for M. Patrick deposition (2.0).	2.00	750.00	$1,500.00
07/25/2022	HRW	MFCO	Email J. Morris re: operative agreements (0.2).	0.20	750.00	$150.00
07/25/2022	HRW	MFCO	Review productions in preparation for M. Patrick deposition (0.8).	0.80	750.00	$600.00
07/25/2022	HRW	MFCO	Review email from J. Morris re: M. Patrick subpoena (0.1).	0.10	750.00	$75.00
07/25/2022	HRW	MFCO	Review email from Z. Annable re: M. Patrick subpoena (0.1).	0.10	750.00	$75.00
07/26/2022	JAM	MFCO	Meet w/ H. Winograd re: prepare for depositions, discuss status (0.8); emails w/ HCRE's counsel, H. Winograd re: discovery (0.2); e-mails w/ L. Canty, H. Winograd re: depositions (0.2); e-mails w/ Barker Vittagio's counsel, H. Winograd re: subpoena, document production, and deposition (0.2); review documents sent by H. Winograd (0.1); tel c. w/ H. Winograd re: document review (0.3).	1.80	1395.00	$2,511.00
07/26/2022	LSC	MFCO	Conduct searches of document productions, retrieve, and review documents in connection with upcoming depositions and transmit same to H. Winograd and J. Morris for review (4.3); assist with additional preparation of documents for upcoming depositions in HCRE contested matter (1.1); update and circulate amended subpoenas and deposition notice (.5); schedule Court Reporters (.3).	6.20	495.00	$3,069.00
07/26/2022	GVD	MFCO	Conference with J. Morris and H. Winograd re preparation for M. Patrick deposition	0.40	1095.00	$438.00
07/26/2022	HRW	MFCO	Meet with J. Morris to discuss status of case and deposition prep (0.8).	0.80	750.00	$600.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 34
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/26/2022	HRW	MFCO	Communicate with L. Canty re: deposition prep (0.5).	0.50	750.00	$375.00
07/26/2022	HRW	MFCO	Review documents in preparation for deposition (5.5).	5.50	750.00	$4,125.00
07/26/2022	HRW	MFCO	Email J. Morris re: deposition prep (0.3).	0.30	750.00	$225.00
07/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato subpoena (0.2).	0.20	750.00	$150.00
07/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato deposition (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato document production (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review emails from J. Morris re: Barker Viggato subpoena (0.2).	0.20	750.00	$150.00
07/26/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato deposition (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review email from L. Canty re: Barker Viggato deposition (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review email from B. Gameros re: deposition scheduling (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review email from B. Gameros re: HCRE document production (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review email from B. Gameros re: Barker Vittago subpoena (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review email from J. Morris re: HCRE document production (0.1).	0.10	750.00	$75.00
07/26/2022	HRW	MFCO	Review emails from J. Morris re: deposition scheduling (0.3).	0.30	750.00	$225.00
07/26/2022	HRW	MFCO	Review emails from L. Canty re: deposition scheduling (0.2).	0.20	750.00	$150.00
07/27/2022	JAM	MFCO	Review amended subpoenas and notices and e-mails to Z. Annable, H. Winograd, L. Canty re: same (0.3); tel c. w/ H. Winograd, D. Klos re: deposition prep (1.2); meet w/ H. Winograd re: deposition prep (0.5); e-mails w/ Z. Annable re: amended subpoena and notices (0.2); tel c. w/ HCRE's counsel re: discovery (0.1).	2.30	1395.00	$3,208.50
07/27/2022	LSC	MFCO	Run searches of document productions, retrieve, and review potential documents in preparation for upcoming depositions (3.4) and confer and correspond with H. Winograd regarding the same (.3).	3.70	495.00	$1,831.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 35
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/27/2022	HRW	MFCO	Prepare for M. Patrick deposition (3.0).	3.00	750.00	$2,250.00
07/27/2022	HRW	MFCO	Call with J. Morris and D. Klos re: M. Patrick deposition prep (1.2).	1.20	750.00	$900.00
07/27/2022	HRW	MFCO	Meet with J. Morris for M. Patrick deposition prep (0.5).	0.50	750.00	$375.00
07/27/2022	HRW	MFCO	Review emails from D. Klos, K. Hendrix, and J. Morris re: return of capital (0.2).	0.20	750.00	$150.00
07/27/2022	HRW	MFCO	Communicate with L. Canty re: M. Patrick deposition prep (0.3).	0.30	750.00	$225.00
07/27/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/27/2022	HRW	MFCO	Review emails from J. Morris re: Barker Viggato deposition and production (0.2).	0.20	750.00	$150.00
07/27/2022	HRW	MFCO	Review email from L. Canty re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/27/2022	HRW	MFCO	Review email from Z. Annable re: deposition subpoenas (0.1).	0.10	750.00	$75.00
07/27/2022	HRW	MFCO	Review email from Z. Annable re: Barker Viggato subpoena (0.1).	0.10	750.00	$75.00
07/28/2022	LSC	MFCO	Run additional searches of document productions, retrieve, and review potential documents in preparation for upcoming depositions (3.1); confer and correspond with H. Winograd regarding documents and upcoming depositions (.5); prepare list of exhibits at the request of H. Winograd (.8).	4.40	495.00	$2,178.00
07/28/2022	HRW	MFCO	Prepare for M. Patrick deposition (9.0).	9.00	750.00	$6,750.00
07/28/2022	HRW	MFCO	Communicate with L. Canty re: M. Patrick deposition (0.3).	0.30	750.00	$225.00
07/28/2022	HRW	MFCO	Email J. Morris re: M. Patrick deposition (0.5).	0.50	750.00	$375.00
07/29/2022	JAM	MFCO	Tel c. w/ H. Winograd re: document review (0.2); review selected "hot documents" (0.2); e-mails w/ H. Winograd re: document production (0.2).	0.60	1395.00	$837.00
07/29/2022	LSC	MFCO	Run additional searches of document productions, retrieve, and review potential documents in preparation for upcoming depositions (4.5); confer and correspond with H. Winograd regarding same (.3); update list of exhibits and exhibits (1.2).	6.00	495.00	$2,970.00
07/29/2022	LSC	MFCO	Retrieve, process, and review BH Equities document production (.8); circulate same to J. Morris and H. Winograd (.2).	1.00	495.00	$495.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 36
Invoice 130587
July 31, 2022

				Hours	Rate	Amount
07/29/2022	HRW	MFCO	Draft outline in preparation for deposition of Mark Patrick (10.0).	10.00	750.00	$7,500.00
07/29/2022	HRW	MFCO	Review exhibits for deposition of Mark Patrick (2.0).	2.00	750.00	$1,500.00
07/29/2022	HRW	MFCO	Communicate with L. Canty re: exhibits for Mark Patrick deposition (0.3).	0.30	750.00	$225.00
07/29/2022	HRW	MFCO	Review exhibits in preparation for deposition of Mark Patrick (2.0).	2.00	750.00	$1,500.00
07/29/2022	HRW	MFCO	Call with W. Carvell re: Highland's production to HCRE (0.1).	0.10	750.00	$75.00
07/29/2022	HRW	MFCO	Email J. Morris re: Highland's production to HCRE (0.2).	0.20	750.00	$150.00
07/29/2022	HRW	MFCO	Email D. Klos re: Highland's production to HCRE (0.2).	0.20	750.00	$150.00
07/29/2022	HRW	MFCO	Email L. Canty re: Highland's production to HCRE (0.1).	0.10	750.00	$75.00
07/29/2022	HRW	MFCO	Review Highland's production to HCRE (0.2).	0.20	750.00	$150.00
07/29/2022	HRW	MFCO	Email J. Morris re: depo prep (0.2).	0.20	750.00	$150.00
07/30/2022	HRW	MFCO	Draft outline for deposition of Mark Patrick (13.0).	13.00	750.00	$9,750.00
07/30/2022	HRW	MFCO	Communicate with L. Canty re: Mark Patrick deposition prep (0.2).	0.20	750.00	$150.00
07/31/2022	JAM	MFCO	Review H. Winograd outline for Patrick deposition and review related documents (1.1); tel c. w/ H. Winograd re: preparation for Patrick deposition (1.6).	2.70	1395.00	$3,766.50
07/31/2022	HRW	MFCO	Draft outline for deposition of Mark Patrick (12.0).	12.00	750.00	$9,000.00
07/31/2022	HRW	MFCO	Call with J. Morris re: preparation for Mark Patrick deposition (1.6).	1.60	750.00	$1,200.00
				150.40		**$124,174.50**

[redacted]

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/1/2022	JAM	MFCO	Review notes to prepare for "meet and confer" call (0.2); tel c. w/ H. Winograd, HCRE's counsel re: (0.2); tel c. w/ H. Winograd, HCRE's counsel re: "meet and confer" over discovery (0.5); tel c. w/ H. Winograd re: meet and confer call (0.2).	0.90	$1,395.00	$1,255.50
7/1/2022	LSC	MFCO	Preparation of document production to HCRE and correspondence with H. Winograd regarding the same.	2.90	$495.00	$1,435.50
7/1/2022	HRW	MFCO	Meet and confer with J. Morris and opposing counsel re: HCRE discovery responses (0.5).	0.50	$750.00	$375.00
7/1/2022	HRW	MFCO	Prepare for meet and confer re: HCRE discovery responses (0.2).	0.20	$750.00	$150.00
7/1/2022	HRW	MFCO	Call with J. Morris re: HCRE meet and confer (0.1).	0.10	$750.00	$75.00
7/1/2022	HRW	MFCO	Communicate with L. Canty re: Highland production (0.1).	0.10	$750.00	$75.00
7/1/2022	HRW	MFCO	Email HCRE counsel re: Highland production (0.1).	0.10	$750.00	$75.00
7/3/2022	JAM	MFCO	Draft e-mails to HCRE's counsel re: discovery (0.8); e-mails w/ J. Seery, T. Surgent, C. Mackle, H. Winograd re: discovery (0.2); e-mails w/ H. Winograd, L. Canty re: discovery (0.2); review HCRE document production (0.2).	1.40	$1,395.00	$1,953.00
7/3/2022	HRW	MFCO	Review emails from J. Morris re: meet and confer (0.2).	0.20	$750.00	$150.00
7/3/2022	HRW	MFCO	Email J. Morris re: meet and confer (0.1).	0.10	$750.00	$75.00
7/3/2022	HRW	MFCO	Email J. Morris re: 30(b)(6) deposition notice (0.1).	0.10	$750.00	$75.00
7/3/2022	HRW	MFCO	Draft 30(b)(6) deposition notice (1.0).	1.00	$750.00	$750.00
7/4/2022	LSC	MFCO	Retrieve and review document production from HCRE for J. Morris.	0.60	$495.00	$297.00
7/5/2022	JAM	MFCO	Review/revise Rule 30(b)(6) deposition notice (0.4); communications w/ C. Mackle, H. Winograd re: supplemental document production (0.2); e-mails to HCRE's counsel re: search terms, custodians, and Rule 30(b)(6) notice (0.2).	0.80	$1,395.00	$1,116.00
7/5/2022	LSC	MFCO	Preparation of supplemental document production to HCRE and correspondence regarding the same.	1.40	$495.00	$693.00
7/5/2022	LSC	MFCO	Retrieve HCRE's document production.	0.40	$495.00	$198.00
7/5/2022	HRW	MFCO	Review email from J. Morris re: deposition notice (0.2).	0.20	$750.00	$150.00
7/5/2022	HRW	MFCO	Email J. Morris re: deposition notice (0.1).	0.10	$750.00	$75.00
7/5/2022	HRW	MFCO	Draft deposition notice (0.2).	0.20	$750.00	$150.00
7/5/2022	HRW	MFCO	Review email from L. Canty re: discovery (0.1).	0.10	$750.00	$75.00
7/5/2022	HRW	MFCO	Review email from C. Mackle re: discovery (0.1).	0.10	$750.00	$75.00
7/5/2022	HRW	MFCO	Email HCRE counsel re: supplemental production (0.1).	0.10	$750.00	$75.00
7/6/2022	JAM	MFCO	e-mail to H. Winograd re: amended Rule 30(b)(6) notice (0.2); review/revise amended Rule 30(b)(6) notice and e-mails w/ H. Winograd, Z. Annable re: same (0.3); e-mails to HCRE's counsel, H. Winograd re: discovery (0.1).	0.60	$1,395.00	$837.00
7/6/2022	GVD	MFCO	Conference with J. Morris re HCRE discovery issues	0.20	$1,095.00	$219.00
7/6/2022	HRW	MFCO	Draft amended deposition notice (0.2).	0.20	$750.00	$150.00
7/6/2022	HRW	MFCO	Review email from J. Morris re: amended deposition notice (0.1).	0.10	$750.00	$75.00
7/6/2022	HRW	MFCO	Email J. Morris re: amended deposition notice (0.1).	0.10	$750.00	$75.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/6/2022	HRW	MFCO	Draft deposition subpoenas (0.9).	0.90	$750.00	$675.00
7/6/2022	HRW	MFCO	Email J. Morris re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/7/2022	JAM	MFCO	review/revise subpoenas and deposition notices for Dondero, Patrick, and McGraner (0.3); e-mail to H. Winograd, L. Canty, Z. Annable re: subpoenas and deposition notices (0.2); e-mail to H. Winograd re: revised Notices of Subpoena (0.1); e-mail to HCRE counsel re: service of subpoena (0.1); review documents re: Barker Vittago (0.7).	1.40	$1,395.00	$1,953.00
7/7/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/7/2022	HRW	MFCO	Review deposition subpoenas (0.2).	0.20	$750.00	$150.00
7/7/2022	HRW	MFCO	Review email from Z. Annable re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/7/2022	HRW	MFCO	Review email from J. Hanson re: BH Equities production (0.1).	0.10	$750.00	$75.00
7/7/2022	HRW	MFCO	Review email from J. Morris to B. Gameros and W. Carvell re: service of deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/8/2022	JAM	MFCO	E-mails w/ D. Dandeneau, HCRE's counsel re: Patrick deposition (0.2); e-mail to HCRE re: outstanding discovery issues (0.3); review discovery responses (0.3).	0.80	$1,395.00	$1,116.00
7/8/2022	HRW	MFCO	Review amended discovery responses (0.3).	0.30	$750.00	$225.00
7/8/2022	HRW	MFCO	Review email re: HCRE production (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW	MFCO	Review email from J. Morris re: HCRE production (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW	MFCO	Review email from W. Carvell re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW	MFCO	Review email from J. Morris to B. Gameros and W. Carvell re: discovery communications (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW	MFCO	Review email from J. Morris re: M. Patrick deposition (0.1).	0.10	$750.00	$75.00
7/8/2022	HRW	MFCO	Review email from D. Dandeneau re: M. Patrick deposition (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW	MFCO	Review HCRE production (0.5).	0.50	$750.00	$375.00
7/11/2022	HRW	MFCO	Email L. Canty re: HCRE production (0.1).	0.10	$750.00	$75.00
7/11/2022	HRW	MFCO	Review emails from L. Canty re: HCRE production (0.1).	0.10	$750.00	$75.00
7/12/2022	JAM	MFCO	E-mails w/ court reporter re: depositions (0.2); e-mails to HCRE's counsel, H. Winograd re: deposition schedule (0.3); review document productions (2.2).	2.70	$1,395.00	$3,766.50
7/12/2022	LSC	MFCO	Follow up and correspondence regarding upcoming depositions.	0.50	$495.00	$247.50
7/12/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities production (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities production (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW	MFCO	Email C. Doherty re: BH Equities production (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW	MFCO	Prepare for call with C. Doherty re: BH Equities production (0.3).	0.30	$750.00	$225.00
7/12/2022	HRW	MFCO	Call with C. Doherty re: BH Equities production (0.2).	0.20	$750.00	$150.00
7/12/2022	HRW	MFCO	Call with J. Morris re: call with C. Doherty (0.2).	0.20	$750.00	$150.00
7/12/2022	HRW	MFCO	Communicate with L. Canty re: deposition schedule (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW	MFCO	Review email from BH Equities' counsel re: production (0.1).	0.10	$750.00	$75.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/12/2022	HRW	MFCO	Review email from J. Morris re: BH Equities production (0.1).	0.10	$750.00	$75.00
7/12/2022	HRW	MFCO	Review emails from J. Morris and L. Canty re: deposition schedule (0.1).	0.10	$750.00	$75.00
7/13/2022	JAM	MFCO	Tel c. w/ C. Doherty re: BH Equities (0.4); e-mail to C. Doherty, H. Winograd re: BH Equities (0.3); review BH Equities document production (2.5); e-mail to J. Seery, D. Klos, H. Winograd re: BH Equities document production (0.4); tel c. w/ H. Winograd re: BYH Equities and related matters (0.2).	3.80	$1,395.00	$5,301.00
7/13/2022	LSC	MFCO	Retrieve and review document productions received from BH Equities and correspond with J. Morris and H. Winograd regarding the same (1.6); update document production chart (.2).	1.90	$495.00	$940.50
7/13/2022	GVD	MFCO	Multiple conferences with J. Morris re HCRE discovery issues	0.60	$1,095.00	$657.00
7/13/2022	HRW	MFCO	Review email from J. Morris to C. Doherty re: BH Equities issues (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities issues (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW	MFCO	Communicate with L. Canty re: BH Equities productions (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW	MFCO	Review email from J. Morris re: BH Equities productions (0.2).	0.20	$750.00	$150.00
7/13/2022	HRW	MFCO	Call with J. Morris re: BH Equities productions (0.2).	0.20	$750.00	$150.00
7/13/2022	HRW	MFCO	Review emails from D. Perez and C. Taylor re: demand for SEMF records (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW	MFCO	Review email from J. Morris re: SEMF records (0.1).	0.10	$750.00	$75.00
7/13/2022	HRW	MFCO	Review email from Z. Annable re: BH Equities subpoena (0.1).	0.10	$750.00	$75.00
7/14/2022	JAM	MFCO	E-mails w/ HCRE's counsel re: discovery (0.2); review documents (1.1).	1.30	$1,395.00	$1,813.50
7/14/2022	HRW	MFCO	Call with J. Morris re: deposition scheduling (0.1).	0.10	$750.00	$75.00
7/14/2022	HRW	MFCO	Review email from J. Morris re: deposition scheduling (0.1).	0.10	$750.00	$75.00
7/15/2022	JAM	MFCO	E-mail to HCRE's counsel re: discovery (0.2).	0.20	$1,395.00	$279.00
7/20/2022	HRW	MFCO	Review email from B. Gameros re: deposition scheduling (0.1).	0.10	$750.00	$75.00
7/20/2022	HRW	MFCO	Review emails from J. Morris and L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
7/21/2022	LSC	MFCO	Coordinate rescheduling of depositions (.3) and prepare notices of amended subpoena and amended subpoenas (.5).	0.80	$495.00	$396.00
7/22/2022	JAM	MFCO	E-mail to HCRE's counsel re: motion for protective order and other discovery matters (0.4); tel c. w/ H. Winograd re: depositions, strategy (0.6).	1.00	$1,395.00	$1,395.00
7/22/2022	LSC	MFCO	Prepare notice of amended subpoena and subpoena for M. Patrick (.3); update same with Court Reporter (.1).	0.40	$495.00	$198.00
7/22/2022	HRW	MFCO	Call with J. Morris to discuss depositions and strategy (0.6).	0.60	$750.00	$450.00
7/22/2022	HRW	MFCO	Review email from M. Roberts re: Barker Viggato production (0.1).	0.10	$750.00	$75.00
7/22/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato production (0.1).	0.10	$750.00	$75.00
7/22/2022	HRW	MFCO	Email M. Roberts re: Barker Viggato production (0.1).	0.10	$750.00	$75.00
7/22/2022	HRW	MFCO	Call with L. Canty re: Barker Viggato production (0.1).	0.10	$750.00	$75.00
7/22/2022	HRW	MFCO	Email D. Klos re: deposition prep (0.1).	0.10	$750.00	$75.00
7/22/2022	HRW	MFCO	Review HCRE's motion for protective order (0.2).	0.20	$750.00	$150.00
7/22/2022	HRW	MFCO	Review email from J. Morris re: HCRE's motion for protective order (0.1).	0.10	$750.00	$75.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/22/2022	HRW	MFCO	Review email from L. Canty re: Patrick deposition scheduling (0.1).	0.10	$750.00	$75.00
7/22/2022	HRW	MFCO	Review email from J. Morris re: Patrick deposition scheduling (0.1).	0.10	$750.00	$75.00
7/23/2022	JAM	MFCO	Review documents and begin preparing for depositions (4.2).	4.20	$1,395.00	$5,859.00
7/24/2022	HRW	MFCO	Review email from Z. Annable re: deposition subpoena (0.1).	0.10	$750.00	$75.00
7/24/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoena (0.1).	0.10	$750.00	$75.00
7/24/2022	HRW	MFCO	Review Patrick deposition subpoena (0.1).	0.10	$750.00	$75.00
7/25/2022	JAM	MFCO	Tel c. w/ H. Winograd re: facts, strategy (0.3); tel c. w/ H. Winograd, M. Roberts re: Barker Vittago subpoena (0.2); review draft motion for protective order (0.2); tel c. w/ H. Winograd re: response to BV draft motion (0.2); tel c. w/ D. Dandeneau re: M. Patrick deposition (0.2); e-mails w/ D. Dandeneau re: M. Patrick subpoena (0.1); e-mail to HCRE's counsel, M. Roberts, H. Winograd re: BV subpoena and client approval (0.5).	1.70	$1,395.00	$2,371.50
7/25/2022	LSC	MFCO	Research and review various document productions in connection with HCRE contested matter and transmit same for H. Winograd and J. Morris.	3.70	$495.00	$1,831.50
7/25/2022	HRW	MFCO	Call with J. Morris re: deposition prep (0.2).	0.20	$750.00	$150.00
7/25/2022	HRW	MFCO	Call with J. Morris re: Barker Viggato subpoena (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW	MFCO	Meet and confer with J. Morris and M. Roberts re: Barker Viggato subpoena (0.2).	0.20	$750.00	$150.00
7/25/2022	HRW	MFCO	Review email from M. Roberts re: Barker Viggato subpoena (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW	MFCO	Review motion for protective order from Barker Viggato (0.3).	0.30	$750.00	$225.00
7/25/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato subpoena (0.2).	0.20	$750.00	$150.00
7/25/2022	HRW	MFCO	Email J. Morris re: Barker Viggato subpoena (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW	MFCO	Review email from B. Gameros re: Barker Viggato subpoena (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW	MFCO	Communicate with L. Canty re: deposition prep (0.8).	0.80	$750.00	$600.00
7/25/2022	HRW	MFCO	Review operative agreements in preparation for M. Patrick deposition (2.0).	2.00	$750.00	$1,500.00
7/25/2022	HRW	MFCO	Email J. Morris re: operative agreements (0.2).	0.20	$750.00	$150.00
7/25/2022	HRW	MFCO	Review productions in preparation for M. Patrick deposition (0.8).	0.80	$750.00	$600.00
7/25/2022	HRW	MFCO	Review email from J. Morris re: M. Patrick subpoena (0.1).	0.10	$750.00	$75.00
7/25/2022	HRW	MFCO	Review email from Z. Annable re: M. Patrick subpoena (0.1).	0.10	$750.00	$75.00
7/26/2022	JAM	MFCO	Meet w/ H. Winograd re: prepare for depositions, discuss status (0.8); emails w/ HCRE's counsel, H. Winograd re: discovery (0.2); e-mails w/ L. Canty, H. Winograd re: depositions (0.2); e-mails w/ Barker Vittagio's counsel, H. Winograd re: subpoena, document production, and deposition (0.2); review documents sent by H. Winograd (0.1); tel c. w/ H. Winograd re: document review (0.3).	1.80	$1,395.00	$2,511.00
7/26/2022	LSC	MFCO	Conduct searches of document productions, retrieve, and review documents in connection with upcoming depositions and transmit same to H. Winograd and J. Morris for review (4.3); assist with additional preparation of documents for upcoming depositions in HCRE contested matter (1.1); update and circulate amended subpoenas and deposition notice (.5); schedule Court Reporters (.3).	6.20	$495.00	$3,069.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/26/2022	GVD	MFCO	Conference with J. Morris and H. Winograd re preparation for M. Patrick deposition	0.40	$1,095.00	$438.00
7/26/2022	HRW	MFCO	Meet with J. Morris to discuss status of case and deposition prep (0.8).	0.80	$750.00	$600.00
7/26/2022	HRW	MFCO	Communicate with L. Canty re: deposition prep (0.5).	0.50	$750.00	$375.00
7/26/2022	HRW	MFCO	Review documents in preparation for deposition (5.5).	5.50	$750.00	$4,125.00
7/26/2022	HRW	MFCO	Email J. Morris re: deposition prep (0.3).	0.30	$750.00	$225.00
7/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato subpoena (0.2).	0.20	$750.00	$150.00
7/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato document production (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review emails from J. Morris re: Barker Viggato subpoena (0.2).	0.20	$750.00	$150.00
7/26/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review email from L. Canty re: Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review email from B. Gameros re: deposition scheduling (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review email from B. Gameros re: HCRE document production (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review email from B. Gameros re: Barker Vittago subpoena (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review email from J. Morris re: HCRE document production (0.1).	0.10	$750.00	$75.00
7/26/2022	HRW	MFCO	Review emails from J. Morris re: deposition scheduling (0.3).	0.30	$750.00	$225.00
7/26/2022	HRW	MFCO	Review emails from L. Canty re: deposition scheduling (0.2).	0.20	$750.00	$150.00
7/27/2022	JAM	MFCO	Review amended subpoenas and notices and e-mails to Z. Annable, H. Winograd, L. Canty re: same (0.3); tel c. w/ H. Winograd, D. Klos re: deposition prep (1.2); meet w/ H. Winograd re: deposition prep (0.5); e-mails w/ Z. Annable re: amended subpoena and notices (0.2); tel c. w/ HCRE's counsel re: discovery (0.1).	2.30	$1,395.00	$3,208.50
7/27/2022	LSC	MFCO	Run searches of document productions, retrieve, and review potential documents in preparation for upcoming depositions (3.4) and confer and correspond with H. Winograd regarding the same (.3).	3.70	$495.00	$1,831.50
7/27/2022	HRW	MFCO	Prepare for M. Patrick deposition (3.0).	3.00	$750.00	$2,250.00
7/27/2022	HRW	MFCO	Call with J. Morris and D. Klos re: M. Patrick deposition prep (1.2).	1.20	$750.00	$900.00
7/27/2022	HRW	MFCO	Meet with J. Morris for M. Patrick deposition prep (0.5).	0.50	$750.00	$375.00
7/27/2022	HRW	MFCO	Review emails from D. Klos, K. Hendrix, and J. Morris re: return of capital (0.2).	0.20	$750.00	$150.00
7/27/2022	HRW	MFCO	Communicate with L. Canty re: M. Patrick deposition prep (0.3).	0.30	$750.00	$225.00
7/27/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW	MFCO	Review emails from J. Morris re: Barker Viggato deposition and production (0.2).	0.20	$750.00	$150.00
7/27/2022	HRW	MFCO	Review email from L. Canty re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW	MFCO	Review email from Z. Annable re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
7/27/2022	HRW	MFCO	Review email from Z. Annable re: Barker Viggato subpoena (0.1).	0.10	$750.00	$75.00

JULY 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/28/2022	LSC	MFCO	Run additional searches of document productions, retrieve, and review potential documents in preparation for upcoming depositions (3.1); confer and correspond with H. Winograd regarding documents and upcoming depositions (.5); prepare list of exhibits at the request of H. Winograd (.8).	4.40	$495.00	$2,178.00
7/28/2022	HRW	MFCO	Prepare for M. Patrick deposition (9.0).	9.00	$750.00	$6,750.00
7/28/2022	HRW	MFCO	Communicate with L. Canty re: M. Patrick deposition (0.3).	0.30	$750.00	$225.00
7/28/2022	HRW	MFCO	Email J. Morris re: M. Patrick deposition (0.5).	0.50	$750.00	$375.00
7/29/2022	JAM	MFCO	Tel c. w/ H. Winograd re: document review (0.2); review selected "hot documents" (0.2); e-mails w/ H. Winograd re: document production (0.2).	0.60	$1,395.00	$837.00
7/29/2022	LSC	MFCO	Run additional searches of document productions, retrieve, and review potential documents in preparation for upcoming depositions (4.5); confer and correspond with H. Winograd regarding same (.3); update list of exhibits and exhibits (1.2).	6.00	$495.00	$2,970.00
7/29/2022	LSC	MFCO	Retrieve, process, and review BH Equities document production (.8); circulate same to J. Morris and H. Winograd (.2).	1.00	$495.00	$495.00
7/29/2022	HRW	MFCO	Draft outline in preparation for deposition of Mark Patrick (10.0).	10.00	$750.00	$7,500.00
7/29/2022	HRW	MFCO	Review exhibits for deposition of Mark Patrick (2.0).	2.00	$750.00	$1,500.00
7/29/2022	HRW	MFCO	Communicate with L. Canty re: exhibits for Mark Patrick deposition (0.3).	0.30	$750.00	$225.00
7/29/2022	HRW	MFCO	Review exhibits in preparation for deposition of Mark Patrick (2.0).	2.00	$750.00	$1,500.00
7/29/2022	HRW	MFCO	Call with W. Carvell re: Highland's production to HCRE (0.1).	0.10	$750.00	$75.00
7/29/2022	HRW	MFCO	Email J. Morris re: Highland's production to HCRE (0.2).	0.20	$750.00	$150.00
7/29/2022	HRW	MFCO	Email D. Klos re: Highland's production to HCRE (0.2).	0.20	$750.00	$150.00
7/29/2022	HRW	MFCO	Email L. Canty re: Highland's production to HCRE (0.1).	0.10	$750.00	$75.00
7/29/2022	HRW	MFCO	Review Highland's production to HCRE (0.2).	0.20	$750.00	$150.00
7/29/2022	HRW	MFCO	Email J. Morris re: depo prep (0.2).	0.20	$750.00	$150.00
7/30/2022	HRW	MFCO	Draft outline for deposition of Mark Patrick (13.0).	13.00	$750.00	$9,750.00
7/30/2022	HRW	MFCO	Communicate with L. Canty re: Mark Patrick deposition prep (0.2).	0.20	$750.00	$150.00
7/31/2022	JAM	MFCO	Review H. Winograd outline for Patrick deposition and review related documents (1.1); tel c. w/ H. Winograd re: preparation for Patrick deposition (1.6).	2.70	$1,395.00	$3,766.50
7/31/2022	HRW	MFCO	Draft outline for deposition of Mark Patrick (12.0).	12.00	$750.00	$9,000.00
7/31/2022	HRW	MFCO	Call with J. Morris re: preparation for Mark Patrick deposition (1.6).	1.60	$750.00	$1,200.00
			TOTAL	**146.70**		**$119,983.50**

AUGUST 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

August 31, 2022
Invoice 130890
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 08/31/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 130890
August 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]			
MFCO	Multi Family Obj to Claims	239.80	$245,874.00
[redacted]			

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 130890
August 31, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

07/30/2022	LSC	MFCO	Continued preparation for M. Patrick deposition and correspondence with H. Winograd regarding the same.	1.60	495.00	$792.00
08/01/2022	JAM	MFCO	Tel c. w/ H Winograd re: preparation for Patrick deposition (0.7); tel c. w/ H. Winograd re: Patrick deposition (0.2); e-mails to counsel, L. Lambert re: Patrick deposition (0.1); e-mails w/ J. Seery, HCRE counsel re: Rule 30(b)(6) deposition (0.1); review documents (3.9); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: Broaddus e-mail to accountants (0.4); e-mail to J. Seery, D. Klos, H. Winograd re: SEM and HCMLP schedules	5.70	1395.00	$7,951.50

				Hours	Rate	Amount
			(0.2); tel c. w/ H. Winograd re: Patrick deposition (0.1).			
08/01/2022	LSC	MFCO	Continued research and review of discovery documents (1.6) and preparation of exhibits in connection with M. Patrick deposition (.6); transmit production documents to parties at the request of J. Morris (.3).	2.50	495.00	$1,237.50
08/01/2022	HRW	MFCO	Refine outline and continue preparing for deposition of Mark Patrick (10.0).	10.00	750.00	$7,500.00
08/01/2022	HRW	MFCO	Call with J. Morris re: preparation for Mark Patrick deposition (0.7).	0.70	750.00	$525.00
08/01/2022	HRW	MFCO	Call with J. Morris and D. Klos re: preparation for Mark Patrick deposition (0.5).	0.50	750.00	$375.00
08/01/2022	HRW	MFCO	Review emails from J. Morris re: HCRE 30(b)(6) deposition (0.2).	0.20	750.00	$150.00
08/01/2022	HRW	MFCO	Review email from J. Seery re: HCRE 30(b)(6) deposition (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Communicate with L. Canty re: exhibits for deposition of Mark Patrick (0.3).	0.30	750.00	$225.00
08/01/2022	HRW	MFCO	Review emails from D. Klos and T. Cournoyer re: operative documents (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Email D. Klos and T. Cournoyer re: operative documents (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from B. Gameros re: HCRE 30(b)(6) deposition (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from B. Gameros re: Barker Viggato deposition (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato deposition (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from L. Canty re: Barker Viggato deposition (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from J. Morris re: HCRE productions (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from D. Klos re: HCRE productions (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review emails from J. Morris re: SEM as estate assets (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review email from D. Klos re: SEM as estate assets (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review emails from Z. Annable re: Objection to	0.20	750.00	$150.00

				Hours	Rate	Amount
			HCRE Motion for Protective Order and Cross-Motion to Compel (0.2).			
08/01/2022	HRW	MFCO	Review proposed order on motion for expedited hearing (0.2).	0.20	750.00	$150.00
08/01/2022	HRW	MFCO	Email Z. Annable and J. Morris re: proposed order on motion for expedited hearing (0.1).	0.10	750.00	$75.00
08/01/2022	HRW	MFCO	Review emails from J. Morris re: proposed order on motion for expedited hearing (0.2).	0.20	750.00	$150.00
08/02/2022	JNP	MFCO	Conference with John A. Morris regarding depositions	0.10	1445.00	$144.50
08/02/2022	JAM	MFCO	Tel c.. w/ H. Winograd re: Patrick deposition (0.1); Patrick deposition (including calls w/ H. Winograd during breaks) (2.5); tel c. w/ H. Winograd re: Patrick deposition (0.2); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: Patrick deposition (0.2).	3.00	1395.00	$4,185.00
08/02/2022	LSC	MFCO	Prepare for and assist at deposition of Mark Patrick.	3.40	495.00	$1,683.00
08/02/2022	HRW	MFCO	Participate in deposition of Mark Patrick (2.5).	2.50	750.00	$1,875.00
08/02/2022	HRW	MFCO	Prepare for deposition of Mark Patrick (1.5).	1.50	750.00	$1,125.00
08/02/2022	HRW	MFCO	Review transcript of Mark Patrick deposition (0.8).	0.80	750.00	$600.00
08/02/2022	HRW	MFCO	Review email from D. Dandeneau re: Mark Patrick deposition (0.1).	0.10	750.00	$75.00
08/02/2022	HRW	MFCO	Call with J. Morris re: Mark Patrick deposition summary (0.2).	0.20	750.00	$150.00
08/02/2022	HRW	MFCO	Review email from J. Morris re: Mark Patrick deposition summary (0.2).	0.20	750.00	$150.00
08/02/2022	HRW	MFCO	Email from J. Morris re: Mark Patrick deposition summary (0.1).	0.10	750.00	$75.00
08/02/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities deposition (0.1).	0.10	750.00	$75.00
08/02/2022	HRW	MFCO	Review email from J. Morris re: BH Equities deposition (0.1).	0.10	750.00	$75.00
08/03/2022	JNP	MFCO	Conference with John A. Morris regarding expert reports, scheduling and strategy.	0.40	1445.00	$578.00
08/03/2022	JAM	MFCO	Review documents (5.4); tel c. w/ B. Gameros re: expert discovery (0.2); tel c. w/ J. Pomerantz re: expert discovery (0.3); tel c. w/ J. Seery re: expert discovery (0.4); e-mail to B. Gameros re: expert discovery (0.5).	6.80	1395.00	$9,486.00
08/03/2022	LSC	MFCO	Prepare for BH Equities deposition, including	2.90	495.00	$1,435.50

				Hours	Rate	Amount
			retrieval exhibits in connection therewith.			
08/03/2022	HRW	MFCO	Review email from L. Canty re: HCRE hot documents (0.1).	0.10	750.00	$75.00
08/03/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities deposition (0.1).	0.10	750.00	$75.00
08/03/2022	HRW	MFCO	Review emails from J. Morris re: BH Equities deposition (0.2).	0.20	750.00	$150.00
08/03/2022	HRW	MFCO	Review emails from J. Morris re: response to HCRE to extend expert discovery deadline (0.3).	0.30	750.00	$225.00
08/03/2022	HRW	MFCO	Email J. Morris re: response to HCRE to extend expert discovery deadline (0.2).	0.20	750.00	$150.00
08/04/2022	JAM	MFCO	Prepare for BH Equities subpoena (4.5); BH Equities deposition (3.4); tel c. w/ H. Winograd re: BH Equities deposition (0.1); e-mail to counsel re: Barker Viggato deposition (0.1); tel c. w/ J. Seery, G. Demo re: BH Equities deposition and related matters (0.3); e-mail to D. Dandeneau re: Patrick deposition transcript (0.1).	8.50	1395.00	$11,857.50
08/04/2022	LSC	MFCO	Prepare for (1.5) and assist at (2.4) deposition of BH Equities; upload exhibits to Court Reporter (.1).	4.00	495.00	$1,980.00
08/04/2022	GVD	MFCO	Conference with J. Morris, J. Seery, and D. Klos re BH Equities deposition	0.30	1095.00	$328.50
08/04/2022	HRW	MFCO	Attend deposition of BH Equities (2.5).	2.50	750.00	$1,875.00
08/04/2022	HRW	MFCO	Review materials in preparation for deposition BH Equities (0.5).	0.50	750.00	$375.00
08/04/2022	HRW	MFCO	Review email from W. Carvell re: response to HCRE to extend expert discovery deadline (0.1).	0.10	750.00	$75.00
08/04/2022	HRW	MFCO	Review email from J. Morris re: Mark Patrick deposition transcript (0.1).	0.10	750.00	$75.00
08/05/2022	JAM	MFCO	Review/revise proposed Second Amendment to Scheduling Order (1.1); e-mail to W. Carvell, W. Gameros, H. Winograd, Z. Annable re: proposed Second Amendment to Scheduling Order (0.2); prepare for Barker Viggato deposition (including numerous communications w/ L. Canty, H. Winograd re: exhibits) (3.4); Barker Viggato deposition (2.7); tel c. w/ J. Seery. G. Demo re: Barker Viggato deposition (0.2); e-mail to C. Doherty re: BH Equities deposition transcript (0.1).	7.70	1395.00	$10,741.50
08/05/2022	LSC	MFCO	Prepare for (1.8) and assist at deposition of Barker Viggato (2.5)	4.30	495.00	$2,128.50
08/05/2022	HRW	MFCO	Attend Barker Viggato deposition (2.6).	2.60	750.00	$1,950.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 130890
August 31, 2022

				Hours	Rate	Amount
08/05/2022	HRW	MFCO	Review email from J. Morris re: transcript of Barker Viggato deposition (0.1).	0.10	750.00	$75.00
08/05/2022	HRW	MFCO	Review email from J. Morris re: Proposed Amended Scheduling Order for HCRE Claim Litigation (0.1).	0.10	750.00	$75.00
08/05/2022	HRW	MFCO	Review email from Z. Annable re: Proposed Amended Scheduling Order for HCRE Claim Litigation (0.1).	0.10	750.00	$75.00
08/05/2022	HRW	MFCO	Review email from B. Gameros re: Highland 30(b)(6) deposition notice (0.1).	0.10	750.00	$75.00
08/06/2022	JAM	MFCO	E-mail to M. Roberts, H. Winograd re: Barker Viggato transcript (0.1).	0.10	1395.00	$139.50
08/09/2022	JAM	MFCO	Review documents and send e-mails to J. Seery, D. Klos, K. Hendrix, H. Winograd re: preparation for Seery deposition (2.1); tel c. w/ D. Klos re: facts (0.2); tel c. w/ J. Seery, D. Klos, K. Hendrix, H. Winograd re: preparation for Seery deposition (2.4); e-mails w/ HCRE's counsel re: late and substantial production of documents (0.3); tel c. w/ J. Pomerantz re: status (0.1); e-mails w/ court, Z. Annable re: setting for anticipated motion to strike (0.2).	5.30	1395.00	$7,393.50
08/09/2022	GVD	MFCO	Conference with J. Morris and H. Winograd re HCRE claim	0.10	1095.00	$109.50
08/09/2022	HRW	MFCO	Call with J. Morris, J. Seery, D. Klos, K. Hendrix re: deposition prep (2.3).	2.30	750.00	$1,725.00
08/09/2022	HRW	MFCO	Email L. Canty re: HCRE discovery (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Review HCRE discovery requests (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Email J. Seery, J. Morris, D. Klos, K. Hendrix re: deposition prep (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Email L. Canty re: Dondero deposition (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Email J. Morris re: deposition prep (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE production (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Review email from W. Carvell re: HCRE production (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Review emails from J. Morris re: HCRE depositions and production (0.2).	0.20	750.00	$150.00
08/09/2022	HRW	MFCO	Review email from J. Morris re: HCRE facts (0.1).	0.10	750.00	$75.00
08/09/2022	HRW	MFCO	Review email from J. Morris re: Amended and Restate Agreement, K-1s, and broad time line (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 130890
August 31, 2022

				Hours	Rate	Amount
08/09/2022	HRW	MFCO	Review email from J. Morris re: Prep for Rule 30(b)(6) Deposition on HCRE (0.1).	0.10	750.00	$75.00
08/10/2022	JNP	MFCO	Conference with John A. Morris regarding deposition and tax related issues.	0.30	1445.00	$433.50
08/10/2022	JNP	MFCO	Emails with D. Agler and John A. Morris scheduling call to discuss tax issues.	0.10	1445.00	$144.50
08/10/2022	JNP	MFCO	Conference with Gregory V. Demo regarding tax counsel.	0.10	1445.00	$144.50
08/10/2022	JAM	MFCO	Prepare for Seery deposition (0.4); tel c. w/ H. Winograd re: HCRE's late production of documents (0.3); e-mails w/ B. Gameros re: HCRE late production of documents (0.6); Seery deposition (1.2); tel c. w/ J. Seery, D. Klos re: status, strategy (0.3); tel c. w/ G. Demo re: status, strategy (0.5); tel c. w/ J. Pomerantz re: status, strategy (0.3); tel c. w/ H. Winograd re: Seery deposition and follow-up (0.3); tel c. w/ J. Seery re: tax expertise (0.2); e-mails to D. Agler re: background (0.3); tel c. w/ J. Pomerantz, D. Agler re: background (0.8).	5.20	1395.00	$7,254.00
08/10/2022	LSC	MFCO	Retrieve, upload, conduct searches, and review document production received from NREP.	3.90	495.00	$1,930.50
08/10/2022	GVD	MFCO	Conference with J. Pomerantz re tax issues and follow up re same	0.30	1095.00	$328.50
08/10/2022	GVD	MFCO	Conference with J. Morris re result of Seery deposition (0.3); follow up research re same (0.2)	0.50	1095.00	$547.50
08/10/2022	HRW	MFCO	Call with J. Morris re: HCRE production (0.3).	0.30	750.00	$225.00
08/10/2022	HRW	MFCO	Call with J. Morris re: HCRE deposition of Seery (0.3).	0.30	750.00	$225.00
08/10/2022	HRW	MFCO	Email L. Canty re: HCRE production (0.2).	0.20	750.00	$150.00
08/10/2022	HRW	MFCO	Review email from L. Canty re: HCRE production (0.2).	0.20	750.00	$150.00
08/10/2022	HRW	MFCO	Email J. Morris re: HCRE hot documents (0.1).	0.10	750.00	$75.00
08/10/2022	HRW	MFCO	Email J. Seery re: operative loan documents (0.1).	0.10	750.00	$75.00
08/10/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE production (0.1).	0.10	750.00	$75.00
08/10/2022	HRW	MFCO	Review emails from J. Morris re: HCRE production (0.2).	0.20	750.00	$150.00
08/10/2022	HRW	MFCO	Review email from J. Seery re: operative loan documents (0.1).	0.10	750.00	$75.00
08/10/2022	HRW	MFCO	Review email from J. Morris re: operative loan documents (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 34
Invoice 130890
August 31, 2022

				Hours	Rate	Amount
08/11/2022	JNP	MFCO	Conference with D. Agler and John A. Morris regarding tax issues	0.50	1445.00	$722.50
08/11/2022	JAM	MFCO	Tel c. w/ J. Pomerantz, D. Agler re: tax issues (0.5)	0.50	1395.00	$697.50
08/12/2022	JNP	MFCO	Conference with D. Agler and John A. Morris regarding tax aspects of litigation.	1.70	1445.00	$2,456.50
08/12/2022	JNP	MFCO	Conference with Gregory V. Demo and John A. Morris regarding request to withdraw proof of claim and response.	0.30	1445.00	$433.50
08/12/2022	JNP	MFCO	Review motion to strike and conference with John A. Morris regarding same.	0.30	1445.00	$433.50
08/12/2022	JAM	MFCO	Tel c. w/ J. Pomerantz, G. Demo re: strategy (0.3); tel c. w/ J. Seery re: strategy (0.2); tel c. w/ J. Pomerantz, D. Agler re: taxes issues (1.6); tel c. w/ J. Seery re: withdrawal of claim (0.2); tel c. w/ J. Seery re: withdrawal of claim (0.1); analysis of issues pertaining to withdrawal of POC (0.4)	2.80	1395.00	$3,906.00
08/12/2022	GVD	MFCO	Conference with J. Morris and J. Pomerantz re HCRE withdrawal of claim	0.30	1095.00	$328.50
08/12/2022	GVD	MFCO	Conference with J. Morris and J. Seery re HCRE proof of claim issues (0.2); conference with J. Seery re additional HCRE issues (0.3)	0.50	1095.00	$547.50
08/12/2022	HRW	MFCO	Communicate with L. Canty re: HCRE supplemental production (0.2).	0.20	750.00	$150.00
08/12/2022	HRW	MFCO	Review HCRE supplemental production (1.5).	1.50	750.00	$1,125.00
08/12/2022	HRW	MFCO	Email J. Morris re: HCRE supplemental production (0.2).	0.20	750.00	$150.00
08/12/2022	HRW	MFCO	Review emails from J. Morris re: HCRE supplemental production (0.1).	0.10	750.00	$75.00
08/12/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE withdrawal of POC (0.1).	0.10	750.00	$75.00
08/12/2022	HRW	MFCO	Review emails from J. Morris re: HCRE withdrawal of POC (0.1).	0.10	750.00	$75.00
08/13/2022	JAM	MFCO	Tel c. w/ G. Demo, H. Winograd re: opposition to motion to withdraw claim (0.3).	0.30	1395.00	$418.50
08/13/2022	GVD	MFCO	Conference with J. Morris and H. Winograd re issues re withdrawal of HCRE claim	0.30	1095.00	$328.50
08/13/2022	HRW	MFCO	Call with G. Demo and J. Morris re: HCRE withdrawal of POC (0.3).	0.30	750.00	$225.00
08/14/2022	JNP	MFCO	Conference with J. Seery, D. Klos, Gregory V. Demo, John A. Morris and Hayley R. Winograd	0.80	1445.00	$1,156.00

				Hours	Rate	Amount
			regarding motion to withdraw claim and proposed response (2x).			
08/14/2022	JNP	MFCO	Conference with John A. Morris, Gregory V. Demo and D. Agler regarding tax issues relating to MFCO and withdrawal.	1.50	1445.00	$2,167.50
08/14/2022	JAM	MFCO	Tel c. w/ J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: strategy (0.4); tel c. w/ D. Klos re: strategy (0.2); tel c. w/ D. Agler, J. Pomerantz, G. Demo re: tax issues (0.8)	1.40	1395.00	$1,953.00
08/14/2022	GVD	MFCO	Conference with J. Pomerantz, J. Seery, and D. Klos re HCRE response (0.3); conference with J. Morris, J. Pomerantz, J. Seery, and D. Klos re HCRE response (0.4)	0.70	1095.00	$766.50
08/14/2022	GVD	MFCO	Conference with D. Alger and PSZJ working group re tax issues	1.40	1095.00	$1,533.00
08/14/2022	HRW	MFCO	Call with J. Seery, D. Klos, G. Demo, J. Morris, J. Pomerantz re: HCRE withdrawal of POC (0.3).	0.30	750.00	$225.00
08/15/2022	JNP	MFCO	Conference with Gregory V. Demo regarding tax issues.	0.10	1445.00	$144.50
08/15/2022	JAM	MFCO	Tel c. w/ G. Demo re: tax issues, status (0.2); e-mails w/ A. Agler, J. Pomerantz, G. Demo re: background, facts (0.3); tel c. w/ B. Gameros re: status of motion to withdraw POC (0.1); tel c. w/ B. Gameros re: status of depositions (0.1)	0.70	1395.00	$976.50
08/15/2022	GVD	MFCO	Conference with J. Morris re open tax issues	0.20	1095.00	$219.00
08/15/2022	GVD	MFCO	Multiple correspondence with D. Agler re tax issues	0.20	1095.00	$219.00
08/15/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE withdrawal of POC (0.1).	0.10	750.00	$75.00
08/16/2022	JNP	MFCO	Conference with John A. Morris, Gregory V. Demo and D. Agler regarding tax issue.	1.00	1445.00	$1,445.00
08/16/2022	JNP	MFCO	Research regarding tax issues.	0.10	1445.00	$144.50
08/16/2022	JNP	MFCO	Conference with Gregory V. Demo and Joshua M. Fried regarding research related tax issues.	0.50	1445.00	$722.50
08/16/2022	JAM	MFCO	Tel c. w/ G. Demo re: status, strategy (0.4); tel c. w/ H. Winograd re: deposition notice and subpoena for Motion to Withdraw POC and related matters (0.3); tel c. w/ G. Demo re: analysis of LLC agreement (0.3); tel c. w/ J. Pomerantz, G. Demo, D. Agler re: tax issues for conveyance (1.0); review/revise Subpoenas, Notices, and Rule 30(b)(6) Notice for Motion to Withdraw POC (0.4).	2.40	1395.00	$3,348.00
08/16/2022	LSC	MFCO	Preparation of deposition notices and subpoenas in	1.30	495.00	$643.50

				Hours	Rate	Amount
			connection with motion to withdraw HCRE claim and confer and correspond with H. Winograd regarding the same (1.2); cancel depositions regarding contested HCRE claim (.1).			
08/16/2022	GVD	MFCO	Multiple conferences with J. Morris re status of tax issues re HCRE	0.60	1095.00	$657.00
08/16/2022	GVD	MFCO	Review SE Multi Family LLC agreement and draft email summarizing same	1.30	1095.00	$1,423.50
08/16/2022	GVD	MFCO	Conference with D. Alger and PSZJ working group re HCRE tax issues	1.00	1095.00	$1,095.00
08/16/2022	GVD	MFCO	Conference with J. Pomerantz and J. Fried re tax research issues	0.40	1095.00	$438.00
08/16/2022	HRW	MFCO	Review and edit deposition subpoenas (0.8).	0.80	750.00	$600.00
08/16/2022	HRW	MFCO	Review and edit notices of subpoenas (0.3).	0.30	750.00	$225.00
08/16/2022	HRW	MFCO	Review and edit 30(b)(6) deposition notice (0.5).	0.50	750.00	$375.00
08/16/2022	HRW	MFCO	Email L. Canty re: deposition subpoenas (0.2).	0.30	750.00	$225.00
08/16/2022	HRW	MFCO	Call with Email L. Canty re: deposition subpoenas (0.1).	0.10	750.00	$75.00
08/16/2022	HRW	MFCO	Review emails from L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
08/16/2022	HRW	MFCO	Review emails from J. Morris re: deposition scheduling (0.1).	0.10	750.00	$75.00
08/16/2022	HRW	MFCO	Email J. Morris re: deposition subpoenas (0.2).	0.20	750.00	$150.00
08/16/2022	HRW	MFCO	Review emails from Z. Annable re: deposition subpoenas (0.1).	0.10	750.00	$75.00
08/16/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.2).	0.20	750.00	$150.00
08/16/2022	HRW	MFCO	Review emails from G. Demo re: AR Agreement (0.3).	0.30	750.00	$225.00
08/16/2022	HRW	MFCO	Review email from L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
08/16/2022	HRW	MFCO	Call with J. Morris re: deposition subpoenas (0.2).	0.20	750.00	$150.00
08/17/2022	JNP	MFCO	Conference with John A. Morris regarding tax issues.	0.20	1445.00	$289.00
08/17/2022	JNP	MFCO	Conference with John A. Morris and Gregory V. Demo regarding tax issues.	0.10	1445.00	$144.50
08/17/2022	JNP	MFCO	Review research regarding applicability of 3173 and 960 to liquidating trust.	0.10	1445.00	$144.50
08/17/2022	JNP	MFCO	Conference with Gregory V. Demo, John A. Morris	0.80	1445.00	$1,156.00

				Hours	Rate	Amount
			and D. Agler regarding tax issues.			
08/17/2022	JMF	MFCO	Review HCRE motion to withdraw claim and stipulation regarding issues re same.	0.60	1145.00	$687.00
08/17/2022	JMF	MFCO	Research re 3717 and IRS issues re HCRE.	6.50	1145.00	$7,442.50
08/17/2022	JAM	MFCO	Tel c. w/ D. Agler re: tax issues (0.1); review/revise Agler list of tax questions for Klos/Hendrix (0.4); e-mail to D. Agler, J. Pomerantz, G, Demo re: tax questions for Klos/Hendrix (0.3); e-mail to D. Klos, K. Hendrix re: tax questions to be discussed with Agler (0.1); e-mail to D. Klos, K. Hendrix re: Agler document requests (0.1); tel c. w/ D. Klos, K. Hendrix, D. Agler, G. Demo re: tax issues/diligence (1.1); tel c. w/ J. Pomerantz, G. Demo, D. Agler re: potential transaction (0.8).	2.90	1395.00	$4,045.50
08/17/2022	GVD	MFCO	Conference with J. Pomerantz and J. Morris re HCRE issues	0.10	1095.00	$109.50
08/17/2022	GVD	MFCO	Review research from J. Fried re tax issues	0.60	1095.00	$657.00
08/17/2022	GVD	MFCO	Conference with PSZJ working group, J. Morris, and D. Algers re potential tax issues re SEMF	1.10	1095.00	$1,204.50
08/17/2022	GVD	MFCO	Internal conference re potential issues in tax structuring	0.80	1095.00	$876.00
08/17/2022	HRW	MFCO	Call with J. Morris re: response to HCRE withdrawal motion (0.1).	0.10	750.00	$75.00
08/17/2022	HRW	MFCO	Research re: response to HCRE withdrawal motion (6.0).	6.00	750.00	$4,500.00
08/17/2022	HRW	MFCO	Review email from J. Morris re: Immunity Issue for Statements by Lawyers (0.1).	0.10	750.00	$75.00
08/17/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoenas (0.1).	0.10	750.00	$75.00
08/18/2022	JNP	MFCO	Review emails from Gregory V. Demo regarding executory contract research regarding operating agreement.	0.10	1445.00	$144.50
08/18/2022	JNP	MFCO	Conference with Gregory V. Demo, John A. Morris and J. Seery regarding tax implications and strategy.	0.80	1445.00	$1,156.00
08/18/2022	JNP	MFCO	Conference with Gregory V. Demo regarding D. Agler tax advice.	0.10	1445.00	$144.50
08/18/2022	JNP	MFCO	Conference with D. Agler regarding tax advice.	0.10	1445.00	$144.50
08/18/2022	JNP	MFCO	Conference with. Gregory V. Demo and John A. Morris regarding strategy issues.	0.10	1445.00	$144.50
08/18/2022	JMF	MFCO	Review cases re 3713 and potential IRS assertions re claims.	2.80	1145.00	$3,206.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 130890
August 31, 2022

				Hours	Rate	Amount
08/18/2022	JAM	MFCO	Tel c. w/ J. Seery, J. Pomerantz, G. Demo re: tax issues and related issues (0.8); review docket and begin preparing Exhibit list for opposition to Motion to Withdraw POC (1.6); e-mail to H. Winograd, L. Canty re: Exhibit list for opposition to Motion to Withdraw POC (0.5).	2.90	1395.00	$4,045.50
08/18/2022	LSC	MFCO	Schedule Court Reporters for upcoming depositions and correspondence regarding status..	0.30	495.00	$148.50
08/18/2022	LSC	MFCO	Begin preparation of exhibit list and exhibits in connection with hearing on Motion to Withdraw HCRE claim.	4.60	495.00	$2,277.00
08/18/2022	GVD	MFCO	Research issues re LLC agreements and executory contracts	1.40	1095.00	$1,533.00
08/18/2022	GVD	MFCO	Review SEMF LLC agreement and summarize issues re same	0.30	1095.00	$328.50
08/18/2022	GVD	MFCO	Conference with J. Seery and PSZJ working group re HCRE issues	0.80	1095.00	$876.00
08/18/2022	GVD	MFCO	Conference with J. Pomerantz and J. Morris re strategy issues re HCRE	0.10	1095.00	$109.50
08/18/2022	HRW	MFCO	Research and draft memo re: HCRE withdrawal of POC (6.5).	6.50	750.00	$4,875.00
08/18/2022	HRW	MFCO	Review email from J. Morris re: opposition to HCRE withdrawal of POC (0.2).	0.20	750.00	$150.00
08/18/2022	HRW	MFCO	Draft opposition to HCRE withdrawal of POC (0.6).	0.60	750.00	$450.00
08/18/2022	HRW	MFCO	Email J. Morris re: opposition to HCRE withdrawal of POC (0.3).	0.30	750.00	$225.00
08/18/2022	HRW	MFCO	Call with J. Morris re: exhibit list (0.1).	0.10	750.00	$75.00
08/18/2022	HRW	MFCO	Email L. Canty re: exhibit list (0.1).	0.10	750.00	$75.00
08/18/2022	HRW	MFCO	Review email from J. Morris re: exhibit list (0.1).	0.10	750.00	$75.00
08/18/2022	HRW	MFCO	Review email from L. Canty re: exhibit list (0.1).	0.10	750.00	$75.00
08/18/2022	HRW	MFCO	Review emails from L. Canty re: HCRE deposition scheduling (0.1).	0.10	750.00	$75.00
08/18/2022	HRW	MFCO	Review email from J. Morris re: HCRE deposition scheduling (0.1).	0.10	750.00	$75.00
08/19/2022	JAM	MFCO	Work on objection to Motion to Withdraw POC (1.7).	1.70	1395.00	$2,371.50
08/19/2022	LSC	MFCO	Continued preparation of exhibit list and exhibits in connection with hearing on Motion to Withdraw HCRE claim, including review and redaction of time detail (10.1); prepare chart regarding same (1.1).	11.20	495.00	$5,544.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 39
Invoice 130890
August 31, 2022

				Hours	Rate	Amount
08/19/2022	GVD	MFCO	Correspondence re ability to withdraw claim with prejudice	0.10	1095.00	$109.50
08/20/2022	LSC	MFCO	Continued review and redaction of time detail and update chart with respect to same.	6.40	495.00	$3,168.00
08/21/2022	LSC	MFCO	Continued preparation of exhibit list and exhibits in connection with hearing on Motion to Withdraw HCRE claim and draft correspondence to J. Morris regarding the same.	1.00	495.00	$495.00
08/21/2022	HRW	MFCO	Review email from L. Canty re: W&E list for opposition to HCRE motion to withdraw (0.1).	0.10	750.00	$75.00
08/22/2022	JAM	MFCO	Continued work on objection to motion to withdraw proof of claim (1.2).	1.20	1395.00	$1,674.00
08/22/2022	HRW	MFCO	Review email from J. Morris re: objection to motion to withdraw (0.1).	0.10	750.00	$75.00
08/23/2022	JNP	MFCO	Review motion to quash.	0.10	1445.00	$144.50
08/23/2022	JMF	MFCO	Review motion to quash and issues re HCRE claims withdrawal.	0.70	1145.00	$801.50
08/23/2022	JMF	MFCO	Review IRS claims and cases re 3713 research.	1.50	1145.00	$1,717.50
08/24/2022	JNP	MFCO	Telephone conference with John A. Morris regarding: HCRE motion for protective order and related matters.	0.20	1445.00	$289.00
08/24/2022	JAM	MFCO	Tel c. w/ J. Pomerantz re: HCRE motion for protective order and related matters (0.2); review Motion for Protective Order (0.3); begin drafting objection to Motion for Protective Order and Cross-Motion to Compel (1.7).	2.20	1395.00	$3,069.00
08/25/2022	JMF	MFCO	Review IRS and veil piercing research in 5th circuit.	1.80	1145.00	$2,061.00
08/25/2022	JAM	MFCO	Continued work on opposition to Motion for Protective Order and Cross-Motion to Enforce Subpoenas (2.7); e-mails w/ B. Gameros, H. Winograd re: cross-motion to compel and September 12 hearing (0.3).	3.00	1395.00	$4,185.00
[redacted]	[redacted]	[redacted]	[redacted]	0.10	750.00	$75.00
08/26/2022	JAM	MFCO	Continued work on opposition papers to Motion to Withdraw and Motion for Protective Order (2.3); communications w/ J. Seery re: HCRE matters and motion status (0.3).	2.60	1395.00	$3,627.00
08/27/2022	JAM	MFCO	Complete initial draft of opposition to Motion for Protective Order and Cross-Motion to Compel (2.2); e-mail to J. Seery, J. Pomerantz, G. Demo, H. Winograd re: draft opposition to Motion for	4.20	1395.00	$5,859.00

				Hours	Rate	Amount
			Protective Order and Cross-Motion to Compel (0.1); work on opposition to Motion to Withdraw POC (1.9).			
08/27/2022	GVD	MFCO	Review draft objection to motion to quash	0.20	1095.00	$219.00
08/27/2022	HRW	MFCO	Review email from J. Morris re: objection to HCRE motion for protective order (0.1).	0.10	750.00	$75.00
08/28/2022	JAM	MFCO	Review/digest BH Equities deposition transcript (2.4); continued work on objection to Motion to Withdraw POC (1.4).	3.80	1395.00	$5,301.00
08/29/2022	JNP	MFCO	Conference with John A. Morris regarding strategy issues.	0.10	1445.00	$144.50
08/29/2022	JNP	MFCO	Conference with J. Seery and John A. Morris regarding strategy issues.	0.10	1445.00	$144.50
08/29/2022	JNP	MFCO	Review and comment to opposition to motion for a protective order.	0.30	1445.00	$433.50
08/29/2022	JAM	MFCO	Tel c. w/ J. Seery re: status/strategy for addressing Motion to Withdraw POC and depositions (0.3); continued work on motion papers (2.6); tel c. w/ B. Gameros re: status of hearing (0.1); tel c. w/ J. Seery re: Gameros call and related matters (0.2); tel c. w/ J. Pomerantz re: strategy issues (0.1); tel c. w/ J. Seery, J. Pomerantz re: strategy (0.1); e-mails to J. Seery, D. Klos, J. Pomerantz re: revised versions of papers (0.2); e-mail to Z. Annable re: projects in connection with MFCO motion practice (0.2); tel c. w/ J. Kroop re: legal research concerning motions to withdraw contested proofs of claim (0.2).	4.00	1395.00	$5,580.00
08/29/2022	HRW	MFCO	Review objection to HCRE motion for protective order (0.8).	0.80	750.00	$600.00
08/29/2022	HRW	MFCO	Research re: objection to HCRE motion for protective order (1.8).	1.80	750.00	$1,350.00
08/29/2022	HRW	MFCO	Review emails from J. Morris re: HCRE motion for protective order (0.3).	0.30	750.00	$225.00
08/29/2022	HRW	MFCO	Review email from B. Gameros re: cross motion to compel (0.1).	0.10	750.00	$75.00
08/29/2022	HRW	MFCO	Review email from J. Morris re: cross motion to compel (0.1).	0.10	750.00	$75.00
08/29/2022	JAK	MFCO	Confer with John Morris regarding research pertaining to objection to withdrawal of HCRE claim (0.4); begin research and analysis of background materials regarding same (2.3).	2.70	1195.00	$3,226.50
08/30/2022	JAM	MFCO	Continued work on opposition papers (1.7); tel c. w/ J. Kroop re: legal research on Rule 3006 (0.4).	2.10	1395.00	$2,929.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 41
Invoice 130890
August 31, 2022

				Hours	Rate	Amount
08/30/2022	JAK	MFCO	Confer with John Morris regarding strategic arguments and issues for opposition to motion to withdraw claim (0.4); extensive research and analysis of case law pertinent to legal arguments for opposition to motion to withdraw claim (5.8); drafting of legal arguments section of opposition (1.9); email to John Morris regarding same (0.1).	8.20	1195.00	$9,799.00
08/31/2022	JAM	MFCO	Continued work on objection to Motion to Withdraw POC and objection to Motion for Protection/Cross-Motion (1.8).	1.80	1395.00	$2,511.00
08/31/2022	GVD	MFCO	Review research re FRBP 3006	0.20	1095.00	$219.00
08/31/2022	JAK	MFCO	Review and revise John Morris's revisions to legal argument insert for opposition (2.5); additional review and analysis of cases in support (1.5); emails to John Morris regarding same (0.3); telephone call with John Morris regarding strategies and arguments for opposition (0.1).	4.40	1195.00	$5,258.00
				239.80		**$245,874.00**

[redacted]

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
7/30/2022	LSC	MFCO	Continued preparation for M. Patrick deposition and correspondence with H. Winograd regarding the same.	1.60	$495.00	$792.00
8/1/2022	JAM	MFCO	Tel c. w/ H Winograd re: preparation for Patrick deposition (0.7); tel c. w/ H. Winograd re: Patrick deposition (0.2); e-mails to counsel, L. Lambert re: Patrick deposition (0.1); e-mails w/ J. Seery, HCRE counsel re: Rule 30(b)(6) deposition (0.1); review documents (3.9); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: Broaddus e-mail to accountants (0.4); e-mail to J. Seery, D. Klos, H. Winograd re: SEM and HCMLP schedules (0.2); tel c. w/ H. Winograd re: Patrick deposition (0.1).	5.70	$1,395.00	$7,951.50
8/1/2022	LSC	MFCO	Continued research and review of discovery documents (1.6) and preparation of exhibits in connection with M. Patrick deposition (.6); transmit production documents to parties at the request of J. Morris (.3).	2.50	$495.00	$1,237.50
8/1/2022	HRW	MFCO	Refine outline and continue preparing for deposition of Mark Patrick (10.0).	10.00	$750.00	$7,500.00
8/1/2022	HRW	MFCO	Call with J. Morris re: preparation for Mark Patrick deposition (0.7).	0.70	$750.00	$525.00
8/1/2022	HRW	MFCO	Call with J. Morris and D. Klos re: preparation for Mark Patrick deposition (0.5).	0.50	$750.00	$375.00
8/1/2022	HRW	MFCO	Review emails from J. Morris re: HCRE 30(b)(6) deposition (0.2).	0.20	$750.00	$150.00
8/1/2022	HRW	MFCO	Review email from J. Seery re: HCRE 30(b)(6) deposition (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Communicate with L. Canty re: exhibits for deposition of Mark Patrick (0.3).	0.30	$750.00	$225.00
8/1/2022	HRW	MFCO	Review emails from D. Klos and T. Cournoyer re: operative documents (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Email D. Klos and T. Cournoyer re: operative documents (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from B. Gameros re: HCRE 30(b)(6) deposition (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from B. Gameros re: Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from L. Canty re: Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from J. Morris re: HCRE productions (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from D. Klos re: HCRE productions (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review emails from J. Morris re: SEM as estate assets (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review email from D. Klos re: SEM as estate assets (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review emails from Z. Annable re: Objection to HCRE Motion for Protective Order and Cross-Motion to Compel (0.2).	0.20	$750.00	$150.00
8/1/2022	HRW	MFCO	Review proposed order on motion for expedited hearing (0.2).	0.20	$750.00	$150.00
8/1/2022	HRW	MFCO	Email Z. Annable and J. Morris re: proposed order on motion for expedited hearing (0.1).	0.10	$750.00	$75.00
8/1/2022	HRW	MFCO	Review emails from J. Morris re: proposed order on motion for expedited hearing (0.2).	0.20	$750.00	$150.00
8/2/2022	JNP	MFCO	Conference with John A. Morris regarding depositions	0.10	$1,445.00	$144.50

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/2/2022	JAM	MFCO	Tel c.. w/ H. Winograd re: Patrick deposition (0.1); Patrick deposition (including calls w/ H. Winograd during breaks) (2.5); tel c. w/ H. Winograd re: Patrick deposition (0.2); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: Patrick deposition (0.2).	3.00	$1,395.00	$4,185.00
8/2/2022	LSC	MFCO	Prepare for and assist at deposition of Mark Patrick.	3.40	$495.00	$1,683.00
8/2/2022	HRW	MFCO	Participate in deposition of Mark Patrick (2.5).	2.50	$750.00	$1,875.00
8/2/2022	HRW	MFCO	Prepare for deposition of Mark Patrick (1.5).	1.50	$750.00	$1,125.00
8/2/2022	HRW	MFCO	Review transcript of Mark Patrick deposition (0.8).	0.80	$750.00	$600.00
8/2/2022	HRW	MFCO	Review email from D. Dandeneau re: Mark Patrick deposition (0.1).	0.10	$750.00	$75.00
8/2/2022	HRW	MFCO	Call with J. Morris re: Mark Patrick deposition summary (0.2).	0.20	$750.00	$150.00
8/2/2022	HRW	MFCO	Review email from J. Morris re: Mark Patrick deposition summary (0.2).	0.20	$750.00	$150.00
8/2/2022	HRW	MFCO	Email from J. Morris re: Mark Patrick deposition summary (0.1).	0.10	$750.00	$75.00
8/2/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities deposition (0.1).	0.10	$750.00	$75.00
8/2/2022	HRW	MFCO	Review email from J. Morris re: BH Equities deposition (0.1).	0.10	$750.00	$75.00
8/3/2022	JNP	MFCO	Conference with John A. Morris regarding expert reports, scheduling and strategy.	0.40	$1,445.00	$578.00
8/3/2022	JAM	MFCO	Review documents (5.4); tel c. w/ B. Gameros re: expert discovery (0.2); tel c. w/ J. Pomerantz re: expert discovery (0.3); tel c. w/ J. Seery re: expert discovery (0.4); e-mail to B. Gameros re: expert discovery (0.5).	6.80	$1,395.00	$9,486.00
8/3/2022	LSC	MFCO	Prepare for BH Equities deposition, including retrieval exhibits in connection therewith.	2.90	$495.00	$1,435.50
8/3/2022	HRW	MFCO	Review email from L. Canty re: HCRE hot documents (0.1).	0.10	$750.00	$75.00
8/3/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities deposition (0.1).	0.10	$750.00	$75.00
8/3/2022	HRW	MFCO	Review emails from J. Morris re: BH Equities deposition (0.2).	0.20	$750.00	$150.00
8/3/2022	HRW	MFCO	Review emails from J. Morris re: response to HCRE to extend expert discovery deadline (0.3).	0.30	$750.00	$225.00
8/3/2022	HRW	MFCO	Email J. Morris re: response to HCRE to extend expert discovery deadline (0.2).	0.20	$750.00	$150.00
8/4/2022	JAM	MFCO	Prepare for BH Equities subpoena (4.5); BH Equities deposition (3.4); tel c. w/ H. Winograd re: BH Equities deposition (0.1); e-mail to counsel re: Barker Viggato deposition (0.1); tel c. w/ J. Seery, G. Demo re: BH Equities deposition and related matters (0.3); e-mail to D. Dandeneau re: Patrick deposition transcript (0.1).	8.50	$1,395.00	$11,857.50
8/4/2022	LSC	MFCO	Prepare for (1.5) and assist at (2.4) deposition of BH Equities; upload exhibits to Court Reporter (.1).	4.00	$495.00	$1,980.00
8/4/2022	GVD	MFCO	Conference with J. Morris, J. Seery, and D. Klos re BH Equities deposition	0.30	$1,095.00	$328.50
8/4/2022	HRW	MFCO	Attend deposition of BH Equities (2.5).	2.50	$750.00	$1,875.00
8/4/2022	HRW	MFCO	Review materials in preparation for deposition BH Equities (0.5).	0.50	$750.00	$375.00
8/4/2022	HRW	MFCO	Review email from W. Carvell re: response to HCRE to extend expert discovery deadline (0.1).	0.10	$750.00	$75.00
8/4/2022	HRW	MFCO	Review email from J. Morris re: Mark Patrick deposition transcript (0.1).	0.10	$750.00	$75.00

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/5/2022	JAM	MFCO	Review/revise proposed Second Amendment to Scheduling Order (1.1); e-mail to W. Carvell, W. Gameros, H. Winograd, Z. Annable re: proposed Second Amendment to Scheduling Order (0.2); prepare for Barker Viggato deposition (including numerous communications w/ L. Canty, H. Winograd re: exhibits) (3.4); Barker Viggato deposition (2.7); tel c. w/ J. Seery. G. Demo re: Barker Viggato deposition (0.2); e-mail to C. Doherty re: BH Equities deposition transcript (0.1).	7.70	$1,395.00	$10,741.50
8/5/2022	LSC	MFCO	Prepare for (1.8) and assist at deposition of Barker Viggato (2.5)	4.30	$495.00	$2,128.50
8/5/2022	HRW	MFCO	Attend Barker Viggato deposition (2.6).	2.60	$750.00	$1,950.00
8/5/2022	HRW	MFCO	Review email from J. Morris re: transcript of Barker Viggato deposition (0.1).	0.10	$750.00	$75.00
8/5/2022	HRW	MFCO	Review email from J. Morris re: Proposed Amended Scheduling Order for HCRE Claim Litigation (0.1).	0.10	$750.00	$75.00
8/5/2022	HRW	MFCO	Review email from Z. Annable re: Proposed Amended Scheduling Order for HCRE Claim Litigation (0.1).	0.10	$750.00	$75.00
8/5/2022	HRW	MFCO	Review email from B. Gameros re: Highland 30(b)(6) deposition notice (0.1).	0.10	$750.00	$75.00
8/6/2022	JAM	MFCO	E-mail to M. Roberts, H. Winograd re: Barker Viggato transcript (0.1).	0.10	$1,395.00	$139.50
8/9/2022	JAM	MFCO	Review documents and send e-mails to J. Seery, D. Klos, K. Hendrix, H. Winograd re: preparation for Seery deposition (2.1); tel c. w/ D. Klos re: facts (0.2); tel c. w/ J. Seery, D. Klos, K. Hendrix, H. Winograd re: preparation for Seery deposition (2.4); e-mails w/ HCRE's counsel re: late and substantial production of documents (0.3); tel c. w/ J. Pomerantz re: status (0.1); e-mails w/ court, Z. Annable re: setting for anticipated motion to strike (0.2).	5.30	$1,395.00	$7,393.50
8/9/2022	GVD	MFCO	Conference with J. Morris and H. Winograd re HCRE claim	0.10	$1,095.00	$109.50
8/9/2022	HRW	MFCO	Call with J. Morris, J. Seery, D. Klos, K. Hendrix re: deposition prep (2.3).	2.30	$750.00	$1,725.00
8/9/2022	HRW	MFCO	Email L. Canty re: HCRE discovery (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Review HCRE discovery requests (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Email J. Seery, J. Morris, D. Klos, K. Hendrix re: deposition prep (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Email L. Canty re: Dondero deposition (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Email J. Morris re: deposition prep (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE production (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Review email from W. Carvell re: HCRE production (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Review emails from J. Morris re: HCRE depositions and production (0.2).	0.20	$750.00	$150.00
8/9/2022	HRW	MFCO	Review email from J. Morris re: HCRE facts (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Review email from J. Morris re: Amended and Restate Agreement, K-1s, and broad time line (0.1).	0.10	$750.00	$75.00
8/9/2022	HRW	MFCO	Review email from J. Morris re: Prep for Rule 30(b)(6) Deposition on HCRE (0.1).	0.10	$750.00	$75.00
8/10/2022	JNP	MFCO	Conference with John A. Morris regarding deposition and tax related issues.	0.30	$1,445.00	$433.50
8/10/2022	JNP	MFCO	Emails with D. Agler and John A. Morris scheduling call to discuss tax issues.	0.10	$1,445.00	$144.50
8/10/2022	JNP	MFCO	Conference with Gregory V. Demo regarding tax counsel.	0.10	$1,445.00	$144.50

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/10/2022	JAM	MFCO	Prepare for Seery deposition (0.4); tel c. w/ H. Winograd re: HCRE's late production of documents (0.3); e-mails w/ B. Gameros re: HCRE late production of documents (0.6); Seery deposition (1.2); tel c. w/ J. Seery, D. Klos re: status, strategy (0.3); tel c. w/ G. Demo re: status, strategy (0.5); tel c. w/ J. Pomerantz re: status, strategy (0.3); tel c. w/H. Winograd re: Seery deposition and follow-up (0.3); tel c. w/ J. Seery re: tax expertise (0.2); e-mails to D. Agler re: background (0.3); tel c. w/ J. Pomerantz, D. Agler re: background (0.8).	5.20	$1,395.00	$7,254.00
8/10/2022	LSC	MFCO	Retrieve, upload, conduct searches, and review document production received from NREP.	3.90	$495.00	$1,930.50
8/10/2022	GVD	MFCO	Conference with J. Pomerantz re tax issues and follow up re same	0.30	$1,095.00	$328.50
8/10/2022	GVD	MFCO	Conference with J. Morris re result of Seery deposition (0.3); follow up research re same (0.2)	0.50	$1,095.00	$547.50
8/10/2022	HRW	MFCO	Call with J. Morris re: HCRE production (0.3).	0.30	$750.00	$225.00
8/10/2022	HRW	MFCO	Call with J. Morris re: HCRE deposition of Seery (0.3).	0.30	$750.00	$225.00
8/10/2022	HRW	MFCO	Email L. Canty re: HCRE production (0.2).	0.20	$750.00	$150.00
8/10/2022	HRW	MFCO	Review email from L. Canty re: HCRE production (0.2).	0.20	$750.00	$150.00
8/10/2022	HRW	MFCO	Email J. Morris re: HCRE hot documents (0.1).	0.10	$750.00	$75.00
8/10/2022	HRW	MFCO	Email J. Seery re: operative loan documents (0.1).	0.10	$750.00	$75.00
8/10/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE production (0.1).	0.10	$750.00	$75.00
8/10/2022	HRW	MFCO	Review emails from J. Morris re: HCRE production (0.2).	0.20	$750.00	$150.00
8/10/2022	HRW	MFCO	Review email from J. Seery re: operative loan documents (0.1).	0.10	$750.00	$75.00
8/10/2022	HRW	MFCO	Review email from J. Morris re: operative loan documents (0.1).	0.10	$750.00	$75.00
8/11/2022	JNP	MFCO	Conference with D. Agler and John A. Morris regarding tax issues	0.50	$1,445.00	$722.50
8/11/2022	JAM	MFCO	Tel c. w/ J. Pomerantz, D. Agler re: tax issues (0.5)	0.50	$1,395.00	$697.50
8/12/2022	JNP	MFCO	Conference with D. Agler and John A. Morris regarding tax aspects of litigation.	1.70	$1,445.00	$2,456.50
8/12/2022	JNP	MFCO	Conference with Gregory V. Demo and John A. Morris regarding request to withdraw proof of claim and response.	0.30	$1,445.00	$433.50
8/12/2022	JNP	MFCO	Review motion to strike and conference with John A. Morris regarding same.	0.30	$1,445.00	$433.50
8/12/2022	JAM	MFCO	Tel c. w/ J. Pomerantz, G. Demo re: strategy (0.3); tel c. w/ J. Seery re: strategy (0.2); tel c. w/ J. Pomerantz, D. Agler re: taxes issues (1.6); tel c. w/J. Seery re: withdrawal of claim (0.2); tel c. w/ J. Seery re: withdrawal of claim (0.1); analysis of issues pertaining to withdrawal of POC (0.4)	2.80	$1,395.00	$3,906.00
8/12/2022	GVD	MFCO	Conference with J. Morris and J. Pomerantz re HCRE withdrawal of claim	0.30	$1,095.00	$328.50
8/12/2022	GVD	MFCO	Conference with J. Morris and J. Seery re HCRE proof of claim issues (0.2); conference with J. Seery re additional HCRE issues (0.3)	0.50	$1,095.00	$547.50
8/12/2022	HRW	MFCO	Communicate with L. Canty re: HCRE supplemental production (0.2).	0.20	$750.00	$150.00
8/12/2022	HRW	MFCO	Review HCRE supplemental production (1.5).	1.50	$750.00	$1,125.00
8/12/2022	HRW	MFCO	Email J. Morris re: HCRE supplemental production (0.2).	0.20	$750.00	$150.00
8/12/2022	HRW	MFCO	Review emails from J. Morris re: HCRE supplemental production (0.1).	0.10	$750.00	$75.00

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/12/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE withdrawal of POC (0.1).	0.10	$750.00	$75.00
8/12/2022	HRW	MFCO	Review emails from J. Morris re: HCRE withdrawal of POC (0.1).	0.10	$750.00	$75.00
8/13/2022	JAM	MFCO	Tel c. w/ G. Demo, H. Winograd re: opposition to motion to withdraw claim (0.3).	0.30	$1,395.00	$418.50
8/13/2022	GVD	MFCO	Conference with J. Morris and H. Winograd re issues re withdrawal of HCRE claim	0.30	$1,095.00	$328.50
8/13/2022	HRW	MFCO	Call with G. Demo and J. Morris re: HCRE withdrawal of POC (0.3).	0.30	$750.00	$225.00
8/14/2022	JNP	MFCO	Conference with J. Seery, D. Klos, Gregory V. Demo, John A. Morris and Hayley R. Winograd regarding motion to withdraw claim and proposed response (2x).	0.80	$1,445.00	$1,156.00
8/14/2022	JNP	MFCO	Conference with John A. Morris, Gregory V. Demo and D. Agler regarding tax issues relating to MFCO and withdrawal.	1.50	$1,445.00	$2,167.50
8/14/2022	JAM	MFCO	Tel c. w/ J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: strategy (0.4); tel c. w/ D. Klos re: strategy (0.2); tel c. w/ D. Agler, J. Pomerantz, G. Demo re: tax issues (0.8)	1.40	$1,395.00	$1,953.00
8/14/2022	GVD	MFCO	Conference with J. Pomerantz, J. Seery, and D. Klos re HCRE response (0.3); conference with J. Morris, J. Pomerantz, J. Seery, and D. Klos re HCRE response (0.4)	0.70	$1,095.00	$766.50
8/14/2022	GVD	MFCO	Conference with D. Alger and PSZJ working group re tax issues	1.40	$1,095.00	$1,533.00
8/14/2022	HRW	MFCO	Call with J. Seery, D. Klos, G. Demo, J. Morris, J. Pomerantz re: HCRE withdrawal of POC (0.3).	0.30	$750.00	$225.00
8/15/2022	JNP	MFCO	Conference with Gregory V. Demo regarding tax issues.	0.10	$1,445.00	$144.50
8/15/2022	JAM	MFCO	Tel c. w/ G. Demo re: tax issues, status (0.2); e-mails w/ A. Agler, J. Pomerantz, G. Demo re: background, facts (0.3); tel c. w/ B. Gameros re: status of motion to withdraw POC (0.1); tel c. w/ B. Gameros re: status of depositions (0.1)	0.70	$1,395.00	$976.50
8/15/2022	GVD	MFCO	Conference with J. Morris re open tax issues	0.20	$1,095.00	$219.00
8/15/2022	GVD	MFCO	Multiple correspondence with D. Agler re tax issues	0.20	$1,095.00	$219.00
8/15/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE withdrawal of POC (0.1).	0.10	$750.00	$75.00
8/16/2022	JNP	MFCO	Conference with John A. Morris, Gregory V. Demo and D. Agler regarding tax issue.	1.00	$1,445.00	$1,445.00
8/16/2022	JNP	MFCO	Research regarding tax issues.	0.10	$1,445.00	$144.50
8/16/2022	JNP	MFCO	Conference with Gregory V. Demo and Joshua M. Fried regarding research related tax issues.	0.50	$1,445.00	$722.50
8/16/2022	JAM	MFCO	Tel c. w/ G. Demo re: status, strategy (0.4); tel c. w/H. Winograd re: deposition notice and subpoena for Motion to Withdraw POC and related matters (0.3); tel c. w/ G. Demo re: analysis of LLC agreement (0.3); tel c. w/ J. Pomerantz, G. Demo, D. Agler re: tax issues for conveyance (1.0); review/revise Subpoenas, Notices, and Rule 30(b)(6) Notice for Motion to Withdraw POC (0.4).	2.40	$1,395.00	$3,348.00
8/16/2022	LSC	MFCO	Preparation of deposition notices and subpoenas in connection with motion to withdraw HCRE claim and confer and correspond with H. Winograd regarding the same (1.2); cancel depositions regarding contested HCRE claim (.1).	1.30	$495.00	$643.50
8/16/2022	GVD	MFCO	Multiple conferences with J. Morris re status of tax issues re HCRE	0.60	$1,095.00	$657.00

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/16/2022	GVD	MFCO	Review SE Multi Family LLC agreement and draft email summarizing same	1.30	$1,095.00	$1,423.50
8/16/2022	GVD	MFCO	Conference with D. Alger and PSZJ working group re HCRE tax issues	1.00	$1,095.00	$1,095.00
8/16/2022	GVD	MFCO	Conference with J. Pomerantz and J. Fried re tax research issues	0.40	$1,095.00	$438.00
8/16/2022	HRW	MFCO	Review and edit deposition subpoenas (0.8).	0.80	$750.00	$600.00
8/16/2022	HRW	MFCO	Review and edit notices of subpoenas (0.3).	0.30	$750.00	$225.00
8/16/2022	HRW	MFCO	Review and edit 30(b)(6) deposition notice (0.5).	0.50	$750.00	$375.00
8/16/2022	HRW	MFCO	Email L. Canty re: deposition subpoenas (0.2).	0.30	$750.00	$225.00
8/16/2022	HRW	MFCO	Call with Email L. Canty re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
8/16/2022	HRW	MFCO	Review emails from L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
8/16/2022	HRW	MFCO	Review emails from J. Morris re: deposition scheduling (0.1).	0.10	$750.00	$75.00
8/16/2022	HRW	MFCO	Email J. Morris re: deposition subpoenas (0.2).	0.20	$750.00	$150.00
8/16/2022	HRW	MFCO	Review emails from Z. Annable re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
8/16/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.2).	0.20	$750.00	$150.00
8/16/2022	HRW	MFCO	Review emails from G. Demo re: AR Agreement (0.3).	0.30	$750.00	$225.00
8/16/2022	HRW	MFCO	Review email from L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
8/16/2022	HRW	MFCO	Call with J. Morris re: deposition subpoenas (0.2).	0.20	$750.00	$150.00
8/17/2022	JNP	MFCO	Conference with John A. Morris regarding tax issues.	0.20	$1,445.00	$289.00
8/17/2022	JNP	MFCO	Conference with John A. Morris and Gregory V. Demo regarding tax issues.	0.10	$1,445.00	$144.50
8/17/2022	JNP	MFCO	Review research regarding applicability of 3173 and 960 to liquidating trust.	0.10	$1,445.00	$144.50
8/17/2022	JNP	MFCO	Conference with Gregory V. Demo, John A. Morris and D. Agler regarding tax issues.	0.80	$1,445.00	$1,156.00
8/17/2022	JMF	MFCO	Review HCRE motion to withdraw claim and stipulation regarding issues re same.	0.60	$1,145.00	$687.00
8/17/2022	JMF	MFCO	Research re 3717 and IRS issues re HCRE.	6.50	$1,145.00	$7,442.50
8/17/2022	JAM	MFCO	Tel c. w/ D. Agler re: tax issues (0.1); review/revise Agler list of tax questions for Klos/Hendrix (0.4); e-mail to D. Agler, J. Pomerantz, G, Demo re: tax questions for Klos/Hendrix (0.3); e-mail to D. Klos, K. Hendrix re: tax questions to be discussed with Agler (0.1); e-mail to D. Klos, K. Hendrix re: Agler document requests (0.1); tel c. w/ D. Klos, K. Hendrix, D. Agler, G. Demo re: tax issues/diligence (1.1); tel c. w/ J. Pomerantz, G. Demo, D. Agler re: potential transaction (0.8).	2.90	$1,395.00	$4,045.50
8/17/2022	GVD	MFCO	Conference with J. Pomerantz and J. Morris re HCRE issues	0.10	$1,095.00	$109.50
8/17/2022	GVD	MFCO	Review research from J. Fried re tax issues	0.60	$1,095.00	$657.00
8/17/2022	GVD	MFCO	Conference with PSZJ working group, J. Morris, and D. Algers re potential tax issues re SEMF	1.10	$1,095.00	$1,204.50
8/17/2022	GVD	MFCO	Internal conference re potential issues in tax structuring	0.80	$1,095.00	$876.00
8/17/2022	HRW	MFCO	Call with J. Morris re: response to HCRE withdrawal motion (0.1).	0.10	$750.00	$75.00
8/17/2022	HRW	MFCO	Research re: response to HCRE withdrawal motion (6.0).	6.00	$750.00	$4,500.00
8/17/2022	HRW	MFCO	Review email from J. Morris re: Immunity Issue for Statements by Lawyers (0.1).	0.10	$750.00	$75.00
8/17/2022	HRW	MFCO	Review email from J. Morris re: deposition subpoenas (0.1).	0.10	$750.00	$75.00

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/18/2022	JNP	MFCO	Review emails from Gregory V. Demo regarding executory contract research regarding operating agreement.	0.10	$1,445.00	$144.50
8/18/2022	JNP	MFCO	Conference with Gregory V. Demo, John A. Morris and J. Seery regarding tax implications and strategy.	0.80	$1,445.00	$1,156.00
8/18/2022	JNP	MFCO	Conference with Gregory V. Demo regarding D. Agler tax advice.	0.10	$1,445.00	$144.50
8/18/2022	JNP	MFCO	Conference with D. Agler regarding tax advice.	0.10	$1,445.00	$144.50
8/18/2022	JNP	MFCO	Conference with. Gregory V. Demo and John A. Morris regarding strategy issues.	0.10	$1,445.00	$144.50
8/18/2022	JMF	MFCO	Review cases re 3713 and potential IRS assertions re claims.	2.80	$1,145.00	$3,206.00
8/18/2022	JAM	MFCO	Tel c. w/ J. Seery, J. Pomerantz, G. Demo re: tax issues and related issues (0.8); review docket and begin preparing Exhibit list for opposition to Motion to Withdraw POC (1.6); e-mail to H. Winograd, L. Canty re: Exhibit list for opposition to Motion to Withdraw POC (0.5).	2.90	$1,395.00	$4,045.50
8/18/2022	LSC	MFCO	Schedule Court Reporters for upcoming depositions and correspondence regarding status..	0.30	$495.00	$148.50
8/18/2022	LSC	MFCO	Begin preparation of exhibit list and exhibits in connection with hearing on Motion to Withdraw HCRE claim.	4.60	$495.00	$2,277.00
8/18/2022	GVD	MFCO	Research issues re LLC agreements and executory contracts	1.40	$1,095.00	$1,533.00
8/18/2022	GVD	MFCO	Review SEMF LLC agreement and summarize issues re same	0.30	$1,095.00	$328.50
8/18/2022	GVD	MFCO	Conference with J. Seery and PSZJ working group re HCRE issues	0.80	$1,095.00	$876.00
8/18/2022	GVD	MFCO	Conference with J. Pomerantz and J. Morris re strategy issues re HCRE	0.10	$1,095.00	$109.50
8/18/2022	HRW	MFCO	Research and draft memo re: HCRE withdrawal of POC (6.5).	6.50	$750.00	$4,875.00
8/18/2022	HRW	MFCO	Review email from J. Morris re: opposition to HCRE withdrawal of POC (0.2).	0.20	$750.00	$150.00
8/18/2022	HRW	MFCO	Draft opposition to HCRE withdrawal of POC (0.6).	0.60	$750.00	$450.00
8/18/2022	HRW	MFCO	Email J. Morris re: opposition to HCRE withdrawal of POC (0.3).	0.30	$750.00	$225.00
8/18/2022	HRW	MFCO	Call with J. Morris re: exhibit list (0.1).	0.10	$750.00	$75.00
8/18/2022	HRW	MFCO	Email L. Canty re: exhibit list (0.1).	0.10	$750.00	$75.00
8/18/2022	HRW	MFCO	Review email from J. Morris re: exhibit list (0.1).	0.10	$750.00	$75.00
8/18/2022	HRW	MFCO	Review email from L. Canty re: exhibit list (0.1).	0.10	$750.00	$75.00
8/18/2022	HRW	MFCO	Review emails from L. Canty re: HCRE deposition scheduling (0.1).	0.10	$750.00	$75.00
8/18/2022	HRW	MFCO	Review email from J. Morris re: HCRE deposition scheduling (0.1).	0.10	$750.00	$75.00
8/19/2022	JAM	MFCO	Work on objection to Motion to Withdraw POC (1.7).	1.70	$1,395.00	$2,371.50
8/19/2022	LSC	MFCO	Continued preparation of exhibit list and exhibits in connection with hearing on Motion to Withdraw HCRE claim, including review and redaction of time detail (10.1); prepare chart regarding same (1.1).	11.20	$495.00	$5,544.00
8/19/2022	GVD	MFCO	Correspondence re ability to withdraw claim with prejudice	0.10	$1,095.00	$109.50
8/20/2022	LSC	MFCO	Continued review and redaction of time detail and update chart with respect to same.	6.40	$495.00	$3,168.00

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/21/2022	LSC	MFCO	Continued preparation of exhibit list and exhibits in connection with hearing on Motion to Withdraw HCRE claim and draft correspondence to J. Morris regarding the same.	1.00	$495.00	$495.00
8/21/2022	HRW	MFCO	Review email from L. Canty re: W&E list for opposition to HCRE motion to withdraw (0.1).	0.10	$750.00	$75.00
8/22/2022	JAM	MFCO	Continued work on objection to motion to withdraw proof of claim (1.2).	1.20	$1,395.00	$1,674.00
8/22/2022	HRW	MFCO	Review email from J. Morris re: objection to motion to withdraw (0.1).	0.10	$750.00	$75.00
8/23/2022	JNP	MFCO	Review motion to quash.	0.10	$1,445.00	$144.50
8/23/2022	JMF	MFCO	Review motion to quash and issues re HCRE claims withdrawal.	0.70	$1,145.00	$801.50
8/23/2022	JMF	MFCO	Review IRS claims and cases re 3713 research.	1.50	$1,145.00	$1,717.50
8/24/2022	JNP	MFCO	Telephone conference with John A. Morris regarding: HCRE motion for protective order and related matters.	0.20	$1,445.00	$289.00
8/24/2022	JAM	MFCO	Tel c. w/ J. Pomerantz re: HCRE motion for protective order and related matters (0.2); review Motion for Protective Order (0.3); begin drafting objection to Motion for Protective Order and Cross-Motion to Compel (1.7).	2.20	$1,395.00	$3,069.00
8/25/2022	JMF	MFCO	Review IRS and veil piercing research in 5th circuit.	1.80	$1,145.00	$2,061.00
8/25/2022	JAM	MFCO	Continued work on opposition to Motion for Protective Order and Cross-Motion to Enforce Subpoenas (2.7); e-mails w/ B. Gameros, H. Winograd re: cross-motion to compel and September 12 hearing (0.3).	3.00	$1,395.00	$4,185.00
8/26/2022	JAM	MFCO	Continued work on opposition papers to Motion to Withdraw and Motion for Protective Order (2.3); communications w/ J. Seery re: HCRE matters and motion status (0.3).	2.60	$1,395.00	$3,627.00
8/27/2022	JAM	MFCO	Complete initial draft of opposition to Motion for Protective Order and Cross-Motion to Compel (2.2); e-mail to J. Seery, J. Pomerantz, G. Demo, H. Winograd re: draft opposition to Motion for Protective Order and Cross-Motion to Compel (0.1); work on opposition to Motion to Withdraw POC (1.9).	4.20	$1,395.00	$5,859.00
8/27/2022	GVD	MFCO	Review draft objection to motion to quash	0.20	$1,095.00	$219.00
8/27/2022	HRW	MFCO	Review email from J. Morris re: objection to HCRE motion for protective order (0.1).	0.10	$750.00	$75.00
8/28/2022	JAM	MFCO	Review/digest BH Equities deposition transcript (2.4); continued work on objection to Motion to Withdraw POC (1.4).	3.80	$1,395.00	$5,301.00
8/29/2022	JNP	MFCO	Conference with John A. Morris regarding strategy issues.	0.10	$1,445.00	$144.50
8/29/2022	JNP	MFCO	Conference with J. Seery and John A. Morris regarding strategy issues.	0.10	$1,445.00	$144.50
8/29/2022	JNP	MFCO	Review and comment to opposition to motion for a protective order.	0.30	$1,445.00	$433.50

AUGUST 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
8/29/2022	JAM	MFCO	Tel c. w/ J. Seery re: status/strategy for addressing Motion to Withdraw POC and depositions (0.3); continued work on motion papers (2.6); tel c. w/ B. Gameros re: status of hearing (0.1); tel c. w/ J. Seery re: Gameros call and related matters (0.2); tel c. w/ J. Pomerantz re: strategy issues (0.1); tel c. w/ J. Seery, J. Pomerantz re: strategy (0.1); e-mails to J. Seery, D. Klos, J. Pomerantz re: revised versions of papers (0.2); e-mail to Z. Annable re: projects in connection with MFCO motion practice (0.2); tel c. w/ J. Kroop re: legal research concerning motions to withdraw contested proofs of claim (0.2).	4.00	$1,395.00	$5,580.00
8/29/2022	HRW	MFCO	Review objection to HCRE motion for protective order (0.8).	0.80	$750.00	$600.00
8/29/2022	HRW	MFCO	Research re: objection to HCRE motion for protective order (1.8).	1.80	$750.00	$1,350.00
8/29/2022	HRW	MFCO	Review emails from J. Morris re: HCRE motion for protective order (0.3).	0.30	$750.00	$225.00
8/29/2022	HRW	MFCO	Review email from B. Gameros re: cross motion to compel (0.1).	0.10	$750.00	$75.00
8/29/2022	HRW	MFCO	Review email from J. Morris re: cross motion to compel (0.1).	0.10	$750.00	$75.00
8/29/2022	JAK	MFCO	Confer with John Morris regarding research pertaining to objection to withdrawal of HCRE claim (0.4); begin research and analysis of background materials regarding same (2.3).	2.70	$1,195.00	$3,226.50
8/30/2022	JAM	MFCO	Continued work on opposition papers (1.7); tel c. w/J. Kroop re: legal research on Rule 3006 (0.4).	2.10	$1,395.00	$2,929.50
8/30/2022	JAK	MFCO	Confer with John Morris regarding strategic arguments and issues for opposition to motion to withdraw claim (0.4); extensive research and analysis of case law pertinent to legal arguments for opposition to motion to withdraw claim (5.8); drafting of legal arguments section of opposition (1.9); email to John Morris regarding same (0.1).	8.20	$1,195.00	$9,799.00
8/31/2022	JAM	MFCO	Continued work on objection to Motion to Withdraw POC and objection to Motion for Protection/Cross-Motion (1.8).	1.80	$1,395.00	$2,511.00
8/31/2022	GVD	MFCO	Review research re FRBP 3006	0.20	$1,095.00	$219.00
8/31/2022	JAK	MFCO	Review and revise John Morris's revisions to legal argument insert for opposition (2.5); additional review and analysis of cases in support (1.5); emails to John Morris regarding same (0.3); telephone call with John Morris regarding strategies and arguments for opposition (0.1).	4.40	$1,195.00	$5,258.00
			TOTAL	**239.70**		**$245,799.00**

SEPTEMBER 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

September 30, 2022
Invoice 131065
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 09/30/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 131065
September 30, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]			
MFCO	Multi Family Obj to Claims	67.90	$76,136.50
[redacted]			

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 131065
September 30, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

09/01/2022	JAM	MFCO	Continued work on objection to Motion to Withdraw Proof of Claim (6.4); e-mail to P. Jeffries re: exhibits	8.70	1395.00	$12,136.50

				Hours	Rate	Amount
			for objection to Motion to Withdraw Proof of Claim (0.6); tel c. w/ J. Kroop re: draft objection to Motion to Withdraw Proof of Claim (0.2); revisions to Objection to Motion to Quash/Cross-Motion, JAM Declaration, Motion to Expedite, and proposed order (1.2); e-mails to H. Winograd, Z. Annable re: revised versions of Objection to Motion to Quash/Cross-Motion, JAM Declaration, Motion to Expedite, and proposed order (0.3).			
09/01/2022	HRW	MFCO	Review emails from Z. Annable re: Objection to HCRE Motion for Protective Order and Cross-Motion to Compel (0.2).	0.20	750.00	$150.00
09/01/2022	HRW	MFCO	Review proposed order on motion for expedited hearing (0.2).	0.20	750.00	$150.00
09/01/2022	HRW	MFCO	Email Z. Annable and J. Morris re: proposed order on motion for expedited hearing (0.1).	0.10	750.00	$75.00
09/01/2022	HRW	MFCO	Review emails from J. Morris re: proposed order on motion for expedited hearing (0.2).	0.20	750.00	$150.00
09/01/2022	JAK	MFCO	Extensive review and comment to objection to motion to withdraw claim (2.1); confer with John Morris regarding same (0.3).	2.40	1195.00	$2,868.00
09/02/2022	JNP	MFCO	Review opposition to motion to withdraw claim and emails regarding same.	0.30	1445.00	$433.50
09/02/2022	JAM	MFCO	Continued work with revisions to opposition to Motion to Withdraw and Motion for Protective Order/Cross-Motion (including work with exhibits, declarations, etc.) (8.8); tel c w/ H. Winograd re: HCRE filings (0.2); tel c. w/ J. Seery re: status of HCRE papers (0.1); e-mails w/ Z. Annable, H. Winograd re: HCRE papers and filings (0.5).	9.60	1395.00	$13,392.00
09/02/2022	GVD	MFCO	Review pleadings re motion to withdraw proof of claim (0.2); conference with J. Morris re same (0.2)	0.40	1095.00	$438.00
09/02/2022	HRW	MFCO	Review and edit objection to motion to quash and cross motion to compel and ancillary documents (4.0).	4.00	750.00	$3,000.00
09/02/2022	HRW	MFCO	Review and edit objection to motion to withdraw proof of claim (0.8).	0.80	750.00	$600.00
09/02/2022	HRW	MFCO	Email with Z. Annable re: filing of objection to motion to quash and cross motion to compel and all ancillary documents (0.3).	0.30	750.00	$225.00
09/02/2022	HRW	MFCO	Review emails from J. Morris re: filing of objection to motion to quash and cross motion to compel and all ancillary documents (0.3).	0.30	750.00	$225.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 131065
September 30, 2022

				Hours	Rate	Amount
09/02/2022	HRW	MFCO	Email J. Morris re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	750.00	$150.00
09/02/2022	HRW	MFCO	Email G. Demo re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	750.00	$150.00
09/02/2022	HRW	MFCO	Review email from G. Demo re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	750.00	$150.00
09/02/2022	HRW	MFCO	Review emails from Z. Annable re: filing of objection to motion to quash and cross motion to compel and all ancillary documents (0.3).	0.30	750.00	$225.00
09/02/2022	HRW	MFCO	Communicate with I. Soto re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	750.00	$150.00
09/04/2022	JAK	MFCO	Review of final versions of all documents filed in connection with motion to withdraw claim (1.1); emails with John Morris regarding same (0.3).	1.40	1195.00	$1,673.00
09/06/2022	JAM	MFCO	E-mails w/ L. Lambert, J. Seery, J. Pomerantz, G. Demo re: HCRE issues (0.2);	0.20	1395.00	$279.00
09/07/2022	HRW	MFCO	Review notice of hearing re: motion to compel (0.2).	0.20	750.00	$150.00
09/07/2022	HRW	MFCO	Email Z. Annable re: notice of hearing re: motion to compel (0.1).	0.10	750.00	$75.00
09/08/2022	HRW	MFCO	Review email from J. Morris re: W&E list for September 12 hearing (0.1).	0.10	750.00	$75.00
09/08/2022	HRW	MFCO	Review email from Z. Annable re: W&E list for September 12 hearing (0.1).	0.10	750.00	$75.00
09/09/2022	JAM	MFCO	Review reply on Motion to Withdraw proof of claim, objection to cross-motion for depositions (0.3).	0.30	1395.00	$418.50
09/09/2022	HRW	MFCO	Review email from Z. Annable re: W&E list (0.1).	0.10	750.00	$75.00
09/09/2022	HRW	MFCO	Review draft W&E list (0.1).	0.10	750.00	$75.00
09/09/2022	HRW	MFCO	Review reply ISO motion to withdraw (0.1).	0.10	750.00	$75.00
09/11/2022	JAM	MFCO	Prepare for argument on Motion to Withdraw and Motion for Protective Order/Cross-Motion (1.5).	1.50	1395.00	$2,092.50
09/12/2022	JNP	MFCO	Participate in hearing on motion to withdraw claim and motion to compel.	2.10	1445.00	$3,034.50
09/12/2022	JNP	MFCO	Conference with John A. Morris, Gregory V. Demo and J. Seery after hearing on motion to withdraw claim.	0.40	1445.00	$578.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 44
Invoice 131065
September 30, 2022

				Hours	Rate	Amount
09/12/2022	JNP	MFCO	Review and consider proposed settlement offer; Conference with John A. Morris regarding same.	0.20	1445.00	$289.00
09/12/2022	JAM	MFCO	Prepare for hearing, including drafting of outline/review of documents (1.9); tel c. w/ J. Seery re: HCRE hearing (0.2); hearing on HCRE motion to withdraw/motion for protective order/cross-motion (2.3); tel c. w/ J. Seery, J. Pomerantz, G. Demo re: HCRE hearing (0.2); tel c. w/ B. Gameros re: settlement (0.1); e-mail to J. Seery, D. Klos, T. Surgent, J. Pomerantz, G. Demo, H. Winograd re: settlement (0.2); draft formal settlement offer to HCRE (0.4); e-mails w/ J. Seery, D. Klos, T. Surgent, J. Pomerantz, G. Demo, H. Winograd re: settlement (0.3); tel c. w/ J. Seery re: settlement issues (0.2); draft proposed orders denying as Motion to Withdraw and denying as moot Motion for Protective Order and Cross-Motion (1.8).	7.60	1395.00	$10,602.00
09/12/2022	LSC	MFCO	Prepare for (.5) and assist at hearing on motion to withdraw HCRE claim (2.1).	2.60	495.00	$1,287.00
09/12/2022	GVD	MFCO	Attend hearing on HCRE proof of claim	2.60	1095.00	$2,847.00
09/12/2022	HRW	MFCO	Hearing on motion to withdraw POC/motion to quash and to compel (2.0).	2.00	750.00	$1,500.00
09/12/2022	HRW	MFCO	Review outline for hearing on motion to withdraw POC/motion to quash and to compel (0.2).	0.20	750.00	$150.00
09/12/2022	HRW	MFCO	Review proposed order on motion to withdraw POC (0.1).	0.10	750.00	$75.00
09/12/2022	HRW	MFCO	Review proposed order on motion to quash POC (0.1).	0.10	750.00	$75.00
09/12/2022	HRW	MFCO	Email J. Morris re: proposed order on motion to quash POC (0.1).	0.10	750.00	$75.00
09/12/2022	HRW	MFCO	Review email from Z. Annable re: proposed orders on motion to quash (0.1).	0.10	750.00	$75.00
09/12/2022	HRW	MFCO	Call with J. Morris re: hearing on motion to withdraw POC (0.1).	0.10	750.00	$75.00
09/12/2022	HRW	MFCO	Review emails from J. Morris re: settlement offer (0.2).	0.20	750.00	$150.00
09/12/2022	HRW	MFCO	Review email from D. Klos re: settlement offer (0.1).	0.10	750.00	$75.00
[redacted]	[redacted]	[redacted]	[redacted]	0.10	750.00	$75.00
09/12/2022	JAK	MFCO	Prepare for and attend hearing on HCRE motion to withdraw proof of claim (2.2).	2.20	1195.00	$2,629.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 45
Invoice 131065
September 30, 2022

				Hours	Rate	Amount
09/14/2022	JAM	MFCO	E-mails w/ Z. Annable, J. Pomerantz re: Orders following Motions to Withdraw (0.1).	0.10	1395.00	$139.50
09/14/2022	HRW	MFCO	Review emails from J. Morris re: Order on HCRE (0.1).	0.10	750.00	$75.00
09/14/2022	HRW	MFCO	Review emails from Z. Annable re: Order on HCRE (0.1).	0.10	750.00	$75.00
09/14/2022	HRW	MFCO	Review email from Court re: Order on HCRE (0.1).	0.10	750.00	$75.00
09/15/2022	JAM	MFCO	E-mails w/ W. Gameros re: depositions (0.1).	0.10	1395.00	$139.50
09/15/2022	HRW	MFCO	Review email from J. Morris re: Second Request for Deposition Dates (0.1).	0.10	750.00	$75.00
09/16/2022	JNP	MFCO	Participate on call regarding HCRE issues.	0.40	1445.00	$578.00
09/16/2022	JAM	MFCO	Tel c. w/ W. Geramos re: depositions, settlement (0.1).	0.10	1395.00	$139.50
09/16/2022	GVD	MFCO	Conference with working group re status of potential HCRE settlement	0.50	1095.00	$547.50
09/19/2022	JAM	MFCO	Review/revise deposition notice and subpoena for HCRE, Dondero, and McGraner (0.5); e-mails w/ J. Seery, B. Gameros re: depositions (0.2).	0.70	1395.00	$976.50
09/19/2022	HRW	MFCO	Review and edit deposition subpoenas (0.8).	0.80	750.00	$600.00
09/19/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.3).	0.30	750.00	$225.00
09/19/2022	HRW	MFCO	Review email from B. Gameros re: deposition scheduling (0.1).	0.10	750.00	$75.00
09/19/2022	HRW	MFCO	Review email from J. Morris re: deposition scheduling (0.1).	0.10	750.00	$75.00
09/19/2022	HRW	MFCO	Email L. Canty re: deposition scheduling (0.1).	0.10	750.00	$75.00
09/19/2022	HRW	MFCO	Email Z. Annable and M. Holmes re: deposition subpoenas (0.3).	0.30	750.00	$225.00
09/19/2022	HRW	MFCO	Email J. Morris re: deposition subpoenas (0.2).	0.20	750.00	$150.00
09/19/2022	HRW	MFCO	Review emails from M. Holmes re: deposition subpoenas (0.2).	0.20	750.00	$150.00
09/19/2022	HRW	MFCO	Review filed deposition notices (0.1).	0.10	750.00	$75.00
09/19/2022	HRW	MFCO	Review email from J. Seery re: deposition notices (0.1).	0.10	750.00	$75.00
09/20/2022	JAM	MFCO	Tel c. w/ J. Seery re: settlement counteroffer (0.1); e-mails w/ B. Gameros, M. Holmes re: depositions (0.1).	0.20	1395.00	$279.00
09/20/2022	LSC	MFCO	Coordinate scheduling of Court Reporters for	0.30	495.00	$148.50

				Hours	Rate	Amount
			upcoming depositions.			
09/20/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.2).	0.20	750.00	$150.00
09/20/2022	HRW	MFCO	Review emails from Z. Annable re: deposition subpoenas (0.1).	0.10	750.00	$75.00
09/20/2022	HRW	MFCO	Review email from L. Canty re: deposition schedules (0.1).	0.10	750.00	$75.00
09/20/2022	HRW	MFCO	Review email from B. Gameros re: deposition schedules (0.1).	0.10	750.00	$75.00
09/21/2022	JNP	MFCO	Review emails regarding potential settlement .	0.10	1445.00	$144.50
09/21/2022	JAM	MFCO	E-mails to J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: settlement concepts/issues (0.4).	0.40	1395.00	$558.00
09/21/2022	HRW	MFCO	Review emails from J. Morris re: settlement offer to HCRE (0.2).	0.20	750.00	$150.00
09/21/2022	HRW	MFCO	Review emails from J. Seery re: settlement offer to HCRE (0.1).	0.10	750.00	$75.00
09/22/2022	JAM	MFCO	Tel c. w/ B. Gameros re: settlement (0.1); review/revise/send e-mail to B. Gameros re: settlement (0.1).	0.20	1395.00	$279.00
09/22/2022	HRW	MFCO	Review emails from J. Morris re: Counterproposal to HCRE (0.1).	0.10	750.00	$75.00
09/28/2022	JAM	MFCO	Meet w/ H. Winograd re: Dondero deposition (0.5).	0.50	1395.00	$697.50
09/28/2022	LSC	MFCO	Conduct searches and retrieve discovery documents in connection with upcoming depositions for H. Winograd and J. Morris (2.1); correspondence regarding hits (.3).	2.40	495.00	$1,188.00
09/28/2022	HRW	MFCO	Meet with J. Morris re: Dondero deposition prep (0.5).	0.50	750.00	$375.00
09/28/2022	HRW	MFCO	Email L. Canty re: Dondero deposition prep (0.1).	0.10	750.00	$75.00
09/28/2022	HRW	MFCO	Email J. Morris re: Dondero deposition prep (0.1).	0.10	750.00	$75.00
09/28/2022	HRW	MFCO	Review emails from L. Canty re: Dondero deposition prep (0.2).	0.20	750.00	$150.00
09/28/2022	HRW	MFCO	Review emails from J. Morris re: Dondero deposition prep (0.1).	0.10	750.00	$75.00
09/28/2022	HRW	MFCO	Email J. Morris re: Dondero deposition prep (0.1).	0.10	750.00	$75.00
09/28/2022	HRW	MFCO	Review exhibits for Dondero deposition (0.3).	0.30	750.00	$225.00
09/29/2022	JAM	MFCO	Begin preparing for Dondero deposition (1.2).	1.20	1395.00	$1,674.00
09/29/2022	HRW	MFCO	Communicate with L. Canty re: exhibits for	0.10	750.00	$75.00

				Hours	Rate	Amount
			Dondero deposition (0.1).			
09/29/2022	HRW	MFCO	Email J. Morris re: exhibits for Dondero deposition (0.2).	0.20	750.00	$150.00
09/29/2022	HRW	MFCO	Review documents in preparation for Dondero deposition (0.7).	0.70	750.00	$525.00
09/29/2022	HRW	MFCO	Draft Dondero deposition outline (1.0).	1.00	750.00	$750.00
09/29/2022	HRW	MFCO	Email J. Morris re: Dondero deposition outline (0.1).	0.10	750.00	$75.00
				67.90		**$76,136.50**

[redacted]

SEPTEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
9/1/2022	JAM	MFCO	Continued work on objection to Motion to Withdraw Proof of Claim (6.4); e-mail to P. Jeffries re: exhibits for objection to Motion to Withdraw Proof of Claim (0.6); tel c. w/ J. Kroop re: draft objection to Motion to Withdraw Proof of Claim (0.2); revisions to Objection to Motion to Quash/Cross-Motion, JAM Declaration, Motion to Expedite, and proposed order (1.2); e-mails to H. Winograd, Z. Annable re: revised versions of Objection to Motion to Quash/Cross-Motion, JAM Declaration, Motion to Expedite, and proposed order (0.3).	8.70	$1,395.00	$12,136.50
9/1/2022	HRW	MFCO	Review emails from Z. Annable re: Objection to HCRE Motion for Protective Order and Cross-Motion to Compel (0.2).	0.20	$750.00	$150.00
9/1/2022	HRW	MFCO	Review proposed order on motion for expedited hearing (0.2).	0.20	$750.00	$150.00
9/1/2022	HRW	MFCO	Email Z. Annable and J. Morris re: proposed order on motion for expedited hearing (0.1).	0.10	$750.00	$75.00
9/1/2022	HRW	MFCO	Review emails from J. Morris re: proposed order on motion for expedited hearing (0.2).	0.20	$750.00	$150.00
9/1/2022	JAK	MFCO	Extensive review and comment to objection to motion to withdraw claim (2.1); confer with John Morris regarding same (0.3).	2.40	$1,195.00	$2,868.00
9/2/2022	JNP	MFCO	Review opposition to motion to withdraw claim and emails regarding same.	0.30	$1,445.00	$433.50
9/2/2022	JAM	MFCO	Continued work with revisions to opposition to Motion to Withdraw and Motion for Protective Order/Cross-Motion (including work with exhibits, declarations, etc.) (8.8); tel c w/ H. Winograd re: HCRE filings (0.2); tel c. w/ J. Seery re: status of HCRE papers (0.1); e-mails w/ Z. Annable, H. Winograd re: HCRE papers and filings (0.5).	9.60	$1,395.00	$13,392.00
9/2/2022	GVD	MFCO	Review pleadings re motion to withdraw proof of claim (0.2); conference with J. Morris re same (0.2)	0.40	$1,095.00	$438.00
9/2/2022	HRW	MFCO	Review and edit objection to motion to quash and cross motion to compel and ancillary documents (4.0).	4.00	$750.00	$3,000.00
9/2/2022	HRW	MFCO	Review and edit objection to motion to withdraw proof of claim (0.8).	0.80	$750.00	$600.00
9/2/2022	HRW	MFCO	Email with Z. Annable re: filing of objection to motion to quash and cross motion to compel and all ancillary documents (0.3).	0.30	$750.00	$225.00
9/2/2022	HRW	MFCO	Review emails from J. Morris re: filing of objection to motion to quash and cross motion to compel and all ancillary documents (0.3).	0.30	$750.00	$225.00
9/2/2022	HRW	MFCO	Email J. Morris re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	$750.00	$150.00
9/2/2022	HRW	MFCO	Email G. Demo re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	$750.00	$150.00
9/2/2022	HRW	MFCO	Review email from G. Demo re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	$750.00	$150.00
9/2/2022	HRW	MFCO	Review emails from Z. Annable re: filing of objection to motion to quash and cross motion to compel and all ancillary documents (0.3).	0.30	$750.00	$225.00
9/2/2022	HRW	MFCO	Communicate with I. Soto re: objection to motion to quash and cross motion to compel and all ancillary documents (0.2).	0.20	$750.00	$150.00

SEPTEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
9/4/2022	JAK	MFCO	Review of final versions of all documents filed in connection with motion to withdraw claim (1.1); emails with John Morris regarding same (0.3).	1.40	$1,195.00	$1,673.00
9/6/2022	JAM	MFCO	E-mails w/ L. Lambert, J. Seery, J. Pomerantz, G. Demo re: HCRE issues (0.2);	0.20	$1,395.00	$279.00
9/7/2022	HRW	MFCO	Review notice of hearing re: motion to compel (0.2).	0.20	$750.00	$150.00
9/7/2022	HRW	MFCO	Email Z. Annable re: notice of hearing re: motion to compel (0.1).	0.10	$750.00	$75.00
9/8/2022	HRW	MFCO	Review email from J. Morris re: W&E list for September 12 hearing (0.1).	0.10	$750.00	$75.00
9/8/2022	HRW	MFCO	Review email from Z. Annable re: W&E list for September 12 hearing (0.1).	0.10	$750.00	$75.00
9/9/2022	JAM	MFCO	Review reply on Motion to Withdraw proof of claim, objection to cross-motion for depositions (0.3).	0.30	$1,395.00	$418.50
9/9/2022	HRW	MFCO	Review email from Z. Annable re: W&E list (0.1).	0.10	$750.00	$75.00
9/9/2022	HRW	MFCO	Review draft W&E list (0.1).	0.10	$750.00	$75.00
9/9/2022	HRW	MFCO	Review reply ISO motion to withdraw (0.1).	0.10	$750.00	$75.00
9/11/2022	JAM	MFCO	Prepare for argument on Motion to Withdraw and Motion for Protective Order/Cross-Motion (1.5).	1.50	$1,395.00	$2,092.50
9/12/2022	JNP	MFCO	Participate in hearing on motion to withdraw claim and motion to compel.	2.10	$1,445.00	$3,034.50
9/12/2022	JNP	MFCO	Conference with John A. Morris, Gregory V. Demo and J. Seery after hearing on motion to withdraw claim.	0.40	$1,445.00	$578.00
9/12/2022	JNP	MFCO	Review and consider proposed settlement offer; Conference with John A. Morris regarding same.	0.20	$1,445.00	$289.00
9/12/2022	JAM	MFCO	Prepare for hearing, including drafting of outline/review of documents (1.9); tel c. w/ J. Seery re: HCRE hearing (0.2); hearing on HCRE motion to withdraw/motion for protective order/cross-motion (2.3); tel c. w/ J. Seery, J. Pomerantz, G. Demo re: HCRE hearing (0.2); tel c. w/ B. Gameros re: settlement (0.1); e-mail to J. Seery, D. Klos, T. Surgent, J. Pomerantz, G. Demo, H. Winograd re: settlement (0.2); draft formal settlement offer to HCRE (0.4); e-mails w/ J. Seery, D. Klos, T. Surgent, J. Pomerantz, G. Demo, H. Winograd re: settlement (0.3); tel c. w/ J. Seery re: settlement issues (0.2); draft proposed orders denying as Motion to Withdraw and denying as moot Motion for Protective Order and Cross-Motion (1.8).	7.60	$1,395.00	$10,602.00
9/12/2022	LSC	MFCO	Prepare for (.5) and assist at hearing on motion to withdraw HCRE claim (2.1).	2.60	$495.00	$1,287.00
9/12/2022	GVD	MFCO	Attend hearing on HCRE proof of claim	2.60	$1,095.00	$2,847.00
9/12/2022	HRW	MFCO	Hearing on motion to withdraw POC/motion to quash and to compel (2.0).	2.00	$750.00	$1,500.00
9/12/2022	HRW	MFCO	Review outline for hearing on motion to withdraw POC/motion to quash and to compel (0.2).	0.20	$750.00	$150.00
9/12/2022	HRW	MFCO	Review proposed order on motion to withdraw POC (0.1).	0.10	$750.00	$75.00
9/12/2022	HRW	MFCO	Review proposed order on motion to quash POC (0.1).	0.10	$750.00	$75.00
9/12/2022	HRW	MFCO	Email J. Morris re: proposed order on motion to quash POC (0.1).	0.10	$750.00	$75.00
9/12/2022	HRW	MFCO	Review email from Z. Annable re: proposed orders on motion to quash (0.1).	0.10	$750.00	$75.00
9/12/2022	HRW	MFCO	Call with J. Morris re: hearing on motion to withdraw POC (0.1).	0.10	$750.00	$75.00

SEPTEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
9/12/2022	HRW	MFCO	Review emails from J. Morris re: settlement offer (0.2).	0.20	$750.00	$150.00
9/12/2022	HRW	MFCO	Review email from D. Klos re: settlement offer (0.1).	0.10	$750.00	$75.00
9/12/2022	JAK	MFCO	Prepare for and attend hearing on HCRE motion to withdraw proof of claim (2.2).	2.20	$1,195.00	$2,629.00
9/14/2022	JAM	MFCO	E-mails w/ Z. Annable, J. Pomerantz re: Orders following Motions to Withdraw (0.1).	0.10	$1,395.00	$139.50
9/14/2022	HRW	MFCO	Review emails from J. Morris re: Order on HCRE (0.1).	0.10	$750.00	$75.00
9/14/2022	HRW	MFCO	Review emails from Z. Annable re: Order on HCRE (0.1).	0.10	$750.00	$75.00
9/14/2022	HRW	MFCO	Review email from Court re: Order on HCRE (0.1).	0.10	$750.00	$75.00
9/15/2022	JAM	MFCO	E-mails w/ W. Gameros re: depositions (0.1).	0.10	$1,395.00	$139.50
9/15/2022	HRW	MFCO	Review email from J. Morris re: Second Request for Deposition Dates (0.1).	0.10	$750.00	$75.00
9/16/2022	JNP	MFCO	Participate on call regarding HCRE issues.	0.40	$1,445.00	$578.00
9/16/2022	JAM	MFCO	Tel c. w/ W. Geramos re: depositions, settlement (0.1).	0.10	$1,395.00	$139.50
9/16/2022	GVD	MFCO	Conference with working group re status of potential HCRE settlement	0.50	$1,095.00	$547.50
9/19/2022	JAM	MFCO	Review/revise deposition notice and subpoena for HCRE, Dondero, and McGraner (0.5); e-mails w/ J. Seery, B. Gameros re: depositions (0.2).	0.70	$1,395.00	$976.50
9/19/2022	HRW	MFCO	Review and edit deposition subpoenas (0.8).	0.80	$750.00	$600.00
9/19/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.3).	0.30	$750.00	$225.00
9/19/2022	HRW	MFCO	Review email from B. Gameros re: deposition scheduling (0.1).	0.10	$750.00	$75.00
9/19/2022	HRW	MFCO	Review email from J. Morris re: deposition scheduling (0.1).	0.10	$750.00	$75.00
9/19/2022	HRW	MFCO	Email L. Canty re: deposition scheduling (0.1).	0.10	$750.00	$75.00
9/19/2022	HRW	MFCO	Email Z. Annable and M. Holmes re: deposition subpoenas (0.3).	0.30	$750.00	$225.00
9/19/2022	HRW	MFCO	Email J. Morris re: deposition subpoenas (0.2).	0.20	$750.00	$150.00
9/19/2022	HRW	MFCO	Review emails from M. Holmes re: deposition subpoenas (0.2).	0.20	$750.00	$150.00
9/19/2022	HRW	MFCO	Review filed deposition notices (0.1).	0.10	$750.00	$75.00
9/19/2022	HRW	MFCO	Review email from J. Seery re: deposition notices (0.1).	0.10	$750.00	$75.00
9/20/2022	JAM	MFCO	Tel c. w/ J. Seery re: settlement counteroffer (0.1); e-mails w/ B. Gameros, M. Holmes re: depositions (0.1).	0.20	$1,395.00	$279.00
9/20/2022	LSC	MFCO	Coordinate scheduling of Court Reporters for upcoming depositions.	0.30	$495.00	$148.50
9/20/2022	HRW	MFCO	Review emails from J. Morris re: deposition subpoenas (0.2).	0.20	$750.00	$150.00
9/20/2022	HRW	MFCO	Review emails from Z. Annable re: deposition subpoenas (0.1).	0.10	$750.00	$75.00
9/20/2022	HRW	MFCO	Review email from L. Canty re: deposition schedules (0.1).	0.10	$750.00	$75.00
9/20/2022	HRW	MFCO	Review email from B. Gameros re: deposition schedules (0.1).	0.10	$750.00	$75.00
9/21/2022	JNP	MFCO	Review emails regarding potential settlement .	0.10	$1,445.00	$144.50
9/21/2022	JAM	MFCO	E-mails to J. Seery, T. Surgent, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: settlement concepts/issues (0.4).	0.40	$1,395.00	$558.00
9/21/2022	HRW	MFCO	Review emails from J. Morris re: settlement offer to HCRE (0.2).	0.20	$750.00	$150.00
9/21/2022	HRW	MFCO	Review emails from J. Seery re: settlement offer to HCRE (0.1).	0.10	$750.00	$75.00

SEPTEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
9/22/2022	JAM	MFCO	Tel c. w/ B. Gameros re: settlement (0.1); review/revise/send e-mail to B. Gameros re: settlement (0.1).	0.20	$1,395.00	$279.00
9/22/2022	HRW	MFCO	Review emails from J. Morris re: Counterproposal to HCRE (0.1).	0.10	$750.00	$75.00
9/28/2022	JAM	MFCO	Meet w/ H. Winograd re: Dondero deposition (0.5).	0.50	$1,395.00	$697.50
9/28/2022	LSC	MFCO	Conduct searches and retrieve discovery documents in connection with upcoming depositions for H. Winograd and J. Morris (2.1); correspondence regarding hits (.3).	2.40	$495.00	$1,188.00
9/28/2022	HRW	MFCO	Meet with J. Morris re: Dondero deposition prep (0.5).	0.50	$750.00	$375.00
9/28/2022	HRW	MFCO	Email L. Canty re: Dondero deposition prep (0.1).	0.10	$750.00	$75.00
9/28/2022	HRW	MFCO	Email J. Morris re: Dondero deposition prep (0.1).	0.10	$750.00	$75.00
9/28/2022	HRW	MFCO	Review emails from L. Canty re: Dondero deposition prep (0.2).	0.20	$750.00	$150.00
9/28/2022	HRW	MFCO	Review emails from J. Morris re: Dondero deposition prep (0.1).	0.10	$750.00	$75.00
9/28/2022	HRW	MFCO	Email J. Morris re: Dondero deposition prep (0.1).	0.10	$750.00	$75.00
9/28/2022	HRW	MFCO	Review exhibits for Dondero deposition (0.3).	0.30	$750.00	$225.00
9/29/2022	JAM	MFCO	Begin preparing for Dondero deposition (1.2).	1.20	$1,395.00	$1,674.00
9/29/2022	HRW	MFCO	Communicate with L. Canty re: exhibits for Dondero deposition (0.1).	0.10	$750.00	$75.00
9/29/2022	HRW	MFCO	Email J. Morris re: exhibits for Dondero deposition (0.2).	0.20	$750.00	$150.00
9/29/2022	HRW	MFCO	Review documents in preparation for Dondero deposition (0.7).	0.70	$750.00	$525.00
9/29/2022	HRW	MFCO	Draft Dondero deposition outline (1.0).	1.00	$750.00	$750.00
9/29/2022	HRW	MFCO	Email J. Morris re: Dondero deposition outline (0.1).	0.10	$750.00	$75.00
			TOTAL	**67.80**		**$76,061.50**

OCTOBER 2022 (MFCO AND NT)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

October 31, 2022
Invoice 131290
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 10/31/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 131290
October 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]			
MFCO	Multi Family Obj to Claims	160.30	$173,398.00
NT	Non-Working Travel	7.20	$3,893.25
[redacted]			

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 29
Invoice 131290
October 31, 2022

[redacted]

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

10/03/2022	JAM	MFCO	Prepare for Dondero deposition (3.1); e-mail to L. Canty re: exhibits for Dondero deposition (0.3); tel c. w/ H. Winograd re: Dondero deposition (0.2); tel c. w/ J. Seery re: Dondero deposition (0.1).	3.70	1395.00	$5,161.50
10/03/2022	HRW	MFCO	Call with J. Morris re: Dondero deposition prep (0.2).	0.20	750.00	$150.00
10/03/2022	HRW	MFCO	Review email from L. Canty re: Dondero deposition exhibits (0.1).	0.10	750.00	$75.00
10/03/2022	HRW	MFCO	Review email from J. Morris re: Dondero deposition exhibits (0.1).	0.10	750.00	$75.00
10/03/2022	HRW	MFCO	Review Dondero deposition exhibits (0.2).	0.20	750.00	$150.00
10/03/2022	HRW	MFCO	Review email from J. Morris to counsel re: Dondero deposition schedule (0.1).	0.10	750.00	$75.00
10/03/2022	HRW	MFCO	Research re: filing claim in bad faith (1.5).	1.50	750.00	$1,125.00
10/04/2022	JAM	MFCO	Prepare for Dondero deposition (2.6); Dondero deposition (including intermittent calls w/ G. Demo, H. Winograd) (4.0); tel c. w/ G. Demo, H. Winograd re: Dondero deposition (0.1); tel c. w/ J. Seery, D. Klos, G. Demo, H. Winograd re: Dondero deposition (0.3); tel c. w/ J. Seery re: status (0.2); tel c. w/ L. Lambert re: Dondero deposition (0.1); tel c. w/ G. Demo re: call with Lambert (0.1); tel c. w/ J. Seery re: call with Lambert (0.1).	7.50	1395.00	$10,462.50
10/04/2022	GVD	MFCO	Attend J. Dondero deposition (partial)	2.10	1095.00	$2,299.50
10/04/2022	GVD	MFCO	Conference with working group re J. Dondero deposition and next steps	0.40	1095.00	$438.00
10/04/2022	GVD	MFCO	Conference with J. Morris and J. Seery re L. Lambert discussion and next steps	0.20	1095.00	$219.00
10/04/2022	HRW	MFCO	Attend deposition of James Dondero, including calls with J. Morris and G. Demo (4.0).	4.00	750.00	$3,000.00
10/04/2022	HRW	MFCO	Call with J. Morris, G. Demo, J. Seery, D. Klos re: Dondero deposition (0.3).	0.30	750.00	$225.00
10/04/2022	HRW	MFCO	Email J. Seery and D. Klos re: deposition of James	0.10	750.00	$75.00

				Hours	Rate	Amount
			Dondero (0.1).			
10/05/2022	JNP	MFCO	Participate in Dondero deposition.	0.30	1445.00	$433.50
10/06/2022	JAM	MFCO	Review Dondero transcript (0.7); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: Dondero deposition (0.3).	1.00	1395.00	$1,395.00
10/06/2022	HRW	MFCO	Review emails from J. Morris re: Dondero deposition (0.2).	0.20	750.00	$150.00
10/10/2022	JAM	MFCO	Prepare for HCRE/McGraner depositions (1.1); e-mails w/ L. Canty, H. Winograd re: exhibits and related matters (0.2).	1.30	1395.00	$1,813.50
10/10/2022	HRW	MFCO	Email L. Canty re: McGraner deposition exhibits (0.1).	0.10	750.00	$75.00
10/10/2022	HRW	MFCO	Review emails from J. Morris re: McGraner deposition (0.2).	0.20	750.00	$150.00
10/11/2022	JAM	MFCO	Prepare for McGraner/HCRE deposition (1.3); McGraner/HCRE deposition (including calls w/ L. Canty, H. Winograd) (5.8); tel c. w/ H. Winograd re: McGraner/HCRE deposition (0.2); tel c. w/ J. Seery re: McGraner/HCRE deposition (0.3); [redacted]	7.90	1395.00	$11,020.50
10/11/2022	HRW	MFCO	Call with J. Morris re: McGraner deposition (0.2).	0.20	750.00	$150.00
10/11/2022	HRW	MFCO	Attend deposition of McGraner, including calls with J. Morris (5.5).	5.50	750.00	$4,125.00
10/11/2022	HRW	MFCO	Review email from J. Morris re: Dondero HCRE transcript (0.1).	0.10	750.00	$75.00
10/12/2022	JAM	MFCO	E-mail to B. Gameros re: McGraner transcript (0.1); e-mail to J. Seery re: McGraner transcript (0.1); review D. Klos analysis of payments to HCMLP from Key Bank (0.3).	0.50	1395.00	$697.50
10/12/2022	HRW	MFCO	Review email from J. Morris re: McGraner transcript (0.1).	0.10	750.00	$75.00
10/13/2022	HRW	MFCO	Review email from J. Morris re: HCRE trial (0.1).	0.10	750.00	$75.00
10/14/2022	HRW	MFCO	Review email from J. Morris re: HCRE trial (0.1).	0.10	750.00	$75.00
10/16/2022	JAM	MFCO	Review/digest BH Equities' deposition transcript (4.2).	4.20	1395.00	$5,859.00
10/16/2022	HRW	MFCO	Review trial subpoenas (0.3).	0.30	750.00	$225.00
10/16/2022	HRW	MFCO	Email J. Morris re: trial subpoenas (0.1).	0.10	750.00	$75.00
10/17/2022	JAM	MFCO	Review draft trial subpoenas and communications w/ Z. Annable re: same (0.4); review deposition	5.40	1395.00	$7,533.00

				Hours	Rate	Amount
			transcript for BH Equities and prepare designations (4.5); e-mail to Gameros re: subpoenas for Dondero and McGraner (0.2); e-mail to D. Dandeneau re: subpoena for M. Patrick (0.1); tel c. w/ D. Dandeneau re: Patrick subpoena (0.1); e-mails to J. Seery re: HCRE discovery (0.1).			
10/17/2022	HRW	MFCO	Review email from J. Morris re: HCRE trial subpoenas and related matters (0.2).	0.20	750.00	$150.00
10/17/2022	HRW	MFCO	Review email from Z. Annable re: HCRE trial subpoenas and related matters (0.2).	0.20	750.00	$150.00
10/17/2022	HRW	MFCO	Review email from J. Morris re: W&E list for HCRE matters (0.1).	0.10	750.00	$75.00
10/18/2022	JAM	MFCO	Prepare Dondero cross-examination (5.4); [redacted] e-mails w Court, B. Gameros, J. Pomerantz, H. Winograd re: November hearing (0.1).	5.60	1395.00	$7,812.00
10/18/2022	HRW	MFCO	Review emails from Z. Annable re: Request for Acceptance of Service of Trial Subpoenas for Mr. Patrick (0.2).	0.20	750.00	$150.00
10/18/2022	HRW	MFCO	Review emails from J. Morris re: Request for Acceptance of Service of Trial Subpoenas for Mr. Patrick (0.1).	0.10	750.00	$75.00
[redacted]				0.10	750.00	$75.00
10/18/2022	HRW	MFCO	Review email from W. Carvell re: trial scheduling (0.1).	0.10	750.00	$75.00
10/19/2022	JAM	MFCO	Meet w/ H. Winograd re: trial prep (0.5); e-mails w/ M. Roberts, B. Gameros, H. Winograd re: Barker Viggato subpoena and related matters (0.4); tel c. w/ J. Seery re: Klos and Conoyour subpoena and related matters (0.3); begin trial preparation (3.6).	4.80	1395.00	$6,696.00
10/19/2022	HRW	MFCO	Meet with J. Morris re: trial prep (0.5).	0.50	750.00	$375.00
10/19/2022	HRW	MFCO	Email L. Canty re: W&E list (0.1).	0.10	750.00	$75.00
10/19/2022	HRW	MFCO	Email J. Morris re: W&E list (0.1).	0.10	750.00	$75.00
10/19/2022	HRW	MFCO	Call with L. Canty re: W&E list (0.2).	0.20	750.00	$150.00
10/19/2022	HRW	MFCO	Review emails from J. Morris re: trial subpoena for Barker Viggato (0.3).	0.30	750.00	$225.00
10/19/2022	HRW	MFCO	Review emails from M. Roberts re: trial subpoena for Barker Viggato (0.1).	0.10	750.00	$75.00
10/19/2022	HRW	MFCO	Review emails from B. Gameros re: trial subpoena for Barker Viggato (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 32
Invoice 131290
October 31, 2022

				Hours	Rate	Amount
10/19/2022	HRW	MFCO	Review emails from J. Morris re: W&E list (0.2).	0.20	750.00	$150.00
10/19/2022	HRW	MFCO	Review email from B. Gameros re: NexPoint REP POC Trial subpoenas (0.1).	0.10	750.00	$75.00
10/19/2022	HRW	MFCO	Review email from J. Seery re: NexPoint REP POC Trial subpoenas (0.1).	0.10	750.00	$75.00
10/19/2022	HRW	MFCO	Review email from Z. Annable re: Request for Acceptance of Service of Trial Subpoenas for Mr. Patrick (0.1).	0.10	750.00	$75.00
10/20/2022	HRW	MFCO	Review cross examination of Dondero in preparation for HCRE trial (1.2).	1.20	750.00	$900.00
10/21/2022	JAM	MFCO	Review draft W&E list and e-mails w/ H. Winograd, L. Canty re: same (0.6).	0.60	1395.00	$837.00
10/21/2022	HRW	MFCO	Prepare for cross of Mark Patrick (3.0).	3.00	750.00	$2,250.00
10/21/2022	HRW	MFCO	Call with L. Canty re: W&E list (0.1).	0.10	750.00	$75.00
10/21/2022	HRW	MFCO	Review draft W&E list (0.3).	0.30	750.00	$225.00
10/21/2022	HRW	MFCO	Review emails from J. Morris re: W&E list (0.2).	0.20	750.00	$150.00
10/21/2022	HRW	MFCO	Review emails from L. Canty re: W&E list (0.2).	0.20	750.00	$150.00
10/21/2022	HRW	MFCO	Email L. Canty and J. Morris re: W&E list (0.2).	0.20	750.00	$150.00
10/23/2022	JAM	MFCO	E-mails w/ B. Gameros, H. Winograd re: W&E lists, trial issues (0.2).	0.20	1395.00	$279.00
10/23/2022	HRW	MFCO	Review emails from J. Morris re: meet and confer (0.1).	0.10	750.00	$75.00
10/23/2022	HRW	MFCO	Review emails from B. Gameros re: meet and confer (0.1).	0.10	750.00	$75.00
10/23/2022	HRW	MFCO	Email J. Morris re: meet and confer (0.1).	0.10	750.00	$75.00
10/23/2022	HRW	MFCO	Review email from L. Canty re: W&E list (0.1).	0.10	750.00	$75.00
10/23/2022	HRW	MFCO	Review exhibits for HCRE trial (0.2).	0.20	750.00	$150.00
10/24/2022	JAM	MFCO	E-mail to J. Seery, D. Klos, T. Cournoyer re: possible testimony (0.2); tel c. w/ T. Cournoyer re: possible testimony (0.2); e-mails w/ D. Dandeneau, H. Winograd re: privilege issues (0.1); e-mails w/ Court, B. Gameros, H. Winograd re: scheduling issues (0.2).	0.70	1395.00	$976.50
10/24/2022	HRW	MFCO	Review email from J. Morris re: HCRE searches (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Review email from T. Cournoyer re: trial subpoenas (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Review emails from D. Dandenaeu re: Patrick	0.20	750.00	$150.00

				Hours	Rate	Amount
			deposition (0.2).			
10/24/2022	HRW	MFCO	Review emails from J. Morris re: Patrick deposition (0.2).	0.20	750.00	$150.00
10/24/2022	HRW	MFCO	Email J. Morris re: Patrick deposition (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Review email from D. Klos re: trial subpoenas (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Review email from J. Morris re: W&E lists (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Review emails from Z. Annable re: W&E lists (0.2).	0.20	750.00	$150.00
10/24/2022	HRW	MFCO	Review email from J. Morris to Court re: W&E lists for HCRE trial (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Review email from Court re: W&E lists for HCRE trial (0.1).	0.10	750.00	$75.00
10/24/2022	HRW	MFCO	Prepare for cross examination of M. Patrick (1.0).	1.00	750.00	$750.00
10/25/2022	JAM	MFCO	Communications w/ H. Winograd, L. Canty re: W&E list and review of same (0.2); review documents re: Klos and Cournoyer (0.4).	0.60	1395.00	$837.00
10/25/2022	HRW	MFCO	Prepare for cross examination of Patrick (3.2).	3.20	750.00	$2,400.00
10/25/2022	HRW	MFCO	Review emails from L. Canty re: HCRE document review (0.2).	0.20	750.00	$150.00
10/25/2022	HRW	MFCO	Review emails from J. Morris re: HCRE document review (0.1).	0.10	750.00	$75.00
10/25/2022	HRW	MFCO	Review emails from J. Morris re: HCRE W&E Lists and Trial Matters (0.1).	0.10	750.00	$75.00
10/25/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE W&E Lists and Trial Matters (0.1).	0.10	750.00	$75.00
10/26/2022	JAM	MFCO	Review/designate Barker Viggato deposition transcript (1.3); e-mail to L. Canty re: deposition designations for Barker Viggato (0.2); meet and confer call w/ H. Winograd, HCRE's counsel (0.5); tel c. w/ H. Winograd re: M. Patrick examination (0.1); e-mails w/ D. Dandeneau, HCRE's counsel re: Patrick appearance (0.1); e-mail to M. Roberts, H. Winograd, HCRE's counsel re: BV document production (0.2); e-mail to C. Doherty, H. Winograd, HCRE's counsel re: BH Equities document production (0.1).	2.50	1395.00	$3,487.50
10/26/2022	HRW	MFCO	Meet and Confer with HCRE counsel re: trial exhibits and scheduling (0.5).	0.50	750.00	$375.00
10/26/2022	HRW	MFCO	Call with L. Canty re: W&E list (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Call with J. Morris re: M. Patrick cross-examination (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 34
Invoice 131290
October 31, 2022

				Hours	Rate	Amount
10/26/2022	HRW	MFCO	Prepare for cross-examination of M. Patrick (3.0).	3.00	750.00	$2,250.00
10/26/2022	HRW	MFCO	Review email from J. Morris re: Deposition Designations for Barker Viggato (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Review email from J. Morris re: meet and confer for hearing (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato document production (0.2).	0.20	750.00	$150.00
10/26/2022	HRW	MFCO	Review emails from J. Morris re: BH Equities document production (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato document production (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Review emails from C. Doherty re: BH Equities document production (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Review email from W. Carvell re: trial subpoenas (0.1).	0.10	750.00	$75.00
10/26/2022	HRW	MFCO	Review trial subpoenas (0.1).	0.10	750.00	$75.00
10/27/2022	JAM	MFCO	Tel c. w/ J. Seery, D. Klos, T. Cournoyer, H. Winograd re: preparation for testimony (1.6); tel c. w/ J. Seery re: HCRE trial issues (0.1); tel c. w/ H. Winograd re: trial strategy and related issues (0.4); work on W&E list (0.8); communications w/ L. Canty, H. Winograd re: W&E list issues (0.3); communications w/ C. Dougherty re: BH Equities document production and confidentiality issues (0.3); prepare for trial (2.3).	5.80	1395.00	$8,091.00
10/27/2022	HRW	MFCO	Prepare for examination of Mark Patrick (3.0).	3.00	750.00	$2,250.00
10/27/2022	HRW	MFCO	Review emails from J. Morris re: trial prep (0.2).	0.20	750.00	$150.00
10/27/2022	HRW	MFCO	Review documents in preparation for trial (0.6).	0.60	750.00	$450.00
10/27/2022	HRW	MFCO	Review emails from J. Morris re: W&E list (0.5).	0.50	750.00	$375.00
10/27/2022	HRW	MFCO	Review emails from J. Morris re: Deposition Designations for Barker Viggato (0.1).	0.10	750.00	$75.00
10/27/2022	HRW	MFCO	Review emails from L. Canty re: W&E list (0.4).	0.40	750.00	$300.00
10/27/2022	HRW	MFCO	Review emails from Z. Annable re: W&E list (0.3).	0.30	750.00	$225.00
10/27/2022	HRW	MFCO	Calls with L. Canty re: W&E list (0.3).	0.30	750.00	$225.00
10/27/2022	HRW	MFCO	Email L. Canty and J. Morris re: W&E list (0.3).	0.30	750.00	$225.00
10/27/2022	HRW	MFCO	Email Z. Annable: W&E list (0.1).	0.10	750.00	$75.00
10/27/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities exhibits (0.1).	0.10	750.00	$75.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 35
Invoice 131290
October 31, 2022

				Hours	Rate	Amount
10/27/2022	HRW	MFCO	Call with J. Morris re: trial prep (0.3).	0.30	750.00	$225.00
10/27/2022	HRW	MFCO	Call with J. Morris, T. Cournoyer, J. Seery, D. Klos re: trial prep (1.6).	1.60	750.00	$1,200.00
10/27/2022	HRW	MFCO	Email R. Saunders re: research on legal standards (0.1).	0.10	750.00	$75.00
10/27/2022	HRW	MFCO	Email J. Morris re: research on legal standards for mutual mistake (0.2).	0.20	750.00	$150.00
10/27/2022	HRW	MFCO	Research re: legal standards for HCRE claim (3.0).	3.00	750.00	$2,250.00
10/28/2022	JNP	MFCO	Conference with John A. Morris regarding HCRE trial.	0.20	1445.00	$289.00
10/28/2022	RMS	MFCO	Telephone conference with Hayley Winograd regarding legal research regarding contract	0.10	1025.00	$102.50
10/28/2022	RMS	MFCO	Legal research regarding contract	0.50	1025.00	$512.50
10/28/2022	JAM	MFCO	Trial preparation, including preparation of opening statement slide deck and cross-examination for McGraner.	7.30	1395.00	$10,183.50
10/28/2022	HRW	MFCO	Review and edit cross examination of M. Patrick (7.5).	7.50	750.00	$5,625.00
10/28/2022	HRW	MFCO	Email J. Morris re: examination of M. Patrick (0.1).	0.10	750.00	$75.00
10/28/2022	HRW	MFCO	Review emails from Court re: HCRE trial scheduling (0.1).	0.10	750.00	$75.00
10/28/2022	HRW	MFCO	Email Court re: HCRE trial scheduling (0.1).	0.10	750.00	$75.00
10/28/2022	HRW	MFCO	Call with R. Saunders re: research issues for trial (0.1).	0.10	750.00	$75.00
10/28/2022	HRW	MFCO	Email R. Saunders re: research issues for trial (0.1).	0.10	750.00	$75.00
10/28/2022	HRW	MFCO	Email J. Morris re: trial strategy (0.1).	0.10	750.00	$75.00
10/29/2022	JAM	MFCO	Prepare for HCRE trial (4.2); tel c. w/ H. Winograd re: Patrick cross and related matters (0.4); communications w/ B. Gameros, W. Carvell, H. Winograd re: objections to exhibits (0.1).	4.70	1395.00	$6,556.50
10/29/2022	HRW	MFCO	Review emails from B. Gameros and W. Carvell re: deposition designations (0.2).	0.20	750.00	$150.00
10/29/2022	HRW	MFCO	Review emails from J. Morris re: trial exhibits (0.2).	0.20	750.00	$150.00
10/29/2022	HRW	MFCO	Review and edit cross examination of M. Patrick (1.8).	1.80	750.00	$1,350.00
10/29/2022	HRW	MFCO	Review deposition testimony (0.5).	0.50	750.00	$375.00
10/30/2022	JAM	MFCO	Prepare for trial (6.0); tel c. w/ H. Winograd re: trial preparation (1.2); tel c. w/ J. Seery re: trial	7.90	1395.00	$11,020.50

				Hours	Rate	Amount
			preparation (0.4); tel c. w/ D. Dandeneau re: Patrick (0.1); e-mails w/ B. Gameros re: Patrick (0.1); tel c. w/ H. Winograd re: trial preparation (0.1).			
10/30/2022	HRW	MFCO	Calls with J. Morris re: HCRE trial prep (1.3).	1.30	750.00	$975.00
10/30/2022	HRW	MFCO	Review and edit cross examinations (3.5).	3.50	750.00	$2,625.00
10/30/2022	HRW	MFCO	Review emails from J. Morris re: HCRE trial schedule (0.1).	0.10	750.00	$75.00
10/30/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE trial schedule (0.1).	0.10	750.00	$75.00
10/30/2022	HRW	MFCO	Research various legal issues in preparation for HCRE trial (2.5).	2.50	750.00	$1,875.00
10/30/2022	HRW	MFCO	Draft and review slides for HCRE trial presentation (2.5).	2.50	750.00	$1,875.00
10/30/2022	HRW	MFCO	Review documents and exhibits in preparation for HCRE trial (2.0).	2.00	750.00	$1,500.00
10/31/2022	JAM	MFCO	Prepare for trial (including reviewing and revising opening deck and cross examinations and meetings w/ H. Winograd concerning the same) (7.6); meet and confer call w/ H. Winograd, W. Carvell (0.4).	8.00	1395.00	$11,160.00
10/31/2022	HRW	MFCO	Prepare for HCRE trial (9.5).	9.50	750.00	$7,125.00
				160.30		**$173,398.00**

Non-Working Travel

10/31/2022	JAM	NT	Non-working travel New York to Dallas (3.7) (billed at 1/2 rate)	3.70	697.50	$2,580.75
10/31/2022	HRW	NT	Travel to Dallas for HCRE trial (3.5) (billed at 1/2 rate)	3.50	375.00	$1,312.50
				7.20		**$3,893.25**

[redacted]

OCTOBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/3/2022	JAM	MFCO	Prepare for Dondero deposition (3.1); e-mail to L. Canty re: exhibits for Dondero deposition (0.3); tel c. w/ H. Winograd re: Dondero deposition (0.2); tel c. w/ J. Seery re: Dondero deposition (0.1).	3.70	$1,395.00	$5,161.50
10/3/2022	HRW	MFCO	Call with J. Morris re: Dondero deposition prep (0.2).	0.20	$750.00	$150.00
10/3/2022	HRW	MFCO	Review email from L. Canty re: Dondero deposition exhibits (0.1).	0.10	$750.00	$75.00
10/3/2022	HRW	MFCO	Review email from J. Morris re: Dondero deposition exhibits (0.1).	0.10	$750.00	$75.00
10/3/2022	HRW	MFCO	Review Dondero deposition exhibits (0.2).	0.20	$750.00	$150.00
10/3/2022	HRW	MFCO	Review email from J. Morris to counsel re: Dondero deposition schedule (0.1).	0.10	$750.00	$75.00
10/3/2022	HRW	MFCO	Research re: filing claim in bad faith (1.5).	1.50	$750.00	$1,125.00
10/4/2022	JAM	MFCO	Prepare for Dondero deposition (2.6); Dondero deposition (including intermittent calls w/ G. Demo, H. Winograd) (4.0); tel c. w/ G. Demo, H. Winograd re: Dondero deposition (0.1); tel c. w/ J. Seery, D. Klos, G. Demo, H. Winograd re: Dondero deposition (0.3); tel c. w/ J. Seery re: status (0.2); tel c. w/ L. Lambert re: Dondero deposition (0.1); tel c. w/ G. Demo re: call with Lambert (0.1); tel c. w/ J. Seery re: call with Lambert (0.1).	7.50	$1,395.00	$10,462.50
10/4/2022	GVD	MFCO	Attend J. Dondero deposition (partial)	2.10	$1,095.00	$2,299.50
10/4/2022	GVD	MFCO	Conference with working group re J. Dondero deposition and next steps	0.40	$1,095.00	$438.00
10/4/2022	GVD	MFCO	Conference with J. Morris and J. Seery re L. Lambert discussion and next steps	0.20	$1,095.00	$219.00
10/4/2022	HRW	MFCO	Attend deposition of James Dondero, including calls with J. Morris and G. Demo (4.0).	4.00	$750.00	$3,000.00
10/4/2022	HRW	MFCO	Call with J. Morris, G. Demo, J. Seery, D. Klos re: Dondero deposition (0.3).	0.30	$750.00	$225.00
10/4/2022	HRW	MFCO	Email J. Seery and D. Klos re: deposition of James Dondero (0.1).	0.10	$750.00	$75.00
10/5/2022	JNP	MFCO	Participate in Dondero deposition.	0.30	$1,445.00	$433.50
10/6/2022	JAM	MFCO	Review Dondero transcript (0.7); e-mail to J. Seery, D. Klos, J. Pomerantz, G. Demo, H. Winograd re: Dondero deposition (0.3).	1.00	$1,395.00	$1,395.00
10/6/2022	HRW	MFCO	Review emails from J. Morris re: Dondero deposition (0.2).	0.20	$750.00	$150.00
10/10/2022	JAM	MFCO	Prepare for HCRE/McGraner depositions (1.1); e-mails w/ L. Canty, H. Winograd re: exhibits and related matters (0.2).	1.30	$1,395.00	$1,813.50
10/10/2022	HRW	MFCO	Email L. Canty re: McGraner deposition exhibits (0.1).	0.10	$750.00	$75.00
10/10/2022	HRW	MFCO	Review emails from J. Morris re: McGraner deposition (0.2).	0.20	$750.00	$150.00
10/11/2022	JAM	MFCO	Prepare for McGraner/HCRE deposition (1.3); McGraner/HCRE deposition (including calls w/ L. Canty, H. Winograd) (5.8); tel c. w/ H. Winograd re: McGraner/HCRE deposition (0.2); tel c. w/ J. Seery re: McGraner/HCRE deposition (0.3).	7.60	$1,395.00	$10,602.00
10/11/2022	HRW	MFCO	Call with J. Morris re: McGraner deposition (0.2).	0.20	$750.00	$150.00
10/11/2022	HRW	MFCO	Attend deposition of McGraner, including calls with J. Morris (5.5).	5.50	$750.00	$4,125.00
10/11/2022	HRW	MFCO	Review email from J. Morris re: Dondero HCRE transcript (0.1).	0.10	$750.00	$75.00

OCTOBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/12/2022	JAM	MFCO	E-mail to B. Gameros re: McGraner transcript (0.1); e-mail to J. Seery re: McGraner transcript (0.1); review D. Klos analysis of payments to HCMLP from Key Bank (0.3).	0.50	$1,395.00	$697.50
10/12/2022	HRW	MFCO	Review email from J. Morris re: McGraner transcript (0.1).	0.10	$750.00	$75.00
10/13/2022	HRW	MFCO	Review email from J. Morris re: HCRE trial (0.1).	0.10	$750.00	$75.00
10/14/2022	HRW	MFCO	Review email from J. Morris re: HCRE trial (0.1).	0.10	$750.00	$75.00
10/16/2022	JAM	MFCO	Review/digest BH Equities' deposition transcript (4.2).	4.20	$1,395.00	$5,859.00
10/16/2022	HRW	MFCO	Review trial subpoenas (0.3).	0.30	$750.00	$225.00
10/16/2022	HRW	MFCO	Email J. Morris re: trial subpoenas (0.1).	0.10	$750.00	$75.00
10/17/2022	JAM	MFCO	Review draft trial subpoenas and communications w/ Z. Annable re: same (0.4); review deposition transcript for BH Equities and prepare designations (4.5); e-mail to Gameros re: subpoenas for Dondero and McGraner (0.2); e-mail to D. Dandeneau re: subpoena for M. Patrick (0.1); tel c. w/ D. Dandeneau re: Patrick subpoena (0.1); e-mails to J. Seery re: HCRE discovery (0.1).	5.40	$1,395.00	$7,533.00
10/17/2022	HRW	MFCO	Review email from J. Morris re: HCRE trial subpoenas and related matters (0.2).	0.20	$750.00	$150.00
10/17/2022	HRW	MFCO	Review email from Z. Annable re: HCRE trial subpoenas and related matters (0.2).	0.20	$750.00	$150.00
10/17/2022	HRW	MFCO	Review email from J. Morris re: W&E list for HCRE matters (0.1).	0.10	$750.00	$75.00
10/18/2022	JAM	MFCO	Prepare Dondero cross-examination (5.4);e-mails w Court, B. Gameros, J. Pomerantz, H. Winograd re: November hearing (0.1).	5.50	$1,395.00	$7,672.50
10/18/2022	HRW	MFCO	Review emails from Z. Annable re: Request for Acceptance of Service of Trial Subpoenas for Mr. Patrick (0.2).	0.20	$750.00	$150.00
10/18/2022	HRW	MFCO	Review emails from J. Morris re: Request for Acceptance of Service of Trial Subpoenas for Mr. Patrick (0.1).	0.10	$750.00	$75.00
10/18/2022	HRW	MFCO	Review email from W. Carvell re: trial scheduling (0.1).	0.10	$750.00	$75.00
10/19/2022	JAM	MFCO	Meet w/ H. Winograd re: trial prep (0.5); e-mails w/M. Roberts, B. Gameros, H. Winograd re: Barker Viggato subpoena and related matters (0.4); tel c. w/J. Seery re: Klos and Conoyour subpoena and related matters (0.3); begin trial preparation (3.6).	4.80	$1,395.00	$6,696.00
10/19/2022	HRW	MFCO	Meet with J. Morris re: trial prep (0.5).	0.50	$750.00	$375.00
10/19/2022	HRW	MFCO	Email L. Canty re: W&E list (0.1).	0.10	$750.00	$75.00
10/19/2022	HRW	MFCO	Email J. Morris re: W&E list (0.1).	0.10	$750.00	$75.00
10/19/2022	HRW	MFCO	Call with L. Canty re: W&E list (0.2).	0.20	$750.00	$150.00
10/19/2022	HRW	MFCO	Review emails from J. Morris re: trial subpoena for Barker Viggato (0.3).	0.30	$750.00	$225.00
10/19/2022	HRW	MFCO	Review emails from M. Roberts re: trial subpoena for Barker Viggato (0.1).	0.10	$750.00	$75.00
10/19/2022	HRW	MFCO	Review emails from B. Gameros re: trial subpoena for Barker Viggato (0.1).	0.10	$750.00	$75.00
10/19/2022	HRW	MFCO	Review emails from J. Morris re: W&E list (0.2).	0.20	$750.00	$150.00
10/19/2022	HRW	MFCO	Review email from B. Gameros re: NexPoint REP POC Trial subpoenas (0.1).	0.10	$750.00	$75.00
10/19/2022	HRW	MFCO	Review email from J. Seery re: NexPoint REP POC Trial subpoenas (0.1).	0.10	$750.00	$75.00

OCTOBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/19/2022	HRW	MFCO	Review email from Z. Annable re: Request for Acceptance of Service of Trial Subpoenas for Mr. Patrick (0.1).	0.10	$750.00	$75.00
10/20/2022	HRW	MFCO	Review cross examination of Dondero in preparation for HCRE trial (1.2).	1.20	$750.00	$900.00
10/21/2022	JAM	MFCO	Review draft W&E list and e-mails w/ H. Winograd, L. Canty re: same (0.6).	0.60	$1,395.00	$837.00
10/21/2022	HRW	MFCO	Prepare for cross of Mark Patrick (3.0).	3.00	$750.00	$2,250.00
10/21/2022	HRW	MFCO	Call with L. Canty re: W&E list (0.1).	0.10	$750.00	$75.00
10/21/2022	HRW	MFCO	Review draft W&E list (0.3).	0.30	$750.00	$225.00
10/21/2022	HRW	MFCO	Review emails from J. Morris re: W&E list (0.2).	0.20	$750.00	$150.00
10/21/2022	HRW	MFCO	Review emails from L. Canty re: W&E list (0.2).	0.20	$750.00	$150.00
10/21/2022	HRW	MFCO	Email L. Canty and J. Morris re: W&E list (0.2).	0.20	$750.00	$150.00
10/23/2022	JAM	MFCO	E-mails w/ B. Gameros, H. Winograd re: W&E lists, trial issues (0.2).	0.20	$1,395.00	$279.00
10/23/2022	HRW	MFCO	Review emails from J. Morris re: meet and confer (0.1).	0.10	$750.00	$75.00
10/23/2022	HRW	MFCO	Review emails from B. Gameros re: meet and confer (0.1).	0.10	$750.00	$75.00
10/23/2022	HRW	MFCO	Email J. Morris re: meet and confer (0.1).	0.10	$750.00	$75.00
10/23/2022	HRW	MFCO	Review email from L. Canty re: W&E list (0.1).	0.10	$750.00	$75.00
10/23/2022	HRW	MFCO	Review exhibits for HCRE trial (0.2).	0.20	$750.00	$150.00
10/24/2022	JAM	MFCO	E-mail to J. Seery, D. Klos, T. Cournoyer re: possible testimony (0.2); tel c. w/ T. Cournoyer re: possible testimony (0.2); e-mails w/ D. Dandeneau, H. Winograd re: privilege issues (0.1); e-mails w/ Court, B. Gameros, H. Winograd re: scheduling issues (0.2).	0.70	$1,395.00	$976.50
10/24/2022	HRW	MFCO	Review email from J. Morris re: HCRE searches (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Review email from T. Cournoyer re: trial subpoenas (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Review emails from D. Dandenaeu re: Patrick deposition (0.2).	0.20	$750.00	$150.00
10/24/2022	HRW	MFCO	Review emails from J. Morris re: Patrick deposition (0.2).	0.20	$750.00	$150.00
10/24/2022	HRW	MFCO	Email J. Morris re: Patrick deposition (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Review email from D. Klos re: trial subpoenas (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Review email from J. Morris re: W&E lists (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Review emails from Z. Annable re: W&E lists (0.2).	0.20	$750.00	$150.00
10/24/2022	HRW	MFCO	Review email from J. Morris to Court re: W&E lists for HCRE trial (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Review email from Court re: W&E lists for HCRE trial (0.1).	0.10	$750.00	$75.00
10/24/2022	HRW	MFCO	Prepare for cross examination of M. Patrick (1.0).	1.00	$750.00	$750.00
10/25/2022	JAM	MFCO	Communications w/ H. Winograd, L. Canty re: W&E list and review of same (0.2); review documents re: Klos and Cournoyer (0.4).	0.60	$1,395.00	$837.00
10/25/2022	HRW	MFCO	Prepare for cross examination of Patrick (3.2).	3.20	$750.00	$2,400.00
10/25/2022	HRW	MFCO	Review emails from L. Canty re: HCRE document review (0.2).	0.20	$750.00	$150.00
10/25/2022	HRW	MFCO	Review emails from J. Morris re: HCRE document review (0.1).	0.10	$750.00	$75.00
10/25/2022	HRW	MFCO	Review emails from J. Morris re: HCRE W&E Lists and Trial Matters (0.1).	0.10	$750.00	$75.00

OCTOBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/25/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE W&E Lists and Trial Matters (0.1).	0.10	$750.00	$75.00
10/26/2022	JAM	MFCO	Review/designate Barker Viggato deposition transcript (1.3); e-mail to L. Canty re: deposition designations for Barker Viggato (0.2); meet and confer call w/ H. Winograd, HCRE's counsel (0.5); tel c. w/ H. Winograd re: M. Patrick examination (0.1); e-mails w/ D. Dandeneau, HCRE's counsel re: Patrick appearance (0.1); e-mail to M. Roberts, H. Winograd, HCRE's counsel re: BV document production (0.2); e-mail to C. Doherty, H. Winograd, HCRE's counsel re: BH Equities document production (0.1).	2.50	$1,395.00	$3,487.50
10/26/2022	HRW	MFCO	Meet and Confer with HCRE counsel re: trial exhibits and scheduling (0.5).	0.50	$750.00	$375.00
10/26/2022	HRW	MFCO	Call with L. Canty re: W&E list (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Call with J. Morris re: M. Patrick cross-examination (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Prepare for cross-examination of M. Patrick (3.0).	3.00	$750.00	$2,250.00
10/26/2022	HRW	MFCO	Review email from J. Morris re: Deposition Designations for Barker Viggato (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Review email from J. Morris re: meet and confer for hearing (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Review email from J. Morris re: Barker Viggato document production (0.2).	0.20	$750.00	$150.00
10/26/2022	HRW	MFCO	Review emails from J. Morris re: BH Equities document production (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Review emails from M. Roberts re: Barker Viggato document production (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Review emails from C. Doherty re: BH Equities document production (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Review email from W. Carvell re: trial subpoenas (0.1).	0.10	$750.00	$75.00
10/26/2022	HRW	MFCO	Review trial subpoenas (0.1).	0.10	$750.00	$75.00
10/27/2022	JAM	MFCO	Tel c. w/ J. Seery, D. Klos, T. Cournoyer, H. Winograd re: preparation for testimony (1.6); tel c. w/ J. Seery re: HCRE trial issues (0.1); tel c. w/ H. Winograd re: trial strategy and related issues (0.4); work on W&E list (0.8); communications w/ L. Canty, H. Winograd re: W&E list issues (0.3); communications w/ C. Dougherty re: BH Equities document production and confidentiality issues (0.3); prepare for trial (2.3).	5.80	$1,395.00	$8,091.00
10/27/2022	HRW	MFCO	Prepare for examination of Mark Patrick (3.0).	3.00	$750.00	$2,250.00
10/27/2022	HRW	MFCO	Review emails from J. Morris re: trial prep (0.2).	0.20	$750.00	$150.00
10/27/2022	HRW	MFCO	Review documents in preparation for trial (0.6).	0.60	$750.00	$450.00
10/27/2022	HRW	MFCO	Review emails from J. Morris re: W&E list (0.5).	0.50	$750.00	$375.00
10/27/2022	HRW	MFCO	Review emails from J. Morris re: Deposition Designations for Barker Viggato (0.1).	0.10	$750.00	$75.00
10/27/2022	HRW	MFCO	Review emails from L. Canty re: W&E list (0.4).	0.40	$750.00	$300.00
10/27/2022	HRW	MFCO	Review emails from Z. Annable re: W&E list (0.3).	0.30	$750.00	$225.00
10/27/2022	HRW	MFCO	Calls with L. Canty re: W&E list (0.3).	0.30	$750.00	$225.00
10/27/2022	HRW	MFCO	Email L. Canty and J. Morris re: W&E list (0.3).	0.30	$750.00	$225.00
10/27/2022	HRW	MFCO	Email Z. Annable: W&E list (0.1).	0.10	$750.00	$75.00
10/27/2022	HRW	MFCO	Review email from C. Doherty re: BH Equities exhibits (0.1).	0.10	$750.00	$75.00

OCTOBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/27/2022	HRW	MFCO	Call with J. Morris re: trial prep (0.3).	0.30	$750.00	$225.00
10/27/2022	HRW	MFCO	Call with J. Morris, T. Cournoyer, J. Seery, D. Klos re: trial prep (1.6).	1.60	$750.00	$1,200.00
10/27/2022	HRW	MFCO	Email R. Saunders re: research on legal standards (0.1).	0.10	$750.00	$75.00
10/27/2022	HRW	MFCO	Email J. Morris re: research on legal standards for mutual mistake (0.2).	0.20	$750.00	$150.00
10/27/2022	HRW	MFCO	Research re: legal standards for HCRE claim (3.0).	3.00	$750.00	$2,250.00
10/28/2022	JNP	MFCO	Conference with John A. Morris regarding HCRE trial.	0.20	$1,445.00	$289.00
10/28/2022	RMS	MFCO	Telephone conference with Hayley Winograd regarding legal research regarding contract	0.10	$1,025.00	$102.50
10/28/2022	RMS	MFCO	Legal research regarding contract	0.50	$1,025.00	$512.50
10/28/2022	JAM	MFCO	Trial preparation, including preparation of opening statement slide deck and cross-examination for McGraner.	7.30	$1,395.00	$10,183.50
10/28/2022	HRW	MFCO	Review and edit cross examination of M. Patrick (7.5).	7.50	$750.00	$5,625.00
10/28/2022	HRW	MFCO	Email J. Morris re: examination of M. Patrick (0.1).	0.10	$750.00	$75.00
10/28/2022	HRW	MFCO	Review emails from Court re: HCRE trial scheduling (0.1).	0.10	$750.00	$75.00
10/28/2022	HRW	MFCO	Email Court re: HCRE trial scheduling (0.1).	0.10	$750.00	$75.00
10/28/2022	HRW	MFCO	Call with R. Saunders re: research issues for trial (0.1).	0.10	$750.00	$75.00
10/28/2022	HRW	MFCO	Email R. Saunders re: research issues for trial (0.1).	0.10	$750.00	$75.00
10/28/2022	HRW	MFCO	Email J. Morris re: trial strategy (0.1).	0.10	$750.00	$75.00
10/29/2022	JAM	MFCO	Prepare for HCRE trial (4.2); tel c. w/ H. Winograd re: Patrick cross and related matters (0.4); communications w/ B. Gameros, W. Carvell, H. Winograd re: objections to exhibits (0.1).	4.70	$1,395.00	$6,556.50
10/29/2022	HRW	MFCO	Review emails from B. Gameros and W. Carvell re: deposition designations (0.2).	0.20	$750.00	$150.00
10/29/2022	HRW	MFCO	Review emails from J. Morris re: trial exhibits (0.2).	0.20	$750.00	$150.00
10/29/2022	HRW	MFCO	Review and edit cross examination of M. Patrick (1.8).	1.80	$750.00	$1,350.00
10/29/2022	HRW	MFCO	Review deposition testimony (0.5).	0.50	$750.00	$375.00
10/30/2022	JAM	MFCO	Prepare for trial (6.0); tel c. w/ H. Winograd re: trial preparation (1.2); tel c. w/ J. Seery re: trial preparation (0.4); tel c. w/ D. Dandeneau re: Patrick (0.1); e-mails w/ B. Gameros re: Patrick (0.1); tel c. w/ H. Winograd re: trial preparation (0.1).	7.90	$1,395.00	$11,020.50
10/30/2022	HRW	MFCO	Calls with J. Morris re: HCRE trial prep (1.3).	1.30	$750.00	$975.00
10/30/2022	HRW	MFCO	Review and edit cross examinations (3.5).	3.50	$750.00	$2,625.00
10/30/2022	HRW	MFCO	Review emails from J. Morris re: HCRE trial schedule (0.1).	0.10	$750.00	$75.00
10/30/2022	HRW	MFCO	Review emails from B. Gameros re: HCRE trial schedule (0.1).	0.10	$750.00	$75.00
10/30/2022	HRW	MFCO	Research various legal issues in preparation for HCRE trial (2.5).	2.50	$750.00	$1,875.00
10/30/2022	HRW	MFCO	Draft and review slides for HCRE trial presentation (2.5).	2.50	$750.00	$1,875.00
10/30/2022	HRW	MFCO	Review documents and exhibits in preparation for HCRE trial (2.0).	2.00	$750.00	$1,500.00
10/31/2022	JAM	MFCO	Prepare for trial (including reviewing and revising opening deck and cross examinations and meetings w/ H. Winograd concerning the same) (7.6); meet and confer call w/ H. Winograd, W. Carvell (0.4).	8.00	$1,395.00	$11,160.00

OCTOBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/31/2022	HRW	MFCO	Prepare for HCRE trial (9.5).	9.50	$750.00	$7,125.00
			TOTAL	**159.80**		**$172,765.00**

Non-Working Travel

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/31/2022	JAM	NT	Non-working travel New York to Dallas (3.7) (billed at 1/2 rate)	3.70	$697.50	$2,580.75
10/31/2022	HRW	NT	Travel to Dallas for HCRE trial (3.5) (billed at 1/2 rate)	3.50	$375.00	$1,312.50
			TOTAL	**7.20**		**$3,893.25**

$176,658.25

NOVEMBER 2022 (MFCO AND NT)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

November 30, 2022
Invoice 131454
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 11/30/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 131454
November 30, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]	[redacted]	[redacted]	[redacted]
MFCO	Multi Family Obj to Claims	89.30	$83,838.00
NT	Non-Working Travel	11.30	$5,946.75
[redacted]	[redacted]	[redacted]	[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 131454
November 30, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

10/04/2022	LSC	MFCO	Prepare for and assist at deposition of J. Dondero.	5.20	495.00	$2,574.00
10/10/2022	LSC	MFCO	Research and retrieve documents in preparation for 10/11/22 HCRE deposition.	0.70	495.00	$346.50
10/11/2022	LSC	MFCO	Prepare for and assist at McGraner/HCRE deposition.	6.50	495.00	$3,217.50
10/16/2022	LSC	MFCO	Prepare notices of trial subpoenas and trial subpoenas for J. Dondero, M. McGraner, M. Patrick, and B. Viggato.	0.80	495.00	$396.00
10/23/2022	LSC	MFCO	Continued preparation of trial exhibit list and exhibits in connection with November 1, 2022 trial re HCRE POC.	4.10	495.00	$2,029.50
10/25/2022	LSC	MFCO	Conduct searches and review documents in connection with upcoming trial for J. Morris.	1.90	495.00	$940.50
11/01/2022	JNP	MFCO	Participate in hearing on claim objection (partial).	4.30	1445.00	$6,213.50
11/01/2022	JAM	MFCO	Prepare for evidentiary hearing (2.3); trial, including communications w/ team (9 am to 4 pm) (7.0); tel c.	10.20	1395.00	$14,229.00

				Hours	Rate	Amount
			w/ J. Seery, D.Klos, G. Demo re: trail (0.3); tel c. w/ J. Pomerantz re: trial (0.2); meet with Highland team re: trial (0.4).			
11/01/2022	LSC	MFCO	Prepare for and assist at HCRE claim hearing.	6.20	495.00	$3,069.00
11/01/2022	GVD	MFCO	Review hearing presentation (0.2); attend hearing (6.1); follow up with J. Morris and J. Seery (0.3)	6.60	1095.00	$7,227.00
11/01/2022	HRW	MFCO	Attend trial on HCRE proof of claim (7.5).	7.50	750.00	$5,625.00
11/01/2022	HRW	MFCO	Prepare for HCRE trial (1.5).	1.50	750.00	$1,125.00
11/02/2022	JAM	MFCO	Tel c. w/ B. Gameros re: settlement (0.1); tel c. w/ J. Seery, D. Klos re: settlement and related matters (0.3); communications w/ G. Demo, Z. Annable, H. Winograd re: motion for leave to file post-hearing brief (0.2).	0.60	1395.00	$837.00
11/02/2022	HRW	MFCO	Review email from Z. Annable re: post-trial brief (0.1).	0.10	750.00	$75.00
11/02/2022	HRW	MFCO	Review email from C re: post-trial brief (0.1).	0.10	750.00	$75.00
11/03/2022	JAM	MFCO	Review case law re: executory contracts (0.6).	0.60	1395.00	$837.00
11/03/2022	HRW	MFCO	Draft motion for leave to file post-trial brief (2.0).	2.00	750.00	$1,500.00
11/04/2022	JAM	MFCO	E-mail to B. Gameros re: settlement (0.2); e-mails w/ D. Klos re: "consolidation" (0.2); review Klos "consolidation" email (0.3).	0.70	1395.00	$976.50
11/04/2022	HRW	MFCO	Email J. Morris re: motion for leave to file post-trial brief (0.1).	0.10	750.00	$75.00
11/04/2022	HRW	MFCO	Draft motion for leave to file post-trial brief (2.5).	2.50	750.00	$1,875.00
11/04/2022	HRW	MFCO	Review email from J. Morris re: counterproposal to HCRE (0.1).	0.10	750.00	$75.00
11/06/2022	JAM	MFCO	On-line research re: consolidation of related entities for executory contract brief (0.3).	0.30	1395.00	$418.50
11/08/2022	JAM	MFCO	Review/revise motion for leave to file post-trial brief (1.3); review transcript of 11/1 hearing re: executory contract issues (0.6); tel c. w/ H. Winograd re: motion for leave (0.1); tel c. w/ H. Winograd re: motion for leave (0.3).	2.30	1395.00	$3,208.50
11/08/2022	HRW	MFCO	Calls with J. Morris re: post-trial brief (0.3).	0.30	750.00	$225.00
11/08/2022	HRW	MFCO	Email J. Morris re: post-trial brief (0.1).	0.10	750.00	$75.00
11/08/2022	HRW	MFCO	Review emails from J. Morris re: post-trial brief (0.1).	0.10	750.00	$75.00
11/08/2022	HRW	MFCO	Review motion for leave to file post-trial brief (0.3).	0.30	750.00	$225.00
11/08/2022	HRW	MFCO	Research executory contract for post-trial brief (1.2).	1.20	750.00	$900.00

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 25
Invoice 131454
November 30, 2022

				Hours	Rate	Amount
11/09/2022	JAM	MFCO	Review/revise motion for leave to file post-trial brief (2.1); communications w/ H. Winograd, Z. Annable re: motion for leave to file post-trial brief (0.3); analysis of issues and continued work on post-trial brief concerning executory contract argument (2.8).	5.20	1395.00	$7,254.00
11/09/2022	GVD	MFCO	Review HCRE post trial brief	0.30	1095.00	$328.50
11/09/2022	HRW	MFCO	Email J. Seery re: HCRE trial (0.2).	0.20	750.00	$150.00
11/09/2022	HRW	MFCO	Review HCRE trial transcript (0.5).	0.50	750.00	$375.00
11/09/2022	HRW	MFCO	Review email from J. Seery re: HCRE trial (0.1).	0.10	750.00	$75.00
11/09/2022	HRW	MFCO	Communicate with G. Demo re: HCRE trial transcript (0.1).	0.10	750.00	$75.00
11/09/2022	HRW	MFCO	Email J. Morris re: post-trial brief (0.1).	0.10	750.00	$75.00
11/09/2022	HRW	MFCO	Review email from J. Morris re: post-trial brief (0.1).	0.10	750.00	$75.00
11/09/2022	HRW	MFCO	Review email from G. Demo re: post-trial brief (0.1).	0.10	750.00	$75.00
11/09/2022	HRW	MFCO	Review email from Z. Annable re: post-trial brief (0.1).	0.10	750.00	$75.00
11/09/2022	HRW	MFCO	Review and edit motion for leave to file post-trial brief (0.5).	0.50	750.00	$375.00
11/10/2022	JAM	MFCO	Review/revise motion for leave to file post-trial brief (0.8); communications w/ J. Seery, D. Klos, Pomerantz, G. Demo, H. Winograd, Z. Annable re: post-trial brief concerning executory contracts (0.6); review/revise post-trial brief concerning executory contract argument (4.6).	6.00	1395.00	$8,370.00
11/10/2022	GVD	MFCO	Review supplemental brief re executory contract issues	1.60	1095.00	$1,752.00
11/10/2022	HRW	MFCO	Review and edit post-trial brief (3.5).	3.50	750.00	$2,625.00
11/10/2022	HRW	MFCO	Review emails from J. Morris re: post-trial brief (0.4).	0.40	750.00	$300.00
11/10/2022	HRW	MFCO	Call with G. Demo re: post-trial brief (0.2).	0.20	750.00	$150.00
11/10/2022	HRW	MFCO	Calls with J. Morris re: post-trial brief (0.2).	0.20	750.00	$150.00
11/10/2022	HRW	MFCO	Review email from J. Pomerantz re: post-trial brief (0.1).	0.10	750.00	$75.00
11/10/2022	HRW	MFCO	Review email from G. Demo re: post-trial brief (0.1).	0.10	750.00	$75.00
11/10/2022	HRW	MFCO	Email Z. Annable re: post-trial brief (0.2).	0.20	750.00	$150.00
11/10/2022	HRW	MFCO	Email J. Pomerantz, J. Morris, G. Demo re: post-trial	0.20	750.00	$150.00

				Hours	Rate	Amount
			brief (0.2).			
11/10/2022	HRW	MFCO	Review emails from Z. Annable re: post-trial brief (0.2).	0.20	750.00	$150.00
11/10/2022	HRW	MFCO	Review email from D. Klos re: post-trial brief (0.1).	0.10	750.00	$75.00
11/17/2022	HRW	MFCO	Review emails from Z. Annable re: order on motion for leave to file post-trial brief (0.2).	0.20	750.00	$150.00
11/17/2022	HRW	MFCO	Review email from J. Morris re: order on motion for leave to file post-trial brief (0.2).	0.20	750.00	$150.00
11/17/2022	HRW	MFCO	Email Z. Annable re: order on motion for leave to file post-trial brief (0.2).	0.20	750.00	$150.00
11/17/2022	HRW	MFCO	Draft and review order on motion for leave to file post-trial brief (0.3).	0.30	750.00	$225.00
11/22/2022	JMF	MFCO	Review post trial brief.	0.50	1145.00	$572.50
11/22/2022	HRW	MFCO	Review email from Z. Annable re: post-trial brief (0.1).	0.10	750.00	$75.00
11/30/2022	JAM	MFCO	Tel c. w/ J. Seery, D. Klos, J. Pomerantz re: potential settlement (0.8).	0.80	1395.00	$1,116.00
				89.30		**$83,838.00**

Non-Working Travel

11/01/2022	HRW	NT	Travel to NYC from HCRE trial (billed at 1/2 rate)	6.00	375.00	$2,250.00
11/02/2022	JAM	NT	Non-working travel Dallas to New York (billed at 1/2 rate)	5.30	697.50	$3,696.75
				11.30		**$5,946.75**

[redacted]

NOVEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
10/4/2022	LSC	MFCO	Prepare for and assist at deposition of J. Dondero.	5.20	495	$2,574.00
10/10/2022	LSC	MFCO	Research and retrieve documents in preparation for 10/11/22 HCRE deposition.	0.70	495	$346.50
10/11/2022	LSC	MFCO	Prepare for and assist at McGraner/HCRE deposition.	6.50	495	$3,217.50
10/16/2022	LSC	MFCO	Prepare notices of trial subpoenas and trial subpoenas for J. Dondero, M. McGraner, M. Patrick, and B. Viggato.	0.80	495	$396.00
10/23/2022	LSC	MFCO	Continued preparation of trial exhibit list and exhibits in connection with November 1, 2022 trial re HCRE POC.	4.10	495	$2,029.50
10/25/2022	LSC	MFCO	Conduct searches and review documents in connection with upcoming trial for J. Morris.	1.90	495	$940.50
11/1/2022	JNP	MFCO	Participate in hearing on claim objection (partial).	4.30	1445	$6,213.50
11/1/2022	JAM	MFCO	Prepare for evidentiary hearing (2.3); trial, including communications w/ team (9 am to 4 pm) (7.0); tel c. w/ J. Seery, D.Klos, G. Demo re: trail (0.3); tel c. w/J. Pomerantz re: trial (0.2); meet with Highland team re: trial (0.4).	10.20	1395	$14,229.00
11/1/2022	LSC	MFCO	Prepare for and assist at HCRE claim hearing.	6.20	495	$3,069.00
11/1/2022	GVD	MFCO	Review hearing presentation (0.2); attend hearing (6.1); follow up with J. Morris and J. Seery (0.3)	6.60	1095	$7,227.00
11/1/2022	HRW	MFCO	Attend trial on HCRE proof of claim (7.5).	7.50	750	$5,625.00
11/1/2022	HRW	MFCO	Prepare for HCRE trial (1.5).	1.50	750	$1,125.00
11/2/2022	JAM	MFCO	Tel c. w/ B. Gameros re: settlement (0.1); tel c. w/ J. Seery, D. Klos re: settlement and related matters (0.3); communications w/ G. Demo, Z. Annable, H. Winograd re: motion for leave to file post-hearing brief (0.2).	0.60	1395	$837.00
11/2/2022	HRW	MFCO	Review email from Z. Annable re: post-trial brief (0.1).	0.10	750	$75.00
11/2/2022	HRW	MFCO	Review email from C re: post-trial brief (0.1).	0.10	750	$75.00
11/3/2022	JAM	MFCO	Review case law re: executory contracts (0.6).	0.60	1395	$837.00
11/3/2022	HRW	MFCO	Draft motion for leave to file post-trial brief (2.0).	2.00	750	$1,500.00
11/4/2022	JAM	MFCO	E-mail to B. Gameros re: settlement (0.2); e-mails w/ D. Klos re: "consolidation" (0.2); review Klos "consolidation" email (0.3).	0.70	1395	$976.50
11/4/2022	HRW	MFCO	Email J. Morris re: motion for leave to file post-trial brief (0.1).	0.10	750	$75.00
11/4/2022	HRW	MFCO	Draft motion for leave to file post-trial brief (2.5).	2.50	750	$1,875.00
11/4/2022	HRW	MFCO	Review email from J. Morris re: counterproposal to HCRE (0.1).	0.10	750	$75.00
11/6/2022	JAM	MFCO	On-line research re: consolidation of related entities for executory contract brief (0.3).	0.30	1395	$418.50
11/8/2022	JAM	MFCO	Review/revise motion for leave to file post-trial brief (1.3); review transcript of 11/1 hearing re: executory contract issues (0.6); tel c. w/ H. Winograd re: motion for leave (0.1); tel c. w/ H. Winograd re: motion for leave (0.3).	2.30	1395	$3,208.50
11/8/2022	HRW	MFCO	Calls with J. Morris re: post-trial brief (0.3).	0.30	750	$225.00
11/8/2022	HRW	MFCO	Email J. Morris re: post-trial brief (0.1).	0.10	750	$75.00
11/8/2022	HRW	MFCO	Review emails from J. Morris re: post-trial brief (0.1).	0.10	750	$75.00
11/8/2022	HRW	MFCO	Review motion for leave to file post-trial brief (0.3).	0.30	750	$225.00

NOVEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
11/8/2022	HRW	MFCO	Research executory contract for post-trial brief (1.2).	1.20	750	$900.00
11/9/2022	JAM	MFCO	Review/revise motion for leave to file post-trial brief (2.1); communications w/ H. Winograd, Z. Annable re: motion for leave to file post-trial brief (0.3); analysis of issues and continued work on post-trial brief concerning executory contract argument (2.8).	5.20	1395	$7,254.00
11/9/2022	GVD	MFCO	Review HCRE post trial brief	0.30	1095	$328.50
11/9/2022	HRW	MFCO	Email J. Seery re: HCRE trial (0.2).	0.20	750	$150.00
11/9/2022	HRW	MFCO	Review HCRE trial transcript (0.5).	0.50	750	$375.00
11/9/2022	HRW	MFCO	Review email from J. Seery re: HCRE trial (0.1).	0.10	750	$75.00
11/9/2022	HRW	MFCO	Communicate with G. Demo re: HCRE trial transcript (0.1).	0.10	750	$75.00
11/9/2022	HRW	MFCO	Email J. Morris re: post-trial brief (0.1).	0.10	750	$75.00
11/9/2022	HRW	MFCO	Review email from J. Morris re: post-trial brief (0.1).	0.10	750	$75.00
11/9/2022	HRW	MFCO	Review email from G. Demo re: post-trial brief (0.1).	0.10	750	$75.00
11/9/2022	HRW	MFCO	Review email from Z. Annable re: post-trial brief (0.1).	0.10	750	$75.00
11/9/2022	HRW	MFCO	Review and edit motion for leave to file post-trial brief (0.5).	0.50	750	$375.00
11/10/2022	JAM	MFCO	Review/revise motion for leave to file post-trial brief (0.8); communications w/ J. Seery, D. Klos, Pomerantz, G. Demo, H. Winograd, Z. Annable re: post-trial brief concerning executory contracts (0.6); review/revise post-trial brief concerning executory contract argument (4.6).	6.00	1395	$8,370.00
11/10/2022	GVD	MFCO	Review supplemental brief re executory contract issues	1.60	1095	$1,752.00
11/10/2022	HRW	MFCO	Review and edit post-trial brief (3.5).	3.50	750	$2,625.00
11/10/2022	HRW	MFCO	Review emails from J. Morris re: post-trial brief (0.4).	0.40	750	$300.00
11/10/2022	HRW	MFCO	Call with G. Demo re: post-trial brief (0.2).	0.20	750	$150.00
11/10/2022	HRW	MFCO	Calls with J. Morris re: post-trial brief (0.2).	0.20	750	$150.00
11/10/2022	HRW	MFCO	Review email from J. Pomerantz re: post-trial brief (0.1).	0.10	750	$75.00
11/10/2022	HRW	MFCO	Review email from G. Demo re: post-trial brief (0.1).	0.10	750	$75.00
11/10/2022	HRW	MFCO	Email Z. Annable re: post-trial brief (0.2).	0.20	750	$150.00
11/10/2022	HRW	MFCO	Email J. Pomerantz, J. Morris, G. Demo re: post-trial brief (0.2).	0.20	750	$150.00
11/10/2022	HRW	MFCO	Review emails from Z. Annable re: post-trial brief (0.2).	0.20	750	$150.00
11/10/2022	HRW	MFCO	Review email from D. Klos re: post-trial brief (0.1).	0.10	750	$75.00
11/17/2022	HRW	MFCO	Review emails from Z. Annable re: order on motion for leave to file post-trial brief (0.2).	0.20	750	$150.00
11/17/2022	HRW	MFCO	Review email from J. Morris re: order on motion for leave to file post-trial brief (0.2).	0.20	750	$150.00
11/17/2022	HRW	MFCO	Email Z. Annable re: order on motion for leave to file post-trial brief (0.2).	0.20	750	$150.00
11/17/2022	HRW	MFCO	Draft and review order on motion for leave to file post-trial brief (0.3).	0.30	750	$225.00
11/22/2022	JMF	MFCO	Review post trial brief.	0.50	1145	$572.50
11/22/2022	HRW	MFCO	Review email from Z. Annable re: post-trial brief (0.1).	0.10	750	$75.00

NOVEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
11/30/2022	JAM	MFCO	Tel c. w/ J. Seery, D. Klos, J. Pomerantz re: potential settlement (0.8).	0.80	1395	$1,116.00
			TOTAL	**89.30**		**$83,838.00**

Non-Working Travel

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
11/1/2022	HRW	NT	Travel to NYC from HCRE trial (billed at 1/2 rate)	6.00	375	$2,250.00
11/2/2022	JAM	NT	Non-working travel Dallas to New York (billed at	5.30	697.5	$3,696.75
			TOTAL	**11.30**		**$5,946.75**

DECEMBER 2022 (MFCO)

Pachulski Stang Ziehl & Jones LLP

10100 Santa Monica Blvd.
13th Floor
Los Angeles, CA 90067

December 31, 2022
Invoice 131566
Client 36027
Matter 00003
JNP

James P. Seery, Jr.
Highland Capital Management LP
100 Crescent Court, Suite 1850
Dallas, TX 75201

RE: Post-Effective Date

STATEMENT OF PROFESSIONAL SERVICES RENDERED THROUGH 12/31/2022

[redacted]

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 3
Invoice 131566
December 31, 2022

Summary of Services by Task Code

Task Code	Description	Hours	Amount
[redacted]			
MFCO	Multi Family Obj to Claims	10.30	$11,434.50
[redacted]			

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Invoice 131566
December 31, 2022

				Hours	Rate	Amount
[redacted]						

Multi Family Obj to Claims

12/04/2022	JAM	MFCO	Work on reply for post-trial brief on executory contracts (2.3).	2.30	1395.00	$3,208.50
12/05/2022	JAM	MFCO	Continued work on reply post-trial brief on executory contracts (2.1).	2.10	1395.00	$2,929.50
12/05/2022	HRW	MFCO	Review and edit reply ISO post-trial brief (0.8).	0.80	750.00	$600.00
12/05/2022	HRW	MFCO	Email J. Morris re: reply ISO post-trial brief (0.8).	0.80	750.00	$600.00
12/06/2022	JAM	MFCO	Review/revise draft reply on "executory contract" issue (0.5); tel c. w/ H. Winograd re: reply brief (0.1); e-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd, Z. Annable re: same (0.2).	0.80	1395.00	$1,116.00
12/06/2022	HRW	MFCO	Call with J. Morris re: reply ISO post-trial brief (0.1).	0.10	750.00	$75.00
12/06/2022	HRW	MFCO	Review reply ISO post-trial brief (0.2).	0.20	750.00	$150.00
12/06/2022	HRW	MFCO	Review emails from J. Morris re: reply ISO post-trial brief (0.1).	0.10	750.00	$75.00
12/06/2022	HRW	MFCO	Review emails from J. Seery re: reply ISO post-trial brief (0.1).	0.10	750.00	$75.00
12/07/2022	JMF	MFCO	Review response to HCRE brief.	0.30	1145.00	$343.50
12/07/2022	JAM	MFCO	Final review/revisions to Reply brief on Executory Contract issue (0.3); e-mails w/ J. Pomerantz, Z. Annable re: same (0.2).	0.50	1395.00	$697.50

Pachulski Stang Ziehl & Jones LLP
Highland Capital Management LP
36027 - 00003

Page: 44
Invoice 131566
December 31, 2022

				Hours	Rate	Amount
12/07/2022	HRW	MFCO	Review emails from Z. Annable re: reply ISO post-trial brief (0.1).	0.10	750.00	$75.00
12/16/2022	LSC	MFCO	Research and correspondence with H. Winograd regarding WP documents.	1.10	495.00	$544.50
12/19/2022	LSC	MFCO	Additional research and correspondence with H. Winograd regarding WP documents.	0.50	495.00	$247.50
[redacted]				0.30	1395.00	$418.50
[redacted]				0.20	1395.00	$279.00
				10.30		**$11,434.50**

[redacted]

DECEMBER 2022

DATE	TKPR	TASK	DESCRIPTION	HOURS	RATE	AMOUNT
12/4/2022	JAM	MFCO	Work on reply for post-trial brief on executory contracts (2.3).	2.30	$1,395.00	$3,208.50
12/5/2022	JAM	MFCO	Continued work on reply post-trial brief on executory contracts (2.1).	2.10	$1,395.00	$2,929.50
12/5/2022	HRW	MFCO	Review and edit reply ISO post-trial brief (0.8).	0.80	$750.00	$600.00
12/5/2022	HRW	MFCO	Email J. Morris re: reply ISO post-trial brief (0.8).	0.80	$750.00	$600.00
12/6/2022	JAM	MFCO	Review/revise draft reply on "executory contract" issue (0.5); tel c. w/ H. Winograd re: reply brief (0.1); e-mails w/ J. Seery, J. Pomerantz, G. Demo, H. Winograd, Z. Annable re: same (0.2).	0.80	$1,395.00	$1,116.00
12/6/2022	HRW	MFCO	Call with J. Morris re: reply ISO post-trial brief (0.1).	0.10	$750.00	$75.00
12/6/2022	HRW	MFCO	Review reply ISO post-trial brief (0.2).	0.20	$750.00	$150.00
12/6/2022	HRW	MFCO	Review emails from J. Morris re: reply ISO post-trial brief (0.1).	0.10	$750.00	$75.00
12/6/2022	HRW	MFCO	Review emails from J. Seery re: reply ISO post-trial brief (0.1).	0.10	$750.00	$75.00
12/7/2022	JMF	MFCO	Review response to HCRE brief.	0.30	$1,145.00	$343.50
12/7/2022	JAM	MFCO	Final review/revisions to Reply brief on Executory Contract issue (0.3); e-mails w/ J. Pomerantz, Z. Annable re: same (0.2).	0.50	$1,395.00	$697.50
12/7/2022	HRW	MFCO	Review emails from Z. Annable re: reply ISO post-trial brief (0.1).	0.10	$750.00	$75.00
12/16/2022	LSC	MFCO	Research and correspondence with H. Winograd regarding WP documents.	1.10	$495.00	$544.50
12/19/2022	LSC	MFCO	Additional research and correspondence with H. Winograd regarding WP documents.	0.50	$495.00	$247.50
			TOTAL	**9.80**		**$10,737.00**

EXHIBIT G

TSG

Name	Invoice Date	Invoice #	Invoice Amount
TSG (Mark Patrick 08_02_22)	8/5/2022	2089377	$2,165.20
TSG (Dustin Thomas_BH Equities 08_04_22)	8/5/2022	2089476	$2,461.40
TSG (Mark Barker_Barker Viggato 08_05_22)	8/8/2022	2089554	$1,616.55
TSG (James P. Seery, Jr. 08_10_22)	8/12/2022	2090019	$1,095.95
TSG (James Dondero 08_24_22) - Operator Bust - Scheduling Fee	8/24/2022	2091350	$300.00
TSG (James Dondero 08_24_22) - Videographer Bust - Scheduling Fee, Zoom Set Up Fee	8/24/2022	2091349	$500.00
TSG (James Dondero 10_4_22)	10/7/2022	2095828	$2,546.60
TSG (James Dondero 10_4_22)_Video	10/7/2022	2095829	$1,012.50
TSG (Matt McGraner_HCRE 10_11_22)	10/24/2022	2097452	$3,265.85
TSG (Matt McGraner_HCRE 10_11_22)_Video	10/24/2022	2097453	$1,200.00
TOTAL			**$16,164.05**

TSG REPORTING
Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 8/5/2022
INVOICE #: 2089377
JOB #: 214839

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o Hayley Winograd
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o Hayley Winograd
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Mark Patrick
JOB DATE: 8/2/2022
LOCATION: TELEPHONIC, Dallas, TX, 75061, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
Mark Patrick				
Original & 1 Certified Transcript	1	114	$5.25	$598.50
Original Transcript - Early AM Pages	1	56	$2.00	$112.00
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	114	$5.80	$661.20
Exhibit Processing - Scanned & Hyperlinked - B&W	1	148	$0.25	$37.00
Exhibit Processing - Scanned & Hyperlinked - Color	1	29	$1.00	$29.00
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Remote	1		$225.00	$225.00
Reporter Appearance Fee / Early AM Session - Remote	1		$337.50	$337.50
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$2,150.20
			SHIPPING & HANDLING	$15.00
			TOTAL	$2,165.20

THE SHIPPING CHARGE REFLECTS THE TOTAL COST OF ALL SHIPMENTS FOR YOUR ORDER ON THIS JOB.

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 8/5/2022
INVOICE #: 2089476
JOB #: 213053

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Dustin Thomas 30(b)(6) BH Equities
JOB DATE: 8/4/2022
LOCATION: TELEPHONIC, Austin, TX, 78705, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
Dustin Thomas 30(b)(6) BH Equities				
Original & 1 Certified Transcript	1	163	$5.25	$855.75
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	163	$5.80	$945.40
Exhibit Processing - Scanned & Hyperlinked - B&W	1	125	$0.25	$31.25
Exhibit Processing - Scanned & Hyperlinked - Color	1	14	$1.00	$14.00
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Remote	2		$225.00	$450.00
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$2,446.40
			SHIPPING & HANDLING	$15.00
			TOTAL	$2,461.40

THE SHIPPING CHARGE REFLECTS THE TOTAL COST OF ALL SHIPMENTS FOR YOUR ORDER ON THIS JOB.

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 8/8/2022
INVOICE #: 2089554
JOB #: 215016

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Mark Barker 30(b)(6) Barker Viggato LLP
JOB DATE: 8/5/2022
LOCATION: TELEPHONIC, Austin, TX, 78708, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
Mark Barker 30(b)(6) Barker Viggato LLP				
Original & 1 Certified Transcript	1	111	$5.25	$582.75
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	111	$5.80	$643.80
Exhibit Processing - Scanned & Hyperlinked - B&W - Complimentary	1	68	$0.25	$0.00
Exhibit Processing - Scanned & Hyperlinked - Color - Complimentary	1	5	$1.00	$0.00
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Remote	1		$225.00	$225.00
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$1,601.55
			SHIPPING & HANDLING	$15.00
			TOTAL	$1,616.55

THE SHIPPING CHARGE REFLECTS THE TOTAL COST OF ALL SHIPMENTS FOR YOUR ORDER ON THIS JOB.

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING
Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 8/12/2022
INVOICE #: 2090019
JOB #: 215540

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: James P. Seery, Jr.
JOB DATE: 8/10/2022
LOCATION: TELEPHONIC, Dallas, TX, 75201, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
James P. Seery, Jr.				
Original & 1 Certified Transcript - Complimentary	1	49	$5.25	$0.00
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	49	$5.80	$284.20
Exhibit Processing - Scanned & Hyperlinked - B&W	1	67	$0.25	$16.75
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Remote - Complimentary	1		$225.00	$0.00
Reporter Deposition Scheduling Fee - Minimum	1		$795.00	$795.00
			SUBTOTAL	$1,095.95
			TOTAL	$1,095.95

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 8/24/2022
INVOICE #: 2091350
JOB #: 216005

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO:
CASE: In re: Highland Capital Management, L.P.
WITNESS: James Dondero
JOB DATE: 8/24/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Rate	Amount
Operator Bust - Scheduling Fee	1	$300.00	$300.00
		SUBTOTAL	$300.00
		TOTAL	$300.00

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING

Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 8/24/2022
INVOICE #: 2091349
JOB #: 216005

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO:
CASE: In re: Highland Capital Management, L.P.
WITNESS: James Dondero
JOB DATE: 8/24/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	-	**TERMS**	Net 30

Services	Qty	Rate	Amount
Remote Video Stream / Zoom Set Up Fee	1	$150.00	$150.00
Videographer Bust - Scheduling Fee	1	$350.00	$350.00
		SUBTOTAL	$500.00
		TOTAL	$500.00

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING
Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 10/7/2022
INVOICE #: 2095828
JOB #: 217518

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: James Dondero
JOB DATE: 10/4/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
James Dondero				
Original & 1 Certified Transcript	1	147	$5.25	$771.75
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	147	$5.80	$852.60
Exhibit Processing - Scanned & Hyperlinked - B&W	1	283	$0.25	$70.75
Exhibit Processing - Scanned & Hyperlinked - Color	1	54	$1.00	$54.00
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Video Recorded, Remote	2		$260.00	$520.00
Reporter Waiting Time / Hour	0.75		$150.00	$112.50
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$2,531.60
			SHIPPING & HANDLING	$15.00
			TOTAL	$2,546.60

THE SHIPPING CHARGE REFLECTS THE TOTAL COST OF ALL SHIPMENTS FOR YOUR ORDER ON THIS JOB.

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING
Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 10/7/2022
INVOICE #: 2095829
JOB #: 217518

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: James Dondero
JOB DATE: 10/4/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Media	Rate	Amount
James Dondero				
Video Sync / Tape	1	3	$75.00	$225.00
Certified - MPEG - Complimentary	1	3	$50.00	$0.00
Other Services				
Videographer - Set Up & 1st Hour of Job	1		$350.00	$350.00
Videographer - Additional Hours	3.5		$125.00	$437.50
			SUBTOTAL	$1,012.50
			TOTAL	$1,012.50

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING
Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 10/24/2022
INVOICE #: 2097452
JOB #: 217519

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Matt McGraner 30(b)(6) HCRE Partners
JOB DATE: 10/11/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Pages	Rate	Amount
Matt McGraner 30(b)(6) HCRE Partners				
Original & 1 Certified Transcript	1	227	$5.25	$1,191.75
Compressed / ASCII / Word Index - Complimentary	1		$55.00	$0.00
Original Transcript - Immediate Delivery	1	227	$5.80	$1,316.60
Exhibit Processing - Scanned & Hyperlinked - B&W	1	110	$0.25	$27.50
Exhibit Processing - Scanned & Hyperlinked - Color	1	35	$1.00	$35.00
File Creation Fee - Hyperlinked Exhibits - Complimentary	1		$45.00	$0.00
Other Services				
Reporter Appearance Fee / Session - Video Recorded, Remote	2		$260.00	$520.00
Remote Video Stream / Zoom	1		$150.00	$150.00
			SUBTOTAL	$3,240.85
			SHIPPING & HANDLING	$25.00
			TOTAL	$3,265.85

THE SHIPPING CHARGE REFLECTS THE TOTAL COST OF ALL SHIPMENTS FOR YOUR ORDER ON THIS JOB.

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

TSG REPORTING
Worldwide - 24 Hours
(877) 702-9580
www.tsgreporting.com

Invoice Issued by TSG Reporting, Inc.

INVOICE DATE: 10/24/2022
INVOICE #: 2097453
JOB #: 217519

BILL TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

SHIP TO: Pachulski Stang Ziehl & Jones LLP
c/o John Morris
780 Third Avenue, 34th Floor
New York, NY 10017-2024 US

CASE: In re: Highland Capital Management, L.P.
WITNESS: Matt McGraner 30(b)(6) HCRE Partners
JOB DATE: 10/11/2022
LOCATION: TELEPHONIC, Dallas, TX, 75001, US

NOTES:

SHIP VIA	Messenger	**TERMS**	Net 30

Services	Qty	Media	Rate	Amount
Matt McGraner 30(b)(6) HCRE Partners				
Video Sync / Tape	1	3	$75.00	$225.00
Certified - MPEG - Complimentary	1	3	$50.00	$0.00
Other Services				
Videographer - Set Up & 1st Hour of Job	1		$350.00	$350.00
Videographer - Additional Hours	5		$125.00	$625.00
			SUBTOTAL	$1,200.00
			TOTAL	$1,200.00

THANK YOU FOR YOUR BUSINESS!
Please make all checks payable to: TSG Reporting Inc.
Remit by Mail to: TSG Reporting Inc. PO Box 95568 Grapevine, TX 76099-9708
Federal ID # 41-2085745
For prompt payment processing, please include the invoice # with your check.
All balances in arrears will be assigned a late fee of 1.5% per month, not exceeded the legal limit.
If you have any questions, please call TSG.

EXHIBIT H

Law Office of David Agler

Name	Invoice Date	Invoice #	Invoice Amount
Law Office of David Agler	9/19/2022	6910-1	$27,300.00
TOTAL			**$27,300.00**

Law Office of David Agler
12450 Magnolia Blvd #3960
Valley Village, CA 91607-9998
Phone 818-528-8015/Fax 818-475-1309
David.Agler@Aglerlaw.com

Invoice No. 6910-1

Date: September 19 ,2022

Mr. James P. Seery Jr., Trustee of the Claimant Trust,
And Manager of HCMLP GP LLC, General Partner of
Highland Capital Management L.P.
C/o Jeff Pomerantz, legal counsel for Claimant Trust and
Highland Capital Management L.P.
Pachulski Stang Ziehl & Jones
Jpomerantz@pszjlaw.com

Matter: Tax Advisory Services for Highland Claimant Trust and Highland Capital Management LP

Invoice for Professional Services rendered in the above referenced matter as set forth in the attached Time Entry and Billing Summary Report through September 19, 2022.

Total Invoice $27,300

Please mail payment to the above address or wire/Ach funds to:

Chase Bank

David Agler, Attorney at Law

Account number: 626771718

Routing number: 322271627

This routing number can only be used for direct deposits and ACH transactions. For wire transfers, please use routing number 021000021.

Please send wire/Ach confirmation information to David.Agler@Aglerlaw.com

Activities Export

Time Entry and Billing Summary- Highland Claimant Trust and Highland Capital Management LP

09/19/2022
7:57 PM

Date	Type	Description	Matter	User	Qty	Rate ($)	Non-billable ($)	Billable ($)
08/10/2022		Discussion with Jeff Pomerantz and John Morris; Analysis of emails, organization chart, documents, and tax information sent by John Morris. ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	2.60h	$700.00	-	$1,820.00
08/11/2022		Analysis of emails, organization chart, documents, and tax information sent by John Morris; Analysis of tax issues re SMH LLC and Highland Capital Management LP; Draft emails to John Morris re provisions of Original and Amended SMH LLC operating Agreements, and operation and capitalization of SMH; Discussion with John Morris and Jeff Pomerantz. ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	4.75h	$700.00	-	$3,325.00
08/12/2022		Analysis of SMH and HCMLP documents, and SMH tax returns/ information sent by John Morris; Analysis of tax issues re SMH LLC and HCMLP. ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	3.75h	$700.00	-	$2,625.00
08/13/2022		Analysis of SMH and HCMLP documents, and SMH tax returns/ information sent by John Morris; Analysis of tax issues re SMH LLC and HCMLP. ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	3.80h	$700.00	-	$2,660.00
08/14/2022		Discussion with Jeff Pomerantz,	00019-Seery	David Agler	4.80h	$700.00	-	$3,360.00
					39.00h		**$0.00**	**$27,300.00**
							0.00h	39.00h

Activities Export

09/19/2022
7:57 PM

Date	Type	Description	Matter	User	Qty	Rate ($)	Non-billable ($)	Billable ($)
		John Morris and Greg Demo re proposed HCMLP restructure transaction; Analysis of SMH organization charts; Analysis of tax issues re proposed SMH LLC and HCMLP restructure transaction, including tax liability exposure issues. ● Unbilled	Tax consulting- Highland Claimant Trust/ Highland Capital Managemer					
08/15/2022		Analysis of Claimant and Litigation Trusts' documents, bankruptcy documents, and HCMLP and SMHLLC documents; Analysis of tax issues to Claimant Trust, HCMLP, and Liquidating Trustee re proposed SMH LLC and HCMLP restructure transaction, including tax liability exposure issues; Draft emails to John Morris; ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	10.20h	$700.00	-	$7,140.00
08/16/2022		Discussion with John Morris, Jeff Pomerantz and Greg Demo; Draft SMH LLC tax questions for discussion with David Klos and Kristin Hendrix; Draft emails to John Morris; ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	4.80h	$700.00	-	$3,360.00
08/17/2022		Review and revise SMH LLC Tax Diligence request; Discussion with David Klos, Kimberly Hendrix, John Morris, Jeff Pomerantz, and Greg Demo re Tax Diligence issues; Discussion with John	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	2.90h	$700.00	-	$2,030.00
					39.00h		**$0.00**	**$27,300.00**
							0.00h	39.00h

Activities Export

09/19/2022
7:57 PM

Date	Type	Description	Matter	User	Qty	Rate ($)	Non-billable ($)	Billable ($)
		Morris, Jeff Pomerantz, and Greg Demo re tax issues with respect to proposed HCMLP restructure transaction, including tax liability exposure issues; Review Trussway org chart; Analysis of tax issues re proposed sale of assets/member interest. ● Unbilled						
08/18/2022		Review Trussway information provided by Tim Cournoyer; Draft email to David Klos and Tim Cournoyer re tax issues in connection with proposed Trussway sale; ● Unbilled	00019-Seery Tax consulting- Highland Claimant Trust/ Highland Capital Managemer	David Agler	1.40h	$700.00	-	$980.00
					39.00h		**$0.00** 0.00h	**$27,300.00** 39.00h

EXHIBIT I

SUMMARY		
PSZJ Total Fees	$782,476.50	
Law Office of David Agler	$27,300.00	
TOTAL FEES	**$809,776.50**	
TSG	$16,164.05	
TOTAL EXPENSES	**$16,164.05**	
TOTAL FEES & EXPENSES		**$825,940.55**

Charles W. Gameros, Jr.
State Bar No. 00796956
Douglas Wade Carvell
State Bar No. 00796316
HOGE & GAMEROS, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: 214-765-6002
Facsimile: 214-559-4905

ATTORNEYS FOR NEXPOINT REAL ESTATE PARTNERS, LLC, f/k/a HCRE PARTNERS, LLC

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-SGJ-11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Movant,	§	
	§	**Contested Matter**
v.	§	
NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC,	§	
Respondent.	§	

RESPONSE TO DEBTOR'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES

I.

SUMMARY

With multiple lawyers working at billing rates in excess of $1,000 per hour, Highland Capital Management, L.P. ("Highland" or the "Debtor") defeated a proof of claim which NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("NREP") had sought to withdraw with prejudice. In other words, instead of taking a win, the Debtor and its lawyers chose to generate fees to get to the same result. The Debtor's attorneys' efforts, though totally unnecessary, were apparently very expensive. And so, through hundreds of additional pages at yet additional expense, the Debtor and its lawyers seek to invoke Rule 105(a) to saddle NREP with attorneys' fees which the Debtor never needed to incur with its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners, LLC [Docket No. 3851] (the "Motion").

Even the Debtor admits that the trial the Debtor insisted on "was a complete waste of judicial resources and of the Claimant Trust's assets."[1] But that waste of time and resources was the fault of the Debtor, not NREP, and there is no precedent for sanctioning NREP for hundreds of thousands of dollars under the circumstances of the case.

The Motion is without support in law or fact and should be denied.

[1] *See* Motion at ¶ 3.

II.

PROCEDURAL HISTORY

1. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court"). The Delaware Court thereafter entered an order transferring venue of the Debtor's bankruptcy case (the "Bankruptcy Case") to this Court.

2. On March 2, 2020, the Court entered its Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof [Docket No. 488] (the "Bar Date Order"), which, among other things, established April 8, 2020 as the deadline for all entities holding claims against the Debtor that arose before the Petition Date to file proofs of claim.

3. On April 8, 2020, NREP timely filed its proof of claim (the "Proof of Claim") regarding its and the Debtor's interest in a limited liability company, SE Multifamily Holdings, LLC (the "Company"), pursuant to an amended limited liability company agreement (the "LLC Agreement").

4. There is no other pending proceeding, lawsuit, or matter regarding the Proof of Claim or the claim made in the Proof of Claim. There is no other pending matter in the Bankruptcy Case involving NREP.

5. On July 30, 2020, the Debtor objected to the Proof of Claim in its First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 906] (the "Objection"). NREP responded to the objection on October 19, 2020 (the "Response").

6. The Debtor's Fifth Amended Plan of Reorganization (the "Plan") [Docket. No. 1808] was confirmed by Order entered by the Bankruptcy Court on February 22, 2021 [Docket No. 1943], and the effective date of the Plan was August 11, 2021 [Docket No. 2700].

7. A year after NREP filed its Proof of Claim, and eight months after the Debtor filed its Objection, the Debtor sought to disqualify NREP's then–counsel Wick Phillips Gould & Martin LLP [Docket Nos. 2196 and 2893]. Following notice and hearing, the Court entered an Order granting in part and denying in part the Debtor's motion to disqualify, in which the Court specifically denied the Debtor's request that NREP "reimburse all costs and fees incurred in making and prosecuting the Motion." [Docket No. 3106].[2] Thereafter, as directed by the Court, NREP secured new counsel, and, on January 14, 2022, the undersigned counsel appeared.

8. Six months later in June of 2022, the Debtor and NREP entered a Scheduling Order regarding the Proof of Claim [Docket No. 3356], after which the parties engaged in six depositions, document and written discovery, and third-party discovery.

9. On August 12, 2022, NREP filed a motion to withdraw its Proof of Claim [Docket No. 3442]. The Debtor opposed the withdrawal [Docket No. 3487]. After NREP filed its reply [Docket No. 3505], the motion was heard on September 12, 2022, and the Court entered a written order denying the motion on September 14, 2022 [Docket No. 3518].

10. This contested matter was tried on November 1, 2022. At the time of the hearing, there was no other pending proceeding, lawsuit, or dispute regarding NREP's Proof of Claim, or the allegations made in the Proof of Claim, involving NREP.

[2] The Court further denied the Debtor's request that NREP disclose all communications between the company or its then–attorneys and certain individuals regarding NREP's Proof of Claim. *See* Docket No. 3106, at p. 4 ("Highland's request that HCRE disclose all communications it (or anyone purporting to act on its behalf, including Wick Phillips) has had with Mark Patrick and Paul Broaddus concerning HCRE's Claim is **DENIED**.").

11. After the hearing, the Debtor and NREP submitted post-hearing briefs [Docket Nos. 3635 and 3641, respectively].

12. The Court, by written Memorandum, Opinion and Order, sustained the Debtor's Objection to the Proof of Claim and disallowed the claim [Docket No. 3766] on April 28, 2023. The Court also denied the Debtor's then claim for its "costs" for alleged bad faith filing.[3]

13. The Debtor filed the present Motion on June 16, 2023 [Docket No. 3581] along with a 436-page Declaration in support [Docket No. 3852].

14. This Response follows.

III.

FACTUAL BACKGROUND

A. NREP Had a Good Faith Basis to File Proof of Claim No. 146

15. Contrary to the Debtor's assertions, NREP had a good faith basis to file its single Proof of Claim in the Bankruptcy Case. As this Court has acknowledged, this is a complex bankruptcy involving numerous entities owned and managed by the Debtor.[4] At its peak, Highland had billions of dollars of assets under management.[5]

16. As the Debtor's former CEO, James Dondero, has testified, he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous

[3] *See* Docket No. 3766 at p. 39 ("the Reorganized Debtor's motion at Trial for sanctions against HCRE in the form of reimbursement of the Reorganized Debtor's costs in connection with its Objection to the HCRE Proof of Claim allegedly filed in bad faith **BE, AND HEREBY IS, DENIED**, without prejudice, as being procedurally deficient.").

[4] *See* Plan, Docket No. 1943 at ¶ 6 ("In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor.").

[5] *See* Plan, Docket No. 1943 at ¶ 4 ("The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940."); at ¶ 5 ("Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles ("CLOs"), and other investments.").

individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds.

17. NREP is a Delaware limited liability company, distinct from the Debtor, with more than one member (*i.e.*, owner).[6] Although Mr. Dondero was a member and manager of NREP, he relied on others to help manage that entity as well.[7]

18. It is undisputed that Mr. Dondero tasked the law firm Bonds Ellis (then led by former Northern District of Texas Bankruptcy Judge D. Michael Lynn) with filing NREP's Proof of Claim.[8]

19. It is also undisputed that Mr. Dondero had authority to sign the Proof of Claim for and on behalf of NREP.[9]

20. Although Mr. Dondero testified that he did not recall reviewing the Proof of Claim before it was filed,[10] he testified that he relied on the attorneys at Bonds Ellis to prepare the Proof of Claim.[11]

21. Moreover, Mr. Dondero believed that Bonds Ellis had worked with some of the other staff to prepare NREP's Proof of Claim.[12] Specifically, Mr. Dondero testified at some length as to the process by which complex documents, such as NREP's Proof of Claim No. 146, were

---

6 *See* Hearing Transcript, p. 78, ll. 12 – 15.

7 *See* Hearing Transcript, p. 79, ll. 12 – 16.

8 *See* Hearing Transcript, p. 55, ll. 23 – 25.

9 *See* Claimant's Trial Exhibit 3 at p. 3; Hearing Transcript p. 55, ll. 10 – 15.

10 *See* Hearing Transcript, p. 55, ll. 19 – 22.

11 *See* Hearing Transcript, p. 56, ll. 1 – 18.

12 *See* Hearing Transcript, p. 57, ll. 14 – 24.

signed.[13] For example, Mr. McGraner, who also holds a membership interest in NREP, was consulted by Bond Ellis as a part of the process.[14]

22. At trial, Mr. Dondero described the process as follows:

> I sign a lot of high-risk documents and I have to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this is another one of those items.[15]

23. There is no evidence in the record controverting that statement or suggesting it is untrue in any way.

24. Indeed, Mr. Dondero testified that he neither interfered in the process of preparing NREP's Proof of Claim nor did Bonds Ellis seek his personal input in preparing the Proof of Claim.[16]

25. In short, in signing NREP's Proof of Claim, NREP, through Mr. Dondero, relied on the advice of counsel, Bonds Ellis, who consulted with members of Mr. Dondero's staff in ascertaining the basis for the Proof of Claim.[17]

---

[13] *See* Hearing Transcript, pp. 60 – 61, ll. 12 – 20, 1 – 5 ("Q. Mr. Dondero, you testified about the process for signing the LLC agreements, the KeyBank loan, and even the proof of claim. Would you please tell the Judge what the process is? A. Well, it's different in everything, but any significant transaction goes through compliance and any significant transaction that includes multiple entities goes through rigorous compliance whereby, by compliance, without direct input of the investment people, investigate the basis of the transaction in the fairness of tr- — of the transaction and then sign off on that transaction. You know, so on any kind of investment, a normal — I know it's changed in the new Highland, but — but a normally-compliant advisor goes through a rigid, rigorous process regarding any sale of an asset. As far as bankruptcy and the complexities of a bankruptcy that takes odd twists and turns, and just the complexities of this bankruptcy in particular and the betrayal of the estate by insiders, you know, et cetera, you have to rely on outside counsel and you have to rely on — you have to rely on outside counsel and you have to rely on their expertise in the bankruptcy process.").

[14] *See* Hearing Transcript, p. 75, ll. 3 – 8.

[15] *See* Hearing Transcript, p. 58, ll. 17 – 20.

[16] *See* Hearing Transcript, p. 60, ll. 12 – 18.

[17] *See* Hearing Transcript, p. 57, ll. 14 – 24.

B. NREP's Proof of Claim Sought to Reallocate Equity Holdings

26. At the time NREP filed its Proof of Claim, it had good reason to seek reallocation of the equity ownership in SE Multifamily.

27. The operative text of Proof of Claim No. 146 reads:

> **Exhibit A**
>
> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

See Claimant's Trial Exhibit 3 at p. 5.

28. As NREP and its counsel previously explained, the central issue raised by the Proof of Claim was whether Highland had an improperly large equity allocation in SE Multifamily given the size of its investment and contribution.[18]

[18] *See* Docket No. 1212, p. 2, ¶ 5 ("[NREP] believes the organizational documents relating to SE Multifamily Holdings, LLC (the 'SE Multifamily Agreement') improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NREP] has a claim to reform, rescind and/or modify the agreement.").

29. Contrary to the implication of the Motion, this is exactly what Claimant's witnesses testified to at trial:

a. The Debtor provided only nominal capital;[19]

b. The Debtor was supposed to provide services, but it stopped doing so;[20]

c. The Debtor was to supposed provide IT and employees as needed, but stopped doing so;[21]

d. The SE Multifamily LLC agreement allowed amendment, but the bankruptcy was too contentious for the parties to agree to appropriate language amending the amendment.[22]

30. In short, the deal should have changed by virtue of the performance of the portfolio and the lack of ongoing support from the Debtor, but it did not.[23]

31. Moreover, given the contentious bankruptcy, NREP had legitimate concerns that the Debtor would interfere in the operations of SE Multifamily.[24]

32. NREP's Proof of Claim was prepared by counsel, was filed on advice of counsel, and was signed and filed in good faith.

---

19 *See* Hearing Transcript at p. 30, ll. 20 – 24/

20 *See* Hearing Transcript at pp. 30 – 31, ll. 25, 1 – 7.

21 *See* Hearing Transcript at p. 71, ll. 18 – 22.

22 *See* Hearing Transcript, p. 73, ll. 6 – 15.

23 *See* Hearing Transcript, p. 117, ll. 4 – 25.

24 *See* Hearing Transcript, pp. 74 – 75, ll. 23 – 25, 1 – 2; p. 37, ll. 9 – 14.

C. The Debtor's Fee Demand is Excessive

33. Aside from the Motion to Disqualify, this entire dispute involved a single hearing — on NREP's Motion to Withdraw its Proof of Claim — and a one-day evidentiary hearing made necessary by the Debtor's objection to the withdrawal of NREP's claim. The Debtor also insisted on taking additional discovery in advance of that hearing that could and should have been avoided altogether. The Debtor now seeks attorneys' fees (excluding fees for the Motion to Disqualify)[25] totaling $809,776.50,[26] plus expenses of $16,164.05.[27]

34. This is *per se* excessive for a single proof of claim objection.

35. Nor is there sufficient evidence appended to the Debtor's Motion to ascertain why the Debtor incurred such extreme expense. For example, the identities of the timekeepers in Exhibit F to the Motion are not disclosed, and they only appear by initial. Some of those timekeepers are identifiable, but it is unclear who the initials "BEL," JMF," or "RMS" are meant to identify. No one with these initials receives notice of filing through the Court's ECF system associated with this dispute.

[25] *See* Docket No. 3106 (denying fees for disqualification).

[26] *See* Docket No. 3852-9, p. 2.

[27] *See* Docket No. 3852-7, p. 2.

36. Compiling the remaining entries from Debtor's Exhibit F into a table for easier review yields Table 1.

Table 1.

INVOICE & DATE	GREG DEMO	JOHN MORRIS	LISA CANTY	HALEY WINOGRAD	JEFF POMERANTZ	JORDAN KROOP
	$1,095/hr	$1,395/hr	$495/hr	$750/hr	$1,445/hr	$1,195/hr
128567 8/31/2021	0.2 $190	0	0	0	0	0
130114 4/30/2022	0	2.3 $3,015.00	0	0	0	0
130358 5/31/2022	1.1 $1,204.50	13.0 $18,135.00	3.0 $594.00	21.5 $16,125.00	0	0
130483 6/30/2022	2.1 $2,230.50	12.2 $17,019.00	2.3 $1,138.50	17.3 $12,975.00	0	0
130587 7/31/2022	1.2 $1,314.00	28.2 $39,339.00	33.9 $16,780.50	83.4 $62,550.00	0	0
130890 8/31/2022	13.8 $15,111.00	77.1 $107,554.50	43.3 $21,433.50	42.0 $31,500.00	10.9 $15,750.50	15.3 $18,283.50
131065 9/30/2022	3.5 $3,832.50	31.4 $43,803.00	0	18.1 $13,575.00	3.5 $5,057.50	6.0 $7,170.00
131290 10/31/2022	2.7 $2,956.50	79.8 $111,321.00 3.7 (travel) $2,580.75	5.3 $2,623.50	76.2 $57,150.00 3.5 (travel) $1,312.50	0.5 $722.50	0
131454 11/30/2022	8.5 $9,307.50	26.7 $37,246.50 5.3 (travel) $3,696.75	25.4 $12,573.00	23.9 $17,925.00 6.0 (travel) $2,250.00	0	0
131566 12/31/2022	0	5.7 $7,951.50	1.6 $792.00	2.2 $1,650.00	4.3 $6,213.50	0
Total Hours	**33.1**	**285.4**	**114.8**	**294.1**	**19.2**	**21.3**
Total Fees	**$36,146.50**	**$391,662.00**	**$55,935.00**	**$217,012.50**	**$27,744.00**	**$25,453.50**

37. Two lawyers, Mr. Morris and Ms. Winograd, billed for travel at $6,277.50 and $3,562.50 respectively.

38. The combined fees from the unidentified timekeepers are as follows: (1) BEL: 1 hour at $1,045 per hour for a total of $1,045; (2) JMF: 15.1 hours at $1,145 per hour for a total of $17,289.50; and (3) RMS: 0.6 hours at $1,025 per hour for a total of $615.00.

39. Moreover, an examination of how these unidentified timekeepers spent their time reveals that much of it was unrelated to the core issues involved in this dispute. For example, "JMF" largely spent their time researching "IRS claims" and "3173 claims" and "veil piercing" in the 5th Circuit.[28] None of these issues were germane to either NREP's Proof of Claim or the Debtor's objection to it.[29]

40. "RMS" billed for a phone conference with Ms. Winograd in October 28 on the eve of the evidentiary hearing for "Legal research regarding contract."[30]

41. "BEL" billed related to HCRE (NREP) discovery requests, but what they actually did is unknown.[31]

42. The Debtor also seeks fees for Mr. Agler for 39 hours of work he performed at $700 per hour in August of 2022 for tax analysis.[32] Notably, the presented invoice indicated that it was "unbilled" work.[33] Whatever work he did, it did not manifest itself in the proceeding.

---

[28] *See* Docket No. 3852-6, pp. 67, 77, 78, and 79 of 127.

[29] "Veil Piercing" in particular was not argued at hearing, which may indicate the frailty of the Debtor's implied argument in the Motion that the NREP is not the discrete entity that it is.

[30] *See* Docket No. 3852-6, p. 110 of 127.

[31] *See* Docket No. 3852-6, pp. 21 and 32 of 127.

[32] *See* Docket No. 3852-8.

[33] *See* Docket No. 3852-8, p. 4 – 6 of 6.

43. After NREP's Motion to Withdraw was filed — which would have had the same effect as sustaining the objection and disallowing NREP's claim — the Debtor's lawyers billed an additional $371,870.50 from September to the end of December 2022.

44. Of the costs of depositions sought, $16,164.50, $8,824.95 (just over half of the total), was incurred after NREP's Motion to Withdraw was filed.[34]

45. In short, some of the expenses that the Debtor seeks to make NREP pay for do not relate to the parties' dispute at all, were incurred by layers of timekeepers whose identities and roles have not been disclosed, and are otherwise extraordinarily high given that this dispute could have been brought to a swift close many months ago.

IV.

ARGUMENT & AUTHORITIES

A. Standards

46. Alleging NREP's Proof of Claim No. 146 was filed in bad faith, the Debtor moves the Court to sanction NREP solely under the Court's 11 U.S.C. § 105(a) "inherent powers." That section of the Bankruptcy Code reads:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.[35]

47. "The Fifth Circuit has found that 'the 'bad faith' actions must occur in the course of litigation' and that the bad faith exception 'does not address conduct underlying the substance of the case; rather, it refers to the conduct of the party and the party's counsel during the litigation

[34] *See* Docket No. 3852-7, p. 2 of 12.

[35] *See* 11 U.S.C. § 105(a).

of the case.' Moreover, the Fifth Circuit has described that the conduct required to invoke the exception to the American Rule must be 'callous and recalcitrant, arbitrary, and capricious, or will-full, callous, and persistent.'[36]

48. Notably, the Debtor must demonstrate by "clear and convincing" evidence that the Court should invoke its inherent powers to issue a sanction. [37]

49. The Debtor cannot meet this burden.

B. NREP Did Not Act In "Bad Faith" In Filing The Proof Of Claim

50. The Debtor's evidence is insufficient to demonstrate that NREP filed its claim in bad faith. Notably, a creditor may file a proof of claim in bankruptcy even without "conclusive proof of the claim at the time of filing."[38] Indeed, a "good-faith belief based on a reasonable inquiry is sufficient if the factual contentions . . . are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."[39] A successful objection to a claim is not a sufficient reason to order sanctions because "[t]he process of objecting to claims is a normal proceeding within the Bankruptcy Court and not one which should normally subject the claimant

---

[36] *See In Re Rastan*, 462 B.R. 201, 210 (Bankr. N. D. Tex. 2011) (citations omitted).

[37] *See National Oilwell Varco, L.P. v. Auto-Dril, Inc.*, 68 F.4th 206, 219 (5th Cir. 2023) ("We review de novo a district court's invocation of its inherent power and the sanctions granted under its inherent power for an abuse of discretion." The courts have certain implied and inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.' These powers include the 'outright dismissal of a lawsuit' and a court's ability to 'vacate its own judgment upon proof that a fraud has been perpetrated upon the court.' 'Because of their very potency, inherent powers must be exercised with restraint and discretion. A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.' Accordingly, we uphold a lower court's decision to invoke its inherent sanctioning power only if *clear and convincing* evidence supports the court's finding of bad faith or willful abuse of the judicial process.") (citations omitted) (emphasis added).

[38] *In re Wingerter*, 594 F.3d 931, 941 (6th Cir. 2010).

[39] *In re Wingerter*, 594 F.3d at 941.

to sanctions if he loses."[40] Further, the proof of claim process "does not exist to discipline those who file erroneous proofs of claim."[41]

51. For example, where a creditor filed a proof of claim but later withdrew it after the debtor objected that no supporting documentation existed to support the claim, the Sixth Circuit held that sanctions were unwarranted.[42] In that case, the creditor relied on a third–party's representation that the claim was valid, but even that did not merit the sanction requested. As the Court explained, "even weak evidence is generally enough to avoid sanctions."[43] Similarly, courts have declined to issue sanctions where a claimant files a claim based on a mistaken belief or unenforceable debt.[44]

52. In the Motion, the Debtor argues that sanctions are appropriate for two reasons: (1) the SE Multifamily Amended LLC Agreement rendered NREP's claim legally unenforceable; and (2) Mr. Dondero allegedly signed the Proof of Claim "without a reasonable basis to believe the Proof of Claim was 'true and correct."[45] However, filing a proof of claim that turns out to be legally unenforceable is not sanctionable conduct.[46] Moreover, Mr. Dondero testified that he relied on counsel (who he believed had investigated the claim, including by talking to other responsible employees) when signing the Proof of Claim.[47] These circumstances are akin to *In re Wingerter*,

---

40 *In re Lawler*, 73 B.R. 515, 521 (Bankr. N.D. Tex. 1987).

41 *In re Trevino*, 535 B.R. 110, 138 (Bankr. S.D. Tex. 2015).

42 *In re Wingerter*, 594 F.3d at 940-41.

43 *In re Wingerter*, 594 F.3d at 940 (citing *Davis v. Carl*, 906 F.2d 533, 536-37 (11th Cir. 1990)).

44 *See Countrywide Homes Loans, Inc. v. McDermott*, 426 B.R. 267, 278 (N.D. Ohio 2010) ("[I]t was an abuse of discretion for the bankruptcy court to hold that the mistaken filing of two documents amounted to sanctionable conduct under Section 105."); *In re Pearce*, 411 B.R. 303, 308 (Bankr. E.D. La. 2008) ("[T]he court does not find that merely filing a proof of claim on a prescribed debt, with nothing more, is evidence of bad faith.").

45 *See* Docket No. 3851 at ¶ 2.

46 *In re Pearce*, 411 B.R. at 308.

47 *See* Hearing Transcript, p. 58, ll. 17 – 20.

a case that is more similar to this one than any of the cases the Debtor cites. Here, as in *Wingerter*, the claimant reasonably relied on others when filing the proof of claim, which ultimately proved unsuccessful.[48] The Sixth Circuit held that reliance on others was not sanctionable conduct, any more than it is here.[49]

53. Notably, at the evidentiary hearing on NREP's Proof of Claim, counsel for the Debtor repeatedly asked for a "bad faith" finding.[50] The Court's Order sustaining the Debtor's Objection and disallowing Proof of Claim 146 did not make a finding of bad faith.[51] The Court has already had an opportunity to weigh in on this, and after hearing the testimony, declined to make the finding requested. There is no basis for the Court to do so now.

54. For its part, Debtor cites four cases for the Court's exercise of its inherent powers under Section 105 of the Bankruptcy Code: *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008); *In re Brown*, 444 B.R. 691, 695 (Bankr. E.D. Tex. 2009); *In re Paige*, 365 B.R. 632 637 – 639 (Bankr. N.D. Tex. 2007), and *In Re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017). *None* of these cases support imposing any sanction on NREP under inherent powers.

55. *In re Yorkshire, LLC* involved a manager's surreptitious bankruptcy filing of a limited liability company made expressly to harm some of the members of the company. Specifically, the Fifth Circuit found that "the Bankruptcy Court concluded that 'the bankruptcy cases were filed when Knight got dissatisfied with his state law remedies and decided to inflict injury on the Luedtkes. Accordingly, the bankruptcy cases were filed with a bad motive and with

---

48 *In re Wingerter*, 594 F.3d at 940-941.

49 *In re Wingerter*, 594 F,3d at 940-941.

50 *See* Hearing Transcript, pp. 32 – 33, ll. 23 – 25, 1 – 6; p. 196, ll. 17 – 22.

51 *See generally* Docket No. 3766.

no meaningful thought being given to the actual purposes of chapter 11 bankruptcy.'"[52] Here, by contrast, there was no way for NREP to protect its interests in light of the HCMLP bankruptcy but to file its proof of claim in an already existing bankruptcy case; moreover, there was no testimony adduced that demonstrated any animus, bad faith, or ill motive on the part of NREP.

56. *In re Brown* is even farther afield. There, the bankruptcy court sanctioned a loan servicer without, as prayed for here, a finding of bad faith;[53] instead, the sanction was driven by the servicer's conduct with respect to a consumer's home.[54] Notably, *Brown* did not deal with a single proof of claim in a case in which, as here, many, many proofs of claim have been filed.[55]

57. *In re Paige* dealt with a Chapter 7 debtor surreptitiously selling cars from a bankruptcy estate without authority to do so.[56] Unlike the instant case, Paige knew he lacked authority to sell the cars and knowingly sold them anyway without the Trustee's "knowledge or

---

[52] *See In re Yorkshire, LLC*, 540 F.3d 328, 331 (5th Cir. 2008).

[53] *See In re Brown*, 444 B.R. 691 695 (Bankr. E.D. Tex. 2009) ("The Court, having considered the evidence and arguments presented by the parties, finds that Citi and Hughes Watters Askanase did not act in bad faith or with improper motive. However, the Court concludes that Citi and Hughes Watters Askanase did act with reckless disregard of their duty to this Court by attempting to remedy their lapses in a careless fashion and only after the debtor challenged Citi's standing. Citi and Hughes Watters Askanase failed to present any testimony or other evidence establishing that their motions seeking relief from the automatic stay and the co-debtor stay had a reasonable basis in fact and law.").

[54] This Court has previously noted that the rationale for sanctions in *In re Brown* was that court's concern about the "high degree" of reliability of a motion for relief from the automatic stay to foreclose on a debtor's home. *See In Re Rastan*, 462 B.R. at 211. In another loan servicer case, this Court declined to impose sanctions on facts similar to *In re Brown*. *See In re Cunningham*, Adversary No. 07–03012 2008 WL 1696756, * 16 (Bankr. N. D. Tex. Apr. 9, 2008) ("The court is not sufficiently convinced that Dovenmuehle's conduct has been anything more than grossly inattentive in this matter (as opposed to egregious or in bad faith). Dovenmuehle was inattentive in the Cunningham matter, no doubt, because of the relatively small dollars involved. This is very sad—since this was Ms. Cunningham's home for 25 years, and she deserved for people to be more attentive to her situation than they apparently have been, during her three-year nightmare in bankruptcy.").

[55] *See* Hearing Transcript, p. 62, ll. 12 – 18.

[56] *See In re Paige*, 365 B.R. 632, 634 (Bankr. N. D. Tex. 2007) ("The Court considers the motion of Kent Ries ('Ries'), the chapter 7 trustee, requesting that the Court sanction the debtor, Robert Paige ('Paige'), for his unauthorized taking and selling of four classic cars.").

consent."[57] The fact that Paige tried to purchase the cars from the Trustee[58] prior to selling them surreptitiously highlighted Paige's knowing misconduct, such that the *Paige* court concluded his "conduct was intentional, deceitful, and done in bad faith and falls squarely within the Court's purview and power under section 105 of the Bankruptcy Code." [59] By contrast here, NREP filed its legitimate proof of claim on advice of counsel. There was no attempt by NREP to steal from any estate, and no intentional, deceitful, or bad faith conduct.

58. Lastly, *In re Lopez* concerned a debt collector's actions in an adversary proceeding in which it was accused of violating the automatic stay and of discovery misconduct.[60] Notably, the cause(s) of the sanctions involved over 1,000 attempts to improperly contact a debtor in violation of the automatic stay,[61] and during the course of the case, the defendant was repeatedly warned, compelled, and ultimately sanctioned for its discovery misconduct.[62] Although the *Lopez*

---

[57] *See In re Paige*, 365 B.R. at 636 ("The issue before the Court is whether the Court can and should sanction Paige for his conduct in taking and selling the four cars without the trustee's, Ries', consent or knowledge, and, in fact, before he had entered into the settlement agreement with the trustee. Ries contends that Paige's actions 'were unconscionable, lacked any resemblance of the good faith required by the settlement agreement he signed with the Estate, and are in direct violation of his statutory duties under Bankruptcy Code § 521.' Severe sanctions are justified, according to Ries, because Paige's actions were taken in an attempt to profit himself at the estate's expense and are consistent with Paige's conduct throughout the case that has resulted in "generally meritless litigation at every turn.").

[58] *See In re Paige*, 365 B.R. at 639 ("Paige wrongfully took and sold the four cars without the trustee's consent. His offers to purchase the four cars from the trustee reflect an intent to both conceal the sale from the trustee and to profit himself from the sale. Paige's conduct constitutes a failure to cooperate with the trustee and to account to the trustee regarding estate property.").

[59] *See In re Paige*, 365 B.R. at 639.

[60] *See In re Lopez*, 576 B.R. 84, 88 (S.D. Tex. 2017) (incorporating by reference three prior Memoranda, "ECF No. 93 at 2–5 (the "*First Memorandum Opinion*"); *In re Lopez*, 2015 WL 1207012, at *1 (Bankr. S.D. Tex. Mar. 12, 2015); ECF No. 145 at 1–3 (the "*Second Memorandum Opinion*"); *In re Lopez*, 2015 WL 5438850, at *1 (Bankr. S.D. Tex. Sept. 14, 2015); ECF No. 158 at 2–11 (the "*Third Memorandum Opinion*"); *In re Lopez*, 2015 WL 7572097, at *1 (Bankr. S.D. Tex. Nov. 24, 2015).").

[61] *In re Lopez*, Case No. 13–07019, 2015 WL 1207012, *1 (Bankr. S.D. Tex. Mar. 12, 2015) ("Although Portfolio wishes to be relieved of all liability for attempting approximately 1,000 communications with Marcos Lopez because it now claims that Marcos Lopez owes nothing to Portfolio, the Court will not allow such absolution until there has been a full exposition of the facts that would justify amnesty for Portfolio's alleged conduct.").

[62] *In re Lopez*, 2015 WL 1207012, at *1 ("At a May 20, 2014 hearing, the Court granted the emergency motion and informed counsel for Portfolio that "[y]ou-all are not complying with discovery."). *In re Lopez*, 2015 WL 5438850, at *1 ("Plaintiff again requested sanctions in a Motion for Sanctions ("Second Motion for Sanctions"). [ECF

court cites Rule 105, its sanctions were also derived from its powers to sanction under Bankruptcy Rule 9037,[63] which has no applicability here. Also, unlike this matter – in which there were no discovery sanctions or even motions – *Lopez* involved multiple motions to compel and for sanctions as well as multiple hearings thereon. Accordingly, the factual bases that resulted in sanctions in *In re Lopez* do not lend themselves to a finding of bad faith herein.

C. The Attorneys' Fees Demand Is Excessive

59. Although the Court should decline to issue any sanction in the context of this dispute, it should most certainly decline to award the fees sought by the Debtor, for several reasons.

60. First, a bankruptcy court's inherent authority to award fees as a sanction for bad-faith "is limited to the fees the innocent party incurred solely because of the misconduct – or put another way, to the fees that party would not have incurred but for the bad faith."[64] Accordingly, there must be "a causal link" between the sanctionable conduct and the opposing party's attorneys' fees through a "but–for test," such that the complaining party may only recover the portion of fees that they would not have paid but for the allegedly sanctionable conduct.[65] In addition, any such

No. 54]. Plaintiff's allegations essentially assert that Defendant has still withheld requested discovery documents, put up incompetent or "no-show" witnesses, and otherwise stonewalled the discovery process. Plaintiff's Second Motion for Sanctions gives rise to this immediate dispute over the admissibility of evidence in support thereof."); *In re Lopez*, 2015 WL 5438850, at *9 ("Plaintiff requests that this Court issue sanctions in the form of fact deeming, pursuant to Rule 37(b)(2)(A)(ii), or by prohibiting PRA from introducing evidence, pursuant to Rule 37(b)(2)(A)(ii).").

[63] *See In re Lopez*, 576 B.R. at 93.

[64] *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 103–04 (2017) ("In this case, we consider a federal court's inherent authority to sanction a litigant for bad-faith conduct by ordering it to pay the other side's legal fees. We hold that such an order is limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith."); *In re ABC Dentistry, P.A.*, No. 16-34221, 2023 WL 1851157, at *2 (Bankr. S.D. Tex. Feb. 8, 2023) (citing Haeger); *In re Lopez*, 576 B.R. at 93.

[65] *See Haeger*, 581 U.S. at 102 ("That kind of causal connection is appropriately framed as a but-for test, meaning a court may award only those fees that the innocent party would not have incurred in the absence of litigation misconduct."); *see also Fox v. Vice*, 563 U.S. 826, 836 (2011) ("So if a frivolous claim occasioned the attorney's fees at issue, a court may decide that the defendant should not have to pay them. But if the defendant would have incurred those fees anyway, to defend against non-frivolous claims, then a court has no basis for transferring the expense to the plaintiff.")

awarded fees must be compensatory rather than punitive.[66] Here, it is undisputed that, had the Debtor agreed to the withdrawal of the Proof of Claim many months ago — before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim — the Debtor would have been exactly in the same position that it is in now, but at far less expense. The real, practical difference between refusing to consent to the withdrawal of NREP's Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees. The Motion abjectly fails any "but–for" analysis.

61. Second, when seeking fees in bankruptcy courts in the Fifth Circuit,[67] an applicant must establish, and the courts will consider, so–called *Johnson* factors.[68] The party seeking fees further bears the burden to prove reasonableness of both the hourly rates sought and hours requested.[69] Among other issues, the Debtor's offer is silent as to whether rates charged in the

---

[66] *See Haeger*, 581 U.S. at 108 ("This Court has made clear that such a sanction, when imposed pursuant to civil procedures, must be compensatory rather than punitive in nature."); *In re Lopez*, 576 B.R. at 93.

[67] *See In re First Colonial Corp. of Am.*, 544 F.2d 1291, 1298–99 (5th Cir. 1977).

[68] *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974) (considering which include (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases); *see also* TEX. DISCIPLINARY R. PROF. CONDUCT 1.04(b) ("Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.").

[69] *See In re Lopez*, 576 B.R. 84, 92 (Bankr. S.D. Tex. 2017); *In re Rodriguez*, 517 B.R. 724, 731 (Bankr. S.D. Tex. 2014) ("The burden is on the fee applicant to produce evidence that the rates are in line with the prevailing rates in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.") (citing *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011)); *see id.* at 734 ("The burden is on the party seeking payment of attorneys' fees to show that the hours requested are reasonable.") (citing *In re Skyport Glob. Communications, Inc.*, 450 B.R. 637, 647 (Bankr. S.D. Tex. 2011), *aff'd sub nom. In re SkyPort Glob. Communications, Inc.*, 528 B.R. 297 (S.D. Tex. 2015), *aff'd in part sub nom. In re Skyport Glob. Commc'n, Inc.*, 642 Fed. Appx. 301 (5th Cir. 2016)).

matter or the fees sought are reasonable or necessary.[70] All but two of the timekeepers in Table 1 (a paralegal and an associate) billed in excess of $1,000 per hour, and there is no evidence that those rates are appropriate or any explanation as to how multiple $1,000–plus–per–hour timekeepers could outstrip the time spent by any associate on the file.

62. Third, an applicant has the burden to apply, and show it has applied, "billing judgment."[71] There are a plethora of entries in Exhibit F describing emails and conferences between counsel yet no reduction in the fee request.[72] The travel time, even at a reduced rate, is inappropriate. The unidentified timekeepers' work was either unrelated to any issue in the proceeding or without significant value. Similarly, having as many as five attorneys at any single hearing[73] shows, in fact, an utter lack of billing judgment.

63. The Debtor fails all three tests, and the Motion should be denied.

CONCLUSION

The Debtor's effort to meet a clear and convincing standard for demonstrating sanctionable "bad faith" fails, especially when the unrebutted testimony was that NREP filed its Proof of Claim on advice of sophisticated bankruptcy counsel bound by the rules of procedure and professional

---

[70] *See* Declaration of John Morris at Docket No. 3852, pp. 3 – 4 of 5, ¶¶ 8 – 12.

[71] *See In re Lopez*, 576 B.R. at 92–93 (Bankr. S.D. Tex. 2017) ("Even with such documentation, however, courts may find the hours expended to be unreasonable under a variety of circumstances: to wit, (1) hours spent on issues in which the attorneys did not prevail; (2) travel time; (3) lumped and vague entries; and (4) interoffice communications. If the applicant does not demonstrate billing judgment, the court should reduce the fee award by a percentage to account for the lack of billing judgment and result in a reasonable number of hours.") (citing *Saizan v. Delta Concrete Products Co.*, 448 F.3d 795, 799 (5th Cir. 2006)).

[72] *See generally* Docket No. 3852-6

[73] For the hearing on NREP's Motion to Withdraw on September 12, 2022, the following attorneys billed the following amounts: John Morris, 2.3 hours, Jeff Pomerantz, 2.1 hours, Greg Demo, 2.6 hours, Haley Winograd, 2.0 hours, and Jordan Kroop, 2.2 hours. *See* Docket No. 3852-6, at pp. 86 – 87 of 127. Given their rates, the combined bill for the hearing to the Debtor in attorneys' fees was $13,219.00. Lisa Canty also billed 2.1 hours for an additional $1,039.50. That yields an astounding total of $14,258.50 for a single hearing. That total is just for attendance at the hearing and does not consider the briefing, meetings, conferences, and other billing associated responding to NREP Motion to Withdraw.

ethics to ensure that their filings are made in good faith. And the Debtor's Motion falls woefully short of demonstrating that the fees sought were reasonable, necessary, or, in some cases, even germane to these proceedings. There is no evidence that the rates are appropriate, that the work therein was necessary, or that any effort was made to consider the "but–for" implications of the bad faith motion.

NREP filed a single Proof of Claim, which it attempted to support through a short discovery process. When NREP tried to withdraw the Proof of Claim, the Debtor resisted that effort, leading to a trial on a claim that NREP no longer wished to pursue. Now, the Debtor asks the Court to saddle NREP with the bills occasioned by the Debtor's own intransigence. The Court should decline to do so.

WHEREFORE, NREP prays that the Court deny the Motion and grant such other relief as may be appropriate.

Respectfully submitted,

/s/ Charles W. Gameros, Jr.
Charles W. Gameros, Jr.
State Bar No. 00796596
Douglas Wade Carvell
State Bar No. 00796316

HOGE & GAMEROS, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: (214) 765-6002
Telecopier: (214) 559-4905
E-Mail BGameros@LegalTexas.com
WCarvell@LegalTexas.com

ATTORNEYS FOR
NEXPOINT REAL ESTATE PARTNERS, LLC,
F/K/A HCRE PARTNERS, LLC

CERTIFICATE OF SERVICE

This is to certify parties which have so registered with the Court, including counsel for the Debtor, the United States Trustee, and all persons or parties requesting notice and service shall receive notification of the foregoing via the Court's ECF system, and are considered served pursuant to the Administrative Procedures incorporated into the Order Adopting Administrative Procedures for Electronic Case Filing, General Order 2003-01.2.

/s/ Charles W. Gameros, Jr.
Charles W. Gameros, Jr.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (admitted *pro hac vice*)
John A. Morris (NY Bar No. 2405397) (admitted *pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (admitted *pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

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

HIGHLAND CAPITAL MANAGEMENT L.P.'S REPLY IN FURTHER SUPPORT OF ITS MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM 146

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

Highland Capital Management, L.P. ("Highland"), the reorganized debtor in the above-captioned bankruptcy case, by and through its undersigned counsel, hereby files this Reply in further support of its Motion and in response to HCRE's *Response to Debtor's [sic] Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* [Docket No. 3995] (the "Response").[2]

PRELIMINARY STATEMENT

1. Predictably, HCRE—acting through Mr. Dondero (HCRE's sole manager since HCRE was formed) and Mr. McGraner (HCRE's only other officer)—defiantly doubles down on its disingenuous positions. Nothing in the Response warrants the denial of the Motion or its requested award of attorneys' fees. In fact, the Response only amplifies the propriety and necessity of granting the requested relief.

2. As the record makes clear, HCRE and its principals clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, (b) opposing the Disqualification Motion when—as was revealed on cross-examination during the hearing on the merits—that there was no basis for doing so, (c) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and (d) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement").

3. HCRE must be held accountable for this wrongful conduct. The Motion should be granted.

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in *Highland Capital Management L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* [Docket No. 3851] (the "Motion").

REPLY STATEMENT OF FACTS

4. The evidence clearly and convincingly proves that HCRE engaged in numerous acts of bad faith in connection with the filing and prosecution of its Proof of Claim.

A. Clear and Convincing Evidence Proves That Mr. Dondero Had No Basis to Swear That the Proof of Claim Was True and Correct

5. As established in the Motion, the evidence clearly and convincingly proves that Mr. Dondero lacked *any* basis to swear, under penalty of perjury, that HCRE's Proof of Claim was true and correct. Motion ¶¶ 14-15 (citing Morris Ex. D. at 4-5).

6. In an effort to dodge the obvious impact of Mr. Dondero's testimony, HCRE tries to deflect by averring that Mr. Dondero was too busy to read and understand the proof of claim and its impact because he supposedly "had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds." Response ¶ 16. But to the best of Highland's knowledge, the "very important person" defense has never been adopted by any court anywhere.

7. HCRE also contends that Mr. Dondero "relied" on his attorneys who he "believed" had "worked with some of the other staff" to prepare the Proof of Claim and vaguely described a "process" by which "complex documents" were signed. *See generally* Response ¶¶ 15-24.

8. But Mr. Dondero had *no* basis to rely on anyone because he asked no questions, did no diligence, and made no effort to determine if reliance was reasonable under the circumstances. *See* Motion ¶ 14 (summarizing extensive testimony cited in Morris Ex. D at 4-5). Nor did he have any basis to know whether the so-called "process" for signing "high risk" documents was followed in this case (assuming, for the sake of argument, such a "process" actually existed).

9. Aside from Mr. Dondero's utter lack of diligence, the most damning evidence that clearly and convincingly proves there was no good faith basis for the Proof of Claim were his own unqualified admissions and those of his partner, Mr. McGraner, that the allocation of the membership interests in the Amended LLC Agreement—including Highland's 46.06% interest—accurately reflected the parties' contemporaneous intent. Morris Dec. Ex. E at 53:25-54:23 (Mr. Dondero admitted knowing that Highland's 49% interest in SE Multifamily would be diluted by 6% when BH Equities was admitted as a member such that Exhibit A to the Amended LLC Agreement comported with his expectations when he signed the Agreement); 93:24-94:20, 95:3-103:20, 105:11-107:22 (Mr. McGraner knew the allocation of membership interests in Schedule A and other provisions in the Amended LLC Agreement accurately reflected the parties' intent).

10. Mr. Dondero did nothing to satisfy himself that there was a good faith basis to sign the Proof of Claim. If he only searched his own memory or asked Mr. McGraner, he would have realized that fact. His failure to do so warrants a finding of bad faith.

B. Clear and Convincing Evidence Proves That HCRE Opposed Highland's Disqualification Motion in Bad Faith

11. The evidence clearly and convincingly proves that HCRE opposed Highland's Disqualification Motion in bad faith.

12. As set forth in the Motion, Wick Phillips initially represented HCRE in this contested matter, including filing HCRE's Response in which HCRE baselessly asserted that the organizational documents "improperly allocate[d] the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration" such that HCRE "ha[d] a claim to reform, rescind and/or modify the agreement." Motion ¶ 6 (citing Morris Dec. Ex. C ¶5).

13. Highland moved to disqualify Wick Phillips because that firm represented both HCRE and Highland in Project Unicorn (the given name of the SE Multifamily project), but HCRE opposed Highland's Disqualification Motion. After being forced to engage in fact and expert discovery and conduct a lengthy argument, the Court granted Highland's Disqualification Motion but denied Highland's request to recover attorneys' fees. Motion ¶ 8 (citing Morris Dec. Ex. D at 6-7).

14. However, at the hearing on the merits of HCRE's Proof of Claim, it became obvious that HCRE never had a good faith basis to oppose the Disqualification Motion. There, Mr. McGraner—HCRE's self-described "quarterback" for the SE Multifamily transaction—admitted that (a) he ***knew*** Wick Phillips jointly provided legal services to HCRE ***and*** Highland in connection with Project Unicorn and that, in fact, "all of the law firms were working on behalf of both HCRE and Highland jointly"; and (b) HCRE opposed Highland's disqualification motion ***after*** Highland refused to provide Wick Phillips with a waiver. Ex. 5 at 126:8-132:3. Mr. McGraner's testimony clearly and convincingly proves that HCRE lacked a good faith basis to oppose the Disqualification Motion because it is axiomatic that a law firm should never be adverse to a former client in connection with a prior representation, particularly where the former client refuses to provide a waiver.[3]

C. Clear and Convincing Evidence Proves That HCRE Moved to Withdraw Its Proof of Claim in Bad Faith

15. As set forth in the Motion, the timing of HCRE's Motion to Withdraw the Proof of Claim clearly and convincingly proves that the Motion to Withdraw was filed in bad faith as part

[3] To be clear, Highland respects the Court's prior ruling and does not seek to recover attorneys' fees in connection with the Disqualification Motion. *See* Morris Dec. ¶11. However, in light of Mr. McGraner's testimony, the Court could and should find that HCRE's opposition to Highland's Disqualification Motion was made in bad faith.

of a continuing game of whack-a-mole foisted on the Highland estate by Mr. Dondero. *See* Motion ¶ 10.

16. HCRE failed to address this point and has never explained why it decided to abruptly file the Motion to Withdraw two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of HCRE's witnesses were to take place. *Id*. The timing of HCRE's Motion to Withdraw was not an accident.

17. The only fair conclusion is that HCRE—in another act of bad faith—wanted to take the depositions of Highland's witnesses for use in later litigation to challenge Highland's ownership interest in SE Multifamily while shielding its own witnesses from testifying—a conclusion validated by HCRE's later attempts to preserve the very claims upon which the Proof Claim was based.

D. <u>Clear and Convincing Evidence Proves That HCRE Tried to Preserve Its Claims in Bad Faith</u>

18. HCRE contends that, rather than "taking a win" after it moved to withdraw its Proof of Claim, "the Debtor [sic] and its lawyers chose to generate fees to get to the same result." Response at 2 (Summary). HCRE continues to play games. The evidence clearly and convincingly proves that any such "victory" through the withdrawal of the Proof of Claim would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

19. Again, HCRE expressly asserted that it "ha[d] a claim to reform, rescind and/or modify the agreement." Motion ¶ 6 (citing Morris Dec. Ex. C ¶5). This Court denied the Motion

to Withdraw precisely because "HCRE was not willing to agree, at the hearing, to language in an order allowing it to withdraw its Proof of Claim stating, unequivocally, that HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily." Notably, even after expressing concerns about the "integrity of the bankruptcy system and claims process" and "gamesmanship," the Court ***still*** held open the possibility of signing an agreed order and denied the Motion to Withdraw only after no such consensual order was presented. Morris Dec. Ex. D at n. 36.

20. Undeterred, HCRE continued right through closing argument to try and limit this Court's ruling to the denial of the Proof of Claim in an effort to save for another day the very claims asserted in support of its Proof of Claim (*i.e.*, "claim[s] to reform, rescind and/or modify the agreement"). Morris Dec. Ex. E at 180:17-181:2 ("They want you to make findings that we can't raise any of these other issues, recissions, stays, et cetera, going forward. That's not proper relief on a proof of claim"). The Court rebuffed HCRE's attempt to preserve its claims, and Highland succeeded in getting what it was indisputably entitled to and what would have been unavailable had HCRE been permitted to simply withdraw its Proof of Claim: good, clear title to its 46.06% interest in SE Multifamily that everyone—HCRE, Mr. Dondero, Mr. McGraner, and BH Equities—unequivocally acknowledged was Highland's intended allocation when the Amended LLC Agreement was executed and every day since, until Mr. Dondero and Mr. McGraner tried to change their minds, post-petition. *See infra* ¶¶ 22-23.

E. <u>Clear and Convincing Evidence Proves That the Proof of Claim Lacked Any Basis in Fact or Law</u>

21. The undisputed evidence clearly and convincingly proves that HCRE's Proof of Claim lacked any factual or legal basis and was pursued in bad faith.

22. Specifically, Mr. McGraner's admissions at trial clearly and convincingly established that no basis existed for HCRE's contention that "Highland had an improperly large equity allocation in SE Multifamily given the size of its investment and contribution" (Response ¶ 28), or to "reform, rescind and/or modify the agreement." Morris Ex. C ¶ 5. Mr. McGraner admitted, among other things, that:

- He (a) owns 25% of HCRE; (b) has been one of only two officers of HCRE since it was formed (Mr. Dondero is HCRE's Manager); (c) is one of only two people authorized to act on HCRE's behalf (Mr. Dondero is the other); and (d) was the "quarterback" of the transactions concerning SE Multifamily (Ex. E at 75:20-76:4; 79:12-25; 80:3-5; 82:13-16);
- "Highland bankrolled HCRE's business" *(id*. at 80-12-20);
- He (a) did not believe there were any mistakes in the allocation of membership interests in the Original LLC Agreement and (b) had no reason to believe that Agreement failed to reflect the parties' intent (*id*. at 82-21-83:10);
- Mr. McGraner and Mr. Dondero included Highland as a member of SE Multifamily because (a) HCRE did not have the financial wherewithal to close on the Key Bank loan by itself and needed Highland to provide "capital flexibility" by co-signing for the Key bank loan;[4] and (b) Highland's inclusion was expected to provide tax benefits (*id*. at 83:11-85:2);
- With a March 15, 2019 deadline for the completion of an amendment to the Original LLC Agreement that would both permit BH Equities to be admitted as a new member and have the amendment retroactive to August 2018, the parties worked to update the contribution schedule with full knowledge of Highland's capital contribution (*Id*. at 86:9-88-4);
- Mr. McGraner (a) reviewed the draft Schedule A for the proposed amendment; (b) saw that it unambiguously showed Highland making a $49,000 capital contribution and receiving a 46.06% interest in SE Multifamily; (c) believed Schedule A reflected his understanding of the terms between Highland and HCRE; and (d) knew of no obligation that

[4] Mr. McGraner admitted that "in the end KeyBank insisted on Highland being a coborrower." Ex. E at 85:2-4. Thus, it is indisputable that (i) HCRE could not have closed on the KeyBank loan and executed Project Unicorn without Highland, and (ii) Highland was a co-obligor under the KeyBank loan.

Highland had to make any future additional capital contribution (*id*. at 93:24-94:20; 105:11-106:7; Ex. 30);

- The allocation of membership interests in Schedule A was consistent with the parties' negotiation of the "waterfall" and other provisions in the Amended LLC Agreement that HCRE understood accurately reflected the parties' intent (*id*. at 95:3-103:20; 106:8-107:22);

- To the best of Mr. McGraner's knowledge and understanding, Schedule A as set forth in the Amended LLC Agreement reflected the parties' intent at the time it was signed (*id*. at 100:-21-101:21);

- HCRE filed the claim because Highland and HCRE were "no longer the same partners" after Highland filed for bankruptcy and the dispute was just "an unintended consequence." (*id*. at 108:3-109:4).

23. For his part, Mr. Dondero also flatly admitted that (a) Highland was included in the SE Multifamily as part of a tax scheme to shelter income, and (b) his understanding when he signed the Amended LLC Agreement was that Highland's 49% interest in SE Multifamily under the Original LLC Agreement would be reduced by 6% to account for the interest being conveyed to BH Equities. Morris Ex. E at 43:2-14, 51:11-52:18, 53:25-54:23.

24. Given these extensive, undisputed, and unqualified admissions, there never was a good-faith basis to (a) support HCRE's contention in the Proof of Claim that "all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to Debtor or may be property of Claimant" (Morris Dec. Ex. 1, Exhibit A), or (b) to "reform, rescind and/or modify the agreement." Motion ¶ 6 (citing Morris Dec. Ex. C ¶ 5).

F. <u>The Record Supports Highland's Request for Attorneys' Fees</u>

25. HCRE makes various complaints about Highland's request for attorneys' fees and generally contends that the fees are "excessive." Response ¶¶ 33-45. None of HCRE's gripes withstand scrutiny.

26. ***First***, HCRE baldly contends that the "Debtor [sic] also insisted on taking additional discovery in advance of [the] hearing that could and should have been avoided

altogether." Response ¶ 33. But ***no*** merits-based depositions had been taken before August 2022. HCRE's contention is also undermined by the fact that the transcripts from the depositions of HCRE, Mr. McGraner, BH Equities, and SE Multifamily's accountant were all admitted into evidence, supported Highland's objection, and—in the case of Mr. McGraner—was used repeatedly to impeach his credibility.

27. ***Second***, HCRE contends (again, with no legal or factual support) that Highland's fee request of $809,776.50 is "*per se* excessive for a single proof of claim." Response ¶ 34. This argument is likewise without merit. Just six months before the hearing in this contested matter, The Dugaboy Investment Trust represented to this Court that Highland's interest in SE Multifamily was worth $20 million.[5] Spending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries.

28. ***Third***, HCRE complains that the identities of three professionals (two of whom billed one hour or less) were undisclosed. Response ¶¶ 35, 38-40. "BEL" are the initials for Beth Levine, a litigator who billed one hour of time. "RMS" are the initials for Robert Saunders, a bankruptcy attorney who billed 0.6 hours of time. "JMF" are the initials for Joshua Fried, a bankruptcy partner who billed 15.1 hours of time. Collectively, these attorneys—who were obviously called upon to provide discrete support—charged 0.023% of the total fee request.[6]

---

[5] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. There is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily.

[6] Despite HCRE's hyperbolic suggestion that there were "layers of timekeepers," (Response ¶ 45), over 82% of the charges related to one litigation partner (John Morris), one litigation associate (Hayley Winograd), and one paralegal (La Asia Canty). Two other lawyers who have been on the Pachulski team since the inception of the engagement—Jeffrey Pomerantz and Gregory Demo—billed relatively modest amounts of time over the course of this prolonged litigation. *See* Response ¶ 36 (Table 1). In context, there is no factual basis for HCRE's suggestion that this matter was overstaffed.

29. ***Fourth***, HCRE complains that two lawyers charged (collectively) $9,840 (or, 0.012% of the total fee request) for travel time. Response ¶37. But (a) as HCRE acknowledges, non-working travel time is billed at half the attorney's regular hourly rate (*see* Response ¶ 36 (Table 1)), and (b) the charges cannot come as a surprise to Mr. Dondero because Highland agreed to pay for travel time in its engagement letter signed prior to the Petition Date.[7]

30. ***Fifth***, HCRE complains about Mr. Agler's invoice. Response ¶ 42. As was previously explained, Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim." Morris Dec. ¶ 15. Notably, Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits. *See* Morris Ex. 5 at 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence).

31. In the end, there is no basis to modify or reduce Highland's request for attorneys' fees. The fees were well-documented, reasonable under the circumstances, and should be borne by HCRE as a bare minimum sanction for its bad faith filing and pursuit of the Proof of Claim.

REPLY LEGAL ARGUMENT

32. The Court should exercise its inherent authority under section 105 of the Bankruptcy Code to issue sanctions against HCRE. As set forth in the Motion, "it is well-settled that a court may impose sanctions against litigants so long as the court makes a specific finding that they engaged in bad faith conduct." *In re Skyport Glob. Commc'n, Inc.*, 642 F. App'x 301,

[7] *See Declaration of Hayley R. Winograd in Support of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint*, [Docket No. 3998], Ex. 1 § E.2 ("The Firm will charge for waiting time in court and elsewhere and for travel time, both local and out of town"). The Court can and should take judicial notice that the substance of this provision is customary in the industry.

304 (5th Cir. 2016) (citing *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008)); *see also In re Cleveland Imaging and Surgical Hosp., L.L.C.*, 26 F.4th 285, 297 (5th Cir. 2022) (noting that a bankruptcy court may sanction litigants if it finds, by clear and convincing evidence, that they acted in bad faith or willfully abused the judicial process").

33. Here, the record establishes that HCRE clearly and convincingly acted in bad faith in connection with the filing and prosecution of its Proof of Claim. As set forth in the Motion and above, the evidence at trial established that HCRE knew when it filed the Proof of Claim that no legal or factual basis existed for HCRE's contention that "Highland had an improperly large equity allocation in SE Multifamily given the size of its investment and contribution." Mr. Dondero had no basis to swear that the Proof of Claim was true and correct at the time he signed it. Mr. Dondero and Mr. McGraner both testified that the allocation of the membership interests in the Amended LLC Agreement—the very basis for the Proof of Claim—accurately reflected the parties' contemporaneous intent. And although HCRE insists that it tried to withdraw the Proof of Claim, HCRE did not do so in good faith. Rather, it did so only after trying to obtain a patently unfair litigation advantage (*i.e.*, after taking Highland's depositions but before subjecting its own witnesses to questioning) while trying at all times to preserve for another day the very baseless claims asserted.

34. Viewed in its entirety, the record supports a finding that HCRE acted in bad faith in connection with the filing and prosecution of its Proof of Claim. *See In re Carroll*, 850 F.3d 811, 816 (2017) ("At bottom, the record fully supports the bankruptcy court's determination of bad faith" where, among other things, parties attempted to relitigate issues that had been resolved, pursue remedies that were unsupported, and "persisted in their unsupported filings"); *In re Jacobsen*, 609 F.3d 647, 662 (5th Cir. 2010) (affirming bankruptcy court's finding of bad faith as

not clearly erroneous where "[t]he bankruptcy court had ample evidence in the form of Jacobsen's own testimony," and "the bankruptcy court, sitting as the factfinder, had the ability to evaluate Jacobsen's testimony and his credibility firsthand. We have little difficulty concluding that a finding of bad faith is plausible in light of the record viewed in its entirety"); *Cleveland*, 26 F.4th at 298 (affirming bankruptcy court's conclusion that parties "were acting in bad faith when they filed their adversary. The factual findings stand.")[8]

35. HCRE's cases in support of its contention that the evidence here does not establish its bad faith are inapposite. For instance, in *In re Pastran*, 462 B.R. 201 (2011), the court found that a loan servicer, in filing motion for relief from a stay as to a deed of trust property, did not act with "bad faith, improper motive, or reckless disregard of its duty to the court," where, although they presented "somewhat lackluster evidence" at a hearing, "the court does not think that forgetfulness in offering a piece of evidence or carelessness when choosing the proper best witness to prove up one's case necessarily rises to the level which would allow this court to assess the Debtor's attorney's fees against" that party. *Id.* at 208-09. Here, by contrast, in filing the Proof of Claim and engaging in all the proceedings that followed, HCRE's conduct did not amount to simple carelessness or forgetfulness but was completely intentional.

36. In *National Oilwell Varco, L.P. v. Auto-Dril, Inc.*, 68 F.4th 206 (2023), the court found that a licensor's conduct in entering into a settlement agreement with a licensee for patent infringement action in connection with a patent that licensor did not own did not rise to the level of a fraud on the court, thus precluding the district court from invoking its inherent authority to dismiss the licensor's claim for breach of settlement agreement. The court explained that there was no evidence that licensor's assertions regarding its ownership of the patent in the underlying action

[8] *See also* Motion ¶ 25 (collecting cases).

amounted to an "unconscionable plan or scheme designed to improperly influence the court," or that the party "committed a fraud on the court or otherwise abused the judicial process … by clear and convincing evidence." *Id.* at 220. Here, the issue is not whether HCRE's conduct amounted to the "fraud on the court" or whether HCRE was engaged in a "scheme which [was] designed to improperly influence the court in its decision." It is whether HCRE's conduct amounted to bad faith by knowingly filing a baseless Proof of Claim, interfering with discovery on that Proof of Claim, and then abruptly withdrawing that Proof of Claim while attempting to preserve the bogus issues for a later time.

37. *In re Wingerter*, 594 F.3d 931 (2010) is equally distinguishable. There, the court found that a creditor's filing of a proof of claim that it was ultimately forced to withdraw for lack of supporting documentation did not warrant Rule 9011 sanctions. The creditor made "reasonable" pre-filing inquiry into the validity of a claim which it had purchased from an intermediary when it subsequently filed the proof of claim based on this claim, by not only conducting its own pre-purchase investigation, but insisting on a warranty of the claim's validity from the intermediary—a company from which it had purchased 1,017 claims, only two of which were found to be invalid, and which itself had acquired the claim only after conducting an investigation using collection agency with which it subcontracted. The court found that, under the particular circumstances of that case, the creditor's failure to insist that the intermediary provide it with originating documents supporting the claim, in an attempt to cut down on the costs of the purchase transaction, did not affect the reasonableness of the creditor's inquiry. *See id.* at 939-40. HCRE's level of pre-filing diligence (none) does not come close to the level of pre-filing diligence undertaken by the creditor in *Wingerter*.

38. Here, unlike in all the cases cited by HCRE, a finding that HCRE engaged in bad faith in connection with its Proof of Claim is clearly and convincingly supported by the record. HCRE's argument that the attorney's fees demand is "excessive," (Response ¶¶ 59-63), is unsupported and without merit for all the reasons discussed *supra* ¶¶ 25-31. Accordingly, the Court should exercise its broad discretion in issuing sanctions against HCRE in the form of reimbursement to Highland for its attorney's fees and costs. *See Skyport*, 642 Fed. Appx. at 304 (finding "the bankruptcy court did not abuse its discretion in ordering sanctions"); *In re Monteagudo*, 536 Fed. Appx. 456, 459 (5th Cir. 2013) (sanctions orders granted under bankruptcy court's inherent powers are reviewed for "abuse of discretion"); *In re ASARCO, L.L.C.*, 751 F.3d 291, 294 (5th Cir. 2014), *aff'd sub nom. Baker Botts L.L.P. v ASARCO LLC*, 576 U.S. 121 (2015) ("A bankruptcy court has 'broad discretion' to determine reasonable attorneys' fees, as the bankruptcy court is familiar "with the actual services performed" and is well positioned to determine "what is just and reasonable") (internal quotations omitted); *Yorkshire*, 540 F.3d at, 332-33 (finding the bankruptcy court did not abuse its discretion in the amount of sanctions it imposed against Appellants under its inherent authority after making a finding of bad faith). The record establishes that HCRE acted in bad faith, and the Court should award sanctions against HCRE for its bad faith conduct.

CONCLUSION

For the foregoing reasons, and those set forth in the Motion, Highland respectfully requests that the Court enter an order finding that HCRE acted in bad faith in the filing and prosecution of the Proof of Claim; awarding Highland its attorneys' fees in the amount of $809,776.50, plus expenses of $16,164.05; and granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: January 19, 2024

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail:jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

- and -

HAYWARD PLLC

/s/ Zachery Z. Annable
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone: (972) 755-7100
Facsimile: (972) 755-7110

Counsel for Highland Capital Management, L.P.

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No. 143717) (admitted *pro hac vice*)
John A. Morris (NY Bar No. 2405397) (admitted *pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (admitted *pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward (TX Bar No. 24044908)
MHayward@HaywardFirm.com
Zachery Z. Annable (TX Bar No. 24053075)
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, TX 75231
Telephone/Facsimile: (972) 755-7100

Counsel for Highland Capital Management, L.P.

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

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

HIGHLAND CAPITAL MANAGEMENT L.P.'S AMENDED REPLY IN FURTHER SUPPORT OF ITS MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM 146

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

Highland Capital Management, L.P. ("Highland"), the reorganized debtor in the above-captioned bankruptcy case, by and through its undersigned counsel, hereby files this Reply in further support of its Motion and in response to HCRE's *Response to Debtor's [sic] Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* [Docket No. 3995] (the "Response").[2]

PRELIMINARY STATEMENT

1. Predictably, HCRE—acting through Mr. Dondero (HCRE's sole manager since HCRE was formed) and Mr. McGraner (HCRE's only other officer)—defiantly doubles down on its disingenuous positions. Nothing in the Response warrants the denial of the Motion or its requested award of attorneys' fees. In fact, the Response only amplifies the propriety and necessity of granting the requested relief.

2. As the record makes clear, HCRE and its principals clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, (b) [intentionally omitted], (c) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and (d) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement").

3. HCRE must be held accountable for this wrongful conduct. The Motion should be granted.

REPLY STATEMENT OF FACTS

4. The evidence clearly and convincingly proves that HCRE engaged in numerous acts of bad faith in connection with the filing and prosecution of its Proof of Claim.

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in *Highland Capital Management L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* [Docket No. 3851] (the "Motion").

A. Clear and Convincing Evidence Proves That Mr. Dondero Had No Basis to Swear That the Proof of Claim Was True and Correct

5. As established in the Motion, the evidence clearly and convincingly proves that Mr. Dondero lacked *any* basis to swear, under penalty of perjury, that HCRE's Proof of Claim was true and correct. Motion ¶¶ 14-15 (citing Morris Ex. D. at 4-5).

6. In an effort to dodge the obvious impact of Mr. Dondero's testimony, HCRE tries to deflect by averring that Mr. Dondero was too busy to read and understand the proof of claim and its impact because he supposedly "had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds." Response ¶ 16. But to the best of Highland's knowledge, the "very important person" defense has never been adopted by any court anywhere.

7. HCRE also contends that Mr. Dondero "relied" on his attorneys who he "believed" had "worked with some of the other staff" to prepare the Proof of Claim and vaguely described a "process" by which "complex documents" were signed. *See generally* Response ¶¶ 15-24.

8. But Mr. Dondero had *no* basis to rely on anyone because he asked no questions, did no diligence, and made no effort to determine if reliance was reasonable under the circumstances. *See* Motion ¶ 14 (summarizing extensive testimony cited in Morris Ex. D at 4-5). Nor did he have any basis to know whether the so-called "process" for signing "high risk" documents was followed in this case (assuming, for the sake of argument, such a "process" actually existed).

9. Aside from Mr. Dondero's utter lack of diligence, the most damning evidence that clearly and convincingly proves there was no good faith basis for the Proof of Claim were his own unqualified admissions and those of his partner, Mr. McGraner, that the allocation of the membership interests in the Amended LLC Agreement—including Highland's 46.06% interest—

accurately reflected the parties' contemporaneous intent. Morris Dec. Ex. E at 53:25-54:23 (Mr. Dondero admitted knowing that Highland's 49% interest in SE Multifamily would be diluted by 6% when BH Equities was admitted as a member such that Exhibit A to the Amended LLC Agreement comported with his expectations when he signed the Agreement); 93:24-94:20, 95:3-103:20, 105:11-107:22 (Mr. McGraner knew the allocation of membership interests in Schedule A and other provisions in the Amended LLC Agreement accurately reflected the parties' intent).

10. Mr. Dondero did nothing to satisfy himself that there was a good faith basis to sign the Proof of Claim. If he only searched his own memory or asked Mr. McGraner, he would have realized that fact. His failure to do so warrants a finding of bad faith.

B. [Intentionally Omitted]

11. [Intentionally Omitted].

12. [Intentionally Omitted].

13. [Intentionally Omitted].

14. [Intentionally Omitted].

C. Clear and Convincing Evidence Proves That HCRE Moved to Withdraw Its Proof of Claim in Bad Faith

15. As set forth in the Motion, the timing of HCRE's Motion to Withdraw the Proof of Claim clearly and convincingly proves that the Motion to Withdraw was filed in bad faith as part of a continuing game of whack-a-mole foisted on the Highland estate by Mr. Dondero. *See* Motion ¶ 10.

16. HCRE failed to address this point and has never explained why it decided to abruptly file the Motion to Withdraw two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of HCRE's witnesses were to take place. *Id*. The timing of HCRE's Motion to Withdraw was not an accident.

17. The only fair conclusion is that HCRE—in another act of bad faith—wanted to take the depositions of Highland's witnesses for use in later litigation to challenge Highland's ownership interest in SE Multifamily while shielding its own witnesses from testifying—a conclusion validated by HCRE's later attempts to preserve the very claims upon which the Proof Claim was based.

D. Clear and Convincing Evidence Proves That HCRE Tried to Preserve Its Claims in Bad Faith

18. HCRE contends that, rather than "taking a win" after it moved to withdraw its Proof of Claim, "the Debtor [sic] and its lawyers chose to generate fees to get to the same result." Response at 2 (Summary). HCRE continues to play games. The evidence clearly and convincingly proves that any such "victory" through the withdrawal of the Proof of Claim would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

19. Again, HCRE expressly asserted that it "ha[d] a claim to reform, rescind and/or modify the agreement." Motion ¶ 6 (citing Morris Dec. Ex. C ¶5). This Court denied the Motion to Withdraw precisely because "HCRE was not willing to agree, at the hearing, to language in an order allowing it to withdraw its Proof of Claim stating, unequivocally, that HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily." Notably, even after expressing concerns about the "integrity of the bankruptcy system and claims process" and "gamesmanship," the Court ***still*** held open the possibility of

signing an agreed order and denied the Motion to Withdraw only after no such consensual order was presented. Morris Dec. Ex. D at n. 36.

20. Undeterred, HCRE continued right through closing argument to try and limit this Court's ruling to the denial of the Proof of Claim in an effort to save for another day the very claims asserted in support of its Proof of Claim (*i.e.*, "claim[s] to reform, rescind and/or modify the agreement"). Morris Dec. Ex. E at 180:17-181:2 ("They want you to make findings that we can't raise any of these other issues, recissions, stays, et cetera, going forward. That's not proper relief on a proof of claim"). The Court rebuffed HCRE's attempt to preserve its claims, and Highland succeeded in getting what it was indisputably entitled to and what would have been unavailable had HCRE been permitted to simply withdraw its Proof of Claim: good, clear title to its 46.06% interest in SE Multifamily that everyone—HCRE, Mr. Dondero, Mr. McGraner, and BH Equities—unequivocally acknowledged was Highland's intended allocation when the Amended LLC Agreement was executed and every day since, until Mr. Dondero and Mr. McGraner tried to change their minds, post-petition. *See infra* ¶¶ 22-23.

E. <u>Clear and Convincing Evidence Proves That the Proof of Claim Lacked Any Basis in Fact or Law</u>

21. The undisputed evidence clearly and convincingly proves that HCRE's Proof of Claim lacked any factual or legal basis and was pursued in bad faith.

22. Specifically, Mr. McGraner's admissions at trial clearly and convincingly established that no basis existed for HCRE's contention that "Highland had an improperly large equity allocation in SE Multifamily given the size of its investment and contribution" (Response ¶ 28), or to "reform, rescind and/or modify the agreement." Morris Ex. C ¶ 5. Mr. McGraner admitted, among other things, that:

- He (a) owns 25% of HCRE; (b) has been one of only two officers of HCRE since it was formed (Mr. Dondero is HCRE's Manager); (c) is one of only

two people authorized to act on HCRE's behalf (Mr. Dondero is the other); and (d) was the "quarterback" of the transactions concerning SE Multifamily (Ex. E at 75:20-76:4; 79:12-25; 80:3-5; 82:13-16);

- "Highland bankrolled HCRE's business" *(id*. at 80-12-20);

- He (a) did not believe there were any mistakes in the allocation of membership interests in the Original LLC Agreement and (b) had no reason to believe that Agreement failed to reflect the parties' intent (*id*. at 82-21-83:10);

- Mr. McGraner and Mr. Dondero included Highland as a member of SE Multifamily because (a) HCRE did not have the financial wherewithal to close on the Key Bank loan by itself and needed Highland to provide "capital flexibility" by co-signing for the Key bank loan;[3] and (b) Highland's inclusion was expected to provide tax benefits (*id*. at 83:11-85:2);

- With a March 15, 2019 deadline for the completion of an amendment to the Original LLC Agreement that would both permit BH Equities to be admitted as a new member and have the amendment retroactive to August 2018, the parties worked to update the contribution schedule with full knowledge of Highland's capital contribution (*Id*. at 86:9-88-4);

- Mr. McGraner (a) reviewed the draft Schedule A for the proposed amendment; (b) saw that it unambiguously showed Highland making a $49,000 capital contribution and receiving a 46.06% interest in SE Multifamily; (c) believed Schedule A reflected his understanding of the terms between Highland and HCRE; and (d) knew of no obligation that Highland had to make any future additional capital contribution (*id*. at 93:24-94:20; 105:11-106:7; Ex. 30);

- The allocation of membership interests in Schedule A was consistent with the parties' negotiation of the "waterfall" and other provisions in the Amended LLC Agreement that HCRE understood accurately reflected the parties' intent (*id*. at 95:3-103:20; 106:8-107:22);

- To the best of Mr. McGraner's knowledge and understanding, Schedule A as set forth in the Amended LLC Agreement reflected the parties' intent at the time it was signed (*id*. at 100:-21-101:21);

[3] Mr. McGraner admitted that "in the end KeyBank insisted on Highland being a coborrower." Ex. E at 85:2-4. Thus, it is indisputable that (i) HCRE could not have closed on the KeyBank loan and executed Project Unicorn without Highland, and (ii) Highland was a co-obligor under the KeyBank loan.

- HCRE filed the claim because Highland and HCRE were "no longer the same partners" after Highland filed for bankruptcy and the dispute was just "an unintended consequence." (*id*. at 108:3-109:4).

23. For his part, Mr. Dondero also flatly admitted that (a) Highland was included in the SE Multifamily as part of a tax scheme to shelter income, and (b) his understanding when he signed the Amended LLC Agreement was that Highland's 49% interest in SE Multifamily under the Original LLC Agreement would be reduced by 6% to account for the interest being conveyed to BH Equities. Morris Ex. E at 43:2-14, 51:11-52:18, 53:25-54:23.

24. Given these extensive, undisputed, and unqualified admissions, there never was a good-faith basis to (a) support HCRE's contention in the Proof of Claim that "all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to Debtor or may be property of Claimant" (Morris Dec. Ex. 1, Exhibit A), or (b) to "reform, rescind and/or modify the agreement." Motion ¶ 6 (citing Morris Dec. Ex. C ¶ 5).

F. <u>The Record Supports Highland's Request for Attorneys' Fees</u>

25. HCRE makes various complaints about Highland's request for attorneys' fees and generally contends that the fees are "excessive." Response ¶¶ 33-45. None of HCRE's gripes withstand scrutiny.

26. ***First***, HCRE baldly contends that the "Debtor [sic] also insisted on taking additional discovery in advance of [the] hearing that could and should have been avoided altogether." Response ¶ 33. But ***no*** merits-based depositions had been taken before August 2022. HCRE's contention is also undermined by the fact that the transcripts from the depositions of HCRE, Mr. McGraner, BH Equities, and SE Multifamily's accountant were all admitted into evidence, supported Highland's objection, and—in the case of Mr. McGraner—was used repeatedly to impeach his credibility.

27. ***Second***, HCRE contends (again, with no legal or factual support) that Highland's fee request of $809,776.50 is "*per se* excessive for a single proof of claim." Response ¶ 34. This argument is likewise without merit. Just six months before the hearing in this contested matter, The Dugaboy Investment Trust represented to this Court that Highland's interest in SE Multifamily was worth $20 million.[4] Spending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries.

28. ***Third***, HCRE complains that the identities of three professionals (two of whom billed one hour or less) were undisclosed. Response ¶¶ 35, 38-40. "BEL" are the initials for Beth Levine, a litigator who billed one hour of time. "RMS" are the initials for Robert Saunders, a bankruptcy attorney who billed 0.6 hours of time. "JMF" are the initials for Joshua Fried, a bankruptcy partner who billed 15.1 hours of time. Collectively, these attorneys—who were obviously called upon to provide discrete support—charged 0.023% of the total fee request.[5]

29. ***Fourth***, HCRE complains that two lawyers charged (collectively) $9,840 (or, 0.012% of the total fee request) for travel time. Response ¶37. But (a) as HCRE acknowledges, non-working travel time is billed at half the attorney's regular hourly rate (*see* Response ¶ 36

[4] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. There is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily.

[5] Despite HCRE's hyperbolic suggestion that there were "layers of timekeepers," (Response ¶ 45), over 82% of the charges related to one litigation partner (John Morris), one litigation associate (Hayley Winograd), and one paralegal (La Asia Canty). Two other lawyers who have been on the Pachulski team since the inception of the engagement—Jeffrey Pomerantz and Gregory Demo—billed relatively modest amounts of time over the course of this prolonged litigation. *See* Response ¶ 36 (Table 1). In context, there is no factual basis for HCRE's suggestion that this matter was overstaffed.

(Table 1)), and (b) the charges cannot come as a surprise to Mr. Dondero because Highland agreed to pay for travel time in its engagement letter signed prior to the Petition Date.[6]

30. ***Fifth***, HCRE complains about Mr. Agler's invoice. Response ¶ 42. As was previously explained, Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim." Morris Dec. ¶ 15. Notably, Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits. *See* Morris Ex. 5 at 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence).

31. In the end, there is no basis to modify or reduce Highland's request for attorneys' fees. The fees were well-documented, reasonable under the circumstances, and should be borne by HCRE as a bare minimum sanction for its bad faith filing and pursuit of the Proof of Claim.

REPLY LEGAL ARGUMENT

32. The Court should exercise its inherent authority under section 105 of the Bankruptcy Code to issue sanctions against HCRE. As set forth in the Motion, "it is well-settled that a court may impose sanctions against litigants so long as the court makes a specific finding that they engaged in bad faith conduct." *In re Skyport Glob. Commc'n, Inc.*, 642 F. App'x 301, 304 (5th Cir. 2016) (citing *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008)); *see also In re Cleveland Imaging and Surgical Hosp., L.L.C.*, 26 F.4th 285, 297 (5th Cir. 2022) (noting that a

[6] *See Declaration of Hayley R. Winograd in Support of PSZJ's Amended Opposition to Motion of James D. Dondero and Strand Advisors, Inc. for Leave to File Adversary Complaint*, [Docket No. 3998], Ex. 1 § E.2 ("The Firm will charge for waiting time in court and elsewhere and for travel time, both local and out of town"). The Court can and should take judicial notice that the substance of this provision is customary in the industry.

bankruptcy court may sanction litigants if it finds, by clear and convincing evidence, that they acted in bad faith or willfully abused the judicial process").

33. Here, the record establishes that HCRE clearly and convincingly acted in bad faith in connection with the filing and prosecution of its Proof of Claim. As set forth in the Motion and above, the evidence at trial established that HCRE knew when it filed the Proof of Claim that no legal or factual basis existed for HCRE's contention that "Highland had an improperly large equity allocation in SE Multifamily given the size of its investment and contribution." Mr. Dondero had no basis to swear that the Proof of Claim was true and correct at the time he signed it. Mr. Dondero and Mr. McGraner both testified that the allocation of the membership interests in the Amended LLC Agreement—the very basis for the Proof of Claim—accurately reflected the parties' contemporaneous intent. And although HCRE insists that it tried to withdraw the Proof of Claim, HCRE did not do so in good faith. Rather, it did so only after trying to obtain a patently unfair litigation advantage (*i.e.*, after taking Highland's depositions but before subjecting its own witnesses to questioning) while trying at all times to preserve for another day the very baseless claims asserted.

34. Viewed in its entirety, the record supports a finding that HCRE acted in bad faith in connection with the filing and prosecution of its Proof of Claim. *See In re Carroll*, 850 F.3d 811, 816 (2017) ("At bottom, the record fully supports the bankruptcy court's determination of bad faith" where, among other things, parties attempted to relitigate issues that had been resolved, pursue remedies that were unsupported, and "persisted in their unsupported filings"); *In re Jacobsen*, 609 F.3d 647, 662 (5th Cir. 2010) (affirming bankruptcy court's finding of bad faith as not clearly erroneous where "[t]he bankruptcy court had ample evidence in the form of Jacobsen's own testimony," and "the bankruptcy court, sitting as the factfinder, had the ability to evaluate

Jacobsen's testimony and his credibility firsthand. We have little difficulty concluding that a finding of bad faith is plausible in light of the record viewed in its entirety"); *Cleveland*, 26 F.4th at 298 (affirming bankruptcy court's conclusion that parties "were acting in bad faith when they filed their adversary. The factual findings stand.")[7]

35. HCRE's cases in support of its contention that the evidence here does not establish its bad faith are inapposite. For instance, in *In re Pastran*, 462 B.R. 201 (2011), the court found that a loan servicer, in filing motion for relief from a stay as to a deed of trust property, did not act with "bad faith, improper motive, or reckless disregard of its duty to the court," where, although they presented "somewhat lackluster evidence" at a hearing, "the court does not think that forgetfulness in offering a piece of evidence or carelessness when choosing the proper best witness to prove up one's case necessarily rises to the level which would allow this court to assess the Debtor's attorney's fees against" that party. *Id.* at 208-09. Here, by contrast, in filing the Proof of Claim and engaging in all the proceedings that followed, HCRE's conduct did not amount to simple carelessness or forgetfulness but was completely intentional.

36. In *National Oilwell Varco, L.P. v. Auto-Dril, Inc.*, 68 F.4th 206 (2023), the court found that a licensor's conduct in entering into a settlement agreement with a licensee for patent infringement action in connection with a patent that licensor did not own did not rise to the level of a fraud on the court, thus precluding the district court from invoking its inherent authority to dismiss the licensor's claim for breach of settlement agreement. The court explained that there was no evidence that licensor's assertions regarding its ownership of the patent in the underlying action amounted to an "unconscionable plan or scheme designed to improperly influence the court," or that the party "committed a fraud on the court or otherwise abused the judicial process … by clear

[7] *See also* Motion ¶ 25 (collecting cases).

and convincing evidence." *Id.* at 220. Here, the issue is not whether HCRE's conduct amounted to the "fraud on the court" or whether HCRE was engaged in a "scheme which [was] designed to improperly influence the court in its decision." It is whether HCRE's conduct amounted to bad faith by knowingly filing a baseless Proof of Claim, interfering with discovery on that Proof of Claim, and then abruptly withdrawing that Proof of Claim while attempting to preserve the bogus issues for a later time.

37. *In re Wingerter*, 594 F.3d 931 (2010) is equally distinguishable. There, the court found that a creditor's filing of a proof of claim that it was ultimately forced to withdraw for lack of supporting documentation did not warrant Rule 9011 sanctions. The creditor made "reasonable" pre-filing inquiry into the validity of a claim which it had purchased from an intermediary when it subsequently filed the proof of claim based on this claim, by not only conducting its own pre-purchase investigation, but insisting on a warranty of the claim's validity from the intermediary—a company from which it had purchased 1,017 claims, only two of which were found to be invalid, and which itself had acquired the claim only after conducting an investigation using collection agency with which it subcontracted. The court found that, under the particular circumstances of that case, the creditor's failure to insist that the intermediary provide it with originating documents supporting the claim, in an attempt to cut down on the costs of the purchase transaction, did not affect the reasonableness of the creditor's inquiry. *See id.* at 939-40. HCRE's level of pre-filing diligence (none) does not come close to the level of pre-filing diligence undertaken by the creditor in *Wingerter*.

38. Here, unlike in all the cases cited by HCRE, a finding that HCRE engaged in bad faith in connection with its Proof of Claim is clearly and convincingly supported by the record. HCRE's argument that the attorney's fees demand is "excessive," (Response ¶¶ 59-63), is

unsupported and without merit for all the reasons discussed *supra* ¶¶ 25-31. Accordingly, the Court should exercise its broad discretion in issuing sanctions against HCRE in the form of reimbursement to Highland for its attorney's fees and costs. *See Skyport*, 642 Fed. Appx. at 304 (finding "the bankruptcy court did not abuse its discretion in ordering sanctions"); *In re Monteagudo*, 536 Fed. Appx. 456, 459 (5th Cir. 2013) (sanctions orders granted under bankruptcy court's inherent powers are reviewed for "abuse of discretion"); *In re ASARCO, L.L.C.*, 751 F.3d 291, 294 (5th Cir. 2014), *aff'd sub nom. Baker Botts L.L.P. v ASARCO LLC*, 576 U.S. 121 (2015) ("A bankruptcy court has 'broad discretion' to determine reasonable attorneys' fees, as the bankruptcy court is familiar "with the actual services performed" and is well positioned to determine "what is just and reasonable") (internal quotations omitted); *Yorkshire*, 540 F.3d at, 332-33 (finding the bankruptcy court did not abuse its discretion in the amount of sanctions it imposed against Appellants under its inherent authority after making a finding of bad faith). The record establishes that HCRE acted in bad faith, and the Court should award sanctions against HCRE for its bad faith conduct.

CONCLUSION

For the foregoing reasons, and those set forth in the Motion, Highland respectfully requests that the Court enter an order finding that HCRE acted in bad faith in the filing and prosecution of the Proof of Claim; awarding Highland its attorneys' fees in the amount of $809,776.50, plus expenses of $16,164.05; and granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: January 23, 2024

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)
John A. Morris (NY Bar No. 2405397)
Gregory V. Demo (NY Bar No. 5371992)
Hayley R. Winograd (NY Bar No. 5612569)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
E-mail:jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinograd@pszjlaw.com

- and -

HAYWARD PLLC

/s/ *Zachery Z. Annable*
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Telephone/Facsimile: (972) 755-7100

Counsel for Highland Capital Management, L.P.

Excerpts From January 24, 2024, Hearing Transcript
[Pages 1-83]

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	January 24, 2024
	9:30 a.m. Docket
Reorganized Debtor.	
	- HIGHLAND'S MOTION FOR BAD FAITH FINDING [3851]
	- HIGHLAND'S MOTION TO STAY CONTESTED MATTER [4013]

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

APPEARANCES:

For the Reorganized Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
For NexPoint Real Estate Partners, LLC:	Charles William "Bill" Gameros, Jr. HOGE & GAMEROS, LLP 6116 N. Central Expressway, Suite 1400 Dallas, TX 75206 (214) 765-6002
For Hunter Mountain Investment Trust, The Dugaboy Investment Trust:	Deborah Rose Deitsch-Perez Michael P. Aigen STINSON, LLP 2200 Ross Avenue, Suite 2900 Dallas, TX 75201 (214) 560-2201
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - JANUARY 24, 2024 - 9:32 A.M.

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas, Dallas Division, is now in session, The Honorable Stacey Jernigan presiding.

THE COURT: Good morning. Please be seated. All right. We have a video hearing this morning in certain Highland Capital Management matters. We're not going to do an appearance roll call because we've started a new, I think, more efficient system where we just have people log in their appearance when they come onto the video WebEx. And so we're going to rely on that.

All right. So we have two matters. One has been long-scheduled. It's Highland's motion for a bad faith finding and attorneys' fees against NexPoint Real Estate Partners in connection with proof of claim litigation. So we have that set.

And then we had an expedited motion to stay a contested matter set by Highland. Highland is wanting to stay any litigation on a newly-filed motion by Hunter Mountain Investment Trust to sue Mr. Seery in the Delaware Chancery Court or Delaware state court system.

I'm thinking it probably makes sense to consider that expedited motion for a stay first. Does anyone on the line disagree with that sequence?

MR. MORRIS: Your Honor, this is John Morris from

Pachulski for Highland. I don't disagree with it. I was prepared to handle the other matter first, simply because it was filed first, but I defer to the Court if that's the Court's wishes.

THE COURT: Well, I'm just thinking it's probably the shorter matter and there may be folks who will drop off, I don't know, maybe.

MR. MORRIS: Oh. Then that makes sense.

THE COURT: Okay. All right. Well, I'll hear what Highland wants to say first, please.

MR. MORRIS: Okay. Good morning, Your Honor. Before I get to that, just a couple of housekeeping matters. I don't mean to be the policeperson here, but there are, at least showing on my screen, a number of participants just by phone number. There's somebody who's identified as Participant. It may be that the Court has the information as to the identity of these folks, but I thought the purpose was to disclose the identity of anybody who's attending this hearing.

So I see, for example, phone numbers beginning with 202 or 312. There's somebody who's listed, at least on my screen, as "Participant." I don't think that was the intent of the rule. And, again, I don't mean to be the policeperson here. Somebody just joined with a telephone number beginning 469.

If I'm mistaken, you know, please just correct me, but I thought the idea was that there would be transparency as to

who was here.

THE COURT: Okay. The idea is, because of national rules at the Administrative Office of the Courts, post-September 21, 2023, because of so-called anti-broadcasting rules, if you're a participant in the case you may watch by video a court proceeding, but if you're not a participant you can only listen in, audio.

So it may be that those that you're seeing is just, you know, they may have chosen to use the term Participant, but they may be only audio. Of course, it seems less --

MR. MORRIS: Okay.

THE COURT: -- significant when we don't have human beings taking the witness stand in the courtroom.

So, Mike, can you answer, are the anonymous people, are they all audio?

THE CLERK: No. They're not. Not -- excuse me. Let me do this, Judge.

Okay. Anyone with a number, you need to identify yourself for the Court. I see a 202, a 312, and a 469 and 703. If you cannot identify yourself, we will have to expel you from the hearing.

THE COURT: And, again, --

(Inaudible interruption.)

THE COURT: Again, if you aren't identified, you're going to be expelled from the WebEx. You can always call in,

audio, but you -- not my rule. A rule from Washington, DC. So, does anyone at this point want to identify themselves?

(No response.)

THE COURT: Okay. Hearing no identification, they'll be expelled. And then, again, if they want to call in, they can call in, but no video WebEx.

All right. Any other housekeeping matters?

MR. MORRIS: Just one other, Your Honor. It's with some very mixed feelings that I report to the Court that our star paralegal, Aja Cantey, has left us. She has moved on to become the head bankruptcy paralegal at Paul Weiss. You know how much I rely on my paralegals. But my sadness has been assuaged a bit by Andrea Bates, who joined us recently. She is on the line today. She'll be assisting me in today's hearing.

I just wanted to, you know, let the Court knows that there has been a change, that we have supreme confidence in Ms. Bates, who joins us from Skadden Arps.

THE COURT: Okay.

MR. MORRIS: And I just -- I just didn't want there to be any surprises there.

THE COURT: All right. Thank you for announcing that.

MR. SANJANA: Your Honor, I'm sorry to interrupt. Your Honor?

THE COURT: Yes?

MR. SANJANA: I'm sorry to interrupt.

THE COURT: Who is this?

MR. SANJANA: Hi. This is Jason Sanjana at Reorg -- this is Jason Sanjana at Reorg Research. I was the 202 number. And I just wanted to -- I was always on audio, and I'm on audio now.

THE COURT: Okay.

MR. SANJANA: But I was on mute until now. So, --

THE COURT: Okay.

MR. SANJANA: -- I just wanted to let you know that.

THE COURT: Okay.

MR. SANJANA: But it may have been appearing as on WebEx for you, but it isn't.

THE COURT: Okay. All right. I appreciate you clarifying that for us, Jason.

Okay. Anything else?

MR. MORRIS: No, Your Honor.

THE COURT: All right. Well, we had this motion to stay the contested matter of Hunter Mountain wanting relief from the gatekeeper provision to sue Mr. Seery in Delaware. So I'll hear what Highland has to say with regard to its motion for a stay.

MR. MORRIS: Okay. Thank you, Your Honor. John Morris; Pachulski Stang Ziehl & Jones; for Highland Capital

Management. We're here today on Highland's motion for a very limited stay of Hunter Mountain's motion for leave to sue Mr. Seery.

I have a short deck to use to assist in today's presentation, and I would ask Ms. Bates to put that up on the screen.

While we're waiting for that, just so it's clear, the motion was originally filed at Docket No. 4013.

THE COURT: Okay.

MR. MORRIS: And, you know, as an overarching theme here, the basis for the stay is that the issues in the motion for leave pertaining to whether or not Hunter Mountain is a beneficiary under the Claimant Trust Agreement are the very issues that are going to be -- that have been fully briefed and that are going to be argued just three weeks from now in connection with Highland's motion to dismiss Hunter Mountain's valuation complaint.

And I think that the easiest thing to do here, Your Honor, if we can -- if we could go to the next slide, is just to think about what's -- what the pleadings are. What's the relief that is being requested and what's the basis for the relief?

And so you'll see -- and this is in our motion -- but I find it helpful to actually focus on exactly what the complaint is. The complaint that we're seeking to stay

includes four or five causes of action. You'll find up on the screen Paragraph 35 of the proposed complaint. It follows the heading Roman Numeral V, Causes of Action. And this is the basis for the complaint. It's solely relying on Delaware corporate law, Section 3327 of the Delaware corporate law. And that law allows, you know, certain people the ability to seek the removal of the Trustee.

As set forth in Hunter Mountain's own pleading, under Section 3327, relief can be sought only if it's in accordance with the governing instrument, and Hunter Mountain is not making that claim here, or by a trustor, another officeholder, or a beneficiary. There's no contention that Hunter Mountain is a trustor, there's no contention that it's a court, there's no contention that it's another officeholder.

Therefore, under Hunter Mountain's complaint that they seek to file to remove Mr. Seery, they must be a beneficiary. This Court must determine that Hunter Mountain is a beneficiary. That's what their complaint says, and there really can't be any dispute about that because each of the causes of action uses the very highlighted language that follows from the statute that they're relying upon.

And let's compare that with Hunter Mountain's motion -- complaint for valuation information. So if we can go to the next slide. They have three causes of action in that lawsuit, and every one of those causes of action also requires a

determination that Hunter Mountain is a beneficiary under the Claimant Trust Agreement.

The first cause of action can be found in Paragraphs 82 to 88, and it demands disclosure of trust assets and an accounting. They claim that they need the information, quote, to determine whether their claimant -- contingent Claimant Trust interests may vest into Claimant Trust interests.

You know, for me, Your Honor, that's already a -- shouldn't they know they're not beneficiaries? They have already conceded in Paragraph 83 that they are not holders of Claimant Trust interests but merely have unvested contingent Claimant Trust interests.

But beyond that, as the Court knows from prior litigation, only Claimant Trust beneficiaries have rights to obtain information, and those rights are severely limited.

So you have a concession that Hunter Mountain is not a Claimant Trust beneficiary. You have a document that's been adopted by this Court, approved by this Court, approved by the Fifth Circuit Court of Appeals, that expressly gives only Claimant Trust beneficiaries very limited information rights. And Hunter Mountain here seeks to ignore all of that.

They don't care that they're not a Claimant Trust beneficiary. They don't care that they're seeking more than even Claimant Trust beneficiaries are entitled to. They don't care that they're seeking information that they have no right

to receive.

But the whole premise of Count One is dependent on whether they're a Claimant Trust beneficiary, which is the exact same issue that has to be decided in the motion to remove Mr. Seery.

The second cause of action is for declaratory judgment on the value of the trust assets. That can be found in Paragraphs 89 to 92. And, you know, these are their words. This isn't my -- these aren't my words. This isn't argument. This is just asking the Court to read Hunter Mountain's own pleading. And it depends -- the second cause of action depends on whether the Defendants have been compelled to provide the information about the Claimant Trust assets. The Court can't make a declaratory judgment unless Highland has been compelled to provide the information. But for the reasons I just discussed, Highland can't be compelled to provide any information to Hunter Mountain or Dugaboy because they're not Claimant Trust beneficiaries.

For the same reasons, the third cause of action, which seeks declaratory judgment regarding the nature of the Plaintiffs' interests, you know, there's a whole host of reasons why these causes of action are deficient and why the motion to dismiss ought to be granted, but I'll save that for February 14th. The point now is that, just like the second cause of action, they seek a determination that the Claimant

Trust interests are likely to vest, an advisory opinion if I've ever heard of one. But be that as it may, it -- still, it's an acknowledgement that they're not Claimant Trust beneficiaries.

And so, in both cases, in both lawsuits, the central question is, is Hunter Mountain a Claimant Trust beneficiary?

If we can go to the next slide, let's look at the briefing, because there's really no dispute about this. There's no dispute about it at all. Look at Highland's motion to dismiss the valuation complaint. Right up in Paragraph 2, we say explicitly: Despite holding only unvested contingent trust interests with no rights in the Claimant Trust, Plaintiffs stubbornly seek financial information regarding Claimant Trust assets. This is the basis for the motion to dismiss, that they're not Claimant Trust beneficiaries.

And it's not as if this is the only place in the pleading where this is discussed. If you go to Docket No. 14 in this adversary proceeding, as you can see in the footnote, there's an extensive analysis that explains why Plaintiffs have no rights to financial information, precisely because they're not Claimant Trust beneficiaries.

And it's not as if Hunter Mountain says we're wrong, it's not an issue. They know it's an issue, and they go to great lengths to address it.

If we can go to the next slide. This is from their

opposition to the motion to dismiss. In Paragraph 10, they say the Claimant Trust Agreement evidences an intent that Plaintiffs become Claimant Trust beneficiaries when Claimant Trust assets are sufficient to pay all lower-ranked claims in full, with interest. Again, their pleading, not mine. And it shows that they understand the hurdle they have to come --

Now, there's lots of other stuff in these pleadings regarding other theories for why these claims fail, but all of them fail if they're not a Claimant Trust beneficiary.

And I'd ask the Court to pay particular attention to Paragraphs 40 to 52 in Hunter Mountain's pleading in opposition to the motion to dismiss. As you can see in the footnote, they have an extensive legal argument as to why Plaintiffs are allegedly -- why Plaintiffs allegedly, quote, have a legal right to obtain the information they seek. That's the same issue that's got to be decided in the motion for leave to sue Mr. Seery.

And what's really interesting, Your Honor, is not only do they make the argument in opposition to the motion to dismiss, they basically cut-and-pasted -- I credit Mr. Demo for helping me out; he pointed this out to me this morning, so I want to give credit where credit is due -- they cut-and-pasted the exact same argument in their motion for leave to sue Mr. Seery. So if you just compare Paragraphs 41 to 46 of Hunter Mountain's opposition to Highland's motion to dismiss the

valuation complaint to Paragraphs 31 to 37 of Hunter Mountain's motion for leave to sue Mr. Seery, you'll see they're making the exact same argument as to why they contend they're a Claimant Trust beneficiary.

Again, don't take our word for it. This isn't argument. This is just looking at their own pleading. Right? They're saying in both cases they're Claimant Trust beneficiaries. They're fighting it, right? They know they have to get over that hurdle, because if they don't they can't pursue these claims.

If we can go to the next slide. You've got Highland's reply. Again, extensive discussion. It's the very first point in the very first paragraph, under the Trust Act, whether a party is a beneficiary: Here, a Claimant Trust beneficiary is determined by the plain language of the governing trust -- here, the Claimant Trust Agreement.

And, again, if you take a look at the footnote, our reply in Paragraphs 5 through 9 provides further argument as to why Plaintiffs are not beneficiaries of the Claimant Trust under the plan, the Claimant Trust Agreement, or under applicable law.

So I think it's pretty clear from the pleadings, it's pretty clear from the parties' positions, it's pretty clear from the Delaware law that Hunter Mountain relies upon to move Mr. Seery, Section 3327, that the causes of action in that

proposed complaint and the causes of action in Hunter Mountain's valuation complaint all depend on whether or not Hunter Mountain is a beneficiary under the plan, under the Claimant Trust Agreement, and under Delaware law. And all of those issues are going to be argued in just three weeks. All of those issues are going to be decided by the Court thereafter.

If we can go to, yeah, this next slide. So, yesterday, Hunter Mountain filed its response to the motion for a stay. And I just want to address some of the arguments that were made.

You know, the first argument that they made concerned the legal standard. They said, oh, Highland didn't use the proper legal standard. We disagree. This isn't a motion for injunctive relief. It's not a motion for a stay pending appeal. It's a motion asking the Court to prudently police its own docket.

And here's, here's the irony, Your Honor. Again, don't take my word for it. Take Ms. Deitsch-Perez and her clients' word for it. Because just last year, in connection with their motion for a stay pending the mediation, in a pleading that was filed on 4/20, they said that the Court has the discretion to issue a stay. They relied on *Clinton v. Jones*, exactly as Highland has done to seek a stay in this case. Okay? So the very standard and the case citation that they criticize today

is the very standard and case citation that they relied upon last April.

And here, it gets even better. Because Ms. Deitsch-Perez, on behalf of her client, Hunter Mountain, joined in Dugaboy and Mr. Dondero's motion for a stay. She and her client personally adopted the very standard that they're criticizing today. You can't make this stuff up.

The standard is the right standard. The Court certainly has the discretion to police its own docket.

The second point that they make is that, you know, they'll be really prejudiced without a stay. I say it's the exact opposite. Everybody will be prejudiced without a stay. The Court will be prejudiced. Highland will be prejudiced. Mr. Dondero. Hunter Mountain. All of us will be prejudiced because we will wind up litigating the exact same issue twice. We will expend further resources. And of greatest concern to us is that we might wind up with inconsistent results.

There's no question that -- I shouldn't say there's no question. In all likelihood, a decision will be had on Highland's motion to dismiss the valuation complaint in short order, since argument is scheduled just three weeks from now and the matter is fully briefed. And as Your Honor knows, that -- if we prevail and the Court finds, as it's indicated in prior rulings, that Hunter Mountain is not a Claimant Trust beneficiary and has no rights to this information, and they

appeal that, that'll get assigned to a particular district judge.

If the stay is denied and we proceed with the litigation of the Hunter Mountain complaint that seeks to remove Mr. Seery and we prevail on that one, that'll go to a different judge, in all likelihood, since there's more than, I think, two dozen judges in the District Court. They'll be on completely separate tracks. And you run the -- you run the real risk -- I mean, actually, it's not a real risk, from our point, given the substance -- but you definitely run the risk of inconsistent decisions.

So I know, and I'll close in a moment with some comments about the wisdom of this whole exercise, but I know -- I know how much Mr. Dondero, you know, wants to challenge Mr. Seery. But that doesn't -- that doesn't make it the efficient thing to do. It doesn't make it the fair thing to do, when we're litigating the exact same issues right now.

The third, the third notion, the third argument they make is really they attempt to rewrite their complaint. They try to suggest that the issues are not identical. They suggest that, you know, they've got theories of breach of fiduciary duty and good faith and fair dealing. You know what, Your Honor? You just have to go back to Paragraph 35 of the proposed complaint. That are the legal theories of their case. And to the extent that there's a notion of fiduciary

duty in there, it is predicated on Section 337. In fact, it's predicated -- if you'll give me just one moment -- it's predicated on Section 337 -- 3327(1): The officeholder has committed a breach of trust.

It's not a stand -- there is no standalone breach of fiduciary duty claim, nor could there be. Because as the Court is likely aware, there's a very specific provision in the trust agreement that's been affirmed by this Court, the District Court, the Fifth Circuit, that specifically disclaimed any fiduciary duty to anybody but a Claimant Trust beneficiary. So you couldn't have a standalone breach of fiduciary duty claim. It just doesn't exist.

So they can try if they want to characterize their claims however they want. They should be held to the pleading that they filed. It's the one that we'll be defending if the motion for stay is denied or if the Debtor sees the light of day.

But I do want to close with just some general observations about this. Right? They want to -- they suggest, you know, Highland wants to avoid the suit to remove Mr. Seery. No, we don't. What we want to do is the right thing here. There is no dispute that neither Mr. Dondero, Mr. Patrick, or Hunter Mountain serve on the Claimant Trust Board. They have no personal knowledge of anything concerning the Claimant Oversight Board. And Hunter Mountain's proposed complaint

cites no facts concerning the governance of the Claimant Oversight Board.

Instead, they seek to file another complaint, borne out of grievances, based on rank speculation, untenable inferences, and fabricated tales, lacking in common sense, frankly, that is woefully ignorant of the evidence that has already been admitted against it.

According to Hunter Mountain, the Claimant Trust Board is missing in action. They have abandoned their fiduciary duty. They have ceded control of the Claimant Trust to Mr. Seery to do what he wishes, even if it's acting against Stonehill and Farallon's own interests. Right? The complaint said, oh, Mr. Seery is arbitrarily withholding distributions so he can supposedly enrich himself by getting the same salary that this Court approved it'll be four years ago in July.

You can't make this stuff up, Your Honor. The whole premise doesn't make any sense at all. Why doesn't it make any sense at all? Because Mr. Dondero [sic] is accountable. He is fully accountable. He's accountable for the Claimant Oversight Board and he is accountable to every holder of an actual vested claimant beneficial interest in the trust. He owes them fiduciary duties. Hunter Mountain is not in that group. But Mr. Seery is most definitely accountable to the people who had allowed claims and the people today who are Claimant Trust beneficiaries.

And here's the thing. Hunter Mountain knows that the Claimant Oversight Board is not missing in action. Hunter Mountain knows that Mr. Seery is not acting unilaterally. How does it know that? Because we had a trial last June. And during that trial -- you can find this at Docket No. --

MS. DEITSCH-PEREZ: Your Honor? I -- Your Honor, I regret --

THE COURT: Stop.

MS. DEITSCH-PEREZ: -- interrupting.

THE COURT: Okay. What do you want to say, Ms. Deitsch-Perez?

MS. DEITSCH-PEREZ: I regret interrupting Mr. Morris, but this is not an evidentiary hearing and Mr. Morris is now testifying to things that are not in his pleadings. It's just not a fair way to proceed and the Court should not allow it. Thank you.

THE COURT: Okay.

MR. MORRIS: If I may, Your Honor, just to --

THE COURT: Go ahead.

MR. MORRIS: We received a response -- we received a response yesterday --

THE COURT: Uh-huh.

MR. MORRIS: -- that accused Highland of filing this motion for the stay in order to avoid having this heard. I'd like to -- all I'm doing is responding to the very argument

that they made yesterday.

THE COURT: Okay. You may respond. I overrule that objection.

MR. MORRIS: Thank you. So, and this is all really important, because there's evidence in the record at Exhibits 39, 40, and 41 that were admitted last June that show a very active, responsible Claimant Oversight Board fulfilling their fiduciary duties in negotiating an incentive compensation package for Mr. Seery. And they want to file a complaint that says the Claimant Oversight Board has abandoned its responsibilities, that they're missing in action.

And I want to be really careful here. I want to -- I want to really be transparent here, frankly. Stonehill and Farallon are two of the biggest claimholders. They both hold seats on the board. Does it make any sense at all that they would allow Mr. Seery to do all this at their own expense if they didn't think it was justified?

This is very important, Your Honor. No one who holds a valid, vested claim in the Claimant Trust, who is a Claimant Trust beneficiary, not one of them is complaining about Mr. Seery's management. Not one of them is complaining about his decisions concerning reserves. Not one of them is complaining about whether he has or hasn't made distributions or how much he's distributing. Not one of them has suggested to the Court that Mr. Seery is acting unlawfully. Nobody

holding a claim, a vested claim in the trust is complaining about anything. The only person complaining is Mr. Dondero, the same person who has been the sole source of litigation since the effective date.

He and his counsel should be careful for what they wish for. If Highland's motion for a stay is denied, Highland will respond to the motion and will serve another Rule 11 motion, just as it did when Mr. Dondero filed his ridiculous lawsuit claiming that my firm actually represented him personally back in 2019. Your Honor may have seen how this ended. It ended with the withdrawal of that motion. And this motion will head for the same result.

And I say all of this, Your Honor, because I want to be respectful. I want to make sure everybody's eyes are wide open. I want to ensure everybody understands that we're not seeking a stay here because we're afraid of anything. And I want everybody to know that if the stay is denied or this motion is ever heard, that the first thing that's going to happen is there will be a response and a Rule 11 motion, because it has no basis in law and it has no basis in fact. Highland seeks a stay not to avoid a hearing on the merits but because it makes no sense to keep litigating the same issue over and over again. We are not the same. The stay should be granted.

Thank you, Your Honor.

THE COURT: I have two follow-up questions. First, I think I heard you say February 14th is when the Court --

MR. MORRIS: Yes.

THE COURT: -- is set to have a hearing on the motion to dismiss the complaint seeking valuation. Correct?

MR. MORRIS: Yes.

THE COURT: And --

MR. MORRIS: Yes, Your Honor.

THE COURT: And your motion for a stay here is 'Please stay hearing this latest Hunter Mountain motion to file a complaint until not only this Court has ruled on the February 14th matter but until all levels of appeals have been exhausted on that.' Am I correct about your request?

MR. MORRIS: Yes, Your Honor.

THE COURT: Okay. And my second question: When Ms. Deitsch-Perez started objecting to your argument, I think you were alluding to a trial this Court had on Hunter Mountain's motion to sue Farallon and Stonehill as well as Mr. Seery with regard to what I'll call claims purchasing activity. Is that what you were alluding to?

MR. MORRIS: It was, Your Honor.

THE COURT: Okay.

MR. MORRIS: And I was alluding to it for the very singular purpose of pointing out that there was evidence admitted into the record against Hunter Mountain that shows

the Claimant Oversight Board fulfilling its fiduciary duties and doing exactly what this Court would expect the Claimant Oversight Board would do.

And I point that out only to contrast that evidence, which has already been admitted, with allegations in the proposed complaint that somehow the Claimant Oversight Board has ceded control to Mr. Seery and they're missing in action. It's just -- they know it's not true. They have the evidence.

THE COURT: Okay. And I said two follow-up questions, but I actually have this additional question. This was on my brain, this -- I couldn't remember what month -- the trial, where I ruled on whether Hunter Mountain should be granted leave to sue Farallon and Stonehill and Mr. Seery. This was on my brain because, you know, I've issued a lot of opinions during the Highland case, but I remembered writing extensively on whether Hunter Mountain had standing back in connection with that motion. And in fact, I'm going to hold it up.

MR. MORRIS: Yep.

THE COURT: I wrote a 105-page opinion -- which I don't know if anyone besides my law clerk and I read it, because it's not entertaining -- but I wrote a 105-page opinion denying Hunter Mountain -- different lawyer at the time, not Ms. Deitsch-Perez -- denying Hunter Mountain leave

to sue what I'll call the Claims Purchasers -- Farallon, Stonehill, as well as Mr. Seery. They wanted to sue Mr. Seery for breach of fiduciary duty. And I had multiple reasons for denial, but lack of standing was one of those reasons.

And I went and printed the opinion yesterday to refresh my memory, did I rule on this already? I thought I ruled on this already. And 23 pages of my 105-page opinion deals with the lack of standing of Hunter Mountain. Twenty-three pages, and 85 footnotes, by the way, within that 23 pages, so it's a very dense 23 pages. I went through constitutional standing and I went through prudential standing, and I said Hunter Mountain failed under both tests.

So this is a very longwinded question: What I'm hearing you argue, Mr. Morris, is I'm going to rule one way or another on February 14th, and then there will likely be appeals, so let's don't have to reinvent the wheel. But is there something about my opinion, my 105-page opinion, that isn't -- I mean, have I already addressed this, or is there something I missed in that opinion regarding standing? Has something changed? This was August 2023.

So maybe it's not fair to ask you, because this was more the Claims Purchasers' lawyers' fight, right, and Mr. Seery's, more than --

MR. MORRIS: Right.

THE COURT: -- the Reorganized Debtor? They were the ones who briefed it and argued it. So maybe it's not something that you bothered to read in detail. But I feel like I've ruled on this. And --

MR. MORRIS: So, --

MS. DEITSCH-PEREZ: Your Honor, may --

THE COURT: First Mr. Morris, and then I'll let you, Ms. Deitsch-Perez.

MR. MORRIS: So, a couple of observations, Your Honor.

THE COURT: Uh-huh.

MR. MORRIS: First of all, I read every word that Your Honor wrote, --

THE COURT: I'm sorry.

MR. MORRIS: -- as I do for all judicial.

THE COURT: Okay.

MR. MORRIS: Yeah, right?

Second of all, this issue was addressed by the Court. It was addressed pretty extensively. It was addressed further, frankly, on -- there was a subsequent post-trial motion by Hunter Mountain challenging that very finding --

THE COURT: The motion for reconsideration.

MR. MORRIS: -- and it challenged that very finding.

THE COURT: Uh-huh.

MR. MORRIS: That's right. It challenged that very

finding based on the same *pro forma* balance sheet that's at -- that we're saying kind of moots this whole exercise, at least the valuation proceeding.

But I'm sure Your Honor is not aware of it, but Hunter Mountain has appealed that decision, and they are challenging, you know, every word, I think, in your order. Every word in seven interlocutory orders that preceded it.

And unlike the resolution of the issue that will be had on February 14th, where Hunter Mountain's lack of beneficial ownership in the Claimant Trust is front and center, that issue is one of a very, very long laundry list of issues that are going to the District Court. And we have no reason to believe, we have no -- right? It's one of a million issues, and there's no certainty at all that the District Court is ever going to get to that issue. Right? We don't know how they're going to -- it's just starting now. I don't even think the opening brief -- I think the opening brief might have been filed a day or two ago. I'll start looking at that shortly.

But, so that's why we didn't think that was particularly relevant. We did note that in our footnote. I mean, we did point out that this -- that, you know, there is an appeal of the Hunter Mountain decision of last June. But given the girth of the appeal and the number of matters that are being adjudicated, you know, I wouldn't -- we're not here saying

you should stay the latest Hunter Mountain motion in order to get a result there, because it doesn't seem, you know, maybe they address it, maybe they don't. There's no way to say because it's just not -- it's just buried in there. It's buried in the laundry list.

Another thing I'll say is that you did, you did address it. You did address it pretty comprehensively. But we have new pleadings, you know, with arguably some new shades of argument. But the motion for leave to remove Mr. Seery is based solely on Section 3327 of the Delaware law, which turns right back to the terms of the Claimant Trust.

I'm sure that we're going to wind up at the same spot, whether it's through res judicata, collateral estoppel. I mean, I think we've made a number of these arguments already. But the point here is, why do we have to litigate these issues for a third time?

THE COURT: Okay. Thank you.

All right. Ms. Deitsch-Perez, I'll hear from you.

MS. DEITSCH-PEREZ: Okay. And Mr. Aigen is going to pull up a PowerPoint.

Just to -- and go to Slide 2. But just to jump ahead, the motion for leave is predicated on Delaware Code 3327, and it has in it a number of criteria for why a trustee should be removed. The issues are entirely different than in a valuation proceeding, and a Delaware court may well have a

different view of what a beneficiary is for the purpose of Delaware Code 3327 and the importance of making sure that Delaware trustees are not hostile or unable to act.

I'm also going to jump ahead and answer one of the -- what Mr. Morris added in his last slide, which was new, claiming that, oh, no, it's perfectly clear that the Oversight Board is on the job, so really you, as an equitable matter, you shouldn't worry about this, because Mr. Seery is supervised.

One, that's not in his pleadings. But more importantly, he's mixing apples and oranges, because the evidence in the former trial had to do with approving his compensation. The issue in the motion for leave to bring a suit to remove Mr. Seery is the fact that the Claimant Trust structurally does not -- it gives Mr. Seery complete discretion over the issue of moving money into the indemnity subtrust. It's an entirely different issue than the issue that was raised in the trial in June, and Mr. Morris should and probably does know that, and so has been -- well, his comment was misleading at best.

THE COURT: Okay. Different --

MS. DEITSCH-PEREZ: But let's take a look at --

THE COURT: Different causes of action, different theories, but still it boils down to whether Hunter Mountain is a Claimant Trust beneficiary, right?

MS. DEITSCH-PEREZ: Or whether it will be treated as a Claimant Trust beneficiary, --

THE COURT: Okay.

MS. DEITSCH-PEREZ: -- which is an additional basis.

THE COURT: I don't know what that distinction, where it comes from.

MS. DEITSCH-PEREZ: The distinction is that the parties cannot waive, in Delaware, the duty of good faith and fair dealing. And so if Mr. Seery is taking actions that prevent or attempt to prevent the Class 10 and 11 from becoming beneficiaries, then under Delaware law he would not be able to raise a lack of that status as a defense under 3327.

THE COURT: You're talking about the cause of action --

MS. DEITSCH-PEREZ: And so if --

THE COURT: Stop. You're talking about the cause of action and defenses thereto. We're talking about standing, which, as I mentioned, 23 pages, 85 footnotes, the last time Hunter Mountain wanted to sue Mr. Seery and Farallon and Stonehill. Some of it was constitutional standing, but a few pages was standing under Delaware law, and I said not a Claimant Trust beneficiary. Okay?

Regardless of what the causes of action and theories are, Hunter Mountain has to be a Claimant Trust beneficiary.

MS. DEITSCH-PEREZ: Or --

THE COURT: I've written on that extensively already,

and it sounds like I'm going to have to write on it one way or another extensively after February 14th.

Why should we not stay this new motion to file a new lawsuit, rather than reinvent the wheel again? Maybe it's going to be different --

MS. DEITSCH-PEREZ: Your Honor, --

THE COURT: -- with the valuation motion versus what I wrote in Summer 2023. I don't know. I haven't started looking at the pleadings in depth. But what is illogical --

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: -- about this? I mean, this is, again, it's about judicial resources, efficiency, parties' resources. Why on earth would --

MS. DEITSCH-PEREZ: No, Your Honor, what it --

THE COURT: Go ahead.

MS. DEITSCH-PEREZ: The reason is there's a reason that the Supreme Court has a very high standard to stay other judicial proceedings. So not only must the applicant make a showing of likelihood of success, but the issue is whether they will be irreparably harmed by not having a stay and whether another party would be harmed by having a stay.

And here, because Highland seeks to stay this matter for years, if it turns out in the end that Your Honor's decision is overturned and Hunter Mountain is found to have standing, it will be too late to do anything about it if the cases are

not allowed to proceed in tandem.

Parties have a right to have their cases heard. The fact that there are similar issues means at some point there may be res judicata or collateral estoppel that deals with it. But there's not a rule that only one case can go forward.

Under Highland's theory, virtually Hunter Mountain could not bring any claims, anymore, ever. And that's not the law. Hunter Mountain is entitled to have this decided.

It may well be that Your Honor thinks there's no difference because of 3327 and is going to rule the same way. We don't think that that's correct. We think we will convince you that because Hunter Mountain is moving under 3327, there is a difference in standing. And in any event, that it should go to a Delaware court for that determination to be made. But if Your Honor stays this proceeding, --

THE COURT: And by the way, by the way, what does the Trust Agreement say about where things get litigated?

MS. DEITSCH-PEREZ: Delaware law says that you -- that --

THE COURT: I asked what the Trust Agreement said.

MS. DEITSCH-PEREZ: Delaware law --

THE COURT: I asked what the trust agreement said, because it would trump, right? A contractual agreement would --

MS. DEITSCH-PEREZ: No. That's the -- exactly. It

doesn't trump. Under Delaware law, and we cite a case for this, it's in the brief, a venue provision in an agreement does not override having matters of Delaware internal affairs decided in Delaware. So, no, the Trust Agreement does not automatically override Delaware law.

And so this goes back to the *Landis* -- the standard for stay under *Landis*. Who's harmed? Which harm is irreparable? Because Highland seeks to stay this matter for years. And Your Honor knows how long the Fifth -- the District Court and the Fifth Circuit have been taking to get to rulings. It could be one, two, two and a half, three, if it goes up to the Supreme Court. It could be years. And by that time, Mr. Seery will have continued doing the very things that the complaint seeks to challenge. That's not fair.

I understand there may be a tiny amount of additional work. Mr. Morris says this is all the same. Well, if it's all the same, then he's already done the work. And if Your Honor is convinced it's all the same, well, then you cut-and-paste the old opinion and put it down and the parties could go forward with their appeals.

The prior standing decision is up on appeal. The parties are entitled to go forward and have -- and have their judicial process. There is -- the amount of money Highland spends on these matters, such as bringing -- bringing the sanctions claim against Mr. Ellington and then suddenly dropping it in

the middle, it defies belief that their -- the real interest here isn't conserving resources. If in fact these are duplicative matters, then it will be easy enough to write them up.

And because Highland waited two weeks after the motion to leave was filed and only a week before its response was due, is it really credible that it hasn't already largely written its response? Was it so sure that this Court would do as it asked that it didn't bother to respond, that it set a hearing for a date after its response was due? That seems improbable, Your Honor. I certainly hope that they've gotten this largely written.

But in any event, we've given them -- they asked for and we've given them an additional week to write up its response to the motion to leave. I'd ask that the Court allow this to proceed, because Highland simply doesn't meet the standard, the very, very high standard for a motion to stay here.

THE COURT: All right.

MR. MORRIS: If I may, just a few comments, Your Honor?

THE COURT: Very briefly. Two minutes. Because I thought this was going to be a short matter, and we've been going --

MR. MORRIS: Yeah.

THE COURT: -- fifty minutes. Five-oh minutes. So,

go ahead.

MR. MORRIS: Yeah. Okay. Just, it's not the exact same thing. It has the exact same legal gating issue: Are they a beneficiary?

If the Court denies the stay -- and I assure the Court, I haven't written one word of this thing yet -- but if the Court denies the stay, we are going to be in major litigation. We reserve the right to take discovery. There will be an evidentiary hearing, of that I'm absolutely certain, when we get to that point, as appropriate under the gatekeeping order that's been adopted by this Court. So it will be expensive, it will be time-consuming, and it will ultimately yield absolutely nothing for the Movants here.

You know, we didn't set the date for today. Ms. Deitsch-Perez is exactly wrong about that. The Court set the date for today. We filed an emergency motion a week ahead of time. It's not like we waited until the last second. Right?

So I just, I take offense with all of that. I take offense to the reference to the Ellington sanctions motion. That got resolved because Mr. Ellington finally said he wasn't going to sue Mr. Seery. Had he done that when we asked him a hundred times before that, we never would have filed the motion. He refused to do it. That's why the motion was filed. And it was resolved -- not withdrawn, but resolved -- only after Mr. Ellington and his lawyer finally said they

weren't going to sue Mr. Seery.

So, you know, facts matter, Your Honor. Facts are very important to me. And I want to make sure that the factual record is a hundred percent accurate.

The fact of the matter is, at the end of the day, the Court should grant the stay. You know, if Hunter Mountain really wanted Mr. Dondero [sic] out, they should have included it in their complaint last summer and they shouldn't be allowed to come up with new claims that aren't even in the proposed complaint that's on file right now. There is no claim for breach of the duty of good faith and fair dealing. There isn't. And so they don't get to come here and argue against the stay based on a pleading that has yet to be filed.

The Court should grant the stay.

THE COURT: All right.

MS. DEITSCH-PEREZ: Your Honor?

THE COURT: No. I'm done. I've heard enough.

I am going to grant a stay. It's going to be slightly different from what is requested here. I'm going to grant a -- well, I'm going to grant a stay on this newest HMIT motion to sue Mr. Seery until at least the time I rule on the valuation motion, the motion to dismiss the valuation complaint. Okay? So it's argued February 14th. We know how this case works. I get voluminous submissions. I try to carefully go through them and make a careful ruling. And so

will I get a ruling out in April? That's just a wild guess, okay, but it's probably a reasonable guess.

So what I envision doing is having something like a status conference/scheduling conference shortly after I rule on the motion to dismiss the valuation complaint and decide, are we going to continue the stay to let maybe any appeals -- in fact, I'll probably set a status/scheduling conference shortly after the deadline for a notice of appeal. And we'll see, is there an appeal pending, what's going on big-picture, should I continue the stay? Okay? So I'm not saying it's going to be a two- or three-year stay, but I'm saying it's going to be at least an until-later-this-year stay, and we'll see where things stand in this case.

Now, let me give you a couple of reasons. I don't think the four-prong TRO standard test applies here: Irreparable harm; likelihood of success on the merits; balancing the parties' interests; the public interest. I don't feel the need to make that evaluation here because I do think this is just policing the Court's own docket, which of course any court has the discretion to police its own docket, in the interest of judicial economy and reducing expense. And so I am going to elaborate on that and why I'm exercising my discretion as such.

As I've alluded to a couple of times, August 25, 2023, Docket Entry No. 3903, this Court issued a 105-page opinion in

what I would call a very similar context, if not squarely down the middle of the fairway the same context. And the context, for the record, was Hunter Mountain, through a different attorney -- not Ms. Deitsch-Perez, a different attorney -- filed a motion for leave to sue Mr. Seery and Farallon and Stonehill, Claims Purchasers, for different causes of action. One of them was breach of fiduciary duty by Mr. Seery, I note, but there were different causes of action.

As I've noted here, and I'm saying this for the record in case there's an appeal of this order granting stay today, in the 105-page opinion that I issued denying Hunter Mountain leave to file the lawsuit against Mr. Seery and the Claims Purchasers, I did spend 23 pages, dense pages with 85 footnotes, explaining why I thought in that context Hunter Mountain has no constitutional standing as well as no prudential standing to sue Mr. Seery and the Claims Purchasers.

I note that the prior lawyer for Hunter Mountain, not Ms. Deitsch-Perez, gave very little oral argument or written argument on that. In fact, as I remember, he said, The person aggrieved standard is what applies and we're a person aggrieved.

And the Fifth Circuit as well as the U.S. Supreme Court seem to love the topic of standing. Okay? And I thought we needed a very thorough discussion of standing, okay, because I

thought, more likely than not, that's going to be the first issue -- of course, because it could be bear on subject matter jurisdiction -- that's going to be the first issue that a District Court, the Fifth Circuit, even the U.S. Supreme Court is going to focus on. So, 23 pages, 85 footnotes.

Now, there may be more or different things to say when we have the motion to dismiss on the valuation complaint. Okay?

(Echoing.)

THE COURT: Please turn off your speakers, whoever that is.

I will note that Delaware law, that would be the narrower question of prudential standing, right? And in my 23 pages, I actually spent more time on constitutional standing than prudential standing. And as Mr. Morris notes, the 105-page opinion is chock-full of other stuff besides standing. Okay? Colorability of the claim that Hunter Mountain wanted to bring and what is the standard the Court should apply under the gatekeeping provision. Okay? So, lots of other things.

Yes, it may be years before a higher court rules or different courts rule. And it may be slightly nuanced and different for the valuation thing. But I don't know why anyone would reasonably think I would go down this trail a third time for the same party. Okay? I went down it *ad nauseam* August 25, 2023. It sounds like I'm going to go down it *ad nauseam* again February 14th and thereafter, as I decide

what to do.

As far as abuse of discretion, I think my bosses -- the District Court, the Fifth Circuit, the Supreme Court -- would want to slap my hand if I didn't grant the stay. It's not just judicial economy to me, it's not just efficiency of the parties, but it's my bosses. It's the District Court, the Fifth Circuit. Why are you going to make us look at this yet again? Okay?

Maybe I'll have something different to say. Maybe I'll have something more to say in connection with the valuation motion. I don't know. And that's why I'm leaving open the possibility that we're going to have a status conference after I've ruled, after notices of appeal may have been filed, and we'll figure out, do I go forward with this motion for leave? I'll have a better idea, is there something new and different at this point?

But there is no way any responsible court would go forward a third time considering Hunter Mountain's standing under Delaware law, under constitutional law, as a Claimant Trust beneficiary. Okay? There's no way any reasonable court would do that, with it twice having been teed up. Okay?

So that is the ruling of the Court. We will put it on our tickler system to set a status conference on whether to continue a stay in place after I've ruled on the valuation motion to dismiss.

All right. Please upload an order, Mr. Morris, that reflects that.

MR. MORRIS: Okay. And just so there's no ambiguity, any further briefing on the motion for leave is also suspended? Is that right?

THE COURT: Correct. Yes. Correct. And, again, --

MR. MORRIS: All right.

THE COURT: -- I just want to say one more thing, actually, for the record. Not whining to anyone, but it's going to sound like whining. I checked yesterday, and I'm not even sure my numbers are perfectly accurate, it may be more than this, but I counted in the Highland case I have issued 13 -- well, there are 13 published opinions from this Court. And then if you go back to *Acis*, which was, one might say, a precursor to Highland, there were five more published opinions. And that's not even counting Reports and Recommendations to the District Court, of which there are many more, probably close to a dozen. And then I've heard -- I've heard; I've never checked it -- that there were something like 55 appeals. And that was I think about a year ago someone announced that in court.

So, again, I mean, this is not just about the parties, although I care about the parties and the lawyers. This is about judicial efficiency. This is overwhelming to the system, so to speak. Okay? And so, again, I think it would

be an abuse of discretion for sure if I didn't grant the motion to stay.

All right. I've said enough. And with that, we'll go on to Highland's motion for a bad faith finding and attorneys' fees against I call it HCRE, but I guess it's changed its name a long time ago to NexPoint Real Estate Partners, LLC. All right. Mr. Morris, are you presenting that?

MR. MORRIS: I am, Your Honor. Thank you very much. John Morris, Pachulski Stang, for Highland.

We're here on this hearing, Your Honor, to argue Highland's motion for a bad faith finding for an award of attorneys' fees in connection with the proof of claim and the prosecution of the proof of claim by HCRE.

The motion was originally filed at Docket 3851, and if Ms. Bates can put up the next deck, I'll walk the Court through this. This is pretty straightforward.

The starting point, the starting point here, Your Honor, as it ought to be, is HCRE's claim. And if we could just, yeah, go to this page. What I've put up on the screen here, or what Ms. Bates has put up on the screen, is a slide that shows two pieces of evidence, two documents that were admitted into evidence in this matter. The first is HCRE's proof of claim, and the second is HCRE's response to Highland's objection to that proof of claim. And these documents are critical (chiming) because it sets forth the entire basis for,

you know, for this litigation.

In the proof of claim, HCRE said, among other things, that it contends that all or a portion (chiming) of Highland's interest in an entity called SE Multifamily, quote, does not belong to the Debtor. Or may be property of (garbled).

So this is the proof of claim. They're saying all or a portion of Highland's interest in SE Multifamily isn't Highland's. Right? But Your Honor knows that that's just a statement without regard to how they get there. A proof of claim -- and this is really simple, and it's why this motion, I think, is pretty simple -- a proof of claim has to have some basis in the law. Somebody could have a breach of contract. Somebody could have a slip and fall. There could be a personal injury case against the Debtor. There could be a claim for breach of fiduciary duty or other tortious conduct. But there's got to be a legal theory on which a claimant is seeking to recover against the Debtor.

And the claimant here, HCRE, set forth those legal theories in their response. And that's the box that's below it. And it's based on the very agreement that's at issue, the Amended and Restated (garbled) LLC Agreement for SE Multifamily. It says, After reviewing the documentation, HCRE, quote, believes the organizational documents relating to SE Multifamily Holdings, LLC improperly allocates the ownership percentages -- so that's the issue -- of the members

thereto due to mutual mistake, lack of consideration, and failure of consideration. And these are the legal theories. They claim to reform, rescind, or modify the agreement.

Again, not argument, don't accept anything I say, just accept what HCRE says. These are their pleadings. They told the Court that they believed that Highland didn't have a right to its interest in SE Multifamily. They told the Court that they believed the document improperly allocated the percentages. They told the Court that Highland provided no consideration. They told the Court that they had claims for reformation, to rescind the agreement, or to modify the agreement. That's the whole basis for this litigation.

If we could go to the next slide. Because let's just look at some very simple terms of the agreement. This is unambiguous. Right? And this is an agreement that's drafted by Highland, by HCRE, all under Mr. Dondero's control. Everybody's rowing in the same direction. The testimony here was consistent, not only among Highland and HCRE witnesses but also, and very, very importantly, BH Equities. Right? We haven't spent a lot of time talking about BH Equities, but that evidence is in the record. BH Equities testified up, down, and sideways that the agreement was consistent with its intent, that it was fully aware that Highland had only put in $49,000, that Highland was getting a 46.0 percent interest. Right?

But in addition to BH Equities, Mr. Dondero, and we'll talk about this more in a moment, and Mr. McGraner testified to the same thing. And how could they not? Just look at these provisions. The first box is Schedule A to the agreement. It says, right, in contrast to the $291 million that was credited to HCRE Partners -- they actually didn't put in any of that; that's what the testimony showed -- Highland actually put in $49,000. But these are the percentages that they wrote.

And Your Honor will recall that in the 48 hours before the document was signed -- this is evidence in the record; I'm sorry I don't have citations to the specific exhibits -- but there's a back-and-forth in emails between Freddy Chang, I believe it was, and BH Equities about Schedule A and about the contributions.

And so none of this is an accident. And it's not just stated in Section -- ii Schedule A. It's set forth -- Highland's interest was set forth in Section 1.7, in Section 6.1A, in Section 9.3E, which is the liquidation provision. Right? This was the waterfall in the event of a liquidation. So these are the plain, unambiguous, uncontested terms of the agreement that everybody agreed to when the document was signed.

We can go to the next slide.

Despite that, Mr. Dondero swore under the penalty of

perjury that the proof of claim was true and correct. Remember, the proof of claim said that this really wasn't Highland's interest in SE Multifamily. I don't understand how he could do that, given the plain terms of the agreement. But his testimony was short and precise and unambiguous. It can be found at Pages 55 to 59. It's quoted there -- it's cited there in the footnote. If you just read those four pages, Your Honor.

And Your Honor cited to this pretty extensively on Pages 4 and 5 of the Court's decision in this matter. I've summarized just some of the Court's findings. It's not the Court's findings; it's Mr. Dondero's admissions. He didn't -- he didn't personally do any due diligence of any kind to make sure that Exhibit A was truthful and accurate before he authorized it to be filed. He filed it.

He didn't review or provide comments to the proof of claim or Exhibit A before it was filed. He didn't review the applicable agreements or any documents before signing the proof of claim. He had no idea whose -- where the genesis of the proof of claim was, who at HCRE worked with or who provided information to Bonds Ellis to allow Bonds Ellis to prepare the proof of claim. He had no information about what information was given to Bonds Ellis to formulate the proof of claim. He didn't know whether Bonds Ellis ever communicated with anybody the real estate group regarding the

proof of claim.

He also testified that he never specifically asked anybody in the real estate group if the proof of claim was truthful and accurate before he authorized it to be filed. He didn't check with any member of the real estate group to see whether or not they believed the proof of claim was truthful and accurate. He failed to -- he admitted he failed to do anything to make sure the proof of claim was truthful and accurate before he authorized his electronic signature to be affixed and have it filed on behalf of HCRE.

That's bad faith, Your Honor. You can't rely on some vague process or say 'I'm just relying on others,' because if that's the case, that's what I -- that's we said in our reply, that's the very important person defense, right? He's too busy, he just relies on others, he just signs stuff, and he's got no obligation to do anything. How do you sign something under the penalty of perjury in that milieu?

If the Court doesn't grant our motion here, it will be sending a signal that people can sign proofs of claim with no knowledge of the substance of the claim, with no knowledge of whether the claim is valid, with no knowledge as to whether or not the Court should take the time to adjudicate a disputed claim.

That's what will happen. Right? That will be the signal, that very important people are absolved of the

responsibility of doing basic due diligence before signing a proof of claim.

I think the signing of the proof of claim, the filing of the proof of claim, given what we know now, in particular what we know now, is bad faith.

And I know that HCRE in their opposition said, oh, well, you know, Mr. McGraner did stuff. I would urge the Court to look at Pages 109 to 112 of the transcript, because Mr. McGraner kind of distanced himself from the proof of claim. He said he didn't authorize it, he didn't approve the filing. He said he never gave any documents to Mr. Sauter. He never discussed the proof of claim with Mr. Dondero or anybody at Bonds Ellis. He didn't provide any comments to the proof of claim. He deferred to counsel. He didn't know if Mr. Sauter gave any documents to Bonds Ellis. He never gave the information to Bonds Ellis. He never discussed it with anybody but D.C. Sauter. Right?

So the two people, the only two people who are authorized to act on behalf of HCRE did absolutely nothing to make sure that there was at least a modicum of credibility, at least some basic level of diligence, at least some good-faith basis to assert that this interest that Highland has in SE Multifamily could be subject to challenge. Right? They did nothing.

If we can go to the next slide.

And then, as Your Honor will recall, they tried to withdraw the proof of claim. Right? That in and of itself we contend was an act of bad faith, and it was an act of bad faith for multiple reasons. There's no dispute that they tried to -- they filed their motion to withdraw the proof of claim immediately after taking Highland's depositions but immediately before I was about to depose their witness. It's a naked attempt to try to procure a patently unfair litigation advantage, particularly in light of the fact that HCRE was simultaneously trying to preserve its claims for another day.

If they had just -- and Your Honor made this point at the hearing, right? Just say unequivocally you're done with this. They couldn't do it. They tried to save it for another day.

And so the withdrawal of -- a motion to withdraw the proof of claim we're not saying is always bad faith. Look at what I say in the title of this slide. Under these circumstances, when you file it after taking discovery but before subjecting your people to discovery, and when you try to preserve your claims for another day, the Court properly denied that motion for leave to withdraw the proof of claim. And it stunk. And Your Honor I think rightly questioned whether or not this was, you know, a threat to the integrity of the bankruptcy system and the claims process, whether or

not this amounted to gamesmanship.

But it didn't end there. In closing argument, HCRE persisted with its attempt to try to preserve their claim. This is bad faith. They continued down the exact same path. They told the Court in closing argument at Pages 180 to 181 of the transcript, quote, They want you to make findings that we can't raise any of these other issues, decisions, et cetera, going forward. That's not proper on proofs of claim. Going forward. They wanted to preserve this issue for the future.

But this issue is their proof of claim. This issue is based on the legal theory set forth in Paragraph 5 of HCRE's response to the objection, the response that says they have claims for rescission, to rescind, to modify the agreement. Right? That's the whole legal theory of it. But they wanted Your Honor to simply say the proof of claim is gone but you all can go pursue another day the legal theories that underlied the entire process.

That's (garbled), Your Honor. That's what this is all about, the claims process. You have a claim. You have legal theories on which the claim is based. If your claim is denied or if the objection to the claim is sustained, done. They wouldn't have it. It's why the proof of -- it's why the motion withdraw was denied and why the Court should find that their attempt to preserve these claims for the future is bad

faith.

And the interesting thing, Your Honor, is this is (chiming) one of the very few rulings in the case that Mr. Dondero didn't appeal. I think even he acknowledges, like, like, this is just not -- that he didn't -- he didn't want this seeing the light of day in the District Court.

If we can go to the next slide. And this really amplifies the bad faith in filing the proof of claim. It's the testimony about the nature of the claim. And again, I -- we talk about this exhaustively in our papers, and so I haven't cited to everything, but this is just some of the nuggets from, you know, the testimony that's out there. Right?

Consideration. Mr. McGraner testified that Highland bankrolled HCRE's business. Your Honor can take judicial notice that Highland loaned millions of dollars to HCRE. Right? Those are part of the Notes Litigation that HCRE is now strenuously trying to avoid repaying in its appeal. Right? They're appealing that to the Fifth Circuit and they're trying -- right? We bankrolled the business, we shouldn't have our interest, and they don't want to pay the money back. It really -- this is *chutzpa*, where I'm from. Right?

Going on to the question of consideration -- because, again, this is in Paragraph 5 of the pleading -- there's the

admission that HCRE didn't have the financial wherewithal to close on the Key Bank loan by itself and it needed Highland to provide capital -- flexibility by co-signing on the loan. Right? Couldn't have done the deal without Highland, but they want to take the interest away from us. Bankrolled the whole project, but they want to take the deal away from us.

They include Highland in order to provide tax benefits, but they want to take the deal away from us. Both Mr. Dondero and Mr. McGraner were very clear that tax benefits was one of the reasons Highland was in this. And if Your Honor will recall, in the closing argument, I pointed Your Honor to just one of the tax returns that showed something like $30-plus million in income was allocated to Highland in order to shelter it from taxes. Right? I don't know that there's anything illegal about it. I take no opinion about it. Right? I have no view on it. But *The Little Engine That Could* that put in the $49,000 was suddenly stuck with $31 million of income. I'll wait to hear an explanation as to why Highland was included in the deal and whether taxes were a part of it.

Mr. McGraner also testified just --

(Audio cuts out.)

THE COURT: Okay. What happened?

MR. MORRIS: (begins speaking)

THE COURT: Okay. Mr. Morris, we lost your sound

for about 20 seconds, so if you could kind of repeat the last 20 seconds.

MR. MORRIS: Sure. So I'll try and summarize. On the consideration piece, they know there was consideration. They pursued a claim based on lack of consideration, but in the first point there's an admission about Highland having both bankrolled the whole operation, and in the second point there's the admission from Mr. McGraner that the deal would never have gotten done without Highland's financial wherewithal. And Mr. Dondero and Mr. McGraner admitted that there were tax benefits. And Your Honor saw those tax benefits, right? In my closing argument, I pointed to just one of the tax returns showing that Highland -- I called it *The Little Engine That Could*, who put in the $49,000, somehow got -- somehow got $31 million of income assigned to it. Right?

This was not an accident. Highland was there for tax reasons. Again, I take no view as to the propriety of that at this time, but the notion that there was no consideration is just -- it was ridiculous then, and their admissions show that it was ridiculous.

The next bullet point shows Mr. McGraner's admissions that on March 15, 2019, the deadline was approaching to amend the original LLC agreement to admit BH Equities and to have it retroactive to the prior August. He admitted that he

reviewed the draft Schedule A, which is what we looked at, right? It showed $49,000 and a 46.06 percent interest for Highland. He saw that it unambiguously showed Highland making a $49,000 contribution, getting the 46.06 percent interest. He believed Schedule A reflected his understanding of the terms between Highland and HCRE, and he knew of no obligation that Highland had to make any future capital contributions. I've cited to all of the testimony very specifically.

Mr. McGraner admitted that the allocation of the interest in Schedule A was consistent with the parties' negotiation of the waterfall and other provisions in the amended LLC agreement, that HCRE understood it accurately reflected the parties' intent.

How do you (garbled) proof of claim saying you have to reform, rescind, modify the agreement, when all of this is in your head? How do you do that in good faith? They both admitted that Schedule A reflected the parties' intent at the time it was signed.

It's the last bullet point that's really the head scratcher. What happened is Mr. Dondero, who also caused Highland to file for bankruptcy, didn't like the consequences of his decision. Nothing happened here, as I said in my closing argument, that doesn't happen in every bankruptcy case. The assets of the Debtor are marshaled for distribution

to the creditors. Highland's interest in HCRE is an asset of the estate. HCRE challenged Highland's title to that asset. That's what this litigation is about. And the only reason they challenged the title is because they didn't like the consequences of Mr. Dondero's decision to file Highland for bankruptcy.

That's not good faith. If that were good faith, every equity owner of every business would be able to claw back everything they'd given to a company, every loan that they'd given to a company, every -- like, they can't do that. That's not what the law -- there's no basis for that theory.

Finally, just deal with the attorneys' fees issues quickly. You know, the challenges to our fees are both petty and baseless, frankly. They said we should have avoided discovery. I don't know how you say that. We shouldn't have taken depositions. They took depositions, and we shouldn't have done that? We should have gone to trial where they had discovery and we didn't? That doesn't make a lot of sense to me, and I can't imagine it would make sense to any objective participant.

They claim our legal fees are *per se* excessive. The total legal fee is less than five percent of the value of Highland's interest in SE Multifamily, not according to us but according to Mr. Dondero's family trust, Dugaboy. They told this Court in -- on June 30, 2022, I think, in the very first motion for

information, that Highland's interest in SE Multifamily was $20 million. So we spent less than five percent of the value of that to get good, clean title. I don't think that's excessive by any means, particularly with the amount of hoops we were required to jump through.

Unidentified timekeepers. They say three people were not identified. It was a *de minimis* amount of money. We've addressed that in the brief.

Travel time. You know, again, an even more *de minimis* -- I think that's right -- a more *de minimis* amount of money, less than $10,000 for me and Ms. Winograd to go to Dallas. We billed out at half-time. They admit it. And ironically, you know, our compensation for nonworking travel time was part of the agreement that was authorized when Mr. Dondero was still the head of Highland. I don't know how you criticize that today when it's part of Mr. Dondero's own agreement.

Finally, they take issue with Mr. Adler's relatively modest invoice. I think he charged $700 an hour. He (garbled) 30 hours or something in August 2022 as we were preparing for depositions. Mr. Dondero and Mr. McGraner have admitted that tax issues were a driving force in including Highland in this. And if you look at the Amended and Restated LLC Agreement in the section that comes after Section A, there is a multipage tax analysis that I can't possibly get my head around. I'm not a tax lawyer. And we needed some help to

understand kind of what the tax implications were.

I think, under the circumstances, the need for the tax services was completely warranted, and the amounts here are relatively modest to the whole. You know, it's 30-some-odd hours in connection with depositions at a $700 hourly rate, when my firm doesn't provide tax advice.

So, you know, Your Honor, I think I'm done. I think there's multiple reasons for finding the bad faith here. This proof of claim should never have been filed. You know, if they wanted to withdraw it, they shouldn't have taken our depositions and they should have given us a clean bill of health without trying to reserve some right to bring future challenges to our title to the asset.

And once we got to the trial, it became clear that there's absolutely no basis for the claim, that through the admissions there is no question that the document reflected the intent of parties. Highland provided more than adequate consideration for its interest. It continues to hold its interest today. It continues, you know, to receive its allocation of income. And there's a reason for all of that.

And for those reasons, Your Honor, I think the time has come to start holding people to account here. You know, we did it, as I mentioned, with the Rule 11 on the motion for leave to sue us. We were able to get rid of that. I think the Court really needs to try to bring some discipline to this

process instead of allowing people -- instead of allowing Mr. Dondero and those working at his direction to just file things irresponsibly, without basis of fact, you know, just -- just because.

It's not a thing. You know, that's not what this Court ought to be doing. It's not what I ought to be doing. It's not what I want to be doing, I'll tell you that right now. And so I think there's a real need for a bad faith finding in this particular case. I think there's a real need for there to be consequences of putting the Court and the Reorganized Debtor through this process. Because this -- if Mr. Dondero had only searched his own memory, if he had only asked Mr. McGraner, hey, did the agreement actually reflect the intent of the parties, how could this ever have gotten filed? That's all he had to do, was ask himself the question. All he had to do was ask Mr. McGraner. Right? We wouldn't be here, Your Honor.

And for those reasons, we ask the Court to find that this whole filing and prosecution of this claim was in bad faith (chiming), that we should get an award of attorneys' fees.

THE COURT: All right.

MR. MORRIS: Thank you.

THE COURT: A couple of follow-up questions. Thank you. I think you just answered this question with your closing comment, that you think there was bad faith in both

the filing and the prosecution.

So, as I understand it, the filing of the proof of claim itself you say is bad faith because you say it was a baseless proof of claim, and it was signed without any due diligence on the part of the person who signed it, Mr. Dondero? And then we obviously had months of prosecution, if you will, litigation, after Highland's objection. And then the timing of the withdrawal I would say is kind of a third thing I hear being argued, correct?

MR. MORRIS: Yeah. I would just summarize it this way. The filing of the proof of claim itself was bad faith for all of the reasons that I've stated. The motion to withdraw under these circumstances was also bad faith because they did it after taking discovery and tried to protect their own witnesses from discovery while trying to preserve the claims. They wanted to assert them at another day. Counsel said it in his closing. You know, going forward. That's what he said. And then the third thing is the substance. There is no basis to reform the contract. There's, like, there's no factual basis for the claim itself.

THE COURT: Okay. And my last question -- famous last words, my last question -- if I were to award attorneys' fees here, I'm looking at sort of a summary page for Pachulski's fees. I'm looking at Docket 2852-6. I think this was an Exhibit F to that motion.

So, I always use timelines in my life. While HCRE filed its proof of claim on April 8, 2020, and then Highland objected to it in an omnibus pleading on July 30, 2020, Pachulski has started the clock running, so to speak, August 21st. So, to the extent there were fees incurred, looking at this, after the proof of claim was filed, 2020, thereafter I note HCRE filed a response to the objection October 19, 2020, then the move to disqualify Wick Phillips, dah, dah, dah, dah, dah, April 14, 2021.

I had understood you weren't billing time for the disqualification motion, but in fact it looks like you're only asking for time starting August 2021, correct?

MR. MORRIS: That's right. My intent -- and I think we started the clock then because that's -- you know, we may have filed an omnibus objection, I think we did file, and we're not including time for that. So that's when -- that's when the fees started to become incurred.

THE COURT: Okay.

MR. MORRIS: And if I made a mistake anywhere, I apologize, Your Honor, but the intent was certainly to include, consistent with Your Honor's prior order, every minute of time that was expended in connection with the disqualification motion.

THE COURT: Okay. I just --

MR. MORRIS: Okay. I'm reminded, actually, I'm

actually reminded that August 7th was also the effective date, so that's probably why we used that date.

THE COURT: Okay. Understood. Understood.

All right. I think those are all my questions, so I will hear from HCRE, or NexPoint Real Estate, I think they may prefer to be called. Who is making the argument there?

THE CLERK: He's on mute, Judge.

THE COURT: Okay. You're on mute. Is it Mr. Gameros?

THE CLERK: Yes.

THE COURT: Okay. Mr. Gameros, you're on mute.

MR. GAMEROS: No, I'm not. There we go.

THE COURT: Okay. Here we go.

MR. GAMEROS: Sorry. Good morning, Your Honor.

THE COURT: Good morning.

MR. GAMEROS: Bill Gameros for NexPoint Real Estate. I'm going to hopefully show a PowerPoint. Let's see. I just want to make sure that this is showing. Can everyone see it?

THE COURT: Not yet.

MR. GAMEROS: All right. Nope. How about that? No.

THE COURT: We're not here on our court equipment. Do others -- Mr. Morris, do you see it?

MR. MORRIS: I do not, Your Honor.

THE COURT: Okay.

MR. GAMEROS: Let me try it this way. I'm sorry.

THE COURT: We do not -- oops, now something is starting to happen. Or was. For a --

MR. GAMEROS: How about now?

THE COURT: Here we go. Oh.

MR. GAMEROS: Is it showing now?

THE COURT: Oh, here we go. We have it now, yes.

MR. GAMEROS: All right. I'm sorry about that, Your Honor.

THE COURT: Okay.

MR. GAMEROS: Hate to waste the Court's time.

THE COURT: No problem.

MR. GAMEROS: All right. We're here in response to HCMLP's motion for a bad faith finding and attorneys' fees. First, what are they asking for? Over $800,000 in fees to defend a singular proof of claim that had for it as actions six short depositions, not lengthy, limited written discovery, and a single-day evidentiary hearing.

NREP only has one matter before this Court, the proof of claim. It has discrete ownership. You've already seen that from Mr. Morris's slides. BH Equities. Mr. McGraner actually has a remote interest in it. There are a bunch of folks that have interests in it, so it's a discrete ownership structure.

And it's not a vexatious litigant. It didn't appeal when the Court denied and overruled the proof of claim. It hasn't done anything else.

It didn't file its claim in bad faith. We're going to go through that with some detail. It's never conducted itself in bad faith in front of this Court in any step in the process.

But most importantly today, Your Honor, two things. First, there's not a single case cited in Mr. Morris's slide deck, and it's -- there's none cited for a very simple reason. There is no authority regarding fees for an alleged bad faith proof of claim under 105. We couldn't find it. We looked for it. It hasn't happened. There's no authority for it. He hasn't showed you any, and the authorities that he had showed, there's none in his slide, but we're going to go through them in detail, Your Honor, there's no basis to award attorneys' fees.

I think intellectually the Court should look at this as a two-step process. First, is the proof of claim and its prosecution done in bad faith? I think the answer is going to be a resounding no. But if the Court thinks there is a bad faith -- is bad faith activity, the second step is what fees are possibly awardable.

First, it's styled as a bad faith finding. You look at when the proof of claim was filed and the process that got there. Your Honor, in our response brief, we provide detailed citations to the trial transcript that says a variety of things, including Bonds Ellis never talked to Mr. Dondero, but, contrary to what Mr. Morris told you this morning, Mr.

McGraner did. So there are folks at NREP that were working with Bonds Ellis when they filed the proof of claim.

But he did so, candidly, with one of the best bankruptcy -- that NREP filed its proof of claim with one of the best bankruptcy shops in the Metroplex is telling. They wanted to do it, and they wanted to do it right, and they hired very competent counsel to do that.

These two cases I think are important. It's not just if there's a mistake in the proof of claim, you don't sanction them. And just beating the proof of claim. Is not enough if they lose. Undenied authority. And I think it's telling here.

This Court has seen a lot of litigation on proofs of claim. Objections to all of them, with a host of settlements. That just didn't happen here, but that doesn't make those prior proofs of claim in bad faith, even though they would like you to think that that's true. It's not true and it's not fair. It's also not right.

How did they do it? First, they hired Bonds Ellis. And part of that process was Bonds Ellis did the drafting. Mr. Dondero testified as to how he signed it and the basis on which he signed it. Because despite all the derision from HCMLP about the process and not believing in it, the reality is the process exists, it's what happened, it's what was done, and they coordinated with counsel in its filing.

Just because it's not enforceable, for whatever reason, doesn't make it sanctionable.

What were they trying to accomplish? They did try to reallocate. They wanted a reallocation because HCMLP only put in a tiny amount of capital and it wasn't providing any services.

I don't think it's in dispute that the bankruptcy case has been adversarial. I sat through the prior hour this morning. Mr. Morris made reference to it during this particular motion as well. But it also made the amendment impractical. Not in dispute.

Importantly, Your Honor, in your opinion disallowing the claim and sustaining HCMLP's objection, you didn't find that it was done in bad faith, and Mr. Morris asked you to do it several times at trial. Quite frankly, Your Honor, this ground has been plowed. We don't need to plow it again. The chance for the bad faith finding was last year. He didn't get what he wanted, so now he's taking a second swing at this particular piñata, and it's not right.

But look what happened in the reply brief. These are what are items of bad faith. Bad motive, animus, ill will. That's *Yorkshire*. That's the surreptitious bankruptcy filing. *Brown*. First, not bad faith. What happens in *Brown*, of course, it's a home case, a loan servicer looking to foreclose. And the sanction itself was tiny. Not $800,000.

It was a small sanction. And this Court, you, Your Honor, specifically looked at that case in the past.

Page (phonetic) (garbled). Intentional, deceitful, bad faith, theft. That is not what happened here. Not even close.

Lopez. They don't discuss *Lopez* again. They never mention it. Why? Because *Lopez* has the 'but for' test in it for fees. But this case, unlike *Lopez*, which had multiple motions to compel, had none.

Your Honor, this case had one hearing before the evidentiary trial. A scheduling conference. I'm sorry, it had two. The motion to withdraw, which we believe should have been granted. Your Honor didn't grant it. I understand the Court's ruling. We didn't appeal it. I'm not appealing it right now. But we did try to withdraw the proof of claim. But *Lopez* finds bad faith under 105 for discovery abuse. It doesn't even apply to these facts.

So, looking at the Court's inherent powers, it's not a standard fee application under the Code, that matters, but most importantly, they've got to provide a causal link for 'but for.' *Lopez* tells you that. *Hagar* in the Supreme Court tells you that.

What happens instead at the motion to withdraw, Mr. Morris tells you he wants to win on the merits. The difference in a withdrawn proof of claim and a disallowed proof of claim is

zero. There would have been no difference at all. Nothing has changed. Except for the 'but for' causation analysis on fees. They spent over $375,000 to get there.

I mentioned it in the reply brief. It's on the slide. The *Johnson* factors. Completely absent from their reply brief. They genuflect at it in the initial motion. But me telling you the *Johnson* factors, Your Honor, is like telling you the standard for summary judgment. You don't want to hear it.

However, eight out of twelve *Johnson* factors do not favor this particular fee app. Time and labor required for everything after the withdrawal. Not required.

Novelty and difficulty. It's a proof of claim. It's neither novel nor difficult.

Preclusion of other employment. There's no evidence of that.

The customary fee for work in the community. Candidly, it's against it. Eight hundred grand for fighting a proof of claim is pretty stout.

Time limitations. There were none.

The amount involved and the results obtained. Candidly, Your Honor, almost twice the fees for the same outcome.

Undesirability of the case. No evidence of that.

And awards in similar cases. Here, Your Honor, the absence of 105 cases for proofs of claim, there are no

comparable awards. And I think that's important.

What is the standard you should be using in assessing whether to use your 105 powers? Clear and convincing, Your Honor. Your Honor needs to have a firm belief or conviction that this was done with malice, ill intent, bad faith, et cetera. That's not here.

Why do you know that? Mr. McGraner had his deposition taken. He showed up at trial. Mr. Dondero had his deposition. Showed up at trial. At no instance were they running away from testifying. Quite the contrary. They came to court, they answered Mr. Morris's questions, they answered my questions. If Your Honor had questions, they would have answered them, too.

They took this very seriously. This wasn't some slapdash proof of claim. They were really trying to get something accomplished.

Fees. Your Honor, this is the fee table. I turned it sideways. It's in our response to the motion. I think it's absolutely shocking. The number of hours that were expended and the fees that were expended, the cumulative total -- this is just for selected timekeepers, not everybody -- but I'd point Your Honor to the very bottom, post-motion to withdraw. If they had just said yes, we'll take the win, they wouldn't have had to spend $350,000 for these selected timekeepers, over $375,000 with the rest. That is a clear failure of the

'but for' test in *Lopez* and the cases that it cites.

So, our conclusion, Your Honor. First, the reply doesn't change anything. They don't give you any new authority or any basis to award sanctions or bad faith analysis, if for no other reason than the record is already closed. You've seen this all before. And when asked repeatedly for a bad faith finding, you didn't give it to them. No bad faith in the filing of the claim.

The requested fees are reasonable and necessary. Your Honor, so they flunk the *Johnson* factors. They fail the 'but for' test.

Respectfully, Your Honor, their motion should be denied. If it's not going to be denied, we would like an opportunity to file supplemental briefing addressing the new authorities in the reply brief. Your Honor, I don't think we need to go there. I think you should deny it outright.

Subject to questions from the Court, that concludes my presentation.

THE COURT: All right. A few follow-up questions. In arguing about the size of the potential fees if I get to bad faith, you've had a little bit of a theme of: It was just a proof of claim, it was not difficult, and this was not some "slapdash proof of claim." So you emphasize not reasonable fees for addressing the proof of claim, and you also stress can't find any authority where attorneys' fees have been

allowed for having to defend against a proof of claim.

Here's what I want you to address. Here is what is going through my brain here. This wasn't a proof of claim where, oops, they actually paid our invoice, we're not really owed this amount, sorry, mistake. It's not a situation where you filed a $105,000 proof of claim and in fact only $97,000 was due and owing. And I just use those as very common examples we see in the Bankruptcy Court.

This was, while not a liquidated amount, while not an amount used in the proof of claim, it was basically a multimillion-dollar issue, right? And I don't know if it was a tens-of-millions-of-dollar issue or more than that, but it was a multimillion-dollar issue, right?

MR. GAMEROS: Yes, Your Honor, I understand that.

THE COURT: I mean, that's stating the obvious, right, because you're saying that Highland wasn't really entitled to a 46-percent-whatever ownership interest in Multifamily, it would be something much, much lower than that. Okay. So I think we had in the record Mr. Dondero says the equity interest is worth $20 million. And we know there was a Key Bank loan of up to $500 million-plus. I mean, the proof of claim seeking reformation was ultimately a many-multimillion-dollar claim, if the theory prevailed, right?

MR. GAMEROS: That's right, Your Honor. It could have been.

THE COURT: Okay. So, again, assuming I get to the bad faith finding, I mean, shouldn't I look at these fees in that context? I mean, it wasn't just a proof of claim; it was a potentially multimillion dollar hit to the estate, a bundle of value that wouldn't be there for the creditors. Is that fair, or no?

MR. GAMEROS: Your Honor, I think it's blending some issues in a way that I don't think are appropriate. I think for analyzing whether or not it's a bad faith filing or bad faith prosecution, you have to look to see ill motive, animus, et cetera, and that's not present here. Instead, --

THE COURT: Yes. I'm just saying --

MR. GAMEROS: -- you've got Mr. Dondero --

THE COURT: I'm just saying assuming I get there. And I totally recognize I've got to look at the overall facts of the filing of the claim, of the prosecution, of the withdrawal. I have to look at all that to see do we have bad faith.

But assuming I get there, you've challenged the reasonableness. And it wasn't just some proof of claim. It's a complicated proof of claim, right? It's potentially a multi --

MR. GAMEROS: Your Honor, I understand that.

THE COURT: Okay, go ahead.

MR. GAMEROS: I'm sorry for interrupting, Your Honor.

Go ahead.

THE COURT: Oh, I'm just saying it was pretty darn complicated, the proof of claim. It wasn't quantified. And even though it wasn't quantified, it was clearly a multimillion dollar claim being asserted at the end of the day, the ownership interest that HCRE was trying to challenge.

MR. GAMEROS: That's the position, Your Honor. And they looked at that particular position at the time of filing and said the capital wasn't right, and their response to the objection lays out the different legal arguments. That's exactly what happened.

THE COURT: Okay. My next question is I think you're arguing that because I did not specifically find bad faith in my opinion -- I'm in the mood to talk about lengthy opinions today; it was a 39-page opinion, with 127 footnotes, disallowing the proof of claim -- because I did not make a finding of bad faith there, I'm somehow precluded at this juncture. Am I hearing your argument correctly?

MR. GAMEROS: Your Honor, I didn't say precluded. I just said we don't need to plow that ground again.

THE COURT: Well, --

MR. GAMEROS: I think you left the door open for this particular motion.

THE COURT: Uh-huh.

MR. GAMEROS: And that's what you did in your

opinion. And I just think you were asked repeatedly to make a bad faith finding, and at the time when you ruled disallowing the proof of claim, you didn't do it. You didn't say bad faith.

THE COURT: Okay.

MR. GAMEROS: That's all.

THE COURT: Okay. And then I guess my last question is you said if they, Highland, if they had just said yes, take the win, we wouldn't have all these fees. But I really want to drill down. Would that really have been a win, or would it have been a temporary stand-down? I mean, I begged you all to wrap it all up with language in connection with the withdrawal of the proof of claim. You know, agreed you weren't going to raise this issue again. And your client wouldn't let you do that.

So is it really fair to say, if they had just said yes and taken the win, we wouldn't have had these fees, when it appeared very likely that it was going to be new litigation in a different forum? What is your response to that?

MR. GAMEROS: Your Honor, we're looking back at what happened with hindsight, and I think if we're going to see the maybe-bad we should also see the maybe-good.

What's happened, in hindsight? Zero. Nothing. NREP hasn't done anything. Its proof of claim was disallowed last year, and nothing else has happened.

I think what really happened at the hearing and the motion to withdraw and what we were hearing from Highland, candidly, is they wanted to put a pin in that's our number forever, can't talk about it, don't want to do that. And the agreement allows for amendment.

And that was what we were hung up on. What if we need to amend this thing in the future? We don't want to be stuck with a 46 percent number that we can never get away from. And that was the problem. That was it.

THE COURT: All right. Thank you, Mr. Gameros.

Any rebuttal, Mr. Morris?

MR. GAMEROS: Thank you, Your Honor.

MR. MORRIS: I do. I'll be brief. It's exactly a $20 million issue. It's not millions of dollars. It's exactly $20 million. As I like to say, don't take my word for it, take Mr. Dondero's word for it.

In Dugaboy's pleading that was filed under seal on June 30, 2022, he included his analysis of the value of Highland's assets. I don't want to go through them all, but I'm happy to report that he valued Highland's interest in SE Multifamily in that document that he represented to the Court was worth $20 million. So, from our perspective, we were fighting to get good, clean title to a $20 million asset. That's Point #1.

Point #2, of course, the Court has inherent power under 105 to enter orders of this type. I -- honestly, you know,

the cases are what the cases are. So there's never been a case exactly like this. You know what? I've been doing this for a while. I've never seen a proof of claim as baseless as this one.

So the whole concept of the 'but for' thing, I'll talk about in a minute, but there's no question that the Court has the power to enter orders of this type, and I don't even think counsel disputes that.

I do want to address the notion that we asked the Court repeatedly for a bad faith finding and the Court declined to do it. That's because this Court does its job and does its job well. And I understood Your Honor when you denied it without prejudice. It was telling. And apparently counsel got the signal, too, that you want to make sure that, before you enter an order of that type, that HCRE has due process. And that's why it's denied without prejudice. Because I was raising the issue for the first time at the podium, and you reluctantly, properly, prudently decided that probably isn't fair. And so you wanted to make sure that this thing was fully briefed. And it's been briefed, and that's why we're here today, not because you made a decision back in November of 2022 that there was no bad faith, but simply that you wanted to make sure that HCRE had a full opportunity to address the charge.

Getting to the 'but for' issue. But for the filing of,

frankly, a fraudulent, baseless proof of claim, Highland would have more than $800,000 in its pocket today.

But for the filing of a motion to withdraw that sought an unfair litigation advantage while trying to preserve for the future more challenges to Highland's clear and good title to this asset, Highland would have more money in its pocket.

But for the conduct of a trial, the taking of depositions, and all of the rest of it, we wouldn't be here today. Highland would have more than $800,000 in its pocket.

The notion that we should have taken the win, frankly, is offensive. That we should have just allowed them. He wants the benefit of the $300,000 on the theory that we should have allowed him to take our depositions, not take their depositions, and fight another day. I just -- I'm speechless. I'll just leave it at that. The argument speaks for itself.

No motive? They had no motive here? They don't have ill will? They showed up at the hearing? Goodness, I hope that doesn't absolve them from filing a proof of claim with no basis in fact or law. Of course they showed up at the hearing. They would have been in contempt of court at that point had they not.

The only reason, apparently, they filed the proof of claim is because they didn't like the unintended consequences of the Highland bankruptcy that Mr. Dondero filed. In what world, in what courtroom, under what law, is that a good faith basis for

pursuing a proof of claim, because you don't like the unintended consequences of your own decisions? That's bad motive right there. To try to deny a debtor a $20 million asset because you didn't like the way it turned out.

Mr. Dondero, Mr. McGraner, HCRE were perfectly happy for Highland to have a 46.06 percent interest in exchange for a $49,000 contribution right up until the day they filed that proof of claim. Maybe until the day they filed for bankruptcy. I didn't ask that particular question.

It's not good faith to come to this Court, to file a proof of claim, to go through all of this, because you don't like the consequences of your own decision.

The Court really needs to ask itself whether or not it wants to sanction this. Whether it wants to allow litigants, claimants, to file proofs of claim with no due diligence, no basis in fact, no basis in law. I don't think the Court should do that. I think the bad faith finding is easy, frankly.

And with respect to our legal fees, they are what they are. The notion that this was overstaffed is kind of crazy. It was me, Ms. Winograd, and Ms. Cantey. We billed, the three of us, more than 82 percent of the total fee. And if you take out Mr. Adler, it's probably close to if not in excess of 90 percent of it. It is what it is.

My rates are higher than some of the attorneys Mr. Dondero

hires. It is what it is. He knew about that when he hired us. They're market rates. Clients from east coast to west coast, from north to south, pay those rates every day, with bankruptcy court approval. I'm sorry if he doesn't like to pay those kinds of rates at this point in time, but they are what they are and my client is entitled to get reimbursed for this bad faith conduct.

I have nothing further, Your Honor.

THE COURT: Okay. Thank you.

Well, no surprise, we'll take this under advisement and issue a written opinion and order.

No surprise, I'm going to say like I always say, we'll get to this as soon as our calendar will allow, but I'm not going to promise a date on that.

Obviously, I'm going to be refreshing my memory, going back and studying the memorandum opinion and order I issued sustaining Highland's objection to this proof of claim and going back and looking at the transcript from that hearing that was submitted.

And I say this a lot, that timelines matter a heck of a lot to me and they reveal a heck of a lot. And I will be studying the timeline here and considering its significance.

Some of the important facts that will matter here are that the HCRE proof of claim, again, was filed timely in this case. April 8, 2020. It was signed by Mr. Dondero as the

representative of HCRE.

The evidence I do remember is that Mr. Dondero was president and sole manager of HCRE and he had signed the limited liability agreement for SE Multifamily Holdings, I think is the name of the entity. He had signed the agreement for both Highland and HCRE. There was an original LLC agreement and there was also an amended LLC agreement.

And again, I always think timelines -- again, I've said it a million times -- are very revealing. This was not a very ancient transaction, a very old transaction, in the Highland universe. The evidence I saw -- and again, I always create a timeline -- was that it was actually August 23, 2018 that this SE Multifamily entity was created, and then it was sometime early first quarter of 2019 where there was an amendment of the LLC agreement that brought in the BH entity and its six percent interest. And then, of course, it was October 2019 when the bankruptcy was filed.

Again, why am I mentioning this? I'm mentioning it because this was fairly recent in Highland history that this whole SE Multifamily transaction, Project Unicorn, was done. And that matters to me because I would think memories should have been fresh relative to a lot of other things we've looked at during this case. And so that really is weighing on my brain here with regard to the bad faith possibility on the filing of the proof of claim and the prosecution. It, in my

view, could have been a quick process, doing the due diligence and assembling, you know, is there a good faith basis for this proof of claim or not. And that concerns me. That concerns me.

It, as I recall hearing the evidence, looked like, oh my goodness, look at the consequences now of this bankruptcy, and Highland falling out of the status of being a friendly partner with HCRE. We don't like this. We don't like this and we want to change this.

So, again, I'm sort of thinking out loud here. I'm sort of revealing where I'm leaning right now. It seems like this was a recent-enough transaction where someone could have assembled information pretty quickly and figured out if there was any basis to argue reformation.

And I never did have a clear idea why they would pack up their marbles and want to go home if there was some evidence. And again, the Bankruptcy Rules require the Court to enter an order whether withdrawal should be permitted or not. I very much wanted this to go away, and then there wasn't -- wordsmithing could not come up with a sentence everyone would agree on to make it go away.

So I will, again, be drilling down on the evidence here as to whether we have bad faith, but that's some of the timeline and evidence I'm going to be drilling down on here.

I think *The Little Engine That Could* was the phrase Mr.

Morris argued. I remember very well the evidence was that Highland put in $49,000 to get its membership interest in SE Multifamily Holdings, but I already heard that it was required ultimately to be a cosigner on a $500 million loan from Key Bank. It provided resources, at least until some point during the bankruptcy, to SE Multifamily. And again, the tax benefit of absorbing the income from the entity, which, again, it's nothing to sneeze at here.

All of that I think was addressed pretty thoroughly in my earlier opinion, but again, I'm going to go back and look at it and the evidence and give you a thorough ruling one way or another on the indicia of bad faith as well as the reasonableness of fee-shifting.

All right. It sounds like I'm going to see you on February 14th, or some of you, and so I shall see you then. We're adjourned.

THE CLERK: All rise.

MR. GAMEROS: Your Honor?

THE COURT: I'm sorry?

MR. GAMEROS: Your Honor?

THE COURT: Yes.

MR. GAMEROS: Yeah, I'm sorry. I did ask, if you weren't going to deny it outright, if I could file a brief surreply. Is that allowed?

THE COURT: No. I've got enough on briefing on this.

Thank you.

MR. GAMEROS: All right. Thank you.

(Proceedings concluded at 11:41 a.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **01/24/2024**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

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

Signed March 4, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM # 146

I. INTRODUCTION

Before this court is a sanctions motion[1] filed by Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor"). [2] The motion seeks sanctions against

[1] *Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in connection with Proof of Claim 146* ("Sanctions Motion"). Dkt. No. 3851.

[2] Highland is a reorganized debtor under the confirmed *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Dkt. No. 1943.

NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("NexPoint/HCRE") for its filing, prosecution, and then abrupt attempt to withdraw a meritless proof of claim (after almost three years of protracted litigation).

NexPoint/HCRE filed the subject proof of claim, #146 on the claims register ("Proof of Claim"), on April 8, 2020.[3] The Proof of Claim was signed electronically by James D. Dondero ("Dondero") and was prepared and filed by a law firm that was representing him personally at that time.[4] The Proof of Claim was not in a liquidated amount and was somewhat ambiguous. It stated in an Exhibit A thereto, that NexPoint/HCRE, which was a limited partner, along with Highland, in a limited liability company called SE Multifamily Holdings, LLC ("SE Multifamily")—an entity which owned valuable real estate—"may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor" and added that Highland's equity interest "may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor." NexPoint/HCRE stated that it would update the Proof of Claim to provide the exact amount of it "in the next ninety days" but never did.

Highland objected to the Proof of Claim. Thereafter, NexPoint/HCRE (while still not providing any liquidated amount of its Proof of Claim) refined its position therein to argue that the organizational documents relating to SE Multifamily improperly allocated the ownership percentages of the equity members, due to mutual mistake, lack of consideration, and/or failure of consideration. NexPoint/HCRE essentially sought to reform, rescind, and/or modify the SE Multifamily limited liability company agreement (and possibly other documentation) to give Highland less ownership (or no ownership interest) in SE Multifamily and, accordingly,

[3] Claim No. 146.

[4] Bonds Ellis Eppich Schafer Jones LLP.

NexPoint/HCRE would have a larger ownership interest in SE Multifamily. Next, there occurred years of litigation between the parties, including: (a) a skirmish over Highland's motion to disqualify NexPoint/HCRE's newest counsel (*i.e.,* a law firm that had represented both Highland and NexPoint/HCRE in transactions involving SE Multifamily), which was ultimately granted, and (b) an eleventh-hour attempt by NexPoint/HCRE to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits. Highland objected to the withdrawal. The court held a hearing on that, as required by Bankruptcy Rule 3006. The court declined to allow withdrawal of the Proof of Claim, when the parties could not stipulate to an agreed form of order (*i.e.,* NexPoint/HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum).

Painfully, after all this, an evidentiary hearing was held on the merits of the Proof of Claim ("Trial") on November 1, 2022. During the Trial, Highland made an oral motion for a bad faith finding and assessment of attorneys' fees against NexPoint/HCRE in connection with its filing and prosecution of the Proof of Claim ("Oral Sanctions Motion"), which this court took under advisement, along with the consideration of the Proof of Claim as a whole.

On April 28, 2023, this court entered a 39-page memorandum opinion and order[5] sustaining Highland's objection to NexPoint/HCRE's Proof of Claim, but denying Highland's Oral Sanctions Motion, without prejudice, ***as procedurally deficient in that it was made orally and for the first time during the Trial.*** Thus, the Oral Sanctions Motion failed to provide NexPoint/HCRE sufficient notice and an opportunity to respond and, therefore, did not satisfy concerns of due process.

[5] *See Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* ("Proof of Claim Disallowance Order"). Dkt. No. 3767.

On June 16, 2023, Highland filed the instant Sanctions Motion, setting forth the legal and factual bases for the relief sought. The Sanctions Motion specifically seeks a finding of bad faith against NexPoint/HCRE and reimbursement of Highland's attorneys' fees and costs, as a sanction for NexPoint/HCRE's filing and prosecution of the Proof of Claim.

After due notice to NexPoint/HCRE, and a hearing held January 24, 2024 on the Sanctions Motion ("Sanctions Motion Hearing"), and after consideration of the pleadings filed, evidence in the record, and arguments of counsel, the court finds, for the reasons detailed in the findings of fact and conclusions of law below,[6] that NexPoint/HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim. Accordingly, NexPoint/HCRE will be required, as a sanction, to reimburse Highland's attorneys' fees and costs (totaling **$825,940.55)** incurred in connection with its objection to the Proof of Claim.

II. JURISDICTION

This court has jurisdiction and authority to determine and enter a final order in this matter, pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B), and (O) and 1334.[7]

III. BACKGROUND, PROCEDURAL HISTORY, AND FINDINGS OF FACT

A. Incorporation Herein of Proof of Claim Disallowance Order

As noted above, this court, on April 28, 2023, issued its 39-page Proof of Claim Disallowance Order, sustaining Highland's objection to NexPoint/HCRE's Proof of Claim

[6] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

[7] The Fifth Circuit recently confirmed the jurisdiction and authority of bankruptcy courts to issue sanctions orders in connection with bankruptcy cases and proceedings over which they exercise jurisdiction, because they are in the nature of ***civil contempt*** orders—which are considered "part of the underlying case" – "because the bankruptcy court had jurisdiction over the [ ] bankruptcy case, it had jurisdiction to enter the sanctions order, too." *Kreit v. Quinn (In re Cleveland Imaging and Surgical Hospital, L.L.C.)*, 26 F.4th 285, 294 (5th Cir. 2022) (cleaned up).

following the Trial on same. The Proof of Claim Disallowance Order sets forth extensive procedural history, findings of fact, and conclusions of law pertaining to NexPoint/HCRE's filing and prosecution of its Proof of Claim, which Highland alleges in the instant Sanctions Motion was conducted in bad faith. NexPoint/HCRE did not appeal the Proof of Claim Disallowance Order. Thus, it is a final and non-appealable order.[8] The court hereby incorporates by reference the Proof of Claim Disallowance Order (and all of the findings and conclusions therein), as if set forth verbatim herein.[9]

B. Highland Files Sanctions Motion

On June 16, 2023, Highland filed the instant Sanctions Motion. It was supported with a Declaration of John A. Morris in support of the Sanctions Motion ("Morris Declaration")[10] and 431 pages of attached exhibits as set forth in the following table:

Exhibit A	NexPoint/HCRE's Proof of Claim[11]
Exhibit B	Highland's Objection to NexPoint/HCRE's Proof of Claim[12]
Exhibit C	NexPoint/HCRE's Response to Objection to Claim[13]

[8] The Proof of Claim Disallowance Order is one of the few bankruptcy court orders issued in this bankruptcy case that was not appealed by Dondero or a Dondero-controlled entity. Although the court has not counted the exact number of appeals filed by Dondero and/or Dondero-controlled entities in this bankruptcy case and related proceedings, this court takes judicial notice of information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." *See Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12, at ¶ 24, filed on February 9, 2024. Dkt. No. 189 (NDTX Case No. 3:21-cv-00881-X).

[9] The Proof of Claim Disallowance Order was attached as Exhibit D to the Declaration of John A. Morris, Dkt. No. 3852, which was filed by Highland in connection with, and in support of, the relief requested in the Sanctions Motion.

[10] Dkt. No. 3852.

[11] Claim No. 146, filed April 8, 2020.

[12] *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection to Claim"), filed July 30, 2020. Dkt. No. 906.

[13] *NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Response to Objection to Claim"), filed October 19, 2020. Dkt. No. 1212.

Exhibit D	Proof of Claim Disallowance Order
Exhibit E	Transcript of November 1, 2022 Trial (on NexPoint/HCRE's Proof of Claim)
Exhibit F	Attorneys' Fees of Pachulski Stang Ziehl & Jones LLP ("PSZJ") for the period of August 1, 2021 through December 31, 2022 incurred in connection with the litigation on the NexPoint/HCRE Proof of Claim
Exhibit G	Invoices for court reporting services provided in connection with depositions taken and defended during the course of the Proof of Claim litigation
Exhibit H	Invoice for services rendered by David Agler, who provided specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim
Exhibit I	Summary of Fees and Expenses Incurred by Highland in Connection with NexPoint/HCRE's Proof of Claim

The Sanctions Motion (unlike the Oral Sanctions Motion made during the Trial) provided NexPoint/HCRE with due and appropriate notice of the legal and factual bases for Highland's request for a bad faith finding and reimbursement of attorneys' fees and costs incurred by it in litigating the Proof of Claim. As stated in the Sanctions Motion, the legal basis for Highland's request for reimbursement of its attorneys' fees as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim is the bankruptcy court's "inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith."[14] Highland referred to specific documentary and testimonial evidence adduced during the Trial that it alleges supports a finding that NexPoint/HCRE filed and prosecuted its Proof of Claim in bad faith, and attached invoices evidencing its attorneys' fees and costs incurred as a direct result of this alleged bad faith.

[14] *See* Sanctions Motion, 10, ¶25.

Before NexPoint/HCRE filed its response to the Sanctions Motion, the matter was stayed on August 2, 2023, pending court-ordered global mediation.[15] The mediation ultimately proved to be unsuccessful.[16] Thereafter, NexPoint/HCRE filed its *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* ("Response")[17] on December 22, 2023. NexPoint/HCRE denies that it filed and prosecuted its Proof of Claim in bad faith and argues it should not be sanctioned at all. It further argues that, even if the filing and prosecution of the Proof of Claim are found to have been in bad faith, the amount of the fees incurred by Highland in connection with the Proof of Claim litigation is "*per se* excessive for a single proof of claim objection"[18] and "extraordinarily high given that this dispute could have been brought to a swift close many months ago"—if only NexPoint/HCRE had been allowed to withdraw its Proof of Claim in September of 2022.[19] Highland's has sought reimbursement of more than $800,000 in attorneys' fees and more than $16,000 in expenses, identified in Exhibits F through H (and summarized in Exhibit I) of the Morris Declaration as having been incurred by Highland in connection with its litigation of the Proof of Claim.

Highland filed its *Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in*

---

[15] *See Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation*. Dkt. No. 3897. This was not the first time the bankruptcy court has ordered global mediation in the Highland case.

[16] *See Joint Notice of Mediation Report* filed on November 7, 2023. Dkt. No. 3995.

[17] Dkt. No. 3995.

[18] Response, 10, ¶34.

[19] Response, 13, ¶45. NexPoint/HCRE argues that, because it had sought to withdraw its Proof of Claim, any fees incurred by Highland after the filing of NexPoint/HCRE's motion to withdraw cannot be attributable to NexPoint/HCRE's alleged bad faith filing and prosecution of its Proof of Claim; rather, such fees were incurred by Highland as a result of Highland's decision to object to NexPoint/HCRE's withdrawal of its Proof of Claim and to proceed with the litigation, including taking depositions, and proceeding to "trial" on the merits instead of "taking a win" with NexPoint/HCRE's withdrawal of its Proof of Claim. *See* Response, 2.

Connection with Proof of Claim 146[20] on January 19, 2024, and filed an *Amended Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* ("Reply")[21] on January 23, 2024. Highland argues that "[n]othing in the Response warrants the denial of the [Sanctions] Motion or its requested award of attorneys' fees" and that "the record makes clear" that NexPoint/HCRE and its principals "clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, . . . ([b]) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and ([c]) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement")."[22]

The court held a hearing on the Sanctions Motion ("Hearing") on January 24, 2024, during which NexPoint/HCRE was given a full opportunity to respond to Highland's allegations of bad faith and request for sanctions.

IV. CONCLUSIONS OF LAW

A. The Sanctions Motion Satisfies Due Process Considerations

In invoking its inherent power to sanction bad faith conduct or a willful abuse of the judicial process, "[a] court must exercise caution . . . , and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018). As noted above, the court entered its Proof of Claim Disallowance Order on April 28, 2023, in which it sustained Highland's objection to, and disallowed, the Proof of Claim but denied, without prejudice, Highland's Oral Sanctions Motion

[20] Dkt. No. 4018.

[21] Dkt. No. 4023.

[22] Reply, 2, ¶2.

as being procedurally defective because, having been raised for the first time during Trial and not having been made in writing, it had not given NexPoint/HCRE adequate notice and an opportunity to respond to the specific allegations of bad faith being made against it. The court pointed out that it did not address or make any determination regarding the substance of Highland's requests in the Oral Sanctions Motion for a bad faith finding and sanctions against NexPoint/HCRE, subject to Highland's right seek a bad faith finding and sanctions against NexPoint/HCRE upon and after giving it proper notice and an opportunity to respond:

> Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny, without prejudice, [Highland's] request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Proof of Claim Disallowance Order, 38-39 (quoting *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010) ("[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond."); *In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) ("By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond.")).

The court concludes that the instant Sanctions Motion and Hearing have provided NexPoint/HCRE with the due process that was lacking in connection with the Oral Sanctions Motion. NexPoint/HCRE was given adequate notice of the legal authority invoked for sanctions (the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code) and NexPoint/HCRE's specific conduct (the filing and prosecution of its Proof of Claim) that Highland

alleges to have been in bad faith, and NexPoint/HCRE was given adequate opportunity to respond through briefing and at the Hearing on the Sanctions Motion.

With due process concerns having been now addressed and satisfied, the court is able to address the substantive questions raised in the instant Sanctions Motion of (1) whether NexPoint/HCRE did, indeed, act in bad faith in the filing and prosecution of its Proof of Claim and (2) if so, whether an award of reimbursement of Highland's attorneys' fees and costs incurred in connection with its litigation of the Proof of Claim is an appropriate sanction for such bad faith.

B. NexPoint/HCRE Filed and Prosecuted its Proof of Claim in Bad Faith and Willfully Abused the Judicial Process

A bankruptcy court may sanction a litigant for bad faith filing or litigation if the court makes specific findings, based on clear and convincing evidence, of bad faith or willful abuse of the judicial process. *See Cleveland Imaging*, 26 F.4th at 292 (A bankruptcy court may only sanction a party using its inherent authority if "(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence.") (citing *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729-30 (5th Cir. 2014)). The bankruptcy court's power to sanction bad faith or willful abuse of the judicial process derives from its inherent authority under 11 U.S.C. § 105(a) to issue civil contempt orders. *Id.* at 294, 294 n.14 (quoting the "relevant part" of Bankruptcy Code section 105(a), which provides that bankruptcy courts may "sua sponte, tak[e] any action . . . necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.") (cleaned up).

Having reviewed the record and the evidence adduced at Trial and NexPoint/HCRE's response to the Sanctions Motion (both in its Response and at the hearing on the Sanctions Motion), the court finds and concludes that there is clear and convincing evidence here that

NexPoint/HCRE filed and prosecuted is Proof of Claim in bad faith and that it willfully abused the judicial process.

1. *Dondero's Execution and Authorization of the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence Was in Bad Faith and a Willful Abuse of the Judicial Process*

As noted in the Proof of Claim Disallowance Order, NexPoint/HCRE filed its Proof of Claim in this Highland bankruptcy case on April 8, 2020, several months after the post-petition "nasty breakup" between Highland and its co-founder and president and chief executive officer, Dondero. NexPoint/HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[23]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

NexPoint/HCRE was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Dondero was the president and sole manager of NexPoint/HCRE, and an individual named Matt McGraner ("McGraner") was NexPoint/HCRE's vice president and secretary. NexPoint/HCRE had no employees of its own but instead relied on Highland's employees (and employees of other entities controlled by Dondero) to conduct business on its behalf. Dondero executed the Proof of Claim as the "person who is completing and signing this claim," checking

[23] Claim No. 146.

the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[24] The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it and without conducting any due diligence on, or investigation into, whether the statements made in the Proof of Claim were truthful and accurate, which supports a finding that Dondero's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.

At Trial, Dondero testified that he had authorized his electronic signature to be affixed to the document and to be filed on behalf of NexPoint/HCRE and admitted that he had not reviewed the document before doing so.[25] He further testified that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed,"[26] and, more specifically, that he did not, prior to authorizing his law firm (Bonds Ellis) to affix his electronic signature on, and to file, the Proof of Claim, review or provide comments to the Proof of Claim or its Exhibit A, review the SE Multifamily Amended LLC Agreement or any documents,[27] "check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it," or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of

[24] Proof of Claim, 3.

[25] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 55:2-22.

[26] Trial Tr. 56:20-23.

[27] Trial Tr. 55:10-22, 56:15-57:6.

HCRE."[28] Moreover, he testified that he did not know whose idea it was to file the Proof of Claim,[29] who at NexPoint/HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever communicated with anybody in the real estate group regarding [the Proof of Claim]."[30]

Dondero has argued that he had a good faith basis to sign and file the Proof of Claim on behalf of NexPoint/HCRE because "he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds"[31] and that he "ha[d] to rely on systems and processes[,]" because "[he] can't be directly involved in everything."[32] Dondero further testified that "[he] sign[s] a lot of high-risk documents and [has] to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this [Proof of Claim] is another one of those items."[33]

Dondero's "I'm-a-very-busy-person/too-busy-to-be-bothered-to-investigate" excuse is not a defense, as a matter of law, to his bad faith and willful abuse of the judicial process in connection with the filing of the Proof of Claim. Nor is Dondero's claimed reliance on systems and processes in connection with the execution and filing of this Proof of Claim, as a matter of fact, supported by the evidence. The court notes that the Proof of Claim is not a complex, lengthy legal or

[28] Trial Tr. 57:25-58:16.

[29] Trial Tr. 57:7-9.

[30] Trial Tr. 56:1-14.

[31] Response, 7, ¶16.

[32] Trial Tr. 57:25-58:7.

[33] Trial Tr. 57:25-59:2.

corporate document; Exhibit A to the Proof of Claim, which set forth the basis for the claim, is only one paragraph long, yet Dondero did not even bother to read it before signing under penalty of perjury that the information contained in the Proof of Claim, including Exhibit A, was truthful and accurate. And, Dondero's own testimony contradicts his assertion that he relied on "systems and processes" and on other people within the "sprawling and sophisticated corporate structure" and his outside counsel to ensure the accuracy of the Proof of Claim. He had no reasonable or justifiable basis to rely on anyone or any "process" that was allegedly in place in connection with his signing of "high risk" documents, because he asked no questions, conducted no due diligence, and made no effort, whatsoever, to verify that the information that he was swearing was accurate under penalty of perjury was, in fact, truthful.

The court finds and concludes that the foregoing admissions by NexPoint/HCRE, through Dondero, provide clear and convincing evidence that ***NexPoint/HCRE filed its Proof of Claim*** in bad faith and willfully abused the judicial process.

2. NexPoint/HCRE's Litigation Strategy and Actions in the Prosecution of Its Proof of Claim Are Further Evidence of Its Bad Faith and Willful Abuse of the Judicial Process

Moreover, NexPoint/HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and a half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process***.

As noted in the Proof of Claim Disallowance Order, six months after Dondero signed and filed the Proof of Claim in April 2020, and in response to Highland's objection to its Proof of Claim,[34] NexPoint/HCRE fleshed-out the legal and factual bases for its claim:[35]

> After reviewing what documentation is available to [NexPoint/HCRE] with the Debtor, [NexPoint/HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NexPoint/HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [NexPoint/HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

The Response was filed by a new law firm—Wick Phillips Gould & Martin, LLP ("Wick Phillips") – not the law firm of Bonds Ellis, which had handled the filing of the Proof of Claim. In the course of discovery, Highland became aware that Wick Phillips had jointly represented NexPoint/HCRE and Highland in connection with at least some of the underlying transactions that were the subject of the Proof of Claim, and, on April 14, 2021, more than a year after NexPoint/HCRE filed its Proof of Claim, Highland moved to disqualify Wick Phillips.[36] Notably, Highland's Plan had been confirmed on February 22, 2021, over the objections of Dondero and his related entities (including NexPoint/HCRE).[37] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan.

---

[34] On July 30, 2020, Highland filed an objection to the allowance of the Proof of Claim, contending it had no liability under the Proof of Claim. *See Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims*, Dkt. No. 906.

[35] Response to Objection to Claim, 2-3, ¶¶ 5-6.

[36] Dkt. Nos. 2196-2198. On October 1, 2021, Highland filed a supplemental disqualification motion. Dkt. No. 2893.

[37] NexPoint/HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* on January 5, 2021. Dkt. No. 1673.

Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including Highland's 46.06% membership interest in SE Multifamily.

Meanwhile, NexPoint/HCRE vigorously fought the disqualification of Wick Phillips, filing its opposition to the disqualification motion on May 6, 2021,[38] and initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with the entry by this court on December 10, 2021, of its *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[39] resolving the disqualification motion by, among other things, disqualifying Wick Phillips from representing NexPoint/HCRE in the contested matter concerning the Proof of Claim, but specifically denying Highland's request that NexPoint/HCRE reimburse it all costs and fees incurred in making and prosecuting the disqualification motion.[40]

In the instant Sanctions Motion, Highland acknowledged that the court denied Highland's specific request for sanctions of reimbursement of Highland's costs and fees in making the Disqualification Motion in its December 2021 Disqualification Order.[41] The court notes that the denial was not "with prejudice"[42] to Highland's right to bring a sanctions motion in the future in connection with allegations that NexPoint/HCRE's filing and prosecution of its Proof of Claim, including its vigorous defense of the Disqualification Motion. Notably, while Highland includes

[38] Dkt. Nos. 2278 and 2279.

[39] Dkt. No. 3106.

[40] Disqualification Order, 4.

[41] *See* Sanctions Motion, 4, ¶8.

[42] The Disqualification Order stated, in relevant part, "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**."

a reference in the instant Sanctions Motion to the lengthy and expensive proceedings on the Disqualification Motion in its recitation of evidence in the record that supports Highland's allegations that NexPoint/HCRE engaged in bad faith conduct in the filing and prosecution of its Proof of Claim, it did ***not*** include them as part of the fees and costs for which Highland is seeking to be reimbursed by NexPoint/HCRE as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.[43]

In any event, following the disqualification of Wick Phillips, NexPoint/HCRE hired yet a third law firm, Hoge & Gameros, LLP, in connection with this matter, and the parties engaged in a second round of extensive discovery, which included the exchange of written discovery and document production and the service of various deposition notices and subpoenas. On August 12, 2022, just two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of NexPoint/HCRE's witnesses, Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[44] By this point, Highland had spent hundreds of thousands of dollars objecting to the Proof of Claim.

Query why might NexPoint/HCRE have done this? Just six months earlier, Dondero's family trust, The Dugaboy Investment Trust, had represented to the bankruptcy court that

[43] *See* Morris Declaration, 3-4, at ¶11 (Referencing the court's denial in its Disqualification Order of Highland's previous request for attorneys' fees incurred in connection with the Disqualification Motion, Morris stated "[W]e reviewed the PSZJ Invoices and redacted all entries relating to the Disqualification Motion; thus, for the avoidance of doubt, Highland does not seek any fee award with respect to any work done in connection with the Disqualification Motion.").

[44] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

Highland's 46.06% interest in SE Multifamily was worth $20 million,[45] and now, NexPoint/HCRE (which presumably also spent substantial sums prosecuting its Proof of Claim during the nearly two and a half years of litigation) appeared willing to walk away from its multi-million dollar challenge to Highland's 46.06% interest in SE Multifamily. Highland objected to NexPoint/HCRE's Motion to Withdraw, and the court held a hearing on September 12, 2022 (as required by Bankruptcy Rule 3006), following which the court entered an order denying NexPoint/HCRE's Motion to Withdraw, for the reasons set forth on the record,[46] and directing the parties to "confer in good faith to complete the depositions" of Dondero, McGraner, and NexPoint/HCRE and otherwise comply with the scheduling order that had been entered by the court on this matter, which included appearing for an evidentiary hearing on November 1, 2022.[47] The court denied NexPoint/HCRE's Motion to Withdraw, in part, because it was concerned that the timing of it all–just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE (*i.e.,* NexPoint/HCRE prosecuted its Proof of Claim for two and a half years, through and including the taking of depositions of Highland's witness, while shielding its own witnesses from testifying). The court was also concerned by NexPoint/HCRE's repeated attempts to preserve its claims against Highland for use against Highland in the future. In fact, the court entered its order denying NexPoint/HCRE's Motion to Withdraw only after: (1) NexPoint/HCRE refused to agree, at the

[45] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. As pointed out by Highland in its Response, "[t]here is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily." Response, 9, at ¶27 n. 4.

[46] The court noted in its order denying HCRE's Motion to Withdraw that, under the Bankruptcy Rules, a creditor does not have an absolute right to withdraw a proof of claim.

[47] Dkt. No. 3525.

September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily, and (2) counsel were thereafter unable, in the day or two after the hearing, to work out mutually acceptable language in an agreed order that protected both parties.[48] As noted in its order denying NexPoint/HCRE's Motion to Withdraw, the court had expressed concerns, during the hearing on the Motion to Withdraw, relating to the integrity of the bankruptcy system and claims process if it allowed NexPoint/HCRE to withdraw its Proof of Claim after two and a half years of litigation, and having caused Highland to spend hundreds of thousands of dollars litigating the Proof of Claim, while at the same time allowing NexPoint/HCRE to preserve its challenges to Highland's ownership interest in SE Multifamily to be used against Highland in the future. The court did not, at the time, make any express findings regarding NexPoint/HCRE's bad faith or abuse of the judicial process, only because Highland's mid-hearing Oral Sanctions Motion had not provided NexPoint/HCRE with adequate notice and an opportunity to respond.[49] With the instant Sanctions Motion, those due process concerns have been satisfied.

Having considered the evidence and argument of counsel at both the Trial on NexPoint/HCRE's Proof of Claim and the hearing on the Sanctions Motion, and the pleadings filed in connection with the Sanctions Motion, including NexPoint/HCRE's written Response, and based on the record as a whole, the court expressly finds and concludes that NexPoint/HCRE's

[48] At the end of the September 12 hearing, the court had expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw, Dkt. No. 3519, 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at docket number 3525, denying NexPoint/HCRE's Motion to Withdraw.

[49] As noted below, NexPoint/HCRE persisted to the end in arguing that the disallowance of its Proof of Claim could not bar NexPoint/HCRE from making future challenges to Highland's 46.06% membership interest in SE Multifamily.

litigation strategy and actions in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process on the part of NexPoint/HCRE.

3. NexPoint/HCRE's Admissions at Trial Are Further Evidence of its Bad Faith Filing and Willful Abuse of the Judicial Process

Following the denial of NexPoint/HCRE's Motion to Withdraw, the parties complied with the court's order to schedule the depositions of Dondero and McGraner at mutually agreeable times to complete discovery and then appeared at Trial on November 1, 2022. At the conclusion of the Trial, NexPoint/HCRE doubled-down on its request of the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[50] This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request. Nevertheless, NexPoint/HCRE continued to the end to try to limit any order disallowing its Proof of Claim so as to preserve its right to assert the very claims asserted in its Proof of Claim (for rescission, reformation and/or modification of the SE Multifamily Amended LLC Agreement to reallocate the membership percentages) for use in the future.[51]

The Trial testimony of Dondero and McGraner revealed that NexPoint/HCRE had no factual basis to claim that a mistake was made by any of the parties, much less a mutual mistake

[50] Trial Tr. 179:23-25; 180:8-9.

[51] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

of the parties, regarding the allocation of ownership percentages in SE Multifamily in corporate documentation,[52] and, in fact, "the evidence overwhelmingly point[ed] to the conclusion that both Mr. Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement."[53] The court specifically noted in the Proof of Claim Disallowance Order that Dondero admitted that he had not read or reviewed the Amended LLC Agreement or any drafts of it before he signed it—apparently the Amended LLC Agreement was one of those important, high-risk documents that Dondero was too busy to read or investigate before signing (like the Proof of Claim)—but he nevertheless testified that "the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland."[54] NexPoint/HCRE was also unable to produce any evidence at Trial to support its factual allegation that there was a "lack of consideration" or a "failure of consideration" with respect to the Amended LLC Agreement, such that NexPoint/HCRE would be entitled to a

[52] The court concluded, specifically, that

> HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor NexPoint/HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement.

Proof of Claim Disallowance Order, 30.

[53] *Id.*, 30-31.

[54] *Id.*, 31 n. 119.

reformation,[55] rescission,[56] or modification of it, to re-allocate the ownership percentages that the parties agreed to at the time of the execution of it.[57]

In fact, McGraner ultimately admitted in his Trial testimony that the only reason NexPoint/HCRE had for filing its Proof of Claim, which challenged Highland's title to its 46.06% membership interest in SE Multifamily, was, essentially, ***that NexPoint/HCRE was frustrated with the consequences of Dondero's decision in 2019 to seek bankruptcy protection for Highland (notably, the bankruptcy case was filed just a few months after the Amended LLC Agreement was executed), which resulted in Dondero losing control over Highland***, such that, as far as NexPoint/HCRE was concerned, its "partner" [in SE Multifamily] was no longer its "partner." The court noted in the Proof of Claim Disallowance Order that McGraner

> could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are –

---

[55] After noting that "neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what NexPoint/HCRE is seeking in its Proof of Claim)," the court concluded that "HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration." Proof of Claim Disallowance Order, 32 n. 120.

[56] The court noted in the Proof of Claim Disallowance Order that NexPoint/HCRE had not actually stated a claim for rescission of the Amended LLC Agreement with respect to its Proof of Claim, but that, if it had,

> Mr. Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.

Proof of Claim Disallowance Order, 33-34.

[57] *See* Proof of Claim Disallowance Order, 32-33 n. 120 (where the court found that "HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. . . . Under Delaware law, the courts 'limit [their] inquiry into consideration to its existence and not whether it is fair or adequate,' . . . . '[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain.' (citations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.").

> that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[58]

McGraner testified that "despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite 'all of the fears [he] had [related to Highland's bankruptcy filing],' HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because 'we didn't think it would be worth it')[ ][59] [and] 'because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves.'"[60] This is not a good-faith basis for filing and prosecuting the Proof of Claim, and it exhibits a willful abuse of the bankruptcy claims process by NexPoint/HCRE.

In summary, the admissions by Dondero and McGraner in their Trial testimony made clear that NexPoint/HCRE never had a factual or legal basis for the Proof of Claim. NexPoint/HCRE's principals knew, at the time of filing and through its prosecution of the Proof of Claim, that there was no factual basis for its claim of rescission, reformation, and/or modification of the Amended LLC Agreement to dispossess Highland of some or all of its 46.06% membership interest in SE Multifamily. This clearly and convincingly constitutes bad faith by NexPoint/HCRE and a willful abuse of the judicial process.

C. Reimbursement of Attorneys' Fees and Costs Incurred by Highland in the Proof of Claim Litigation Is an Appropriate Sanction for NexPoint/HCRE's Bad Faith

Having found and concluded by clear and convincing evidence that NexPoint/HCRE filed and prosecuted (and attempted withdrawal of) its Proof of Claim in bad faith and willfully abused the judicial process, this court may use its inherent powers under Bankruptcy Code section 105(a)

---

[58] Proof of Claim Disallowance Order, 27 (citing Trial Tr. 114:24-115:16, 118:6-15).

[59] *Id.* (citing Trial Tr. 121:24-122:9).

[60] *Id.* at 28 (citing Trial Tr. 122:20-125:21).

to sanction it for such conduct. Reimbursement of the opposing party's fees and costs incurred in responding to a bad faith filing or willful abuse of the judicial process has been upheld as an appropriate form of sanctions. *See Cleveland Imaging*, 26 F.4th at 294 (upholding the bankruptcy court's sanction order that required the parties who were found to have filed bankruptcy petitions in bad faith to reimburse the fees incurred by a post-confirmation litigation trust in responding to the bad faith filing); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017) (bankruptcy court did not abuse its discretion in ordering the debtors to "pay $49,432, which represents the amount of attorneys' fees incurred by [the bankruptcy trustee] in responding to certain instances of the [debtors'] bad faith conduct."); *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's use of its inherent powers to issue monetary sanctions for bad faith filing that were, in part, based upon the opposing parties' attorneys' fees and costs "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Paige*, 365 B.R. 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same). Any sanction imposed pursuant to a bankruptcy court's inherent powers for bad faith conduct or willful abuse of the judicial process "must be compensatory rather than punitive in nature." *In re Lopez*, 576 B.R. at 93 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994)). "[A] sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based[,]" and "[a] fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber*, 581 U.S.

at 108 (quoting *Bagwell*, 512 U.S. at 834). The fee award must be "limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith." *Id.* (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. at 104). The "'causal link' between the sanctionable conduct and the opposing party's attorney's fees" must be established "through a 'but-for test:' to wit, the complaining party may only recover the portion of fees that they would not have paid 'but-for' the sanctionable conduct." *Id.* (citing *Goodyear Tire & Rubber*, 581 U.S. at 108-109 (citing *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

Here, as earlier noted, Highland has requested, as a sanction, reimbursement of its attorneys' fees and costs incurred by it in responding to NexPoint/HCRE's filing and prosecution of its Proof of Claim. Specifically, Highland seeks reimbursement of an aggregate amount of **$825,940.55**, consisting of

- **$782,476.50** in attorneys' fees charged by its primary bankruptcy counsel, PSZJ, for the period August 1, 2021 through December 31, 2022, for work performed in connection with the litigation of the Proof of Claim;[61]
- **$16,164.05** in third-party expenses for court reporting services provided in connection with the Proof of Claim litigation;[62] and,

[61] *See* Morris Declaration, 3-4, at ¶¶ 8-13, and Ex. F. As stated in the Morris Declaration, the $782,476.50 amount does not include any fees relating to the Disqualification Motion or any fees that PSZJ concluded were inadvertently coded by a timekeeper to the NexPoint/HCRE Claim Objection category "or that were otherwise unrelated to services rendered in connection with the Proof of Claim litigation." *Id.*, 3-4, at ¶¶ 11 and 12. By way of specific example, Morris stated that "in 2022 and 2023 we charged Highland for services rendered in connection with our unsuccessful attempts to obtain SE Multifamily's books and records but excluded those charges here because they do not directly relate to the litigation of HCRE's Proof of Claim; Highland is seeking those fees in the Delaware Chancery Court where Highland was forced to commence an action against HCRE for specific performance (Case No. 2023-0493-LM))." *Id.*, 4, at ¶ 12.

[62] *See id.*, 4, at ¶ 14, and Ex. G.

- **$27,300.00** in attorneys' fees charged by David Agler for providing Highland with specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim.[63]

NexPoint/HCRE challenges Highland's request for reimbursement of its fees on several bases. ***First***, it argues that it cannot be ordered to reimburse the fees and expenses incurred by Highland ***after*** NexPoint/HCRE attempted to withdraw its Proof of Claim because they do not satisfy the "but for" test for establishing a "causal link" between those fees and costs and NexPoint/HCRE's filing and pursuit of its Proof of Claim—that Highland cannot show that "but for" NexPoint/HCRE's filing and prosecution of its Proof of Claim, Highland would not have incurred those fees and costs. NexPoint/HCRE urges the court to adopt its narrative of the proceedings that "instead of taking a win, [Highland] and its lawyers chose to generate fees to get the same result" and thus Highland's attorneys' efforts were "totally unnecessary" and a "waste of time and resources" that was "the fault of [Highland], not [NexPoint/HCRE]."[64] NexPoint/HCRE states in its Response that "[h]ere, ***it is undisputed*** that, had [Highland] agreed to the withdrawal of the Proof of Claim many months ago – before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim – [Highland] would have been exactly in the same position that it is in now, but at far less expense" and further that "[t]he real, practical difference between refusing to consent to the withdrawal of [NexPoint/HCRE]'s Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees" and, thus, "[t]he Motion abjectly fails any 'but–for' analysis."[65]

---

[63] *See id.*, 4-5, at ¶¶ 15 and 16, and Ex. H. A summary of the aggregate fees and expenses of which Highland is seeking reimbursement in the Sanctions Motion is attached as Exhibit I to the Morris Declaration. *See id.*, 5, at ¶ 17, and Ex. I.

[64] Response, 2.

[65] Response, 20, at ¶60 (emphasis added).

The court disagrees with NexPoint/HCRE's "narrative" and its view of the evidence established at Trial. Highland ***does*** dispute NexPoint/HCRE's contention that, if only it had allowed it to withdraw its Proof of Claim and accepted a "win," that Highland would have been "exactly in the same position that it is in now [after a Trial and ruling on the merits of the Proof of Claim], but at far less expense." The court does as well. As Highland has argued, NexPoint/HCRE's Motion to Withdraw was itself filed in bad faith. Highland was forced to oppose the withdrawal of the Proof of Claim because NexPoint/HCRE would not agree to a withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future.[66] The evidence clearly and convincingly established that any "win" or "victory" that Highland would have obtained through the withdrawal of the Proof of Claim[67]

> would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

The court finds and concludes, as argued by Highland, that there is clear and convincing evidence here that the fees and costs incurred by it, after NexPoint/HCRE sought to withdraw its Proof of Claim (*i.e.,* to prepare for the Trial and prosecute its objection to the Proof of Claim through a trial and ruling on the merits), would not have been incurred "but for" NexPoint/HCRE's bad faith. As pointed out by Highland and as noted above,[68] the court did not enter the Proof of Claim Disallowance Order in December 2022 in a vacuum. Rather, the court denied

[66] *See supra* note 45 and accompanying text.

[67] Response, 5, at ¶18.

[68] *See supra* at pages 16-17.

NexPoint/HCRE's Motion to Withdraw only ***after:*** (1) the court had expressed concerns that the timing and context of its filing of its Motion to Withdraw suggested gamesmanship on its part, and that the integrity of the bankruptcy system and claims process would be in jeopardy if the court were to simply allow withdrawal, without protecting Highland from future challenges to its membership interest in SE Multifamily (particularly, after Highland had spent hundreds of thousands of dollars to that point in objecting to the Proof of Claim); and (2) NexPoint/HCRE refused to agree to language in an order that would alleviate these expressed concerns. The court—having now made an express finding that NexPoint/HCRE's filing of its Motion to Withdraw was in bad faith and part of its willful abuse of the bankruptcy claims process that began with the filing of its Proof of Claim in April 2020—now expressly finds that the fees and costs incurred by Highland after NexPoint/HCRE filed its Motion to Withdraw were necessary for Highland to protect its interests and would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

Second, NexPoint/HCRE objects to Highland's fees ($809,776.50) and expenses ($16,164.05) as being "*per se* excessive for a single proof of claim objection."[69] Highland argues that "[s]pending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries." Per the Morris Declaration, Highland only seeks reimbursement of expenses and fees charged to Highland for expenses incurred and work performed in litigating the Proof of Claim (but—as noted earlier—specifically excluding any fees charged relating to the Disqualification Motion). The court agrees with Highland and finds that the fees and expenses incurred by it in objecting to the Proof of Claim,

[69] Response, 10, ¶34.

including the fees incurred ***after*** NexPoint/HCRE sought to withdraw its Proof of Claim, were reasonable and necessary for Highland to protect a valuable asset—it's 46.06% interest in SE Multifamily—and, thus, they are not excessive.

Third, NexPoint/HCRE complains, in its Response, that the fees charged by PSZJ were unreasonable and excessive because the PSZJ invoices show that it was seeking reimbursement for fees charged by "layers of timekeepers whose identities and roles have not been disclosed."[70] NexPoint/HCRE points out three professionals (two of whom billed one hour or less) who were identified in PSZJ's invoices only by their initials.[71] In its Reply, Highland identified the timekeepers by name—as a litigator who billed one hour of time; a bankruptcy attorney who billed 0.6 hours of time; and a bankruptcy partner who billed 15.1 hours of time—all of whom were "called upon to provide discrete support."[72] Collectively, the three previously "unidentified" attorneys charged just 0.023% of the total fee request.[73] PSZJ's identification of the "unidentified timekeepers" and explanation of the work performed by them satisfies the court that these fees were reasonable and necessary fees incurred as a direct result of NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim. The court rejects NexPoint/HCRE's suggestion that PSZJ overstaffed and overbilled the file because there were "layers of timekeepers." As pointed out in Highland's Reply, "over 82% of the charges related to one litigation partner . . . , one litigation associate . . . , and one paralegal" and "[t]wo other lawyers who have been on the Pachulski team since the inception of this engagement . . . billed relatively modest amounts of time over the course

[70] *Id.*, 13, ¶45.
[71] *Id.*, 12, ¶38.
[72] Reply, 9, ¶28.
[73] *Id.*

of this prolonged litigation."[74] There is simply no factual basis to support a conclusion that the matter was overstaffed.

Fourth, NexPoint/HCRE objects to $9,840 charged by two attorneys for travel time,[75] while acknowledging that those attorneys' non-working travel time was billed at half of the attorneys' regular hourly rate.[76] As pointed out by Highland in its Reply, Highland agreed to pay for travel time in its pre-petition engagement letter, so those "charges cannot come as a surprise to Mr. Dondero."[77] The court takes judicial notice of the fact that attorneys charging half of their hourly rates for non-working travel time, as PSZJ did here, pursuant to its engagement letter with Highland that was approved when the court authorized the retention of PSZJ as counsel for the Debtor, is common practice and is a commonly approved term of engagement of professionals in bankruptcy cases. The $9,840 charged by two attorneys for travel time in this matter was a reasonable and necessary expense incurred by Highland in responding to NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.

Fifth, and finally, NexPoint/HCRE objects to the fees charged by David Agler (39 hours of work performed at $700 per hour) for providing Highland with tax advice in August 2022, on the basis that the invoice attached as Exhibit H to the Morris Declaration "indicated that it was 'unbilled' work" and that "[w]hatever work he did, it did not manifest itself in the proceedings."[78] Highland pointed out that it ***had*** explained, in the Morris Declaration, that Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of

[74] *Id.*, 9, ¶28 n. 5.

[75] Response, 12, ¶37.

[76] *Id.*, 11, ¶36 (Table 1).

[77] Reply, 9-10, ¶29.

[78] Response, 12, ¶42.

Claim."[79] Highland provided a more detailed description of the services provided by Mr. Agler and why those services were necessary in its Reply: "Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits."[80] The court finds that the fees charged by David Agler for work performed for Highland that are set forth in Exhibit H to the Morris Declaration were reasonable and necessary expenses incurred by Highland in responding to HCRE's bad faith conduct and that they would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

The court has determined that the full amount of fees – $809,776.50 – and costs – $16,164.05 – that are set forth in detail in Exhibits F through H (and summarized on Exhibit I) of the Morris Declaration were reasonable and necessary for Highland to respond to, and would not have been incurred "but for," NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim, which the court has found to have been a willful abuse by NexPoit/HCRE of the judicial process. Under Fifth Circuit precedent, it is appropriate for the court, in the use of its inherent power under Bankruptcy Code § 105(a), to order NexPoint/HCRE, as a compensatory sanction for its bad faith conduct and willful abuse of the judicial process, to reimburse Highland the full amount of fees and costs requested by Highland, which, in the aggregate, total $825,940.55. NexPoint/HCRE's objections to such amounts as excessive, unnecessary, unreasonable, or unrelated to NexPoint/HCRE's bad faith conduct, are overruled.

---

[79] Reply, 10, ¶30 (citing Morris Declaration, ¶15).

[80] *See id.* (citing Morris Declaration, Ex. [E] (Trial Transcript) 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence)).

V. CONCLUSION AND ORDER

In summary, the court has determined that NexPoint/HCRE was given adequate notice and an opportunity to respond to the Sanctions Motion and that there is clear and convincing evidence that it filed and prosecuted its Proof of Claim, including its eleventh-hour attempt to withdraw its Proof of Claim, in bad faith and that it willfully abused the judicial process. Such conduct directly caused Highland to incur $825,940.55 in fees and expenses. In the exercise of its inherent power under Bankruptcy Code § 105(a), the court will grant Highland's Sanctions Motion and order NexPoint/HCRE to reimburse Highland for those fees and expenses as an appropriate sanction for NexPoint/HCRE's bad faith or willful abuse of the judicial process.

Accordingly, and based on the foregoing findings of fact and conclusions of law, including those findings and conclusions in this court's Proof of Claim Disallowance Order, which has been incorporated herein by reference,

IT IS ORDERED that the Sanctions Motion [Dkt. No. 3851] be, and hereby is **GRANTED**;

IT IS FURTHER ORDERED that, in order to compensate Highland for loss and expense resulting from NexPoint/HCRE's bad faith and willful abuse of the judicial process, in filing and prosecuting its Proof of Claim, NexPoint/HCRE is hereby directed to pay Highland the compensatory sum of **$825,940.55**.

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

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

Signed March 4, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM # 146

I. INTRODUCTION

Before this court is a sanctions motion[1] filed by Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor"). [2] The motion seeks sanctions against

[1] *Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in connection with Proof of Claim 146* ("Sanctions Motion"). Dkt. No. 3851.

[2] Highland is a reorganized debtor under the confirmed *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Dkt. No. 1943.

NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("NexPoint/HCRE") for its filing, prosecution, and then abrupt attempt to withdraw a meritless proof of claim (after almost three years of protracted litigation).

NexPoint/HCRE filed the subject proof of claim, #146 on the claims register ("Proof of Claim"), on April 8, 2020.[3] The Proof of Claim was signed electronically by James D. Dondero ("Dondero") and was prepared and filed by a law firm that was representing him personally at that time.[4] The Proof of Claim was not in a liquidated amount and was somewhat ambiguous. It stated in an Exhibit A thereto, that NexPoint/HCRE, which was a limited partner, along with Highland, in a limited liability company called SE Multifamily Holdings, LLC ("SE Multifamily")—an entity which owned valuable real estate—"may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor" and added that Highland's equity interest "may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor." NexPoint/HCRE stated that it would update the Proof of Claim to provide the exact amount of it "in the next ninety days" but never did.

Highland objected to the Proof of Claim. Thereafter, NexPoint/HCRE (while still not providing any liquidated amount of its Proof of Claim) refined its position therein to argue that the organizational documents relating to SE Multifamily improperly allocated the ownership percentages of the equity members, due to mutual mistake, lack of consideration, and/or failure of consideration. NexPoint/HCRE essentially sought to reform, rescind, and/or modify the SE Multifamily limited liability company agreement (and possibly other documentation) to give Highland less ownership (or no ownership interest) in SE Multifamily and, accordingly,

[3] Claim No. 146.

[4] Bonds Ellis Eppich Schafer Jones LLP.

NexPoint/HCRE would have a larger ownership interest in SE Multifamily. Next, there occurred years of litigation between the parties, including: (a) a skirmish over Highland's motion to disqualify NexPoint/HCRE's newest counsel (*i.e.,* a law firm that had represented both Highland and NexPoint/HCRE in transactions involving SE Multifamily), which was ultimately granted, and (b) an eleventh-hour attempt by NexPoint/HCRE to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits. Highland objected to the withdrawal. The court held a hearing on that, as required by Bankruptcy Rule 3006. The court declined to allow withdrawal of the Proof of Claim, when the parties could not stipulate to an agreed form of order (*i.e.,* NexPoint/HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum).

Painfully, after all this, an evidentiary hearing was held on the merits of the Proof of Claim ("Trial") on November 1, 2022. During the Trial, Highland made an oral motion for a bad faith finding and assessment of attorneys' fees against NexPoint/HCRE in connection with its filing and prosecution of the Proof of Claim ("Oral Sanctions Motion"), which this court took under advisement, along with the consideration of the Proof of Claim as a whole.

On April 28, 2023, this court entered a 39-page memorandum opinion and order[5] sustaining Highland's objection to NexPoint/HCRE's Proof of Claim, but denying Highland's Oral Sanctions Motion, without prejudice, ***as procedurally deficient in that it was made orally and for the first time during the Trial.*** Thus, the Oral Sanctions Motion failed to provide NexPoint/HCRE sufficient notice and an opportunity to respond and, therefore, did not satisfy concerns of due process.

[5] *See Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* ("Proof of Claim Disallowance Order"). Dkt. No. 3767.

On June 16, 2023, Highland filed the instant Sanctions Motion, setting forth the legal and factual bases for the relief sought. The Sanctions Motion specifically seeks a finding of bad faith against NexPoint/HCRE and reimbursement of Highland's attorneys' fees and costs, as a sanction for NexPoint/HCRE's filing and prosecution of the Proof of Claim.

After due notice to NexPoint/HCRE, and a hearing held January 24, 2024 on the Sanctions Motion ("Sanctions Motion Hearing"), and after consideration of the pleadings filed, evidence in the record, and arguments of counsel, the court finds, for the reasons detailed in the findings of fact and conclusions of law below,[6] that NexPoint/HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim. Accordingly, NexPoint/HCRE will be required, as a sanction, to reimburse Highland's attorneys' fees and costs (totaling **$825,940.55)** incurred in connection with its objection to the Proof of Claim.

II. JURISDICTION

This court has jurisdiction and authority to determine and enter a final order in this matter, pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B), and (O) and 1334.[7]

III. BACKGROUND, PROCEDURAL HISTORY, AND FINDINGS OF FACT

A. Incorporation Herein of Proof of Claim Disallowance Order

As noted above, this court, on April 28, 2023, issued its 39-page Proof of Claim Disallowance Order, sustaining Highland's objection to NexPoint/HCRE's Proof of Claim

[6] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

[7] The Fifth Circuit recently confirmed the jurisdiction and authority of bankruptcy courts to issue sanctions orders in connection with bankruptcy cases and proceedings over which they exercise jurisdiction, because they are in the nature of ***civil contempt*** orders—which are considered "part of the underlying case" – "because the bankruptcy court had jurisdiction over the [ ] bankruptcy case, it had jurisdiction to enter the sanctions order, too." *Kreit v. Quinn (In re Cleveland Imaging and Surgical Hospital, L.L.C.)*, 26 F.4th 285, 294 (5th Cir. 2022) (cleaned up).

following the Trial on same. The Proof of Claim Disallowance Order sets forth extensive procedural history, findings of fact, and conclusions of law pertaining to NexPoint/HCRE's filing and prosecution of its Proof of Claim, which Highland alleges in the instant Sanctions Motion was conducted in bad faith. NexPoint/HCRE did not appeal the Proof of Claim Disallowance Order. Thus, it is a final and non-appealable order.[8] The court hereby incorporates by reference the Proof of Claim Disallowance Order (and all of the findings and conclusions therein), as if set forth verbatim herein.[9]

B. Highland Files Sanctions Motion

On June 16, 2023, Highland filed the instant Sanctions Motion. It was supported with a Declaration of John A. Morris in support of the Sanctions Motion ("Morris Declaration")[10] and 431 pages of attached exhibits as set forth in the following table:

Exhibit A	NexPoint/HCRE's Proof of Claim[11]
Exhibit B	Highland's Objection to NexPoint/HCRE's Proof of Claim[12]
Exhibit C	NexPoint/HCRE's Response to Objection to Claim[13]

[8] The Proof of Claim Disallowance Order is one of the few bankruptcy court orders issued in this bankruptcy case that was not appealed by Dondero or a Dondero-controlled entity. Although the court has not counted the exact number of appeals filed by Dondero and/or Dondero-controlled entities in this bankruptcy case and related proceedings, this court takes judicial notice of information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." *See Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12, at ¶ 24, filed on February 9, 2024. Dkt. No. 189 (NDTX Case No. 3:21-cv-00881-X).

[9] The Proof of Claim Disallowance Order was attached as Exhibit D to the Declaration of John A. Morris, Dkt. No. 3852, which was filed by Highland in connection with, and in support of, the relief requested in the Sanctions Motion.

[10] Dkt. No. 3852.

[11] Claim No. 146, filed April 8, 2020.

[12] *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection to Claim"), filed July 30, 2020. Dkt. No. 906.

[13] *NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Response to Objection to Claim"), filed October 19, 2020. Dkt. No. 1212.

Exhibit D	Proof of Claim Disallowance Order
Exhibit E	Transcript of November 1, 2022 Trial (on NexPoint/HCRE's Proof of Claim)
Exhibit F	Attorneys' Fees of Pachulski Stang Ziehl & Jones LLP ("PSZJ") for the period of August 1, 2021 through December 31, 2022 incurred in connection with the litigation on the NexPoint/HCRE Proof of Claim
Exhibit G	Invoices for court reporting services provided in connection with depositions taken and defended during the course of the Proof of Claim litigation
Exhibit H	Invoice for services rendered by David Agler, who provided specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim
Exhibit I	Summary of Fees and Expenses Incurred by Highland in Connection with NexPoint/HCRE's Proof of Claim

The Sanctions Motion (unlike the Oral Sanctions Motion made during the Trial) provided NexPoint/HCRE with due and appropriate notice of the legal and factual bases for Highland's request for a bad faith finding and reimbursement of attorneys' fees and costs incurred by it in litigating the Proof of Claim. As stated in the Sanctions Motion, the legal basis for Highland's request for reimbursement of its attorneys' fees as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim is the bankruptcy court's "inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith."[14] Highland referred to specific documentary and testimonial evidence adduced during the Trial that it alleges supports a finding that NexPoint/HCRE filed and prosecuted its Proof of Claim in bad faith, and attached invoices evidencing its attorneys' fees and costs incurred as a direct result of this alleged bad faith.

[14] *See* Sanctions Motion, 10, ¶25.

Before NexPoint/HCRE filed its response to the Sanctions Motion, the matter was stayed on August 2, 2023, pending court-ordered global mediation.[15] The mediation ultimately proved to be unsuccessful.[16] Thereafter, NexPoint/HCRE filed its *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* ("Response")[17] on December 22, 2023. NexPoint/HCRE denies that it filed and prosecuted its Proof of Claim in bad faith and argues it should not be sanctioned at all. It further argues that, even if the filing and prosecution of the Proof of Claim are found to have been in bad faith, the amount of the fees incurred by Highland in connection with the Proof of Claim litigation is "*per se* excessive for a single proof of claim objection"[18] and "extraordinarily high given that this dispute could have been brought to a swift close many months ago"—if only NexPoint/HCRE had been allowed to withdraw its Proof of Claim in September of 2022.[19] Highland's has sought reimbursement of more than $800,000 in attorneys' fees and more than $16,000 in expenses, identified in Exhibits F through H (and summarized in Exhibit I) of the Morris Declaration as having been incurred by Highland in connection with its litigation of the Proof of Claim.

Highland filed its *Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in*

---

[15] *See Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation*. Dkt. No. 3897. This was not the first time the bankruptcy court has ordered global mediation in the Highland case.

[16] *See Joint Notice of Mediation Report* filed on November 7, 2023. Dkt. No. 3995.

[17] Dkt. No. 3995.

[18] Response, 10, ¶34.

[19] Response, 13, ¶45. NexPoint/HCRE argues that, because it had sought to withdraw its Proof of Claim, any fees incurred by Highland after the filing of NexPoint/HCRE's motion to withdraw cannot be attributable to NexPoint/HCRE's alleged bad faith filing and prosecution of its Proof of Claim; rather, such fees were incurred by Highland as a result of Highland's decision to object to NexPoint/HCRE's withdrawal of its Proof of Claim and to proceed with the litigation, including taking depositions, and proceeding to "trial" on the merits instead of "taking a win" with NexPoint/HCRE's withdrawal of its Proof of Claim. *See* Response, 2.

Connection with Proof of Claim 146[20] on January 19, 2024, and filed an *Amended Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* ("Reply")[21] on January 23, 2024. Highland argues that "[n]othing in the Response warrants the denial of the [Sanctions] Motion or its requested award of attorneys' fees" and that "the record makes clear" that NexPoint/HCRE and its principals "clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, . . . ([b]) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and ([c]) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement")."[22]

The court held a hearing on the Sanctions Motion ("Hearing") on January 24, 2024, during which NexPoint/HCRE was given a full opportunity to respond to Highland's allegations of bad faith and request for sanctions.

IV. CONCLUSIONS OF LAW

A. The Sanctions Motion Satisfies Due Process Considerations

In invoking its inherent power to sanction bad faith conduct or a willful abuse of the judicial process, "[a] court must exercise caution . . . , and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018). As noted above, the court entered its Proof of Claim Disallowance Order on April 28, 2023, in which it sustained Highland's objection to, and disallowed, the Proof of Claim but denied, without prejudice, Highland's Oral Sanctions Motion

[20] Dkt. No. 4018.

[21] Dkt. No. 4023.

[22] Reply, 2, ¶2.

as being procedurally defective because, having been raised for the first time during Trial and not having been made in writing, it had not given NexPoint/HCRE adequate notice and an opportunity to respond to the specific allegations of bad faith being made against it. The court pointed out that it did not address or make any determination regarding the substance of Highland's requests in the Oral Sanctions Motion for a bad faith finding and sanctions against NexPoint/HCRE, subject to Highland's right seek a bad faith finding and sanctions against NexPoint/HCRE upon and after giving it proper notice and an opportunity to respond:

> Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny, without prejudice, [Highland's] request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Proof of Claim Disallowance Order, 38-39 (quoting *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010) ("[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond."); *In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) ("By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond.")).

The court concludes that the instant Sanctions Motion and Hearing have provided NexPoint/HCRE with the due process that was lacking in connection with the Oral Sanctions Motion. NexPoint/HCRE was given adequate notice of the legal authority invoked for sanctions (the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code) and NexPoint/HCRE's specific conduct (the filing and prosecution of its Proof of Claim) that Highland

alleges to have been in bad faith, and NexPoint/HCRE was given adequate opportunity to respond through briefing and at the Hearing on the Sanctions Motion.

With due process concerns having been now addressed and satisfied, the court is able to address the substantive questions raised in the instant Sanctions Motion of (1) whether NexPoint/HCRE did, indeed, act in bad faith in the filing and prosecution of its Proof of Claim and (2) if so, whether an award of reimbursement of Highland's attorneys' fees and costs incurred in connection with its litigation of the Proof of Claim is an appropriate sanction for such bad faith.

B. NexPoint/HCRE Filed and Prosecuted its Proof of Claim in Bad Faith and Willfully Abused the Judicial Process

A bankruptcy court may sanction a litigant for bad faith filing or litigation if the court makes specific findings, based on clear and convincing evidence, of bad faith or willful abuse of the judicial process. *See Cleveland Imaging*, 26 F.4th at 292 (A bankruptcy court may only sanction a party using its inherent authority if "(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence.") (citing *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729-30 (5th Cir. 2014)). The bankruptcy court's power to sanction bad faith or willful abuse of the judicial process derives from its inherent authority under 11 U.S.C. § 105(a) to issue civil contempt orders. *Id.* at 294, 294 n.14 (quoting the "relevant part" of Bankruptcy Code section 105(a), which provides that bankruptcy courts may "sua sponte, tak[e] any action . . . necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.") (cleaned up).

Having reviewed the record and the evidence adduced at Trial and NexPoint/HCRE's response to the Sanctions Motion (both in its Response and at the hearing on the Sanctions Motion), the court finds and concludes that there is clear and convincing evidence here that

NexPoint/HCRE filed and prosecuted is Proof of Claim in bad faith and that it willfully abused the judicial process.

1. *Dondero's Execution and Authorization of the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence Was in Bad Faith and a Willful Abuse of the Judicial Process*

As noted in the Proof of Claim Disallowance Order, NexPoint/HCRE filed its Proof of Claim in this Highland bankruptcy case on April 8, 2020, several months after the post-petition "nasty breakup" between Highland and its co-founder and president and chief executive officer, Dondero. NexPoint/HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[23]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

NexPoint/HCRE was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Dondero was the president and sole manager of NexPoint/HCRE, and an individual named Matt McGraner ("McGraner") was NexPoint/HCRE's vice president and secretary. NexPoint/HCRE had no employees of its own but instead relied on Highland's employees (and employees of other entities controlled by Dondero) to conduct business on its behalf. Dondero executed the Proof of Claim as the "person who is completing and signing this claim," checking

[23] Claim No. 146.

the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[24] The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it and without conducting any due diligence on, or investigation into, whether the statements made in the Proof of Claim were truthful and accurate, which supports a finding that Dondero's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.

At Trial, Dondero testified that he had authorized his electronic signature to be affixed to the document and to be filed on behalf of NexPoint/HCRE and admitted that he had not reviewed the document before doing so.[25] He further testified that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed,"[26] and, more specifically, that he did not, prior to authorizing his law firm (Bonds Ellis) to affix his electronic signature on, and to file, the Proof of Claim, review or provide comments to the Proof of Claim or its Exhibit A, review the SE Multifamily Amended LLC Agreement or any documents,[27] "check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it," or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of

[24] Proof of Claim, 3.

[25] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 55:2-22.

[26] Trial Tr. 56:20-23.

[27] Trial Tr. 55:10-22, 56:15-57:6.

HCRE."[28] Moreover, he testified that he did not know whose idea it was to file the Proof of Claim,[29] who at NexPoint/HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever communicated with anybody in the real estate group regarding [the Proof of Claim]."[30]

Dondero has argued that he had a good faith basis to sign and file the Proof of Claim on behalf of NexPoint/HCRE because "he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds"[31] and that he "ha[d] to rely on systems and processes[,]" because "[he] can't be directly involved in everything."[32] Dondero further testified that "[he] sign[s] a lot of high-risk documents and [has] to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this [Proof of Claim] is another one of those items."[33]

Dondero's "I'm-a-very-busy-person/too-busy-to-be-bothered-to-investigate" excuse is not a defense, as a matter of law, to his bad faith and willful abuse of the judicial process in connection with the filing of the Proof of Claim. Nor is Dondero's claimed reliance on systems and processes in connection with the execution and filing of this Proof of Claim, as a matter of fact, supported by the evidence. The court notes that the Proof of Claim is not a complex, lengthy legal or

[28] Trial Tr. 57:25-58:16.

[29] Trial Tr. 57:7-9.

[30] Trial Tr. 56:1-14.

[31] Response, 7, ¶16.

[32] Trial Tr. 57:25-58:7.

[33] Trial Tr. 57:25-59:2.

corporate document; Exhibit A to the Proof of Claim, which set forth the basis for the claim, is only one paragraph long, yet Dondero did not even bother to read it before signing under penalty of perjury that the information contained in the Proof of Claim, including Exhibit A, was truthful and accurate. And, Dondero's own testimony contradicts his assertion that he relied on "systems and processes" and on other people within the "sprawling and sophisticated corporate structure" and his outside counsel to ensure the accuracy of the Proof of Claim. He had no reasonable or justifiable basis to rely on anyone or any "process" that was allegedly in place in connection with his signing of "high risk" documents, because he asked no questions, conducted no due diligence, and made no effort, whatsoever, to verify that the information that he was swearing was accurate under penalty of perjury was, in fact, truthful.

The court finds and concludes that the foregoing admissions by NexPoint/HCRE, through Dondero, provide clear and convincing evidence that ***NexPoint/HCRE filed its Proof of Claim*** in bad faith and willfully abused the judicial process.

2. NexPoint/HCRE's Litigation Strategy and Actions in the Prosecution of Its Proof of Claim Are Further Evidence of Its Bad Faith and Willful Abuse of the Judicial Process

Moreover, NexPoint/HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and a half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process***.

As noted in the Proof of Claim Disallowance Order, six months after Dondero signed and filed the Proof of Claim in April 2020, and in response to Highland's objection to its Proof of Claim,[34] NexPoint/HCRE fleshed-out the legal and factual bases for its claim:[35]

> After reviewing what documentation is available to [NexPoint/HCRE] with the Debtor, [NexPoint/HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NexPoint/HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [NexPoint/HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

The Response was filed by a new law firm—Wick Phillips Gould & Martin, LLP ("Wick Phillips") – not the law firm of Bonds Ellis, which had handled the filing of the Proof of Claim. In the course of discovery, Highland became aware that Wick Phillips had jointly represented NexPoint/HCRE and Highland in connection with at least some of the underlying transactions that were the subject of the Proof of Claim, and, on April 14, 2021, more than a year after NexPoint/HCRE filed its Proof of Claim, Highland moved to disqualify Wick Phillips.[36] Notably, Highland's Plan had been confirmed on February 22, 2021, over the objections of Dondero and his related entities (including NexPoint/HCRE).[37] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan.

---

[34] On July 30, 2020, Highland filed an objection to the allowance of the Proof of Claim, contending it had no liability under the Proof of Claim. *See Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims*, Dkt. No. 906.

[35] Response to Objection to Claim, 2-3, ¶¶ 5-6.

[36] Dkt. Nos. 2196-2198. On October 1, 2021, Highland filed a supplemental disqualification motion. Dkt. No. 2893.

[37] NexPoint/HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* on January 5, 2021. Dkt. No. 1673.

Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including Highland's 46.06% membership interest in SE Multifamily.

Meanwhile, NexPoint/HCRE vigorously fought the disqualification of Wick Phillips, filing its opposition to the disqualification motion on May 6, 2021,[38] and initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with the entry by this court on December 10, 2021, of its *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[39] resolving the disqualification motion by, among other things, disqualifying Wick Phillips from representing NexPoint/HCRE in the contested matter concerning the Proof of Claim, but specifically denying Highland's request that NexPoint/HCRE reimburse it all costs and fees incurred in making and prosecuting the disqualification motion.[40]

In the instant Sanctions Motion, Highland acknowledged that the court denied Highland's specific request for sanctions of reimbursement of Highland's costs and fees in making the Disqualification Motion in its December 2021 Disqualification Order.[41] The court notes that the denial was not "with prejudice"[42] to Highland's right to bring a sanctions motion in the future in connection with allegations that NexPoint/HCRE's filing and prosecution of its Proof of Claim, including its vigorous defense of the Disqualification Motion. Notably, while Highland includes

[38] Dkt. Nos. 2278 and 2279.

[39] Dkt. No. 3106.

[40] Disqualification Order, 4.

[41] *See* Sanctions Motion, 4, ¶8.

[42] The Disqualification Order stated, in relevant part, "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**."

a reference in the instant Sanctions Motion to the lengthy and expensive proceedings on the Disqualification Motion in its recitation of evidence in the record that supports Highland's allegations that NexPoint/HCRE engaged in bad faith conduct in the filing and prosecution of its Proof of Claim, it did ***not*** include them as part of the fees and costs for which Highland is seeking to be reimbursed by NexPoint/HCRE as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.[43]

In any event, following the disqualification of Wick Phillips, NexPoint/HCRE hired yet a third law firm, Hoge & Gameros, LLP, in connection with this matter, and the parties engaged in a second round of extensive discovery, which included the exchange of written discovery and document production and the service of various deposition notices and subpoenas. On August 12, 2022, just two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of NexPoint/HCRE's witnesses, Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[44] By this point, Highland had spent hundreds of thousands of dollars objecting to the Proof of Claim.

Query why might NexPoint/HCRE have done this? Just six months earlier, Dondero's family trust, The Dugaboy Investment Trust, had represented to the bankruptcy court that

[43] *See* Morris Declaration, 3-4, at ¶11 (Referencing the court's denial in its Disqualification Order of Highland's previous request for attorneys' fees incurred in connection with the Disqualification Motion, Morris stated "[W]e reviewed the PSZJ Invoices and redacted all entries relating to the Disqualification Motion; thus, for the avoidance of doubt, Highland does not seek any fee award with respect to any work done in connection with the Disqualification Motion.").

[44] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

Highland's 46.06% interest in SE Multifamily was worth $20 million,[45] and now, NexPoint/HCRE (which presumably also spent substantial sums prosecuting its Proof of Claim during the nearly two and a half years of litigation) appeared willing to walk away from its multi-million dollar challenge to Highland's 46.06% interest in SE Multifamily. Highland objected to NexPoint/HCRE's Motion to Withdraw, and the court held a hearing on September 12, 2022 (as required by Bankruptcy Rule 3006), following which the court entered an order denying NexPoint/HCRE's Motion to Withdraw, for the reasons set forth on the record,[46] and directing the parties to "confer in good faith to complete the depositions" of Dondero, McGraner, and NexPoint/HCRE and otherwise comply with the scheduling order that had been entered by the court on this matter, which included appearing for an evidentiary hearing on November 1, 2022.[47] The court denied NexPoint/HCRE's Motion to Withdraw, in part, because it was concerned that the timing of it all–just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE (*i.e.,* NexPoint/HCRE prosecuted its Proof of Claim for two and a half years, through and including the taking of depositions of Highland's witness, while shielding its own witnesses from testifying). The court was also concerned by NexPoint/HCRE's repeated attempts to preserve its claims against Highland for use against Highland in the future. In fact, the court entered its order denying NexPoint/HCRE's Motion to Withdraw only after: (1) NexPoint/HCRE refused to agree, at the

[45] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. As pointed out by Highland in its Response, "[t]here is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily." Response, 9, at ¶27 n. 4.

[46] The court noted in its order denying HCRE's Motion to Withdraw that, under the Bankruptcy Rules, a creditor does not have an absolute right to withdraw a proof of claim.

[47] Dkt. No. 3525.

September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily, and (2) counsel were thereafter unable, in the day or two after the hearing, to work out mutually acceptable language in an agreed order that protected both parties.[48] As noted in its order denying NexPoint/HCRE's Motion to Withdraw, the court had expressed concerns, during the hearing on the Motion to Withdraw, relating to the integrity of the bankruptcy system and claims process if it allowed NexPoint/HCRE to withdraw its Proof of Claim after two and a half years of litigation, and having caused Highland to spend hundreds of thousands of dollars litigating the Proof of Claim, while at the same time allowing NexPoint/HCRE to preserve its challenges to Highland's ownership interest in SE Multifamily to be used against Highland in the future. The court did not, at the time, make any express findings regarding NexPoint/HCRE's bad faith or abuse of the judicial process, only because Highland's mid-hearing Oral Sanctions Motion had not provided NexPoint/HCRE with adequate notice and an opportunity to respond.[49] With the instant Sanctions Motion, those due process concerns have been satisfied.

Having considered the evidence and argument of counsel at both the Trial on NexPoint/HCRE's Proof of Claim and the hearing on the Sanctions Motion, and the pleadings filed in connection with the Sanctions Motion, including NexPoint/HCRE's written Response, and based on the record as a whole, the court expressly finds and concludes that NexPoint/HCRE's

[48] At the end of the September 12 hearing, the court had expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw, Dkt. No. 3519, 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at docket number 3525, denying NexPoint/HCRE's Motion to Withdraw.

[49] As noted below, NexPoint/HCRE persisted to the end in arguing that the disallowance of its Proof of Claim could not bar NexPoint/HCRE from making future challenges to Highland's 46.06% membership interest in SE Multifamily.

litigation strategy and actions in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process on the part of NexPoint/HCRE.

3. NexPoint/HCRE's Admissions at Trial Are Further Evidence of its Bad Faith Filing and Willful Abuse of the Judicial Process

Following the denial of NexPoint/HCRE's Motion to Withdraw, the parties complied with the court's order to schedule the depositions of Dondero and McGraner at mutually agreeable times to complete discovery and then appeared at Trial on November 1, 2022. At the conclusion of the Trial, NexPoint/HCRE doubled-down on its request of the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[50] This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request. Nevertheless, NexPoint/HCRE continued to the end to try to limit any order disallowing its Proof of Claim so as to preserve its right to assert the very claims asserted in its Proof of Claim (for rescission, reformation and/or modification of the SE Multifamily Amended LLC Agreement to reallocate the membership percentages) for use in the future.[51]

The Trial testimony of Dondero and McGraner revealed that NexPoint/HCRE had no factual basis to claim that a mistake was made by any of the parties, much less a mutual mistake

[50] Trial Tr. 179:23-25; 180:8-9.

[51] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

of the parties, regarding the allocation of ownership percentages in SE Multifamily in corporate documentation,[52] and, in fact, "the evidence overwhelmingly point[ed] to the conclusion that both Mr. Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement."[53] The court specifically noted in the Proof of Claim Disallowance Order that Dondero admitted that he had not read or reviewed the Amended LLC Agreement or any drafts of it before he signed it—apparently the Amended LLC Agreement was one of those important, high-risk documents that Dondero was too busy to read or investigate before signing (like the Proof of Claim)—but he nevertheless testified that "the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland."[54] NexPoint/HCRE was also unable to produce any evidence at Trial to support its factual allegation that there was a "lack of consideration" or a "failure of consideration" with respect to the Amended LLC Agreement, such that NexPoint/HCRE would be entitled to a

[52] The court concluded, specifically, that

> HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor NexPoint/HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement.

Proof of Claim Disallowance Order, 30.

[53] *Id.*, 30-31.

[54] *Id.*, 31 n. 119.

reformation,[55] rescission,[56] or modification of it, to re-allocate the ownership percentages that the parties agreed to at the time of the execution of it.[57]

In fact, McGraner ultimately admitted in his Trial testimony that the only reason NexPoint/HCRE had for filing its Proof of Claim, which challenged Highland's title to its 46.06% membership interest in SE Multifamily, was, essentially, ***that NexPoint/HCRE was frustrated with the consequences of Dondero's decision in 2019 to seek bankruptcy protection for Highland (notably, the bankruptcy case was filed just a few months after the Amended LLC Agreement was executed), which resulted in Dondero losing control over Highland***, such that, as far as NexPoint/HCRE was concerned, its "partner" [in SE Multifamily] was no longer its "partner." The court noted in the Proof of Claim Disallowance Order that McGraner

> could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are –

---

[55] After noting that "neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what NexPoint/HCRE is seeking in its Proof of Claim)," the court concluded that "HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration." Proof of Claim Disallowance Order, 32 n. 120.

[56] The court noted in the Proof of Claim Disallowance Order that NexPoint/HCRE had not actually stated a claim for rescission of the Amended LLC Agreement with respect to its Proof of Claim, but that, if it had,

> Mr. Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.

Proof of Claim Disallowance Order, 33-34.

[57] *See* Proof of Claim Disallowance Order, 32-33 n. 120 (where the court found that "HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. . . . Under Delaware law, the courts 'limit [their] inquiry into consideration to its existence and not whether it is fair or adequate,' . . . . '[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain.' (citations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.").

> that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[58]

McGraner testified that "despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite 'all of the fears [he] had [related to Highland's bankruptcy filing],' HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because 'we didn't think it would be worth it')[ ][59] [and] 'because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves.'"[60] This is not a good-faith basis for filing and prosecuting the Proof of Claim, and it exhibits a willful abuse of the bankruptcy claims process by NexPoint/HCRE.

In summary, the admissions by Dondero and McGraner in their Trial testimony made clear that NexPoint/HCRE never had a factual or legal basis for the Proof of Claim. NexPoint/HCRE's principals knew, at the time of filing and through its prosecution of the Proof of Claim, that there was no factual basis for its claim of rescission, reformation, and/or modification of the Amended LLC Agreement to dispossess Highland of some or all of its 46.06% membership interest in SE Multifamily. This clearly and convincingly constitutes bad faith by NexPoint/HCRE and a willful abuse of the judicial process.

C. Reimbursement of Attorneys' Fees and Costs Incurred by Highland in the Proof of Claim Litigation Is an Appropriate Sanction for NexPoint/HCRE's Bad Faith

Having found and concluded by clear and convincing evidence that NexPoint/HCRE filed and prosecuted (and attempted withdrawal of) its Proof of Claim in bad faith and willfully abused the judicial process, this court may use its inherent powers under Bankruptcy Code section 105(a)

---

[58] Proof of Claim Disallowance Order, 27 (citing Trial Tr. 114:24-115:16, 118:6-15).

[59] *Id.* (citing Trial Tr. 121:24-122:9).

[60] *Id.* at 28 (citing Trial Tr. 122:20-125:21).

to sanction it for such conduct. Reimbursement of the opposing party's fees and costs incurred in responding to a bad faith filing or willful abuse of the judicial process has been upheld as an appropriate form of sanctions. *See Cleveland Imaging*, 26 F.4th at 294 (upholding the bankruptcy court's sanction order that required the parties who were found to have filed bankruptcy petitions in bad faith to reimburse the fees incurred by a post-confirmation litigation trust in responding to the bad faith filing); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017) (bankruptcy court did not abuse its discretion in ordering the debtors to "pay $49,432, which represents the amount of attorneys' fees incurred by [the bankruptcy trustee] in responding to certain instances of the [debtors'] bad faith conduct."); *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's use of its inherent powers to issue monetary sanctions for bad faith filing that were, in part, based upon the opposing parties' attorneys' fees and costs "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Paige*, 365 B.R. 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same). Any sanction imposed pursuant to a bankruptcy court's inherent powers for bad faith conduct or willful abuse of the judicial process "must be compensatory rather than punitive in nature." *In re Lopez*, 576 B.R. at 93 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994)). "[A] sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based[,]" and "[a] fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber*, 581 U.S.

at 108 (quoting *Bagwell*, 512 U.S. at 834). The fee award must be "limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith." *Id.* (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. at 104). The "'causal link' between the sanctionable conduct and the opposing party's attorney's fees" must be established "through a 'but-for test:' to wit, the complaining party may only recover the portion of fees that they would not have paid 'but-for' the sanctionable conduct." *Id.* (citing *Goodyear Tire & Rubber*, 581 U.S. at 108-109 (citing *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

Here, as earlier noted, Highland has requested, as a sanction, reimbursement of its attorneys' fees and costs incurred by it in responding to NexPoint/HCRE's filing and prosecution of its Proof of Claim. Specifically, Highland seeks reimbursement of an aggregate amount of **$825,940.55**, consisting of

- **$782,476.50** in attorneys' fees charged by its primary bankruptcy counsel, PSZJ, for the period August 1, 2021 through December 31, 2022, for work performed in connection with the litigation of the Proof of Claim;[61]
- **$16,164.05** in third-party expenses for court reporting services provided in connection with the Proof of Claim litigation;[62] and,

[61] *See* Morris Declaration, 3-4, at ¶¶ 8-13, and Ex. F. As stated in the Morris Declaration, the $782,476.50 amount does not include any fees relating to the Disqualification Motion or any fees that PSZJ concluded were inadvertently coded by a timekeeper to the NexPoint/HCRE Claim Objection category "or that were otherwise unrelated to services rendered in connection with the Proof of Claim litigation." *Id.*, 3-4, at ¶¶ 11 and 12. By way of specific example, Morris stated that "in 2022 and 2023 we charged Highland for services rendered in connection with our unsuccessful attempts to obtain SE Multifamily's books and records but excluded those charges here because they do not directly relate to the litigation of HCRE's Proof of Claim; Highland is seeking those fees in the Delaware Chancery Court where Highland was forced to commence an action against HCRE for specific performance (Case No. 2023-0493-LM))." *Id.*, 4, at ¶ 12.

[62] *See id.*, 4, at ¶ 14, and Ex. G.

- **$27,300.00** in attorneys' fees charged by David Agler for providing Highland with specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim.[63]

NexPoint/HCRE challenges Highland's request for reimbursement of its fees on several bases. ***First***, it argues that it cannot be ordered to reimburse the fees and expenses incurred by Highland ***after*** NexPoint/HCRE attempted to withdraw its Proof of Claim because they do not satisfy the "but for" test for establishing a "causal link" between those fees and costs and NexPoint/HCRE's filing and pursuit of its Proof of Claim—that Highland cannot show that "but for" NexPoint/HCRE's filing and prosecution of its Proof of Claim, Highland would not have incurred those fees and costs. NexPoint/HCRE urges the court to adopt its narrative of the proceedings that "instead of taking a win, [Highland] and its lawyers chose to generate fees to get the same result" and thus Highland's attorneys' efforts were "totally unnecessary" and a "waste of time and resources" that was "the fault of [Highland], not [NexPoint/HCRE]."[64] NexPoint/HCRE states in its Response that "[h]ere, ***it is undisputed*** that, had [Highland] agreed to the withdrawal of the Proof of Claim many months ago – before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim – [Highland] would have been exactly in the same position that it is in now, but at far less expense" and further that "[t]he real, practical difference between refusing to consent to the withdrawal of [NexPoint/HCRE]'s Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees" and, thus, "[t]he Motion abjectly fails any 'but–for' analysis."[65]

---

[63] *See id.*, 4-5, at ¶¶ 15 and 16, and Ex. H. A summary of the aggregate fees and expenses of which Highland is seeking reimbursement in the Sanctions Motion is attached as Exhibit I to the Morris Declaration. *See id.*, 5, at ¶ 17, and Ex. I.

[64] Response, 2.

[65] Response, 20, at ¶60 (emphasis added).

The court disagrees with NexPoint/HCRE's "narrative" and its view of the evidence established at Trial. Highland ***does*** dispute NexPoint/HCRE's contention that, if only it had allowed it to withdraw its Proof of Claim and accepted a "win," that Highland would have been "exactly in the same position that it is in now [after a Trial and ruling on the merits of the Proof of Claim], but at far less expense." The court does as well. As Highland has argued, NexPoint/HCRE's Motion to Withdraw was itself filed in bad faith. Highland was forced to oppose the withdrawal of the Proof of Claim because NexPoint/HCRE would not agree to a withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future.[66] The evidence clearly and convincingly established that any "win" or "victory" that Highland would have obtained through the withdrawal of the Proof of Claim[67]

> would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

The court finds and concludes, as argued by Highland, that there is clear and convincing evidence here that the fees and costs incurred by it, after NexPoint/HCRE sought to withdraw its Proof of Claim (*i.e.,* to prepare for the Trial and prosecute its objection to the Proof of Claim through a trial and ruling on the merits), would not have been incurred "but for" NexPoint/HCRE's bad faith. As pointed out by Highland and as noted above,[68] the court did not enter the Proof of Claim Disallowance Order in December 2022 in a vacuum. Rather, the court denied

[66] *See supra* note 45 and accompanying text.

[67] Response, 5, at ¶18.

[68] *See supra* at pages 16-17.

NexPoint/HCRE's Motion to Withdraw only ***after:*** (1) the court had expressed concerns that the timing and context of its filing of its Motion to Withdraw suggested gamesmanship on its part, and that the integrity of the bankruptcy system and claims process would be in jeopardy if the court were to simply allow withdrawal, without protecting Highland from future challenges to its membership interest in SE Multifamily (particularly, after Highland had spent hundreds of thousands of dollars to that point in objecting to the Proof of Claim); and (2) NexPoint/HCRE refused to agree to language in an order that would alleviate these expressed concerns. The court—having now made an express finding that NexPoint/HCRE's filing of its Motion to Withdraw was in bad faith and part of its willful abuse of the bankruptcy claims process that began with the filing of its Proof of Claim in April 2020—now expressly finds that the fees and costs incurred by Highland after NexPoint/HCRE filed its Motion to Withdraw were necessary for Highland to protect its interests and would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

Second, NexPoint/HCRE objects to Highland's fees ($809,776.50) and expenses ($16,164.05) as being "*per se* excessive for a single proof of claim objection."[69] Highland argues that "[s]pending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries." Per the Morris Declaration, Highland only seeks reimbursement of expenses and fees charged to Highland for expenses incurred and work performed in litigating the Proof of Claim (but—as noted earlier—specifically excluding any fees charged relating to the Disqualification Motion). The court agrees with Highland and finds that the fees and expenses incurred by it in objecting to the Proof of Claim,

[69] Response, 10, ¶34.

including the fees incurred ***after*** NexPoint/HCRE sought to withdraw its Proof of Claim, were reasonable and necessary for Highland to protect a valuable asset—it's 46.06% interest in SE Multifamily—and, thus, they are not excessive.

Third, NexPoint/HCRE complains, in its Response, that the fees charged by PSZJ were unreasonable and excessive because the PSZJ invoices show that it was seeking reimbursement for fees charged by "layers of timekeepers whose identities and roles have not been disclosed."[70] NexPoint/HCRE points out three professionals (two of whom billed one hour or less) who were identified in PSZJ's invoices only by their initials.[71] In its Reply, Highland identified the timekeepers by name—as a litigator who billed one hour of time; a bankruptcy attorney who billed 0.6 hours of time; and a bankruptcy partner who billed 15.1 hours of time—all of whom were "called upon to provide discrete support."[72] Collectively, the three previously "unidentified" attorneys charged just 0.023% of the total fee request.[73] PSZJ's identification of the "unidentified timekeepers" and explanation of the work performed by them satisfies the court that these fees were reasonable and necessary fees incurred as a direct result of NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim. The court rejects NexPoint/HCRE's suggestion that PSZJ overstaffed and overbilled the file because there were "layers of timekeepers." As pointed out in Highland's Reply, "over 82% of the charges related to one litigation partner . . . , one litigation associate . . . , and one paralegal" and "[t]wo other lawyers who have been on the Pachulski team since the inception of this engagement . . . billed relatively modest amounts of time over the course

[70] *Id.*, 13, ¶45.
[71] *Id.*, 12, ¶38.
[72] Reply, 9, ¶28.
[73] *Id.*

of this prolonged litigation."[74] There is simply no factual basis to support a conclusion that the matter was overstaffed.

Fourth, NexPoint/HCRE objects to $9,840 charged by two attorneys for travel time,[75] while acknowledging that those attorneys' non-working travel time was billed at half of the attorneys' regular hourly rate.[76] As pointed out by Highland in its Reply, Highland agreed to pay for travel time in its pre-petition engagement letter, so those "charges cannot come as a surprise to Mr. Dondero."[77] The court takes judicial notice of the fact that attorneys charging half of their hourly rates for non-working travel time, as PSZJ did here, pursuant to its engagement letter with Highland that was approved when the court authorized the retention of PSZJ as counsel for the Debtor, is common practice and is a commonly approved term of engagement of professionals in bankruptcy cases. The $9,840 charged by two attorneys for travel time in this matter was a reasonable and necessary expense incurred by Highland in responding to NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.

Fifth, and finally, NexPoint/HCRE objects to the fees charged by David Agler (39 hours of work performed at $700 per hour) for providing Highland with tax advice in August 2022, on the basis that the invoice attached as Exhibit H to the Morris Declaration "indicated that it was 'unbilled' work" and that "[w]hatever work he did, it did not manifest itself in the proceedings."[78] Highland pointed out that it ***had*** explained, in the Morris Declaration, that Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of

[74] *Id.*, 9, ¶28 n. 5.

[75] Response, 12, ¶37.

[76] *Id.*, 11, ¶36 (Table 1).

[77] Reply, 9-10, ¶29.

[78] Response, 12, ¶42.

Claim."[79] Highland provided a more detailed description of the services provided by Mr. Agler and why those services were necessary in its Reply: "Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits."[80] The court finds that the fees charged by David Agler for work performed for Highland that are set forth in Exhibit H to the Morris Declaration were reasonable and necessary expenses incurred by Highland in responding to HCRE's bad faith conduct and that they would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

The court has determined that the full amount of fees – $809,776.50 – and costs – $16,164.05 – that are set forth in detail in Exhibits F through H (and summarized on Exhibit I) of the Morris Declaration were reasonable and necessary for Highland to respond to, and would not have been incurred "but for," NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim, which the court has found to have been a willful abuse by NexPoit/HCRE of the judicial process. Under Fifth Circuit precedent, it is appropriate for the court, in the use of its inherent power under Bankruptcy Code § 105(a), to order NexPoint/HCRE, as a compensatory sanction for its bad faith conduct and willful abuse of the judicial process, to reimburse Highland the full amount of fees and costs requested by Highland, which, in the aggregate, total $825,940.55. NexPoint/HCRE's objections to such amounts as excessive, unnecessary, unreasonable, or unrelated to NexPoint/HCRE's bad faith conduct, are overruled.

---

[79] Reply, 10, ¶30 (citing Morris Declaration, ¶15).

[80] *See id.* (citing Morris Declaration, Ex. [E] (Trial Transcript) 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence)).

V. CONCLUSION AND ORDER

In summary, the court has determined that NexPoint/HCRE was given adequate notice and an opportunity to respond to the Sanctions Motion and that there is clear and convincing evidence that it filed and prosecuted its Proof of Claim, including its eleventh-hour attempt to withdraw its Proof of Claim, in bad faith and that it willfully abused the judicial process. Such conduct directly caused Highland to incur $825,940.55 in fees and expenses. In the exercise of its inherent power under Bankruptcy Code § 105(a), the court will grant Highland's Sanctions Motion and order NexPoint/HCRE to reimburse Highland for those fees and expenses as an appropriate sanction for NexPoint/HCRE's bad faith or willful abuse of the judicial process.

Accordingly, and based on the foregoing findings of fact and conclusions of law, including those findings and conclusions in this court's Proof of Claim Disallowance Order, which has been incorporated herein by reference,

IT IS ORDERED that the Sanctions Motion [Dkt. No. 3851] be, and hereby is **GRANTED**;

IT IS FURTHER ORDERED that, in order to compensate Highland for loss and expense resulting from NexPoint/HCRE's bad faith and willful abuse of the judicial process, in filing and prosecuting its Proof of Claim, NexPoint/HCRE is hereby directed to pay Highland the compensatory sum of **$825,940.55**.

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

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
bgameros@legaltexas.com
wcarvell@legaltexas.com

Attorneys for NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC)

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-SGJ-11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Movant,	§	
	§	**Contested Matter**
v.	§	
NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC,	§	
Respondent.	§	

MOTION FOR RELIEF FROM ORDER

Pursuant to Federal Rule of Bankruptcy Procedure 9024, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("HCRE") files this Motion for Relief from Order ("Motion"), seeking reconsideration of and relief from the Bankruptcy Court's Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim # 146 ("Order"). Reconsideration of and relief from the Order is warranted for several independent reasons as detailed in HCRE's Memorandum of Law in Support of this Motion for Relief From Order filed simultaneously herewith.

Dated: March 18, 2024

Respectfully Submitted,

REICHMAN JORGENSEN LEHMAN & FELDBERG

/s/ Amy L. Ruhland
Amy L. Ruhland
Texas Bar No. 24043561
aruhland@reichmanjorgensen.com
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102

HOGE & GAMEROS. L.L.P

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
bgameros@legaltexas.com
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
wcarvell@legaltexas.com
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002

Attorneys for NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 18, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

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

In re:	§	
	§	**Chapter 11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	**Case No. 19-34054-SGJ-11**
Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Movant,	§	
	§	**Contested Matter**
v.	§	
NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC,	§	
Respondent.	§	

ORDER GRANTING MOTION FOR RELIEF FROM ORDER

Upon consideration of the Motion for Relief from Order ("Motion") and Memorandum of Law in support thereof filed by NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("HCRE"), seeking reconsideration of and relief from the Bankruptcy Court's Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding

and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim # 146 ("Order"),

IT IS ORDERED the Motion [Dkt. ____] be, and hereby is **GRANTED**.

End of Order # #

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Attorneys for NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC)

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case N. 19-34054 (SGJ)
Debtor.	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF FROM ORDER

I. INTRODUCTION

Pursuant to Federal Rule of Bankruptcy Procedure 9024, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("HCRE") files its Motion for Relief from Order ("Motion") to seek reconsideration of and relief from the Bankruptcy Court's Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim # 146 ("Order"). Reconsideration of and relief from the Order is warranted for several independent reasons.

First, one of the core premises of the Court's Order is contrary to the testimony of record. Specifically, the Court concluded that HCRE was acting in "bad faith" in part because it was "unwilling to withdraw the Proof of Claim with prejudice to asserting its claims again in any future litigation in any forum." Order at 2, 27. This is not true. To the contrary, two lawyers for HCRE and James Dondero himself repeatedly represented on the record that HCRE was willing to withdraw its Proof of Claim ("POC") *with prejudice* and to waive any right to appeal. And true to their word, HCRE did not file an appeal of the Court's order disallowing the POC. *Id.* at 5.

Second, because the Court's finding of bad faith is based on an erroneous premise of fact (HCRE's supposed refusal to withdraw the POC with prejudice), the Court's conclusion—that "but for" HCRE's refusal to withdraw the POC, Highland would not have incurred additional attorneys' fees and costs continuing to fight it—is wrong and should be corrected.

Finally, there are other problems with the Court's Order as well. For example, the Court purports to take judicial notice of "information" unrelated to HCRE contained in the legal argument section of a brief filed by Highland in another case. *See id.* at 5 n.8. This is improper for several reasons, including because the Court did not give HCRE an opportunity to be heard on

the information about which the Court took judicial notice and because the "information" is unsubstantiated legal argument. The Court also bases its finding that HCRE acted in bad faith in part on the action of its former counsel, Wick Phillips Gould & Martin, LLP ("Wick Phillips"), in contesting a motion filed by Highland seeking to disqualify Wick Phillips from its representation of HCRE. But the Court previously denied Highland its fees in connection with this fight, and not even Highland sought a "bad faith" finding or attorneys' fees on this basis. In any event, the law is clear that a finding of "bad faith" cannot be premised on a party's taking a reasonable but ultimately unsuccessful position in court.

The Court should revisit its finding of "bad faith" in light of the actual testimony of record, correct the mistakes in its Order, eliminate or reduce the fee award consistent with those corrections, and issue an amended order in its place. HCRE's Motion should be granted.

II. BACKGROUND

A. HCRE Files a Single Proof of Claim, and Highland Objects

With the assistance of outside counsel, HCRE filed its proof of claim (Claim #146) on April 8, 2020. Order at 2 & n. 3. Both Mr. Dondero, HCRE's sole manager, and Matt McGraner, HCRE's vice president, testified that outside counsel (Bonds Ellis Eppich Shafer Jones, LLP ("Bonds Ellis"), led by former bankruptcy judge Mike Lynn) prepared the POC, including Exhibit A describing the POC, and that HCRE relied on counsel's advice that filing the POC was necessary to protect HCRE's interests. *See* Nov. 1, 2022 Hr'g Tr., Ex. A, at 54:24-55:25, 59:11-60:5, 62:9-15, 74:23-75:8, 109:10-110:6. Highland never sought to depose Bonds Ellis about the investigation it performed before filing the POC, nor did Highland seek to elicit the testimony of D.C. Sauter, the in-house counsel responsible for communicating with Bonds Ellis about the POC.[1]

[1] It defies belief that former Judge Lynn would have agreed to file a POC without performing a proper investigation.

Highland objected to HCRE's POC on July 30, 2020. It did not do so in isolation but instead filed a First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims ("Omnibus Objection"). Dkt. 906. In its Omnibus Objection, Highland explained that it had identified 63 proofs of claim that were "no liability claims" because the claimed liability was not reflected in Highland's books and records. *Id.* at ¶ 22. HCRE's POC was among those 63 claims, which also included a multitude of other claims filed by individuals and entities, including various "unliquidated" claims asserted by the HarbourVest entities and even a claim for $500,000 asserted by Highland's attorney, John Morris. *See id.* at Schedule 6. Notably, although many of the "no liability claims" identified by Highland were either unliquidated, not specified, or later withdrawn, HCRE is the only party that Highland has accused of acting in "bad faith" for filing its POC.

In the meantime, HCRE hired new outside bankruptcy counsel, Wick Phillips, to pursue the POC. On October 19, 2020, Wick Phillips filed a Response to Debtor's Omnibus Objection ("Response") which further explained the basis for the POC. Dkt. 1212. Specifically, Wick Phillips explained:

> After reviewing what documentation is available to HCRE[] with the Debtor, HCRE[] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, HCRE[] has a claim to reform, rescind and/or modify the agreement.

Id. at ¶ 5. Wick Phillips also clarified that HCRE required "additional discovery . . . to determine what happened in connection with the memorialization of the parties' agreement and improper

In any event, it was impossible after Judge Lynn's death for anyone (including Messrs. Dondero and McGraner) to question him about that investigation.

distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement." *Id.* at ¶ 6. Nobody has suggested that Wick Phillips filed the Response in bad faith or violated its duties under Federal Rule of Bankruptcy Procedure 9011 by failing to perform a proper investigation or otherwise before filing the Response.

B. Highland Belatedly Moves to Disqualify Wick Phillips

After Wick Phillips filed its Response, the Court entered the parties' stipulated scheduling order in the contested matter on December 14, 2020. Dkt. 1568. Thereafter, the parties exchanged written discovery and served deposition notices. But Highland subsequently adjourned the scheduled depositions. Claiming to have discovered that Wick Phillips represented Highland in one or more transactions underlying the POC, on April 14, 2021, Highland filed a motion to disqualify Wick Phillips. *See* Dkt. 2197 at ¶ 4.

The Court suggests that HCRE "initiated a more than six-month period of expensive discovery and side litigation" in opposing Highland's motion to disqualify. *See* Order at 16. But that fight was "initiated" by Highland, not HCRE, well more than a year after Wick Phillips initially appeared in the case on behalf of HCRE. *Id.* At that point, it made little sense for HCRE to dispense with its chosen counsel well into the process of prosecuting the POC especially if, as Wick Phillips reasonably believed, the conflict was not one requiring its disqualification. Indeed, Texas ethics expert Ben Selman testified that the alleged conflict did not require the firm's disqualification. *See* Deposition of Ben Selman dated Sept. 17, 2021, Ex. B, at 57:7-59:17. Nor has anyone (including this Court) ever suggested that Wick Phillips took an unethical or sanctionable position in opposing Highland's disqualification motion. After all, had anyone believed as much, they could have sought or threatened sanctions against Wick Phillips under Federal Rule of Bankruptcy Procedure 9011, as Highland has threatened to do on several occasions

during these bankruptcy proceedings. It is unclear how Wick Phillips' defense of its representation could be in "bad faith" under these circumstances. Yet that is what the Court concluded in fashioning its "bad faith" finding. *See* Order at 20.

In any event, on May 24, 2021, the Court—at the urging of both parties—entered a scheduling order permitting limited discovery into the circumstances of Wick Phillips' prior representation of Highland and requiring the parties to file additional briefing following discovery. Dkt. 2361.[2] At the end of that process, on December 10, 2021, the Court ultimately entered an order granting in part and denying in part Highland's motion for disqualification. Dkt. 3106 at 3-4. Notably, the Court denied Highland's request for reimbursement of its costs and attorneys' fees incurred in connection with the motion for disqualification, *see id.* at ¶ 6, and Highland did not renew that request for fees as part of its "bad faith" motion.

C. HCRE Retains New Counsel and the Parties Engage in Discovery

After the disqualification of Wick Phillips, HCRE retained the law firm of Hoge & Gameros, L.L.P. to pursue the POC, and on June 9, 2022, the Court entered a new, agreed scheduling order in the matter. *See* Dkt. 3356. The scheduling order was subsequently twice amended by agreement of the parties, first on June 17, 2022, and again on August 9, 2022. Dkt. 3368, Dkt. 3438. The schedule entered on June 17 contemplated that the parties would complete fact discovery by August 1, 2022, expert discovery by August 19, 2022, and attend a two-day evidentiary hearing on November 1 and 2, 2022. *See* Dkt. 3368. However, after HCRE timely disclosed its expert on August 5, 2022, Highland indicated that it would seek to strike that expert, so the parties agreed to amend the scheduling order to allow the parties to brief, and the Court to hear, Highland's expected motion to strike. *See* Dkt. 3438. The remainder of the schedule was

[2] The Court subsequently amended the agreed scheduling order on August 23, 2021. Dkt. 2757.

pushed back to accommodate that motion. The amended schedule contemplated that briefing on the motion to strike would be complete on September 9, 2022 (*see* Dkt. 3438 at ¶ 1); that Highland would file a motion for summary judgment within 14 days of any order granting the motion to strike (*id.* at ¶ 2); that Highland would file a rebuttal expert report within 21 days of any order denying the motion to strike and also make its expert available for deposition thereafter (*id.* at ¶ 3); and that the parties would confer as necessary on a new date for the evidentiary hearing (*id.*). In addition, when the Court entered its last amended scheduling order in the matter, two fact depositions remained to be taken—a deposition of James Dondero, and a deposition of Matt McGraner, both in his individual capacity and as a 30(b)(6) witness for HCRE. *See* Dkts. 3415, 3416, 3418.

In other words, much remained to be done in the case, by both parties, and the case was still months away from any evidentiary hearing.

D. HCRE Files Its Motion to Withdraw the POC, Highland Objects, and the Court Denies the Motion

Three days after the Court entered an order amending the scheduling order to accommodate a briefing schedule on Highland's contemplated motion to strike, on August 12, 2022, HCRE filed its Motion to Withdraw Proof of Claim ("Motion to Withdraw"). HCRE did so after consultation with its outside counsel, and "in consideration of the cost and uncertainty of continuing to pursue the Claim in the face of Debtor's objection." *See* Dkt. 3443 at 2. Again, the tasks to be completed and the costs still to be incurred included fact and expert depositions, motion practice (including a motion to strike and a motion for summary judgment), potential rebuttal expert discovery, preparations for an evidentiary hearing, and a two-day evidentiary hearing. *See* Dkts. 3368, 3438. Thus, the Court's statement that the Motion to Withdraw was filed "just prior to a trial on the merits" is simply wrong. *See* Order at 3.

Highland opposed the Motion to Withdraw, arguing among other things that HCRE's "true intent" in filing the Motion was to "avoid[] depositions now, leav[e] the specter of future litigation hanging over Highland's head, and preserv[e] the ability to re-file its claim later." *See* Dkt. 3487 at ¶ 67.[3] The Court held a hearing on HCRE's Motion to Withdraw on September 12, 2022. Dkt. 3511.

The Court repeatedly cites as evidence of HCRE's "bad faith"—and Highland's entitlement to attorneys' fees—HCRE's "gamesmanship" in refusing to withdraw its POC with prejudice and instead trying preserve its right to fight Highland's ownership in SE Multifamily Holdings, LLC ("SE Multifamily") for another day. *See* Order at 3, 18, 27. But the record demonstrates that no such gamesmanship occurred.

In fact, two lawyers for HCRE and HCRE's sole manager, Mr. Dondero, all represented on the record to the Court that HCRE was willing to withdraw its POC *with prejudice* and to refrain from challenging Highland's interest in SE Multifamily. At the hearing on HCRE's Motion to Withdraw Proof of Claim, the following exchanges occurred:

> The Court: . . . .Would you agree to a condition on the withdrawal of your proof of claim that your client agrees that Highland has a 46-point whatever it was percent interest in SE Multifamily Holdings and your client waives any right in the future to challenge that interest?
>
> Mr. Gameros[4]: Your Honor, if that's what the Court wants to put in an order and I have a chance to confer with my client on it,

[3] Highland also argued that HCRE's "concerns about costs" were "not credible," since "all that remains is a few depositions and a short trial." Dkt. 3487 at ¶ 65. But as we know from the scheduling orders entered in the case, that was not "all that remain[ed]." *See* Dkts. 3368, 3438. Indeed, in the same breath that Highland claimed there was almost nothing left to do, Highland made clear its intention to file a summary judgment motion, which alone would have caused both parties to incur substantial additional cost. *See* Dkt. 3487 at ¶ 1.

[4] Mr. Gameros, as counsel for HCRE and as an attorney licensed in the state of Texas and admitted to practice in the Bankruptcy Court for the Northern District of Texas, was an officer of the Court with authority to bind HCRE. Indeed, the Supreme Court of the United States has recognized this principle for more than a century. *See Ex Parte Garland*, 731 U.S. 333 (1866) ("Attorneys and counselors are not officers of the United States; they are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character.").

> I'm pretty sure that would be agreeable.
>
> The Court: Today's the day. I'm not going to continue.
>
> Mr. Gameros: Your Honor, we'd agree with that.
>
> Mr. Morris: Your Honor, I'm sorry to interrupt, but waiver of any appeal too. . . .
>
> And what the debtor needs in order to avoid legal prejudice is the complete elimination of any uncertainty that it owns 46.06 percent of SE Multifamily. . . .
>
> Mr. Gameros: Your Honor, we'll agree to it.
>
> The Court: Well, you know what, this is such a big deal I really need a client representative to say that. . . .

September 12, 2022 Hearing Transcript ("Sept. Hr'g Tr."), Ex. C, at 33:23-34:5. At that point, the Court took at recess so that HCRE's counsel could get a client representative on the phone to make the same representation Mr. Gameros had just made:

> Mr. Gameros: Your Honor wanted me to get a representative of NexPoint Real Estate Partners to state that they agree that the estate has its 46 percent interest in the company agreement subject to the company agreement. And I've got Mr. Sauter here who has authority to speak on behalf of NexPoint Real Estate Partners.
>
> The Court: All right. Well so what is his position with HCRE?
>
> Mr. Sauter: Your Honor, I don't have – this is D.C. Sauter. I don't have an official position with HCRE, but I have spoken with Mr. Dondero and he has authorized me to appear here today and agree to the conditions that Mr. Gameros just outlined.

Id. at 35:16-36:3. Still this was not sufficient for the Court, which characterized Mr. Sauter's representation on the record in open court as "hearsay." *Id.* at 36:4-8.[5] Although counsel for

[5] As Mr. Gameros pointed out in response to the Court's comment, Mr. Sauter (who also is an attorney licensed in the state of Texas representing HCRE) was also an officer of the Court with authority to bind HCRE. Sept. Hr'g Tr. at 36:12-23.

HCRE disagreed with the Court's characterization, to further assuage the Court's concern, he then elicited the following testimony from Mr. Dondero:

DIRECT EXAMINATION

By Mr. Gameros:

Q Mr. Dondero, on behalf of HCRE, do you agree as a condition for withdrawing the proof of claim that HCRE will not challenge the estate's ownership or equity interest in SE Multifamily subject to the company agreement?

A Yes.

Q Do you agree that you will not appeal and that, therefore, HCRE is waiving any appeal right to that determination as a condition of withdrawing the proof of claim?

A Yes.

Id. at 40:8-17.

By Mr. Gameros:

Q Mr. Dondero, you desire to withdraw the proof of claim. Correct?

A Yes.

Q ***And you agree to an order denying the proof of claim with prejudice. Correct?***

A ***Yes.***

Q ***And you agree that HCRE will not challenge the equity interest of its member in SE Multifamily?***

A ***Yes.***

Id. at 43:23-44:6 (emphases added). In short, there can be no doubt from this record that:

- HCRE was willing to withdraw its claim *with prejudice*;
- HCRE agreed to waive any right to appeal any order relating to its POC (to the extent that is even a legally permissible concession to extract from a party); and

- HCRE agreed not to challenge the equity interest of Highland in SE Multifamily.[6]

Nonetheless, the Court refused to accept these concessions. The Court's refusal stemmed from Mr. Dondero's testimony that Highland's interest in SE Multifamily was "subject to" the company agreement—i.e., the LLC agreement governing that entity. But of course that statement is true: every member of SE Multifamily is bound by the company's LLC agreement, which sets forth their rights and obligations vis-à-vis the company.[7] Mr. Dondero's only point was that the LLC agreement could in the future be amended to reflect different ownership percentages, which often happens as a result of capital calls, new investment dollars, and the like. *Id*. at 43:2-13. To be clear, what Highland and the Court were demanding was a concession that, even if SE Multifamily later made a capital call that was funded by other members but not by Highland, Highland's ownership percentage would not change. Nothing in law or equity requires a party to agree to such a restriction.

In short, the Court's repeated conclusion that HCRE refused to withdraw its POC with prejudice (and attempted to preserve its fight for another day) is wrong.

E. The Court Denies HCRE's Motion to Withdraw and Forces HCRE to Defend Itself in an Evidentiary Hearing

Two days after the September 12, 2022 hearing, the Court issued an order denying HCRE's Motion to Withdraw "for the reasons set forth on the record." Order at 18; *see also* Dkt. 3518. Subsequently, Highland took remaining fact depositions, and the parties prepared for and attended

[6] Mr. Gameros further expressly represented that HCRE would agree "not to challenge [Highland's interest] on the basis of anything asserted in the proof of claim, that being mistake, lack of consideration, or failure of consideration. Their 46 percent is their ownership interest in SE Multifamily and HCRE won't challenge that." Sept. Hr'g Tr. at 42:13-19.

[7] Even Highland's lawyer, John Morris, agreed—as he must—that Highland's "rights and obligations as a member of SE Multifamily are subject to the [LLC] agreement." Sept. Hr'g Tr. at 41:10-14. Mr. Morris argued, however, that Highland's "ownership interest" in SE Multifamily somehow exists independently of the LLC agreement. *Id.* This makes no sense and is contrary to arguments made by Mr. Morris at the evidentiary hearing on HCRE's POC. *See id.* at 16:24-17:10.

the evidentiary hearing ordered by the Court. The Court criticizes HCRE's counsel for arguing at the close of that hearing that the Court should "grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]." Order at 20. It is unclear what else HCRE's counsel was supposed to do in a circumstance where it was being forced to defend HCRE's position in an evidentiary hearing it did not want and sought to avoid by withdrawing its POC months earlier. In that very unusual procedural posture, counsel did the only logical and ethical thing he could do—he zealously defended his client's position. The Court's criticism is misplaced.

F. The Court Disallows HCRE's POC, and Highland Files its Bad Faith Motion

The Court entered an order disallowing HCRE's POC on April 28, 2023. On June 16, 2023, Highland filed the Bad Faith Motion. *See generally* Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim # 146 ("Bad Faith Motion"), Dkt. 3851. The Bad Faith Motion contained only two pages of legal argument. The first argument was titled "HCRE's Proof of Claim Was Filed in Bad Faith," and posits that Mr. Dondero conducted no diligence and had no basis to believe that the POC was truthful. *See id.* at ¶ 21. The only other legal argument made in Highland's Bad Faith Motion concerned its entitlement to a sanction in the form of recoupment of its attorneys' fees and expenses, citing as evidence various invoices and summaries of fees and expenses incurred. *Id.*, ¶ 24-26.

Notably, the Bad Faith Motion contained a single paragraph regarding Wick Phillips, which merely recounted that Wick Phillips represented HCRE until it was disqualified in

December 2021. *Id.* at ¶ 8. Highland did not argue that the Wick Phillips fight constituted bad faith on HCRE's part.[8]

On December 22, 2023, HCRE filed its Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees ("Opposition Brief"). Dkt. 3995. In its Opposition Brief, HCRE responded directly to Highland's two legal arguments, explaining why HCRE had a good faith basis to file the POC and contending that the fees sought by Highland are excessive. *Id.* at ¶¶ 50-63.

On January 19, 2024, Highland filed its Reply Brief. Dkt. 4018. The Reply Brief was 15 pages long (four pages longer than Highland's Bad Faith Motion) and contained new arguments that could not fairly be characterized as responsive to HCRE's Opposition Brief. For example, Highland argued for the first time in its Reply Brief that HCRE and its principals acted in bad faith by opposing Highland's motion to disqualify Wick Phillips and asks the Court to "find that HCRE's opposition to Highland's Disqualification Motion was made in bad faith." Reply Brief, Dkt. 4018, at ¶¶ 2, 12-14. In support of this new argument, Highland cited the Court to seven pages of "Exhibit 5." That citation does not correlate to any exhibits of record, much less to a citation from Highland's Bad Faith Motion.[9] And because this argument did not feature at all in Highland's Bad Faith Motion, HCRE had no reason to address or oppose it.

In addition, Highland argued for the first time in its Reply Brief that HCRE did not just *file* its POC in bad faith, it *tried to preserve the substance of its claim* in bad faith. Bad Faith Motion, Dkt. 4018, at ¶¶ 18-20. As explained extensively above, the parties sharply disagree about whether

[8] As a result, HCRE did not address the Wick Phillips disqualification issue in its opposition brief.

[9] HCRE assumes that Highland intended to cite to Exhibit E, which appears as docket entry 3852-5, but again the page citations appear nowhere in the Bad Faith Motion (nor could Highland's mere attachment of a 203-page transcript have alerted HCRE that Highland intended to rely on the newly cited testimony).

HCRE and its counsel adequately represented on the record before the Court that HCRE sought to withdraw its POC with prejudice and to forego any right of appeal. But regardless, this new legal argument was absent from Highland's Bad Faith Motion, and so again, HCRE had no notice that Highland's request for sanctions was also premised on HCRE's actions taken through the closing argument at the evidentiary hearing on HCRE's POC.

Because Highland's Reply Brief raised new arguments, HCRE told Highland it intended to file a motion to strike or for surreply. Ultimately, Highland agreed to file an amended brief striking the Wick Phillips argument but would not agree to strike the other new arguments raised in its Reply Brief. *See* Amended Reply, Dkt. 4023, at ¶¶ 11-14.

Nonetheless, the Court's Order adopted *all* of Highland's new arguments, including its stricken argument relating to Wick Phillips. Not only did the Court conclude that actions taken by HCRE (with the advice of counsel) throughout the contested matter on HCRE's POC constituted "bad faith" by HCRE, but the Court also concluded that HCRE acted in "bad faith" by contesting Highland's motion to disqualify Wick Phillips. *See* Order at 19-20, 23, 31.

III. THE BANKRUPTCY COURT SHOULD GRANT THIS MOTION

Pursuant to Federal Rule of Bankruptcy Procedure 9024 (which incorporates by reference Federal Rule of Civil Procedure 60), the Court may relieve a party from an order on one of several grounds, including because the Court made a "mistake" or for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (6). As explained above, the Court's conclusion that HCRE refused to withdraw its POC with prejudice was mistaken, rendering its Order erroneous in critical ways. In addition, relief from the Court's order is warranted because the Court reached other conclusions that are either based on a mistaken premise or were inappropriate and unjust under the circumstances of this case. HCRE's Motion should be granted and a new order issued.

A. The Court's Conclusion that HCRE Refused to Withdraw its POC With Prejudice Is Mistaken

In its Order, the Court repeatedly cites HCRE's supposed refusal to withdraw its POC with prejudice as a basis for the Court's finding of "bad faith." *See* Order at 3 (explaining that the Court would not allow HCRE to withdraw its POC because HCRE "was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum") (emphasis in original); *id.* at 18-19 (citing HCRE's "repeated attempts to preserve it claims against Highland for use against Highland in the future," as evidenced by HCRE's supposed "refus[al] to agree, at the September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily"). But as the actual testimony at the September 12, 2022 hearing demonstrates, HCRE repeatedly attempted to withdraw its POC *with prejudice*, agreed *not to challenge* the equity interest of Highland in SE Multifamily, and even agreed to *waive* any right to appeal of an order denying its POC. *See supra* at Section II.D, pp. 7-9. The truth is, the Court and Highland simply refused to accept these concessions.

Instead, the Court and Highland insisted that HCRE and its counsel stipulate to something that was improper and made no sense: that Highland would *always* have a 46.06% interest in SE Multifamily, regardless of what happens in the future, and regardless of what the SE Multifamily LLC agreement might someday say. That is something HCRE had no obligation to agree to, because HCRE has no way to predict what might happen to SE Multifamily in the future, whether new investments in the company might someday be made or be required, and how those investments could change the relative ownership interests in the company. In short, the Court and Highland set up a straw man to ensure that HCRE would not be able to withdraw its POC.

The Court's Order should be corrected. HCRE *did* seek to withdraw its claim with prejudice. It *did* agree not to assert any of the bases for its POC in the future or to challenge Highland's ownership interest in SE Multifamily. And it agreed not to appeal any order disallowing the POC, a promise that HCRE ultimately fulfilled. The Court's order concluding otherwise is wrong, and a new Order should issue on this basis alone.

B. The Court's Conclusion that "But For" HCRE's Conduct, Highland Would Not Have Incurred Additional Attorneys' Fees, Is Based on a Mistaken Premise

The Court also premised its award of attorneys' fees and costs on the erroneous conclusion that HCRE "would not agree to [the POC's] withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future." Order at 27. Specifically, the Court concluded that the fees and costs Highland incurred to continue fighting the POC after HCRE's attempted withdrawal would not have been incurred "but for" HCRE's bad faith attempted withdrawal. *Id.*[10] But again, the Court's finding that HCRE refused to withdraw its POC "with prejudice" is mistaken. HCRE most certainly tried to and desired to withdraw its claim with prejudice, as both its counsel and its sole manager testified. *See supra*, Section II.D, at pp. 7-9.

To bolster its "but for" conclusion on attorneys' fees post-dating HCRE's motion to withdraw, the Court also surmised that Highland is somehow in a different position today than it would have been had it simply "accepted a 'win'" and agreed to the withdrawal of HCRE's POC in September 2022. The Court does not explain what is different, except to default to its erroneous refrain that HCRE refused to withdraw its POC with prejudice. Order at 27.

[10] Notably, approximately $375,000 of the total $809,000 in fees incurred by Highland were incurred *after* the Court denied HCRE's motion to withdraw the POC. Dkt. 3852-5 and Dkt. 3995 at ¶ 43.

The record belies the Court's conclusion. Indeed, not even the Court's Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 ("Order Denying POC") goes as far as the Court insisted that HCRE needed to go to avoid a full evidentiary hearing on the POC. Specifically, the Court's Order Denying POC *does not* hold that Highland will retain a 46.06% interest in SE Multifamily in perpetuity (which the Court must realize it does not have the power to order). To the contrary, the Court in its Order Denying POC *acknowledged* that, "under section 2.1 of the Amended LLC Agreement, Members may make future capital contributions to SE Multifamily . . . ." Order Denying POC, Dkt. 3767, at 36. And that is precisely why Mr. Dondero testified in September 2022 that he could not agree that Highland would hold a fixed 46.06% interest in SE Multifamily in perpetuity; it stands to reason that future capital contributions by Highland or others could change that percentage. The Court's Order Denying POC also does not purport to prevent HCRE from contesting Highland's interest in SE Multifamily in the future (for reasons other than those rejected by the Court). And for all the Court's (and Highland's) insistence about the importance of HCRE's withdrawal of its POC "with prejudice," the Court's own order does not disallow the claim "with prejudice." Instead, the actual Order merely states that Highland's objection to the POC is sustained and that the claim is disallowed "for all purposes." Order Denying POC at 39. In other words, the parties *are indeed in the exact same position* as they would have been had Highland just "taken the win" when HCRE sought to withdraw its POC over 17 months ago.

Under these circumstances, the Court's conclusion that "but for" HCRE's refusal to withdraw the POC with prejudice, Highland would not have incurred an additional $375,000 in attorneys' fees is wrong. The Court should amend the Order to eliminate the sanction or, at the very least, reduce the sanction by the amount of fees and costs incurred after HCRE expressly

agreed to withdraw the POC with prejudice.

C. There Are Other Problems With The Court's Order That Should Be Corrected

Finally, the Court should revise its Order to correct other mistakes and errors. In particular: (1) the Order purports to take judicial notice of an irrelevant and disputed issue contained in a brief filed by Highland in an unrelated proceeding; and (2) the Order adopts arguments made by Highland for the first time in its reply brief (including arguments about HCRE's "bad faith" in permitting Wick Phillips to contest Highland's disqualification motion) that HCRE never had an opportunity to respond to and should not have been considered by the Court in issuing its Order.

1. Taking Judicial Notice of Disputed "Information" Contained in the Argument Section of One Party's Brief Is Impermissible

While admitting that it "has not counted the exact number of appeals filed by Dondero and and/or Dondero-related entities in this bankruptcy case and related proceedings," the Court purports to take judicial notice of "information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." Order at 5 n.8 (citing *Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12 at ¶ 24, filed on February 9, 2024, Dkt. No. 189 (NDTX Case No. 3:21-cv-0881-X)). There are several problems with judicial notice under these circumstances.

First, the judicial notice does not comport with the Federal Rules of Evidence. Specifically, Rule 201 states that a court may only take judicial notice of "a fact that is not subject to reasonable dispute because it "is generally known within the trial court's territorial jurisdiction," or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)-(2). Neither circumstance exists here. Clearly, the number of appeals

filed by "Dondero or Dondero-related entities" is not "generally known": as the Court admits, even the Court does not know the number of appeals that fall into this category, and it is the Court that is closest to the bankruptcy and related proceedings. Nor is there any source that could "accurately and readily" convey this information in such a way that "cannot reasonably be questioned." There is no readily ascertainable definition of "Dondero-related entities," and several entities have repeatedly disputed that they are "Dondero-related" or "Dondero-controlled," including in the very proceeding from which the Court purports to draw its judicial notice. *See, e.g.*, *Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P. et. al.*, Cause No. 3:21-cv-00881-x (N.D. Tex.), Dkt. 173 at p. 23.

Moreover, it is axiomatic that a court may not take judicial notice of argument contained in one party's brief, which is inherently untrustworthy and subject to dispute. *See Eastbourne Arlington One, LP v. JPMorgan Chase Bank, N.A.*, 2011 WL 3165683, at * 2 (N.D. Tex. July 27, 2011) (while a court may take judicial notice of court records "to establish the fact of their having been filed," it may not take judicial notice of such records "to establish the facts asserted therein."). In this case, the Court purports to take judicial notice of "information" contained in a reply brief filed by Highland. That information appears in an argumentative section of Highland's brief titled "The Dondero Entities Are Individually and Collectively Vexatious," and the particular paragraph itself cites no evidence to support the assertion. *See Highland Capital Mgmt., L.P. v. Highland Fund Advisors, L.P., et al.*, Case No. 3:21-cv-00881-x (N.D. Tex.), Dkt. 189 at p. 8 & ¶ 24. There is nothing about the noticed information that comports with the requirements of Rule 201.

Finally, the Court took judicial notice without giving HCRE an opportunity to be heard on the "fact" to be noticed, which is required. Under Rule 201, "a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial

notice before notifying a party, the party, on request, is still entitled to be heard." Fed. R. Civ. P. 201(e). Had the Court given HCRE the opportunity to be heard, HCRE would have pointed out that the "information" is not reliable for the reasons stated above. In addition, HCRE would have taken issue with being lumped together with other "Dondero-related entities" that have filed appeals because HCRE *has had no involvement in the overwhelming majority of those appeals*, making the judicial notice (presumably offered up to bolster the Court's "bad faith" finding) particularly inappropriate in this contested matter.

The judicial notice was improper, and the Court should strike that notice from its Order.

2. The Court's Order Improperly Adopts Arguments Made for the First Time In Highland's Reply Brief

The Court's Order also should be revised because, as set forth above, it improperly adopts arguments made by Highland that HCRE never had an opportunity to address and should not have factored into the Court's conclusion that HCRE acted in "bad faith." *See* Section II.F, *supra* at pp. 11-13.

It is black-letter law that "the scope of the reply brief must be limited to addressing the arguments raised by the response. The reply brief is not the appropriate vehicle for presenting new arguments or legal theories to the court.'" *Staton Holdings, Inc. v. First Data Corp.*, No. 3:04-cv-2321-P, 2005 WL 2219249, at *4 n.1 (N.D. Tex. Sept. 9, 2005) (quoting *United States v. Feinberg*, 89 F.3d 333, 340-41 (7th Cir. 1996)). As a result, "[a] court need not consider late-filed evidence or new facts that are raised for the first time in a reply brief." *In re Reagor-Dykes Motors, LP*, No. 18-50214-RLJ-11, 2022 WL 468065, at *4 (Bankr. N.D. Tex. Feb. 15, 2022) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 894-98 (1990).

Highland's Reply Brief is replete with new argument not mentioned in the Bad Faith Motion. This is highly prejudicial to HCRE, which had no opportunity to address the new

arguments in the briefing before the Court despite requesting the opportunity to do so at the hearing on Highland's Bad Faith Motion. *See* Jan. 24, 2024 Hr'g Tr., Ex. D, at 69:12-16, 81:22-82:2. The prejudice is particularly acute where, as here, the movant's new arguments formed much of the basis for this Court's finding that various actions (not previously identified in the movant's opening brief) constituted "bad faith" meriting a multi-hundred-thousand-dollar sanction. The Court's wholesale adoption of Highland's arguments in its Order is proof positive that HCRE was prejudiced by Highland's tactics.

The Court's Order should be revised to account for this prejudice and to eliminate its reliance on the arguments raised by Highland for the first time in its Reply Brief.

IV. CONCLUSION

The Court's order sanctioning HCRE to the tune of more than $825,000 is severe and should be based on evidence that is "clear and convincing" and not mistaken or unfair. Unfortunately, the Court's order is premised on a core mistake of fact—that HCRE refused to withdraw its POC with prejudice and not contest Highland's equity interest in SE Multifamily. Contrary to the Court's conclusion, HCRE did agree to that relief. And other key parts of the Court's order are premised on flawed evidence or arguments that HCRE never had the opportunity to brief. The finding of "bad faith" and the sanction awarded under these circumstances are inappropriate. The Court should revisit its Order, correct the mistakes, and reissue an Order consistent with the record and the fairly made arguments of the parties. HCRE's Motion should be granted.

Dated: March 18, 2024

Respectfully Submitted, .

REICHMAN JORGENSEN LEHMAN & FELDBERG

/s/ Amy L. Ruhland
Amy L. Ruhland
Texas Bar No. 24043561
aruhland@reichmanjorgensen.com
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102

HOGE & GAMEROS. L.L.P

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
bgameros@legaltexas.com
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
wcarvell@legaltexas.com
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002

Attorneys for NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 18, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, CHIEF JUDGE

In Re:	) Case No. 19-34054-sgj11
	)
	) TRANSCRIPT of the HEARING
HIGHLAND CAPITAL MANAGEMENT, L.P.,	) on DEBTOR'S OBJECTION to
	) HCRE's PROOF Of CLAIM
	)
Debtor.	)
	) November 1, 2022
	) Dallas, Texas

Appearances:

For the Debtor:	John A. Morris Hayley Winograd Pachulski Stang Ziehl & Jones LLP 780 Third Avenue, 39th Floor New York, New York 10017-2024
	Zachery Z. Annable Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231
For Creditor and Claimant NexPoint Real Estate Partners, also known as HCRE:	C. William "Bill" Gameros, Jr. D. Wade Carvell Hoge & Gameros, L.L.P. 6116 N. Central Expressway, Suite 1400 Dallas, Texas 75206
Digital Court Reporter:	United States Bankruptcy Court Michael F. Edmond Sr., Judicial Support Specialist 1100 Commerce Street, Room 1254 Dallas, Texas 75242
Certified Electronic Transcriber:	Susan Palmer Palmer Reporting Services

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

was going to obtain six percent of the SE Multifamily's membership interests, correct?

A. That B&H was going to take — yes, get six percent, correct —

Q. That's right. And you may not have known exactly how much Highland was going to get, but you — you do admit that you knew and understood at the time you signed this document that Highland was going to get a significant majority of the interests, correct?

A. That there would be a dilution for B&H coming in, but the percentages would be similar to the original —

Q. Okay.

A. — agreement, and I guess is what I knew in general.

Q. Right. So it was your understanding when you signed this document that Highland's 49-percent interest was going to be diluted by the six percent that was being granted to BH Equities, correct?

A. Generally, yes.

Q. Okay. So even though you didn't read Schedule A before signing the agreement, the schedule comports with your expectations when you signed the agreement on behalf of Highland and HCRE, correct?

A. Generally, yes.

Q. Okay. Let's just cut to the chase with the proof of claim. That's Exhibit 8. Do you have that in front of you, sir?

A. Yes.
Q. Okay. Your electronic signature is on the proof of claim, correct?
A. It — I'll — I'll stipulate to that, I guess, on —
Q. It's on the bottom of the page wherein the top left it says number 12.
A. Okay.
Q. Do you see your electronic signature?
A. Ye- — yes.
Q. Okay. And you authorized your electronic signature to be affixed to this document, correct?
A. Yes.
Q. And you authorized this document to be filed on behalf of HCRE, correct?
A. Yes.
Q. You didn't review this document before it was filed, correct?
A. Correct.
Q. And so you didn't review Exhibit A, which is the last page of the exhibit, you didn't review that before it was filed, correct?
A. Not that I recall.
Q. You can't identify — now this agreement was prepared by Bonds Ellis; do I have that right?
A. Correct.

correct?

A. I did not believe I needed to.

MR. MORRIS: Okay, I have no further questions, Your Honor.

THE COURT: Redirect.

MR. GAMEROS: Very briefly, Your Honor, I've only got a couple of questions.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. GAMEROS:

Q. Mr. Dondero, you testified about the process for signing the LLC agreements, the KeyBank loan, and even the proof of claim. Would you please tell the Judge what the process is?

A. Well, it's different in everything, but any significant transaction goes through compliance and any significant transaction that includes multiple entities goes through rigorous compliance whereby, by compliance, without direct input of the investment people, investigate the basis of the transaction in the fairness of tr- — of the transaction and then sign off on that transaction. You know, so on any kind of investment, a normal — I know it's changed in the new Highland, but — but a normally-compliant advisor goes through a rigid, rigorous process regarding any sale of an asset.

As far as bankruptcy and the complexities of a bankruptcy that takes odd twists and turns, and just the

complexities of this bankruptcy in particular and the betrayal of the estate by insiders, you know, et cetera, you have to rely on outside counsel and you have to rely on — you have to rely on outside counsel and you have to rely on their expertise in the bankruptcy process.

Q. So —

MR. MORRIS: Your Honor, I move to strike the portions of the answer that refer to the new Highland's practices because the witness has no personal knowledge. I move to strike his reference to the betrayal of the estate as being outrageous. It's got absolutely nothing to do with his inability to review documents before he signs them.

THE COURT: Your response.

MR. GAMEROS: Your Honor, the witness was asked about the process, and that was one of the views that he had in terms of how he deals with external events, transactions. That's his view of the bankruptcy proceeding. Mr. Morris may not like it and Highland may not like that characterization or new Highland may not like that characterization, but it's a fair summary of the witness' answer. It's how he feels about what's going on. I think it's wholly appropriate.

THE COURT: Okay. I overrule. It's his view of the process, he was asked about the process, so —

MR. MORRIS: Your Honor, I'm going to try one more time. He can testify to his process all he wants. This is

and just grab my notebook.

THE COURT: You may, um-hum.

MR. GAMEROS: Thank you.

THE WITNESS: I got it. Oh, the — what —

MR. GAMEROS: That's Exhibit 8.

BY MR. GAMEROS:

Q. That's Highland's Exhibit 8, the proof of claim.

A. Yes.

Q. You relied on Bonds Ellis to draft the proof of claim, correct?

A. Yes.

Q. Did you do anything to interfere with Bonds Ellis' access to anyone at Highland or HCRE for drafting — Highland, I'm sorry — anyone at HCRE for drafting a proof of claim?

A. No.

Q. Did they ever talk to you about the proof of claim?

A. No. I mean knew generally we were filing a bunch of proofs of claims at the time, but not specifically.

MR. GAMEROS: All right. Thank you. I have no other questions, Your Honor.

THE COURT: Recross.

MR. MORRIS: I have nothing, Your Honor.

THE COURT: All right. Mr. Dondero, you're excused from the witness box.

THE WITNESS: Thank you.

with the DSI folks, Caruso, Fred Caruso, and my team.
Q. Okay. Who is DSI, just so the Court's clear on that?
A. I don't know what — I think they were the CRO, the chief reorg- — but this is the only part I really touched with them. And so the couple conversations I had with Fred were I think we both agreed that we're — it was going to be futile.
Q. Okay. And Mr. Caruso works for DSI?
A. I believe so.
Q. All right. Did HCRE try to pay back Highlands Capital?
A. I think so.
Q. Okay. What happened?
MR. MORRIS: I apologize, Your Honor. I didn't hear the answer.
THE WITNESS: I think so.
MR. MORRIS: Thank you.
THE COURT: Okay.
THE WITNESS: You bet.
BY MR. GAMEROS:
Q. What happened?
A. I — I was told it was returned.
Q. Okay. Do you know why?
A. I don't.
Q. All right. Why did HCRE file a proof of claim?
A. I think we were trying to protect our interests, advice of counsel. Again, the important point is my partners weren't my

partners, you know, in March of 2019. And then when the bankruptcy started, it kind of took on a life of its own.

Q. Do you know the proof of claim worked through the HCRE side of the house before it was filed?

A. Yeah. I mean our internal counsel at NexPoint, external counsel, you know, came to me and said that they thought it would be a good idea and generally told me what it was about, and I said okay.

MR. GAMEROS: Pass the witness, Your Honor.

THE COURT: Okay. Cross.

CROSS-EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. McGraner.

A. Good morning, Mr. Morris.

MR. MORRIS: So may I just approach the witness to clean up the exhibits?

THE COURT: You may.

THE WITNESS: These are yours.

BY MR. MORRIS:

Q. Let's just do a little background here, Mr. McGraner. Since the time HCRE was formed, it's only been owned by you, Mr. Dondero, and Mr. Scott Ellington, correct?

A. Yes.

Q. And Mr. Dondero owns 70 percent, you own 25 percent, and Mr. Ellington owns five percent, correct?

A. I had good partners —
Q. — perspective, this dispute is really just a consequence of Highland's bankruptcy filing; isn't that right?
A. I think it's an unintended consequence, yeah.
Q. Let's talk about the proof of claim for a moment.
A. Okay.
Q. If we can go to Exhibit 8. You mentioned D. C. Sauter earlier. Did I hear that correctly?
A. Sure.
Q. And Mr. Sauter at the time the original LLC agreement was prepared and at the time the KeyBank loan was prepared and at the time the amended and restate LLC agreement was prepared, he was at Wick Phillips, right?
A. I think so.
Q. And then in the fall of 2019, or thereabouts, he came over to NexPoint; do I have that right?
A. I think so.
Q. Okay. And when he was at Wick Phillips he worked on Project Unicorn, didn't he?
A. Yeah.
Q. Yeah. And he is the one who showed you this proof of claim before it was filed on behalf of HCRE, correct?
A. I think so.
Q. Um-hum. You weren't given an opportunity to provide any comments to the document before it was filed, correct?

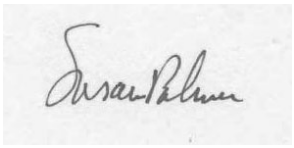
A. I think we — we spoke about it generally, conceptually.
Q. You — you weren't given the opportunity to provide any comments to the document before it was filed, correct?
A. I didn't think I needed to. I'm not a bankruptcy attorney, I don't know the process or what should be said. We relied on our counsel for that.
Q. Okay. So a simple question: You weren't given the opportunity to provide any comments to the document before it was filed, correct?
A. My answer is I was deferential to — to our counsel.
Q. You never gave Mr. Sauter any documents in connection with the proof of claim, correct?
A. Correct.
Q. You don't know whether Mr. Sauter ever gave any documents to Bonds Ellis in connection with this proof of claim, correct?
A. I don't know.
Q. You — you don't know, right? You have no personal knowledge —
A. I don't know —
Q. — of Mr. Sauter giving any documents to Bonds Ellis in connection with the proof of claim, correct?
A. Correct.
Q. You never discussed this document with Mr. Dondero, correct?
A. Correct.
Q. You never discussed this document with anybody at Bonds

State of California)
) SS.
County of Stanislaus)

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

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

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



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

Dated November 5, 2022

EXHIBIT B

BEN SELMAN - 9/17/2021

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

IN RE:	)	CHAPTER 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	CASE NO.
	)	19-34054-SGI11
Debtor.	)	
----------x	)	
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	
	)	ADVERSARY
Plaintiff,	)	PROCEEDING
	)	NO:
Vs.	)	21-03000-SGI
	)	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; NEXPOINT ADVISORS, L.P.; HIGHLAND INCOME FUND; NEXPOINT STRATEGIC OPPORTUNITIES FUND; NEXPOINT CAPITAL, INC.; AND CLO HOLDCO, LTD.,	)	
	)	
Defendants.	)	
----------/	)	

REMOTE DEPOSITION OF BEN SELMAN

Waco, Texas

Friday, September 17, 2021

Reported by:

KIM A. McCANN, RMR, CRR, CSR

JOB NO. 199442

BEN SELMAN - 9/17/2021

A. Am I going to testify and give opinions is my understanding of the last question. And I hope I understood it correctly, but if that's the last question you asked, then my answer to that question is yes.

Q. Have you formed opinions?

A. I have.

Q. Okay. Please tell me what your opinions are.

A. My opinions are that the Wick Phillips firm represented both Highland and NREP together with other borrowers in regard to the bridge loan; that the bridge loan was consummated by execution on September 25, 2018, showing an effective date of September 26, 2018.

My opinion is that Wick Phillips' representation of all parties ceased at that point, and that representation was limited on the part of Wick Phillips with regard to the named parties in regard to the bridge loan as of the time of the execution, perhaps a bit earlier, but I don't really have a way to isolate that.

My opinion is further that some six months after the bridge loan was consummated, the

SE Multi-Family Company restated itself, and in doing so presented a contestable matter that bore no relationship of any materiality or of any substance to the bridge loan.

I believe the fact is that Wick Phillips began representation of NREP in regard to that narrow issue in a contested matter in the bankruptcy proceeding, and that this motion to disqualify and responsive motions about which we're talking today resulted from Wick Phillips' representation of NREP in a matter that is almost wholly dissimilar to the bridge loan. But that it certainly bears no same relationship to the bridge loan and appears to bear no substantial relationship to the bridge loan.

I haven't yet formulated but I will formulate at some point an opinion with regard to the document that we talked about earlier, the release from loan agreement document that I've recently received and needs to be studied.

I've reviewed it three or four times and I still have questions that need to be looked at before I'll have an opinion on it. But it is

my opinion based on the plain language of the release document that the bridge loan as a result of the release agreement between Highland Capital and the bridge loan lenders are between Highland Capital and two other allied companies appears to even further isolate the bridge loan from the instant contested matter litigation.

That having been said, there appears to be no discernible violation of Rule 1.9 of the ABA Model Rules or of 1.7 of the ABA Model Rules or of 1.06 of the Texas Disciplinary Rules of Professional Conduct or Rule 1.09 of the Texas Disciplinary Rules of Professional Conduct by or through Wick Phillips' present representation of NREP in regard to the amended and restated SE Multi-Family Holdings, LLC.

Q. Sorry. You broke up on that last. Could you repeat the last thing you said, Mr. Selman?

A. Yes. The amended and restated SE Multi-Family Holdings, LLC.

Q. Before that. Go back -- could you repeat that entire last thought.

A. Not without a great deal of

BEN SELMAN - 9/17/2021

C E R T I F I C A T E

I, Kim A. McCann, RMR, CRR, CSR in and for the State of Texas, do hereby certify:

That BEN SELMAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness;

That pursuant to FRCP Rule 30, signature of the witness was requested by the witness or other party before the conclusion of the deposition;

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this September 17, 2021.

Kim A. McCann, RMR, CRR, CSR

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11(SGJ)
	.	
HIGHLAND CAPITAL	.	Earle Cabell Federal Building
MANAGEMENT, L.P.,	.	1100 Commerce Street
	.	Dallas, TX 75242-1496
	.	
Debtor.	.	Monday, September 12, 2022
. . . . .	.	9:40 a.m.

TRANSCRIPT OF HEARING ON MOTION TO WITHDRAW PROOF OF CLAIM #146 BY HCRE PARTNERS, LLC (3443) AND REORGANIZED DEBTOR'S (A) OBJECTION TO MOTION TO QUASH AND FOR PROTECTION [DOCKET NO. 3464] AND (B) CROSS-MOTION TO ENFORCE SUBPOENAS TO ENFORCE SUBPOENAS AND TO COMPEL A DEPOSITION (3484)

BEFORE HONORABLE STACEY G. JERNIGAN
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

TELEPHONIC APPEARANCES:

For Highland Capital Management, L.P.:	Pachulski Stang Ziehl & Jones LLP BY: JOHN MORRIS, ESQ. 780 3rd Avenue, 34th Floor New York, New York 10017
For NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC:	Hoge & Gameros, L.L.P. BY: CHARLES W. GAMEROS, JR., ESQ. 6116 North Central Expressway Suite 1400 Dallas, Texas 75206
Audio Operator:	Michael F. Edmond

Proceedings recorded by electronic sound recording, transcript produced by a transcript service.

LIBERTY TRANSCRIPTS
7306 Danwood Drive
Austin, Texas 78759
E-mail: DBPATEL1180@GMAIL.COM
(847) 848-4907

your proof of claim that your client agrees that Highland has a 46-point whatever it was percent interest in SE Multifamily Holdings and your client waives any right in the future to challenge that interest?

MR. GAMEROS: Your Honor, if that's what the Court wants to put in an order and I have a chance to confer with my client on it, I'm pretty sure that would be agreeable.

THE COURT: Today's the day. I'm not going to continue. I've got, you know, the whole day booked if I needed it because I wasn't sure what you all were going to want to put on.

MR. GAMEROS: Your Honor, we'd agree with that.

MR. MORRIS: Your Honor, I'm sorry to interrupt, but a waiver of any appeal, too. I just hard that if that's what you want to put in the order, that's okay. But this case has to end, and that's what we're looking for.

We're a post-confirmation estate that will not go forward with the possibility hanging over its head that it may be divested of this asset. That is what this proof of claim and this dispute is about.

And what the debtor needs in order to avoid legal prejudice is the complete elimination of any uncertainty that it owns 46.06 percent of SE Multifamily. And if HCRE is not willing to give that comfort today, we again renew our request for a direction that the three HCRE witnesses appear for

substantive depositions and we get this on the trial calendar.

MR. GAMEROS: Your Honor, we'll agree to it.

THE COURT: Well, you know what, this is such a big deal I really need a client representative to say that. It would be that --

MR. GAMEROS: I don't have one here today, but I can get you one.

THE COURT: How soon --

MR. GAMEROS: Do you want me to file a stipulation or an affidavit?

THE COURT: Pardon?

MR. GAMEROS: Do you want me to file an affidavit?

THE COURT: Well, let's be a hundred percent clear. Your client would state that with the granting of the motion to withdraw proof of claim number 146, HCRE is irrevocably waiving the right to ever challenge Highland Capital Management's 46 percent interest -- and I know it's 46-point something -- 46 percent interest in SE Multifamily Holdings, LLC and is, likewise, waiving the right to appeal or challenge the order to this effect.

MR. MORRIS: Your Honor, if I may, perhaps we can take a ten-minute recess and allow him to consult with his client and perhaps get a client representative on the phone who can make that representation?

THE COURT: All right. Mr. Gameros, you think you

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

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS DATE: September 13, 2022

EXHIBIT D

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

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	January 24, 2024
	9:30 a.m. Docket
Reorganized Debtor.	
	- HIGHLAND'S MOTION FOR BAD FAITH FINDING [3851]
	- HIGHLAND'S MOTION TO STAY CONTESTED MATTER [4013]

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

APPEARANCES:

For the Reorganized Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7760
For NexPoint Real Estate Partners, LLC:	Charles William "Bill" Gameros, Jr. HOGE & GAMEROS, LLP 6116 N. Central Expressway, Suite 1400 Dallas, TX 75206 (214) 765-6002
For Hunter Mountain Investment Trust, The Dugaboy Investment Trust:	Deborah Rose Deitsch-Perez Michael P. Aigen STINSON, LLP 2200 Ross Avenue, Suite 2900 Dallas, TX 75201 (214) 560-2201
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

'but for' test in *Lopez* and the cases that it cites.

So, our conclusion, Your Honor. First, the reply doesn't change anything. They don't give you any new authority or any basis to award sanctions or bad faith analysis, if for no other reason than the record is already closed. You've seen this all before. And when asked repeatedly for a bad faith finding, you didn't give it to them. No bad faith in the filing of the claim.

The requested fees are reasonable and necessary. Your Honor, so they flunk the *Johnson* factors. They fail the 'but for' test.

Respectfully, Your Honor, their motion should be denied. If it's not going to be denied, we would like an opportunity to file supplemental briefing addressing the new authorities in the reply brief. Your Honor, I don't think we need to go there. I think you should deny it outright.

Subject to questions from the Court, that concludes my presentation.

THE COURT: All right. A few follow-up questions. In arguing about the size of the potential fees if I get to bad faith, you've had a little bit of a theme of: It was just a proof of claim, it was not difficult, and this was not some "slapdash proof of claim." So you emphasize not reasonable fees for addressing the proof of claim, and you also stress can't find any authority where attorneys' fees have been

Morris argued. I remember very well the evidence was that Highland put in $49,000 to get its membership interest in SE Multifamily Holdings, but I already heard that it was required ultimately to be a cosigner on a $500 million loan from Key Bank. It provided resources, at least until some point during the bankruptcy, to SE Multifamily. And again, the tax benefit of absorbing the income from the entity, which, again, it's nothing to sneeze at here.

All of that I think was addressed pretty thoroughly in my earlier opinion, but again, I'm going to go back and look at it and the evidence and give you a thorough ruling one way or another on the indicia of bad faith as well as the reasonableness of fee-shifting.

All right. It sounds like I'm going to see you on February 14th, or some of you, and so I shall see you then. We're adjourned.

THE CLERK: All rise.

MR. GAMEROS: Your Honor?

THE COURT: I'm sorry?

MR. GAMEROS: Your Honor?

THE COURT: Yes.

MR. GAMEROS: Yeah, I'm sorry. I did ask, if you weren't going to deny it outright, if I could file a brief surreply. Is that allowed?

THE COURT: No. I've got enough on briefing on this.

Thank you.

MR. GAMEROS: All right. Thank you.

(Proceedings concluded at 11:41 a.m.)

--oOo--

CERTIFICATE

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

/s/ Kathy Rehling **01/24/2024**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

INDEX

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Attorneys for NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case N. 19-34054 (SGJ)
Debtor.	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT, pursuant to 28 U.S.C. § 158(a) and Rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) hereby appeals to the United States District for the Northern District of Texas from the *Memorandum, Opinion and Order Granting Highland Capital Management,*

L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (F/K/A HCRE Partners, LLC) in Connection With Proof of Claim # 146 [Dkt. Nos. 4038 and 4039] (the "Order"), entered by the United States Bankruptcy Court for the Northern District on March 5, 2024. A true and correct copy of the Order is attached hereto as Exhibit A.

The parties to the appeal are as follows:

Appellant/Respondent: NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

Attorneys:
Amy L. Ruhland
REICHMAN JORGENSEN LEHMAN & FELDBERG
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Douglas Wade Carvell, P.C.
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Appellee/Movant: Highland Capital Management, L.P.

Attorneys:
Jeffery N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinofrad@pszjlaw.com

Dated: March 18, 2024

Respectfully Submitted,

REICHMAN JORGENSEN LEHMAN & FELDBERG

/s/ Amy L. Ruhland
Amy L. Ruhland
Texas Bar No. 24043561
aruhland@reichmanjorgensen.com
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102

HOGE & GAMEROS. L.L.P

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
bgameros@legaltexas.com
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
wcarvell@legaltexas.com
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002

Attorneys for NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 18, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Attorneys for NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Debtor.	Chapter 11 Case N. 19-34054 (SGJ)

AMENDED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT, pursuant to 28 U.S.C. § 158(a) and Rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) hereby appeals to the United States District for the Northern District of Texas from the *Memorandum, Opinion and Order Granting Highland Capital Management,*

L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (F/K/A HCRE Partners, LLC) in Connection With Proof of Claim # 146 [Dkt. Nos. 4038 and 4039] (the "Order"), entered by the United States Bankruptcy Court for the Northern District on March 5, 2024. A true and correct copy of the Order is attached hereto as Exhibits A and B. The parties to the appeal are as follows:

Appellant/Respondent: NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

Attorneys:
Amy L. Ruhland
REICHMAN JORGENSEN LEHMAN & FELDBERG
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Douglas Wade Carvell, P.C.
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Appellee/Movant: Highland Capital Management, L.P.

Attorneys:
Jeffery N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinofrad@pszjlaw.com

Dated: March 20, 2024

Respectfully Submitted,

REICHMAN JORGENSEN LEHMAN & FELDBERG

/s/

Amy L. Ruhland
Texas Bar No. 24043561
aruhland@reichmanjorgensen.com
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102

HOGE & GAMEROS. L.L.P

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
bgameros@legaltexas.com
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
wcarvell@legaltexas.com
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002

Attorneys for NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 20, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

EXHIBIT A

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed March 4, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM # 146

I. INTRODUCTION

Before this court is a sanctions motion[1] filed by Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor"). [2] The motion seeks sanctions against

[1] *Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in connection with Proof of Claim 146* ("Sanctions Motion"). Dkt. No. 3851.

[2] Highland is a reorganized debtor under the confirmed *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Dkt. No. 1943.

NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("NexPoint/HCRE") for its filing, prosecution, and then abrupt attempt to withdraw a meritless proof of claim (after almost three years of protracted litigation).

NexPoint/HCRE filed the subject proof of claim, #146 on the claims register ("Proof of Claim"), on April 8, 2020.[3] The Proof of Claim was signed electronically by James D. Dondero ("Dondero") and was prepared and filed by a law firm that was representing him personally at that time.[4] The Proof of Claim was not in a liquidated amount and was somewhat ambiguous. It stated in an Exhibit A thereto, that NexPoint/HCRE, which was a limited partner, along with Highland, in a limited liability company called SE Multifamily Holdings, LLC ("SE Multifamily")—an entity which owned valuable real estate—"may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor" and added that Highland's equity interest "may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor." NexPoint/HCRE stated that it would update the Proof of Claim to provide the exact amount of it "in the next ninety days" but never did.

Highland objected to the Proof of Claim. Thereafter, NexPoint/HCRE (while still not providing any liquidated amount of its Proof of Claim) refined its position therein to argue that the organizational documents relating to SE Multifamily improperly allocated the ownership percentages of the equity members, due to mutual mistake, lack of consideration, and/or failure of consideration. NexPoint/HCRE essentially sought to reform, rescind, and/or modify the SE Multifamily limited liability company agreement (and possibly other documentation) to give Highland less ownership (or no ownership interest) in SE Multifamily and, accordingly,

[3] Claim No. 146.

[4] Bonds Ellis Eppich Schafer Jones LLP.

NexPoint/HCRE would have a larger ownership interest in SE Multifamily. Next, there occurred years of litigation between the parties, including: (a) a skirmish over Highland's motion to disqualify NexPoint/HCRE's newest counsel (*i.e.,* a law firm that had represented both Highland and NexPoint/HCRE in transactions involving SE Multifamily), which was ultimately granted, and (b) an eleventh-hour attempt by NexPoint/HCRE to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits. Highland objected to the withdrawal. The court held a hearing on that, as required by Bankruptcy Rule 3006. The court declined to allow withdrawal of the Proof of Claim, when the parties could not stipulate to an agreed form of order (*i.e.,* NexPoint/HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum).

Painfully, after all this, an evidentiary hearing was held on the merits of the Proof of Claim ("Trial") on November 1, 2022. During the Trial, Highland made an oral motion for a bad faith finding and assessment of attorneys' fees against NexPoint/HCRE in connection with its filing and prosecution of the Proof of Claim ("Oral Sanctions Motion"), which this court took under advisement, along with the consideration of the Proof of Claim as a whole.

On April 28, 2023, this court entered a 39-page memorandum opinion and order[5] sustaining Highland's objection to NexPoint/HCRE's Proof of Claim, but denying Highland's Oral Sanctions Motion, without prejudice, ***as procedurally deficient in that it was made orally and for the first time during the Trial.*** Thus, the Oral Sanctions Motion failed to provide NexPoint/HCRE sufficient notice and an opportunity to respond and, therefore, did not satisfy concerns of due process.

[5] *See Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* ("Proof of Claim Disallowance Order"). Dkt. No. 3767.

On June 16, 2023, Highland filed the instant Sanctions Motion, setting forth the legal and factual bases for the relief sought. The Sanctions Motion specifically seeks a finding of bad faith against NexPoint/HCRE and reimbursement of Highland's attorneys' fees and costs, as a sanction for NexPoint/HCRE's filing and prosecution of the Proof of Claim.

After due notice to NexPoint/HCRE, and a hearing held January 24, 2024 on the Sanctions Motion ("Sanctions Motion Hearing"), and after consideration of the pleadings filed, evidence in the record, and arguments of counsel, the court finds, for the reasons detailed in the findings of fact and conclusions of law below,[6] that NexPoint/HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim. Accordingly, NexPoint/HCRE will be required, as a sanction, to reimburse Highland's attorneys' fees and costs (totaling **$825,940.55)** incurred in connection with its objection to the Proof of Claim.

II. JURISDICTION

This court has jurisdiction and authority to determine and enter a final order in this matter, pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B), and (O) and 1334.[7]

III. BACKGROUND, PROCEDURAL HISTORY, AND FINDINGS OF FACT

A. Incorporation Herein of Proof of Claim Disallowance Order

As noted above, this court, on April 28, 2023, issued its 39-page Proof of Claim Disallowance Order, sustaining Highland's objection to NexPoint/HCRE's Proof of Claim

[6] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

[7] The Fifth Circuit recently confirmed the jurisdiction and authority of bankruptcy courts to issue sanctions orders in connection with bankruptcy cases and proceedings over which they exercise jurisdiction, because they are in the nature of ***civil contempt*** orders—which are considered "part of the underlying case" – "because the bankruptcy court had jurisdiction over the [ ] bankruptcy case, it had jurisdiction to enter the sanctions order, too." *Kreit v. Quinn (In re Cleveland Imaging and Surgical Hospital, L.L.C.)*, 26 F.4th 285, 294 (5th Cir. 2022) (cleaned up).

following the Trial on same. The Proof of Claim Disallowance Order sets forth extensive procedural history, findings of fact, and conclusions of law pertaining to NexPoint/HCRE's filing and prosecution of its Proof of Claim, which Highland alleges in the instant Sanctions Motion was conducted in bad faith. NexPoint/HCRE did not appeal the Proof of Claim Disallowance Order. Thus, it is a final and non-appealable order.[8] The court hereby incorporates by reference the Proof of Claim Disallowance Order (and all of the findings and conclusions therein), as if set forth verbatim herein.[9]

B. Highland Files Sanctions Motion

On June 16, 2023, Highland filed the instant Sanctions Motion. It was supported with a Declaration of John A. Morris in support of the Sanctions Motion ("Morris Declaration")[10] and 431 pages of attached exhibits as set forth in the following table:

Exhibit A	NexPoint/HCRE's Proof of Claim[11]
Exhibit B	Highland's Objection to NexPoint/HCRE's Proof of Claim[12]
Exhibit C	NexPoint/HCRE's Response to Objection to Claim[13]

[8] The Proof of Claim Disallowance Order is one of the few bankruptcy court orders issued in this bankruptcy case that was not appealed by Dondero or a Dondero-controlled entity. Although the court has not counted the exact number of appeals filed by Dondero and/or Dondero-controlled entities in this bankruptcy case and related proceedings, this court takes judicial notice of information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." *See Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12, at ¶ 24, filed on February 9, 2024. Dkt. No. 189 (NDTX Case No. 3:21-cv-00881-X).

[9] The Proof of Claim Disallowance Order was attached as Exhibit D to the Declaration of John A. Morris, Dkt. No. 3852, which was filed by Highland in connection with, and in support of, the relief requested in the Sanctions Motion.

[10] Dkt. No. 3852.

[11] Claim No. 146, filed April 8, 2020.

[12] *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection to Claim"), filed July 30, 2020. Dkt. No. 906.

[13] *NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Response to Objection to Claim"), filed October 19, 2020. Dkt. No. 1212.

Exhibit D	Proof of Claim Disallowance Order
Exhibit E	Transcript of November 1, 2022 Trial (on NexPoint/HCRE's Proof of Claim)
Exhibit F	Attorneys' Fees of Pachulski Stang Ziehl & Jones LLP ("PSZJ") for the period of August 1, 2021 through December 31, 2022 incurred in connection with the litigation on the NexPoint/HCRE Proof of Claim
Exhibit G	Invoices for court reporting services provided in connection with depositions taken and defended during the course of the Proof of Claim litigation
Exhibit H	Invoice for services rendered by David Agler, who provided specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim
Exhibit I	Summary of Fees and Expenses Incurred by Highland in Connection with NexPoint/HCRE's Proof of Claim

The Sanctions Motion (unlike the Oral Sanctions Motion made during the Trial) provided NexPoint/HCRE with due and appropriate notice of the legal and factual bases for Highland's request for a bad faith finding and reimbursement of attorneys' fees and costs incurred by it in litigating the Proof of Claim. As stated in the Sanctions Motion, the legal basis for Highland's request for reimbursement of its attorneys' fees as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim is the bankruptcy court's "inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith."[14] Highland referred to specific documentary and testimonial evidence adduced during the Trial that it alleges supports a finding that NexPoint/HCRE filed and prosecuted its Proof of Claim in bad faith, and attached invoices evidencing its attorneys' fees and costs incurred as a direct result of this alleged bad faith.

[14] *See* Sanctions Motion, 10, ¶25.

Before NexPoint/HCRE filed its response to the Sanctions Motion, the matter was stayed on August 2, 2023, pending court-ordered global mediation.[15] The mediation ultimately proved to be unsuccessful.[16] Thereafter, NexPoint/HCRE filed its *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* ("Response")[17] on December 22, 2023. NexPoint/HCRE denies that it filed and prosecuted its Proof of Claim in bad faith and argues it should not be sanctioned at all. It further argues that, even if the filing and prosecution of the Proof of Claim are found to have been in bad faith, the amount of the fees incurred by Highland in connection with the Proof of Claim litigation is "*per se* excessive for a single proof of claim objection"[18] and "extraordinarily high given that this dispute could have been brought to a swift close many months ago"—if only NexPoint/HCRE had been allowed to withdraw its Proof of Claim in September of 2022.[19] Highland's has sought reimbursement of more than $800,000 in attorneys' fees and more than $16,000 in expenses, identified in Exhibits F through H (and summarized in Exhibit I) of the Morris Declaration as having been incurred by Highland in connection with its litigation of the Proof of Claim.

Highland filed its *Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in*

---

[15] *See Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation*. Dkt. No. 3897. This was not the first time the bankruptcy court has ordered global mediation in the Highland case.

[16] *See Joint Notice of Mediation Report* filed on November 7, 2023. Dkt. No. 3995.

[17] Dkt. No. 3995.

[18] Response, 10, ¶34.

[19] Response, 13, ¶45. NexPoint/HCRE argues that, because it had sought to withdraw its Proof of Claim, any fees incurred by Highland after the filing of NexPoint/HCRE's motion to withdraw cannot be attributable to NexPoint/HCRE's alleged bad faith filing and prosecution of its Proof of Claim; rather, such fees were incurred by Highland as a result of Highland's decision to object to NexPoint/HCRE's withdrawal of its Proof of Claim and to proceed with the litigation, including taking depositions, and proceeding to "trial" on the merits instead of "taking a win" with NexPoint/HCRE's withdrawal of its Proof of Claim. *See* Response, 2.

Connection with Proof of Claim 146[20] on January 19, 2024, and filed an *Amended Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* ("Reply")[21] on January 23, 2024. Highland argues that "[n]othing in the Response warrants the denial of the [Sanctions] Motion or its requested award of attorneys' fees" and that "the record makes clear" that NexPoint/HCRE and its principals "clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, . . . ([b]) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and ([c]) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement")."[22]

The court held a hearing on the Sanctions Motion ("Hearing") on January 24, 2024, during which NexPoint/HCRE was given a full opportunity to respond to Highland's allegations of bad faith and request for sanctions.

IV. CONCLUSIONS OF LAW

A. The Sanctions Motion Satisfies Due Process Considerations

In invoking its inherent power to sanction bad faith conduct or a willful abuse of the judicial process, "[a] court must exercise caution . . . , and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018). As noted above, the court entered its Proof of Claim Disallowance Order on April 28, 2023, in which it sustained Highland's objection to, and disallowed, the Proof of Claim but denied, without prejudice, Highland's Oral Sanctions Motion

[20] Dkt. No. 4018.

[21] Dkt. No. 4023.

[22] Reply, 2, ¶2.

as being procedurally defective because, having been raised for the first time during Trial and not having been made in writing, it had not given NexPoint/HCRE adequate notice and an opportunity to respond to the specific allegations of bad faith being made against it. The court pointed out that it did not address or make any determination regarding the substance of Highland's requests in the Oral Sanctions Motion for a bad faith finding and sanctions against NexPoint/HCRE, subject to Highland's right seek a bad faith finding and sanctions against NexPoint/HCRE upon and after giving it proper notice and an opportunity to respond:

> Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny, without prejudice, [Highland's] request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Proof of Claim Disallowance Order, 38-39 (quoting *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010) ("[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond."); *In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) ("By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond.")).

The court concludes that the instant Sanctions Motion and Hearing have provided NexPoint/HCRE with the due process that was lacking in connection with the Oral Sanctions Motion. NexPoint/HCRE was given adequate notice of the legal authority invoked for sanctions (the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code) and NexPoint/HCRE's specific conduct (the filing and prosecution of its Proof of Claim) that Highland

alleges to have been in bad faith, and NexPoint/HCRE was given adequate opportunity to respond through briefing and at the Hearing on the Sanctions Motion.

With due process concerns having been now addressed and satisfied, the court is able to address the substantive questions raised in the instant Sanctions Motion of (1) whether NexPoint/HCRE did, indeed, act in bad faith in the filing and prosecution of its Proof of Claim and (2) if so, whether an award of reimbursement of Highland's attorneys' fees and costs incurred in connection with its litigation of the Proof of Claim is an appropriate sanction for such bad faith.

B. NexPoint/HCRE Filed and Prosecuted its Proof of Claim in Bad Faith and Willfully Abused the Judicial Process

A bankruptcy court may sanction a litigant for bad faith filing or litigation if the court makes specific findings, based on clear and convincing evidence, of bad faith or willful abuse of the judicial process. *See Cleveland Imaging*, 26 F.4th at 292 (A bankruptcy court may only sanction a party using its inherent authority if "(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence.") (citing *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729-30 (5th Cir. 2014)). The bankruptcy court's power to sanction bad faith or willful abuse of the judicial process derives from its inherent authority under 11 U.S.C. § 105(a) to issue civil contempt orders. *Id.* at 294, 294 n.14 (quoting the "relevant part" of Bankruptcy Code section 105(a), which provides that bankruptcy courts may "sua sponte, tak[e] any action . . . necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.") (cleaned up).

Having reviewed the record and the evidence adduced at Trial and NexPoint/HCRE's response to the Sanctions Motion (both in its Response and at the hearing on the Sanctions Motion), the court finds and concludes that there is clear and convincing evidence here that

NexPoint/HCRE filed and prosecuted is Proof of Claim in bad faith and that it willfully abused the judicial process.

1. *Dondero's Execution and Authorization of the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence Was in Bad Faith and a Willful Abuse of the Judicial Process*

As noted in the Proof of Claim Disallowance Order, NexPoint/HCRE filed its Proof of Claim in this Highland bankruptcy case on April 8, 2020, several months after the post-petition "nasty breakup" between Highland and its co-founder and president and chief executive officer, Dondero. NexPoint/HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[23]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

NexPoint/HCRE was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Dondero was the president and sole manager of NexPoint/HCRE, and an individual named Matt McGraner ("McGraner") was NexPoint/HCRE's vice president and secretary. NexPoint/HCRE had no employees of its own but instead relied on Highland's employees (and employees of other entities controlled by Dondero) to conduct business on its behalf. Dondero executed the Proof of Claim as the "person who is completing and signing this claim," checking

[23] Claim No. 146.

the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[24] The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it and without conducting any due diligence on, or investigation into, whether the statements made in the Proof of Claim were truthful and accurate, which supports a finding that Dondero's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.

At Trial, Dondero testified that he had authorized his electronic signature to be affixed to the document and to be filed on behalf of NexPoint/HCRE and admitted that he had not reviewed the document before doing so.[25] He further testified that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed,"[26] and, more specifically, that he did not, prior to authorizing his law firm (Bonds Ellis) to affix his electronic signature on, and to file, the Proof of Claim, review or provide comments to the Proof of Claim or its Exhibit A, review the SE Multifamily Amended LLC Agreement or any documents,[27] "check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it," or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of

[24] Proof of Claim, 3.

[25] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 55:2-22.

[26] Trial Tr. 56:20-23.

[27] Trial Tr. 55:10-22, 56:15-57:6.

HCRE."[28] Moreover, he testified that he did not know whose idea it was to file the Proof of Claim,[29] who at NexPoint/HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever communicated with anybody in the real estate group regarding [the Proof of Claim]."[30]

Dondero has argued that he had a good faith basis to sign and file the Proof of Claim on behalf of NexPoint/HCRE because "he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds"[31] and that he "ha[d] to rely on systems and processes[,]" because "[he] can't be directly involved in everything."[32] Dondero further testified that "[he] sign[s] a lot of high-risk documents and [has] to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this [Proof of Claim] is another one of those items."[33]

Dondero's "I'm-a-very-busy-person/too-busy-to-be-bothered-to-investigate" excuse is not a defense, as a matter of law, to his bad faith and willful abuse of the judicial process in connection with the filing of the Proof of Claim. Nor is Dondero's claimed reliance on systems and processes in connection with the execution and filing of this Proof of Claim, as a matter of fact, supported by the evidence. The court notes that the Proof of Claim is not a complex, lengthy legal or

[28] Trial Tr. 57:25-58:16.

[29] Trial Tr. 57:7-9.

[30] Trial Tr. 56:1-14.

[31] Response, 7, ¶16.

[32] Trial Tr. 57:25-58:7.

[33] Trial Tr. 57:25-59:2.

corporate document; Exhibit A to the Proof of Claim, which set forth the basis for the claim, is only one paragraph long, yet Dondero did not even bother to read it before signing under penalty of perjury that the information contained in the Proof of Claim, including Exhibit A, was truthful and accurate. And, Dondero's own testimony contradicts his assertion that he relied on "systems and processes" and on other people within the "sprawling and sophisticated corporate structure" and his outside counsel to ensure the accuracy of the Proof of Claim. He had no reasonable or justifiable basis to rely on anyone or any "process" that was allegedly in place in connection with his signing of "high risk" documents, because he asked no questions, conducted no due diligence, and made no effort, whatsoever, to verify that the information that he was swearing was accurate under penalty of perjury was, in fact, truthful.

The court finds and concludes that the foregoing admissions by NexPoint/HCRE, through Dondero, provide clear and convincing evidence that ***NexPoint/HCRE filed its Proof of Claim*** in bad faith and willfully abused the judicial process.

2. NexPoint/HCRE's Litigation Strategy and Actions in the Prosecution of Its Proof of Claim Are Further Evidence of Its Bad Faith and Willful Abuse of the Judicial Process

Moreover, NexPoint/HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and a half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process***.

As noted in the Proof of Claim Disallowance Order, six months after Dondero signed and filed the Proof of Claim in April 2020, and in response to Highland's objection to its Proof of Claim,[34] NexPoint/HCRE fleshed-out the legal and factual bases for its claim:[35]

> After reviewing what documentation is available to [NexPoint/HCRE] with the Debtor, [NexPoint/HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NexPoint/HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [NexPoint/HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

The Response was filed by a new law firm—Wick Phillips Gould & Martin, LLP ("Wick Phillips") – not the law firm of Bonds Ellis, which had handled the filing of the Proof of Claim. In the course of discovery, Highland became aware that Wick Phillips had jointly represented NexPoint/HCRE and Highland in connection with at least some of the underlying transactions that were the subject of the Proof of Claim, and, on April 14, 2021, more than a year after NexPoint/HCRE filed its Proof of Claim, Highland moved to disqualify Wick Phillips.[36] Notably, Highland's Plan had been confirmed on February 22, 2021, over the objections of Dondero and his related entities (including NexPoint/HCRE).[37] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan.

---

[34] On July 30, 2020, Highland filed an objection to the allowance of the Proof of Claim, contending it had no liability under the Proof of Claim. *See Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims*, Dkt. No. 906.

[35] Response to Objection to Claim, 2-3, ¶¶ 5-6.

[36] Dkt. Nos. 2196-2198. On October 1, 2021, Highland filed a supplemental disqualification motion. Dkt. No. 2893.

[37] NexPoint/HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* on January 5, 2021. Dkt. No. 1673.

Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including Highland's 46.06% membership interest in SE Multifamily.

Meanwhile, NexPoint/HCRE vigorously fought the disqualification of Wick Phillips, filing its opposition to the disqualification motion on May 6, 2021,[38] and initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with the entry by this court on December 10, 2021, of its *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[39] resolving the disqualification motion by, among other things, disqualifying Wick Phillips from representing NexPoint/HCRE in the contested matter concerning the Proof of Claim, but specifically denying Highland's request that NexPoint/HCRE reimburse it all costs and fees incurred in making and prosecuting the disqualification motion.[40]

In the instant Sanctions Motion, Highland acknowledged that the court denied Highland's specific request for sanctions of reimbursement of Highland's costs and fees in making the Disqualification Motion in its December 2021 Disqualification Order.[41] The court notes that the denial was not "with prejudice"[42] to Highland's right to bring a sanctions motion in the future in connection with allegations that NexPoint/HCRE's filing and prosecution of its Proof of Claim, including its vigorous defense of the Disqualification Motion. Notably, while Highland includes

[38] Dkt. Nos. 2278 and 2279.

[39] Dkt. No. 3106.

[40] Disqualification Order, 4.

[41] *See* Sanctions Motion, 4, ¶8.

[42] The Disqualification Order stated, in relevant part, "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**."

a reference in the instant Sanctions Motion to the lengthy and expensive proceedings on the Disqualification Motion in its recitation of evidence in the record that supports Highland's allegations that NexPoint/HCRE engaged in bad faith conduct in the filing and prosecution of its Proof of Claim, it did ***not*** include them as part of the fees and costs for which Highland is seeking to be reimbursed by NexPoint/HCRE as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.[43]

In any event, following the disqualification of Wick Phillips, NexPoint/HCRE hired yet a third law firm, Hoge & Gameros, LLP, in connection with this matter, and the parties engaged in a second round of extensive discovery, which included the exchange of written discovery and document production and the service of various deposition notices and subpoenas. On August 12, 2022, just two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of NexPoint/HCRE's witnesses, Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[44] By this point, Highland had spent hundreds of thousands of dollars objecting to the Proof of Claim.

Query why might NexPoint/HCRE have done this? Just six months earlier, Dondero's family trust, The Dugaboy Investment Trust, had represented to the bankruptcy court that

[43] *See* Morris Declaration, 3-4, at ¶11 (Referencing the court's denial in its Disqualification Order of Highland's previous request for attorneys' fees incurred in connection with the Disqualification Motion, Morris stated "[W]e reviewed the PSZJ Invoices and redacted all entries relating to the Disqualification Motion; thus, for the avoidance of doubt, Highland does not seek any fee award with respect to any work done in connection with the Disqualification Motion.").

[44] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

Highland's 46.06% interest in SE Multifamily was worth $20 million,[45] and now, NexPoint/HCRE (which presumably also spent substantial sums prosecuting its Proof of Claim during the nearly two and a half years of litigation) appeared willing to walk away from its multi-million dollar challenge to Highland's 46.06% interest in SE Multifamily. Highland objected to NexPoint/HCRE's Motion to Withdraw, and the court held a hearing on September 12, 2022 (as required by Bankruptcy Rule 3006), following which the court entered an order denying NexPoint/HCRE's Motion to Withdraw, for the reasons set forth on the record,[46] and directing the parties to "confer in good faith to complete the depositions" of Dondero, McGraner, and NexPoint/HCRE and otherwise comply with the scheduling order that had been entered by the court on this matter, which included appearing for an evidentiary hearing on November 1, 2022.[47] The court denied NexPoint/HCRE's Motion to Withdraw, in part, because it was concerned that the timing of it all–just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE (*i.e.,* NexPoint/HCRE prosecuted its Proof of Claim for two and a half years, through and including the taking of depositions of Highland's witness, while shielding its own witnesses from testifying). The court was also concerned by NexPoint/HCRE's repeated attempts to preserve its claims against Highland for use against Highland in the future. In fact, the court entered its order denying NexPoint/HCRE's Motion to Withdraw only after: (1) NexPoint/HCRE refused to agree, at the

[45] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. As pointed out by Highland in its Response, "[t]here is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily." Response, 9, at ¶27 n. 4.

[46] The court noted in its order denying HCRE's Motion to Withdraw that, under the Bankruptcy Rules, a creditor does not have an absolute right to withdraw a proof of claim.

[47] Dkt. No. 3525.

September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily, and (2) counsel were thereafter unable, in the day or two after the hearing, to work out mutually acceptable language in an agreed order that protected both parties.[48] As noted in its order denying NexPoint/HCRE's Motion to Withdraw, the court had expressed concerns, during the hearing on the Motion to Withdraw, relating to the integrity of the bankruptcy system and claims process if it allowed NexPoint/HCRE to withdraw its Proof of Claim after two and a half years of litigation, and having caused Highland to spend hundreds of thousands of dollars litigating the Proof of Claim, while at the same time allowing NexPoint/HCRE to preserve its challenges to Highland's ownership interest in SE Multifamily to be used against Highland in the future. The court did not, at the time, make any express findings regarding NexPoint/HCRE's bad faith or abuse of the judicial process, only because Highland's mid-hearing Oral Sanctions Motion had not provided NexPoint/HCRE with adequate notice and an opportunity to respond.[49] With the instant Sanctions Motion, those due process concerns have been satisfied.

Having considered the evidence and argument of counsel at both the Trial on NexPoint/HCRE's Proof of Claim and the hearing on the Sanctions Motion, and the pleadings filed in connection with the Sanctions Motion, including NexPoint/HCRE's written Response, and based on the record as a whole, the court expressly finds and concludes that NexPoint/HCRE's

[48] At the end of the September 12 hearing, the court had expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw, Dkt. No. 3519, 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at docket number 3525, denying NexPoint/HCRE's Motion to Withdraw.

[49] As noted below, NexPoint/HCRE persisted to the end in arguing that the disallowance of its Proof of Claim could not bar NexPoint/HCRE from making future challenges to Highland's 46.06% membership interest in SE Multifamily.

litigation strategy and actions in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process on the part of NexPoint/HCRE.

3. NexPoint/HCRE's Admissions at Trial Are Further Evidence of its Bad Faith Filing and Willful Abuse of the Judicial Process

Following the denial of NexPoint/HCRE's Motion to Withdraw, the parties complied with the court's order to schedule the depositions of Dondero and McGraner at mutually agreeable times to complete discovery and then appeared at Trial on November 1, 2022. At the conclusion of the Trial, NexPoint/HCRE doubled-down on its request of the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[50] This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request. Nevertheless, NexPoint/HCRE continued to the end to try to limit any order disallowing its Proof of Claim so as to preserve its right to assert the very claims asserted in its Proof of Claim (for rescission, reformation and/or modification of the SE Multifamily Amended LLC Agreement to reallocate the membership percentages) for use in the future.[51]

The Trial testimony of Dondero and McGraner revealed that NexPoint/HCRE had no factual basis to claim that a mistake was made by any of the parties, much less a mutual mistake

[50] Trial Tr. 179:23-25; 180:8-9.

[51] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

of the parties, regarding the allocation of ownership percentages in SE Multifamily in corporate documentation,[52] and, in fact, "the evidence overwhelmingly point[ed] to the conclusion that both Mr. Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement."[53] The court specifically noted in the Proof of Claim Disallowance Order that Dondero admitted that he had not read or reviewed the Amended LLC Agreement or any drafts of it before he signed it—apparently the Amended LLC Agreement was one of those important, high-risk documents that Dondero was too busy to read or investigate before signing (like the Proof of Claim)—but he nevertheless testified that "the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland."[54] NexPoint/HCRE was also unable to produce any evidence at Trial to support its factual allegation that there was a "lack of consideration" or a "failure of consideration" with respect to the Amended LLC Agreement, such that NexPoint/HCRE would be entitled to a

[52] The court concluded, specifically, that

> HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor NexPoint/HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement.

Proof of Claim Disallowance Order, 30.

[53] *Id.*, 30-31.

[54] *Id.*, 31 n. 119.

reformation,[55] rescission,[56] or modification of it, to re-allocate the ownership percentages that the parties agreed to at the time of the execution of it.[57]

In fact, McGraner ultimately admitted in his Trial testimony that the only reason NexPoint/HCRE had for filing its Proof of Claim, which challenged Highland's title to its 46.06% membership interest in SE Multifamily, was, essentially, ***that NexPoint/HCRE was frustrated with the consequences of Dondero's decision in 2019 to seek bankruptcy protection for Highland (notably, the bankruptcy case was filed just a few months after the Amended LLC Agreement was executed), which resulted in Dondero losing control over Highland***, such that, as far as NexPoint/HCRE was concerned, its "partner" [in SE Multifamily] was no longer its "partner." The court noted in the Proof of Claim Disallowance Order that McGraner

> could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are –

---

[55] After noting that "neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what NexPoint/HCRE is seeking in its Proof of Claim)," the court concluded that "HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration." Proof of Claim Disallowance Order, 32 n. 120.

[56] The court noted in the Proof of Claim Disallowance Order that NexPoint/HCRE had not actually stated a claim for rescission of the Amended LLC Agreement with respect to its Proof of Claim, but that, if it had,

> Mr. Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.

Proof of Claim Disallowance Order, 33-34.

[57] *See* Proof of Claim Disallowance Order, 32-33 n. 120 (where the court found that "HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. . . . Under Delaware law, the courts 'limit [their] inquiry into consideration to its existence and not whether it is fair or adequate,' . . . . '[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain.' (citations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.").

> that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[58]

McGraner testified that "despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite 'all of the fears [he] had [related to Highland's bankruptcy filing],' HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because 'we didn't think it would be worth it')[ ][59] [and] 'because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves.'"[60] This is not a good-faith basis for filing and prosecuting the Proof of Claim, and it exhibits a willful abuse of the bankruptcy claims process by NexPoint/HCRE.

In summary, the admissions by Dondero and McGraner in their Trial testimony made clear that NexPoint/HCRE never had a factual or legal basis for the Proof of Claim. NexPoint/HCRE's principals knew, at the time of filing and through its prosecution of the Proof of Claim, that there was no factual basis for its claim of rescission, reformation, and/or modification of the Amended LLC Agreement to dispossess Highland of some or all of its 46.06% membership interest in SE Multifamily. This clearly and convincingly constitutes bad faith by NexPoint/HCRE and a willful abuse of the judicial process.

C. Reimbursement of Attorneys' Fees and Costs Incurred by Highland in the Proof of Claim Litigation Is an Appropriate Sanction for NexPoint/HCRE's Bad Faith

Having found and concluded by clear and convincing evidence that NexPoint/HCRE filed and prosecuted (and attempted withdrawal of) its Proof of Claim in bad faith and willfully abused the judicial process, this court may use its inherent powers under Bankruptcy Code section 105(a)

---

[58] Proof of Claim Disallowance Order, 27 (citing Trial Tr. 114:24-115:16, 118:6-15).

[59] *Id.* (citing Trial Tr. 121:24-122:9).

[60] *Id.* at 28 (citing Trial Tr. 122:20-125:21).

to sanction it for such conduct. Reimbursement of the opposing party's fees and costs incurred in responding to a bad faith filing or willful abuse of the judicial process has been upheld as an appropriate form of sanctions. *See Cleveland Imaging*, 26 F.4th at 294 (upholding the bankruptcy court's sanction order that required the parties who were found to have filed bankruptcy petitions in bad faith to reimburse the fees incurred by a post-confirmation litigation trust in responding to the bad faith filing); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017) (bankruptcy court did not abuse its discretion in ordering the debtors to "pay $49,432, which represents the amount of attorneys' fees incurred by [the bankruptcy trustee] in responding to certain instances of the [debtors'] bad faith conduct."); *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's use of its inherent powers to issue monetary sanctions for bad faith filing that were, in part, based upon the opposing parties' attorneys' fees and costs "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Paige*, 365 B.R. 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same). Any sanction imposed pursuant to a bankruptcy court's inherent powers for bad faith conduct or willful abuse of the judicial process "must be compensatory rather than punitive in nature." *In re Lopez*, 576 B.R. at 93 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994)). "[A] sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based[,]" and "[a] fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber*, 581 U.S.

at 108 (quoting *Bagwell*, 512 U.S. at 834). The fee award must be "limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith." *Id.* (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. at 104). The "'causal link' between the sanctionable conduct and the opposing party's attorney's fees" must be established "through a 'but-for test:' to wit, the complaining party may only recover the portion of fees that they would not have paid 'but-for' the sanctionable conduct." *Id.* (citing *Goodyear Tire & Rubber*, 581 U.S. at 108-109 (citing *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

Here, as earlier noted, Highland has requested, as a sanction, reimbursement of its attorneys' fees and costs incurred by it in responding to NexPoint/HCRE's filing and prosecution of its Proof of Claim. Specifically, Highland seeks reimbursement of an aggregate amount of **$825,940.55**, consisting of

- **$782,476.50** in attorneys' fees charged by its primary bankruptcy counsel, PSZJ, for the period August 1, 2021 through December 31, 2022, for work performed in connection with the litigation of the Proof of Claim;[61]
- **$16,164.05** in third-party expenses for court reporting services provided in connection with the Proof of Claim litigation;[62] and,

[61] *See* Morris Declaration, 3-4, at ¶¶ 8-13, and Ex. F. As stated in the Morris Declaration, the $782,476.50 amount does not include any fees relating to the Disqualification Motion or any fees that PSZJ concluded were inadvertently coded by a timekeeper to the NexPoint/HCRE Claim Objection category "or that were otherwise unrelated to services rendered in connection with the Proof of Claim litigation." *Id.*, 3-4, at ¶¶ 11 and 12. By way of specific example, Morris stated that "in 2022 and 2023 we charged Highland for services rendered in connection with our unsuccessful attempts to obtain SE Multifamily's books and records but excluded those charges here because they do not directly relate to the litigation of HCRE's Proof of Claim; Highland is seeking those fees in the Delaware Chancery Court where Highland was forced to commence an action against HCRE for specific performance (Case No. 2023-0493-LM))." *Id.*, 4, at ¶ 12.

[62] *See id.*, 4, at ¶ 14, and Ex. G.

- **$27,300.00** in attorneys' fees charged by David Agler for providing Highland with specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim.[63]

NexPoint/HCRE challenges Highland's request for reimbursement of its fees on several bases. ***First***, it argues that it cannot be ordered to reimburse the fees and expenses incurred by Highland ***after*** NexPoint/HCRE attempted to withdraw its Proof of Claim because they do not satisfy the "but for" test for establishing a "causal link" between those fees and costs and NexPoint/HCRE's filing and pursuit of its Proof of Claim—that Highland cannot show that "but for" NexPoint/HCRE's filing and prosecution of its Proof of Claim, Highland would not have incurred those fees and costs. NexPoint/HCRE urges the court to adopt its narrative of the proceedings that "instead of taking a win, [Highland] and its lawyers chose to generate fees to get the same result" and thus Highland's attorneys' efforts were "totally unnecessary" and a "waste of time and resources" that was "the fault of [Highland], not [NexPoint/HCRE]."[64] NexPoint/HCRE states in its Response that "[h]ere, ***it is undisputed*** that, had [Highland] agreed to the withdrawal of the Proof of Claim many months ago – before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim – [Highland] would have been exactly in the same position that it is in now, but at far less expense" and further that "[t]he real, practical difference between refusing to consent to the withdrawal of [NexPoint/HCRE]'s Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees" and, thus, "[t]he Motion abjectly fails any 'but–for' analysis."[65]

---

[63] *See id.*, 4-5, at ¶¶ 15 and 16, and Ex. H. A summary of the aggregate fees and expenses of which Highland is seeking reimbursement in the Sanctions Motion is attached as Exhibit I to the Morris Declaration. *See id.*, 5, at ¶ 17, and Ex. I.

[64] Response, 2.

[65] Response, 20, at ¶60 (emphasis added).

The court disagrees with NexPoint/HCRE's "narrative" and its view of the evidence established at Trial. Highland ***does*** dispute NexPoint/HCRE's contention that, if only it had allowed it to withdraw its Proof of Claim and accepted a "win," that Highland would have been "exactly in the same position that it is in now [after a Trial and ruling on the merits of the Proof of Claim], but at far less expense." The court does as well. As Highland has argued, NexPoint/HCRE's Motion to Withdraw was itself filed in bad faith. Highland was forced to oppose the withdrawal of the Proof of Claim because NexPoint/HCRE would not agree to a withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future.[66] The evidence clearly and convincingly established that any "win" or "victory" that Highland would have obtained through the withdrawal of the Proof of Claim[67]

> would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

The court finds and concludes, as argued by Highland, that there is clear and convincing evidence here that the fees and costs incurred by it, after NexPoint/HCRE sought to withdraw its Proof of Claim (*i.e.,* to prepare for the Trial and prosecute its objection to the Proof of Claim through a trial and ruling on the merits), would not have been incurred "but for" NexPoint/HCRE's bad faith. As pointed out by Highland and as noted above,[68] the court did not enter the Proof of Claim Disallowance Order in December 2022 in a vacuum. Rather, the court denied

---

[66] *See supra* note 45 and accompanying text.

[67] Response, 5, at ¶18.

[68] *See supra* at pages 16-17.

NexPoint/HCRE's Motion to Withdraw only ***after:*** (1) the court had expressed concerns that the timing and context of its filing of its Motion to Withdraw suggested gamesmanship on its part, and that the integrity of the bankruptcy system and claims process would be in jeopardy if the court were to simply allow withdrawal, without protecting Highland from future challenges to its membership interest in SE Multifamily (particularly, after Highland had spent hundreds of thousands of dollars to that point in objecting to the Proof of Claim); and (2) NexPoint/HCRE refused to agree to language in an order that would alleviate these expressed concerns. The court—having now made an express finding that NexPoint/HCRE's filing of its Motion to Withdraw was in bad faith and part of its willful abuse of the bankruptcy claims process that began with the filing of its Proof of Claim in April 2020—now expressly finds that the fees and costs incurred by Highland after NexPoint/HCRE filed its Motion to Withdraw were necessary for Highland to protect its interests and would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

Second, NexPoint/HCRE objects to Highland's fees ($809,776.50) and expenses ($16,164.05) as being "*per se* excessive for a single proof of claim objection."[69] Highland argues that "[s]pending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries." Per the Morris Declaration, Highland only seeks reimbursement of expenses and fees charged to Highland for expenses incurred and work performed in litigating the Proof of Claim (but—as noted earlier—specifically excluding any fees charged relating to the Disqualification Motion). The court agrees with Highland and finds that the fees and expenses incurred by it in objecting to the Proof of Claim,

[69] Response, 10, ¶34.

including the fees incurred ***after*** NexPoint/HCRE sought to withdraw its Proof of Claim, were reasonable and necessary for Highland to protect a valuable asset—it's 46.06% interest in SE Multifamily—and, thus, they are not excessive.

Third, NexPoint/HCRE complains, in its Response, that the fees charged by PSZJ were unreasonable and excessive because the PSZJ invoices show that it was seeking reimbursement for fees charged by "layers of timekeepers whose identities and roles have not been disclosed."[70] NexPoint/HCRE points out three professionals (two of whom billed one hour or less) who were identified in PSZJ's invoices only by their initials.[71] In its Reply, Highland identified the timekeepers by name—as a litigator who billed one hour of time; a bankruptcy attorney who billed 0.6 hours of time; and a bankruptcy partner who billed 15.1 hours of time—all of whom were "called upon to provide discrete support."[72] Collectively, the three previously "unidentified" attorneys charged just 0.023% of the total fee request.[73] PSZJ's identification of the "unidentified timekeepers" and explanation of the work performed by them satisfies the court that these fees were reasonable and necessary fees incurred as a direct result of NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim. The court rejects NexPoint/HCRE's suggestion that PSZJ overstaffed and overbilled the file because there were "layers of timekeepers." As pointed out in Highland's Reply, "over 82% of the charges related to one litigation partner . . . , one litigation associate . . . , and one paralegal" and "[t]wo other lawyers who have been on the Pachulski team since the inception of this engagement . . . billed relatively modest amounts of time over the course

[70] *Id.*, 13, ¶45.
[71] *Id.*, 12, ¶38.
[72] Reply, 9, ¶28.
[73] *Id.*

of this prolonged litigation."[74] There is simply no factual basis to support a conclusion that the matter was overstaffed.

Fourth, NexPoint/HCRE objects to $9,840 charged by two attorneys for travel time,[75] while acknowledging that those attorneys' non-working travel time was billed at half of the attorneys' regular hourly rate.[76] As pointed out by Highland in its Reply, Highland agreed to pay for travel time in its pre-petition engagement letter, so those "charges cannot come as a surprise to Mr. Dondero."[77] The court takes judicial notice of the fact that attorneys charging half of their hourly rates for non-working travel time, as PSZJ did here, pursuant to its engagement letter with Highland that was approved when the court authorized the retention of PSZJ as counsel for the Debtor, is common practice and is a commonly approved term of engagement of professionals in bankruptcy cases. The $9,840 charged by two attorneys for travel time in this matter was a reasonable and necessary expense incurred by Highland in responding to NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.

Fifth, and finally, NexPoint/HCRE objects to the fees charged by David Agler (39 hours of work performed at $700 per hour) for providing Highland with tax advice in August 2022, on the basis that the invoice attached as Exhibit H to the Morris Declaration "indicated that it was 'unbilled' work" and that "[w]hatever work he did, it did not manifest itself in the proceedings."[78] Highland pointed out that it ***had*** explained, in the Morris Declaration, that Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of

[74] *Id.*, 9, ¶28 n. 5.

[75] Response, 12, ¶37.

[76] *Id.*, 11, ¶36 (Table 1).

[77] Reply, 9-10, ¶29.

[78] Response, 12, ¶42.

Claim."[79] Highland provided a more detailed description of the services provided by Mr. Agler and why those services were necessary in its Reply: "Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits."[80] The court finds that the fees charged by David Agler for work performed for Highland that are set forth in Exhibit H to the Morris Declaration were reasonable and necessary expenses incurred by Highland in responding to HCRE's bad faith conduct and that they would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

The court has determined that the full amount of fees – $809,776.50 – and costs – $16,164.05 – that are set forth in detail in Exhibits F through H (and summarized on Exhibit I) of the Morris Declaration were reasonable and necessary for Highland to respond to, and would not have been incurred "but for," NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim, which the court has found to have been a willful abuse by NexPoit/HCRE of the judicial process. Under Fifth Circuit precedent, it is appropriate for the court, in the use of its inherent power under Bankruptcy Code § 105(a), to order NexPoint/HCRE, as a compensatory sanction for its bad faith conduct and willful abuse of the judicial process, to reimburse Highland the full amount of fees and costs requested by Highland, which, in the aggregate, total $825,940.55. NexPoint/HCRE's objections to such amounts as excessive, unnecessary, unreasonable, or unrelated to NexPoint/HCRE's bad faith conduct, are overruled.

---

[79] Reply, 10, ¶30 (citing Morris Declaration, ¶15).

[80] *See id.* (citing Morris Declaration, Ex. [E] (Trial Transcript) 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence)).

V. CONCLUSION AND ORDER

In summary, the court has determined that NexPoint/HCRE was given adequate notice and an opportunity to respond to the Sanctions Motion and that there is clear and convincing evidence that it filed and prosecuted its Proof of Claim, including its eleventh-hour attempt to withdraw its Proof of Claim, in bad faith and that it willfully abused the judicial process. Such conduct directly caused Highland to incur $825,940.55 in fees and expenses. In the exercise of its inherent power under Bankruptcy Code § 105(a), the court will grant Highland's Sanctions Motion and order NexPoint/HCRE to reimburse Highland for those fees and expenses as an appropriate sanction for NexPoint/HCRE's bad faith or willful abuse of the judicial process.

Accordingly, and based on the foregoing findings of fact and conclusions of law, including those findings and conclusions in this court's Proof of Claim Disallowance Order, which has been incorporated herein by reference,

IT IS ORDERED that the Sanctions Motion [Dkt. No. 3851] be, and hereby is **GRANTED**;

IT IS FURTHER ORDERED that, in order to compensate Highland for loss and expense resulting from NexPoint/HCRE's bad faith and willful abuse of the judicial process, in filing and prosecuting its Proof of Claim, NexPoint/HCRE is hereby directed to pay Highland the compensatory sum of **$825,940.55**.

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

EXHIBIT B

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

Signed March 4, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM # 146

I. INTRODUCTION

Before this court is a sanctions motion[1] filed by Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor"). [2] The motion seeks sanctions against

[1] *Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in connection with Proof of Claim 146* ("Sanctions Motion"). Dkt. No. 3851.

[2] Highland is a reorganized debtor under the confirmed *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Dkt. No. 1943.

NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("NexPoint/HCRE") for its filing, prosecution, and then abrupt attempt to withdraw a meritless proof of claim (after almost three years of protracted litigation).

NexPoint/HCRE filed the subject proof of claim, #146 on the claims register ("Proof of Claim"), on April 8, 2020.[3] The Proof of Claim was signed electronically by James D. Dondero ("Dondero") and was prepared and filed by a law firm that was representing him personally at that time.[4] The Proof of Claim was not in a liquidated amount and was somewhat ambiguous. It stated in an Exhibit A thereto, that NexPoint/HCRE, which was a limited partner, along with Highland, in a limited liability company called SE Multifamily Holdings, LLC ("SE Multifamily")—an entity which owned valuable real estate—"may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor" and added that Highland's equity interest "may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor." NexPoint/HCRE stated that it would update the Proof of Claim to provide the exact amount of it "in the next ninety days" but never did.

Highland objected to the Proof of Claim. Thereafter, NexPoint/HCRE (while still not providing any liquidated amount of its Proof of Claim) refined its position therein to argue that the organizational documents relating to SE Multifamily improperly allocated the ownership percentages of the equity members, due to mutual mistake, lack of consideration, and/or failure of consideration. NexPoint/HCRE essentially sought to reform, rescind, and/or modify the SE Multifamily limited liability company agreement (and possibly other documentation) to give Highland less ownership (or no ownership interest) in SE Multifamily and, accordingly,

[3] Claim No. 146.

[4] Bonds Ellis Eppich Schafer Jones LLP.

NexPoint/HCRE would have a larger ownership interest in SE Multifamily. Next, there occurred years of litigation between the parties, including: (a) a skirmish over Highland's motion to disqualify NexPoint/HCRE's newest counsel (*i.e.,* a law firm that had represented both Highland and NexPoint/HCRE in transactions involving SE Multifamily), which was ultimately granted, and (b) an eleventh-hour attempt by NexPoint/HCRE to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits. Highland objected to the withdrawal. The court held a hearing on that, as required by Bankruptcy Rule 3006. The court declined to allow withdrawal of the Proof of Claim, when the parties could not stipulate to an agreed form of order (*i.e.,* NexPoint/HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum).

Painfully, after all this, an evidentiary hearing was held on the merits of the Proof of Claim ("Trial") on November 1, 2022. During the Trial, Highland made an oral motion for a bad faith finding and assessment of attorneys' fees against NexPoint/HCRE in connection with its filing and prosecution of the Proof of Claim ("Oral Sanctions Motion"), which this court took under advisement, along with the consideration of the Proof of Claim as a whole.

On April 28, 2023, this court entered a 39-page memorandum opinion and order[5] sustaining Highland's objection to NexPoint/HCRE's Proof of Claim, but denying Highland's Oral Sanctions Motion, without prejudice, ***as procedurally deficient in that it was made orally and for the first time during the Trial.*** Thus, the Oral Sanctions Motion failed to provide NexPoint/HCRE sufficient notice and an opportunity to respond and, therefore, did not satisfy concerns of due process.

[5] *See Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* ("Proof of Claim Disallowance Order"). Dkt. No. 3767.

On June 16, 2023, Highland filed the instant Sanctions Motion, setting forth the legal and factual bases for the relief sought. The Sanctions Motion specifically seeks a finding of bad faith against NexPoint/HCRE and reimbursement of Highland's attorneys' fees and costs, as a sanction for NexPoint/HCRE's filing and prosecution of the Proof of Claim.

After due notice to NexPoint/HCRE, and a hearing held January 24, 2024 on the Sanctions Motion ("Sanctions Motion Hearing"), and after consideration of the pleadings filed, evidence in the record, and arguments of counsel, the court finds, for the reasons detailed in the findings of fact and conclusions of law below,[6] that NexPoint/HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim. Accordingly, NexPoint/HCRE will be required, as a sanction, to reimburse Highland's attorneys' fees and costs (totaling **$825,940.55)** incurred in connection with its objection to the Proof of Claim.

II. JURISDICTION

This court has jurisdiction and authority to determine and enter a final order in this matter, pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B), and (O) and 1334.[7]

III. BACKGROUND, PROCEDURAL HISTORY, AND FINDINGS OF FACT

A. Incorporation Herein of Proof of Claim Disallowance Order

As noted above, this court, on April 28, 2023, issued its 39-page Proof of Claim Disallowance Order, sustaining Highland's objection to NexPoint/HCRE's Proof of Claim

[6] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

[7] The Fifth Circuit recently confirmed the jurisdiction and authority of bankruptcy courts to issue sanctions orders in connection with bankruptcy cases and proceedings over which they exercise jurisdiction, because they are in the nature of ***civil contempt*** orders—which are considered "part of the underlying case" – "because the bankruptcy court had jurisdiction over the [ ] bankruptcy case, it had jurisdiction to enter the sanctions order, too." *Kreit v. Quinn (In re Cleveland Imaging and Surgical Hospital, L.L.C.)*, 26 F.4th 285, 294 (5th Cir. 2022) (cleaned up).

following the Trial on same. The Proof of Claim Disallowance Order sets forth extensive procedural history, findings of fact, and conclusions of law pertaining to NexPoint/HCRE's filing and prosecution of its Proof of Claim, which Highland alleges in the instant Sanctions Motion was conducted in bad faith. NexPoint/HCRE did not appeal the Proof of Claim Disallowance Order. Thus, it is a final and non-appealable order.[8] The court hereby incorporates by reference the Proof of Claim Disallowance Order (and all of the findings and conclusions therein), as if set forth verbatim herein.[9]

B. Highland Files Sanctions Motion

On June 16, 2023, Highland filed the instant Sanctions Motion. It was supported with a Declaration of John A. Morris in support of the Sanctions Motion ("Morris Declaration")[10] and 431 pages of attached exhibits as set forth in the following table:

Exhibit A	NexPoint/HCRE's Proof of Claim[11]
Exhibit B	Highland's Objection to NexPoint/HCRE's Proof of Claim[12]
Exhibit C	NexPoint/HCRE's Response to Objection to Claim[13]

[8] The Proof of Claim Disallowance Order is one of the few bankruptcy court orders issued in this bankruptcy case that was not appealed by Dondero or a Dondero-controlled entity. Although the court has not counted the exact number of appeals filed by Dondero and/or Dondero-controlled entities in this bankruptcy case and related proceedings, this court takes judicial notice of information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." *See Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12, at ¶ 24, filed on February 9, 2024. Dkt. No. 189 (NDTX Case No. 3:21-cv-00881-X).

[9] The Proof of Claim Disallowance Order was attached as Exhibit D to the Declaration of John A. Morris, Dkt. No. 3852, which was filed by Highland in connection with, and in support of, the relief requested in the Sanctions Motion.

[10] Dkt. No. 3852.

[11] Claim No. 146, filed April 8, 2020.

[12] *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection to Claim"), filed July 30, 2020. Dkt. No. 906.

[13] *NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Response to Objection to Claim"), filed October 19, 2020. Dkt. No. 1212.

Exhibit D	Proof of Claim Disallowance Order
Exhibit E	Transcript of November 1, 2022 Trial (on NexPoint/HCRE's Proof of Claim)
Exhibit F	Attorneys' Fees of Pachulski Stang Ziehl & Jones LLP ("PSZJ") for the period of August 1, 2021 through December 31, 2022 incurred in connection with the litigation on the NexPoint/HCRE Proof of Claim
Exhibit G	Invoices for court reporting services provided in connection with depositions taken and defended during the course of the Proof of Claim litigation
Exhibit H	Invoice for services rendered by David Agler, who provided specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim
Exhibit I	Summary of Fees and Expenses Incurred by Highland in Connection with NexPoint/HCRE's Proof of Claim

The Sanctions Motion (unlike the Oral Sanctions Motion made during the Trial) provided NexPoint/HCRE with due and appropriate notice of the legal and factual bases for Highland's request for a bad faith finding and reimbursement of attorneys' fees and costs incurred by it in litigating the Proof of Claim. As stated in the Sanctions Motion, the legal basis for Highland's request for reimbursement of its attorneys' fees as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim is the bankruptcy court's "inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith."[14] Highland referred to specific documentary and testimonial evidence adduced during the Trial that it alleges supports a finding that NexPoint/HCRE filed and prosecuted its Proof of Claim in bad faith, and attached invoices evidencing its attorneys' fees and costs incurred as a direct result of this alleged bad faith.

[14] *See* Sanctions Motion, 10, ¶25.

Before NexPoint/HCRE filed its response to the Sanctions Motion, the matter was stayed on August 2, 2023, pending court-ordered global mediation.[15] The mediation ultimately proved to be unsuccessful.[16] Thereafter, NexPoint/HCRE filed its *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* ("Response")[17] on December 22, 2023. NexPoint/HCRE denies that it filed and prosecuted its Proof of Claim in bad faith and argues it should not be sanctioned at all. It further argues that, even if the filing and prosecution of the Proof of Claim are found to have been in bad faith, the amount of the fees incurred by Highland in connection with the Proof of Claim litigation is "*per se* excessive for a single proof of claim objection"[18] and "extraordinarily high given that this dispute could have been brought to a swift close many months ago"—if only NexPoint/HCRE had been allowed to withdraw its Proof of Claim in September of 2022.[19] Highland's has sought reimbursement of more than $800,000 in attorneys' fees and more than $16,000 in expenses, identified in Exhibits F through H (and summarized in Exhibit I) of the Morris Declaration as having been incurred by Highland in connection with its litigation of the Proof of Claim.

Highland filed its *Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in*

---

[15] *See Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation*. Dkt. No. 3897. This was not the first time the bankruptcy court has ordered global mediation in the Highland case.

[16] *See Joint Notice of Mediation Report* filed on November 7, 2023. Dkt. No. 3995.

[17] Dkt. No. 3995.

[18] Response, 10, ¶34.

[19] Response, 13, ¶45. NexPoint/HCRE argues that, because it had sought to withdraw its Proof of Claim, any fees incurred by Highland after the filing of NexPoint/HCRE's motion to withdraw cannot be attributable to NexPoint/HCRE's alleged bad faith filing and prosecution of its Proof of Claim; rather, such fees were incurred by Highland as a result of Highland's decision to object to NexPoint/HCRE's withdrawal of its Proof of Claim and to proceed with the litigation, including taking depositions, and proceeding to "trial" on the merits instead of "taking a win" with NexPoint/HCRE's withdrawal of its Proof of Claim. *See* Response, 2.

Connection with Proof of Claim 146[20] on January 19, 2024, and filed an *Amended Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* ("Reply")[21] on January 23, 2024. Highland argues that "[n]othing in the Response warrants the denial of the [Sanctions] Motion or its requested award of attorneys' fees" and that "the record makes clear" that NexPoint/HCRE and its principals "clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, . . . ([b]) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and ([c]) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement")."[22]

The court held a hearing on the Sanctions Motion ("Hearing") on January 24, 2024, during which NexPoint/HCRE was given a full opportunity to respond to Highland's allegations of bad faith and request for sanctions.

IV. CONCLUSIONS OF LAW

A. The Sanctions Motion Satisfies Due Process Considerations

In invoking its inherent power to sanction bad faith conduct or a willful abuse of the judicial process, "[a] court must exercise caution . . . , and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018). As noted above, the court entered its Proof of Claim Disallowance Order on April 28, 2023, in which it sustained Highland's objection to, and disallowed, the Proof of Claim but denied, without prejudice, Highland's Oral Sanctions Motion

[20] Dkt. No. 4018.

[21] Dkt. No. 4023.

[22] Reply, 2, ¶2.

as being procedurally defective because, having been raised for the first time during Trial and not having been made in writing, it had not given NexPoint/HCRE adequate notice and an opportunity to respond to the specific allegations of bad faith being made against it. The court pointed out that it did not address or make any determination regarding the substance of Highland's requests in the Oral Sanctions Motion for a bad faith finding and sanctions against NexPoint/HCRE, subject to Highland's right seek a bad faith finding and sanctions against NexPoint/HCRE upon and after giving it proper notice and an opportunity to respond:

> Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny, without prejudice, [Highland's] request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Proof of Claim Disallowance Order, 38-39 (quoting *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010) ("[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond."); *In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) ("By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond.")).

The court concludes that the instant Sanctions Motion and Hearing have provided NexPoint/HCRE with the due process that was lacking in connection with the Oral Sanctions Motion. NexPoint/HCRE was given adequate notice of the legal authority invoked for sanctions (the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code) and NexPoint/HCRE's specific conduct (the filing and prosecution of its Proof of Claim) that Highland

alleges to have been in bad faith, and NexPoint/HCRE was given adequate opportunity to respond through briefing and at the Hearing on the Sanctions Motion.

With due process concerns having been now addressed and satisfied, the court is able to address the substantive questions raised in the instant Sanctions Motion of (1) whether NexPoint/HCRE did, indeed, act in bad faith in the filing and prosecution of its Proof of Claim and (2) if so, whether an award of reimbursement of Highland's attorneys' fees and costs incurred in connection with its litigation of the Proof of Claim is an appropriate sanction for such bad faith.

B. NexPoint/HCRE Filed and Prosecuted its Proof of Claim in Bad Faith and Willfully Abused the Judicial Process

A bankruptcy court may sanction a litigant for bad faith filing or litigation if the court makes specific findings, based on clear and convincing evidence, of bad faith or willful abuse of the judicial process. *See Cleveland Imaging*, 26 F.4th at 292 (A bankruptcy court may only sanction a party using its inherent authority if "(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence.") (citing *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729-30 (5th Cir. 2014)). The bankruptcy court's power to sanction bad faith or willful abuse of the judicial process derives from its inherent authority under 11 U.S.C. § 105(a) to issue civil contempt orders. *Id.* at 294, 294 n.14 (quoting the "relevant part" of Bankruptcy Code section 105(a), which provides that bankruptcy courts may "sua sponte, tak[e] any action . . . necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.") (cleaned up).

Having reviewed the record and the evidence adduced at Trial and NexPoint/HCRE's response to the Sanctions Motion (both in its Response and at the hearing on the Sanctions Motion), the court finds and concludes that there is clear and convincing evidence here that

NexPoint/HCRE filed and prosecuted is Proof of Claim in bad faith and that it willfully abused the judicial process.

1. *Dondero's Execution and Authorization of the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence Was in Bad Faith and a Willful Abuse of the Judicial Process*

As noted in the Proof of Claim Disallowance Order, NexPoint/HCRE filed its Proof of Claim in this Highland bankruptcy case on April 8, 2020, several months after the post-petition "nasty breakup" between Highland and its co-founder and president and chief executive officer, Dondero. NexPoint/HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[23]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

NexPoint/HCRE was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Dondero was the president and sole manager of NexPoint/HCRE, and an individual named Matt McGraner ("McGraner") was NexPoint/HCRE's vice president and secretary. NexPoint/HCRE had no employees of its own but instead relied on Highland's employees (and employees of other entities controlled by Dondero) to conduct business on its behalf. Dondero executed the Proof of Claim as the "person who is completing and signing this claim," checking

[23] Claim No. 146.

the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[24] The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it and without conducting any due diligence on, or investigation into, whether the statements made in the Proof of Claim were truthful and accurate, which supports a finding that Dondero's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.

At Trial, Dondero testified that he had authorized his electronic signature to be affixed to the document and to be filed on behalf of NexPoint/HCRE and admitted that he had not reviewed the document before doing so.[25] He further testified that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed,"[26] and, more specifically, that he did not, prior to authorizing his law firm (Bonds Ellis) to affix his electronic signature on, and to file, the Proof of Claim, review or provide comments to the Proof of Claim or its Exhibit A, review the SE Multifamily Amended LLC Agreement or any documents,[27] "check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it," or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of

[24] Proof of Claim, 3.

[25] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 55:2-22.

[26] Trial Tr. 56:20-23.

[27] Trial Tr. 55:10-22, 56:15-57:6.

HCRE."[28] Moreover, he testified that he did not know whose idea it was to file the Proof of Claim,[29] who at NexPoint/HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever communicated with anybody in the real estate group regarding [the Proof of Claim]."[30]

Dondero has argued that he had a good faith basis to sign and file the Proof of Claim on behalf of NexPoint/HCRE because "he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds"[31] and that he "ha[d] to rely on systems and processes[,]" because "[he] can't be directly involved in everything."[32] Dondero further testified that "[he] sign[s] a lot of high-risk documents and [has] to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this [Proof of Claim] is another one of those items."[33]

Dondero's "I'm-a-very-busy-person/too-busy-to-be-bothered-to-investigate" excuse is not a defense, as a matter of law, to his bad faith and willful abuse of the judicial process in connection with the filing of the Proof of Claim. Nor is Dondero's claimed reliance on systems and processes in connection with the execution and filing of this Proof of Claim, as a matter of fact, supported by the evidence. The court notes that the Proof of Claim is not a complex, lengthy legal or

[28] Trial Tr. 57:25-58:16.

[29] Trial Tr. 57:7-9.

[30] Trial Tr. 56:1-14.

[31] Response, 7, ¶16.

[32] Trial Tr. 57:25-58:7.

[33] Trial Tr. 57:25-59:2.

corporate document; Exhibit A to the Proof of Claim, which set forth the basis for the claim, is only one paragraph long, yet Dondero did not even bother to read it before signing under penalty of perjury that the information contained in the Proof of Claim, including Exhibit A, was truthful and accurate. And, Dondero's own testimony contradicts his assertion that he relied on "systems and processes" and on other people within the "sprawling and sophisticated corporate structure" and his outside counsel to ensure the accuracy of the Proof of Claim. He had no reasonable or justifiable basis to rely on anyone or any "process" that was allegedly in place in connection with his signing of "high risk" documents, because he asked no questions, conducted no due diligence, and made no effort, whatsoever, to verify that the information that he was swearing was accurate under penalty of perjury was, in fact, truthful.

The court finds and concludes that the foregoing admissions by NexPoint/HCRE, through Dondero, provide clear and convincing evidence that ***NexPoint/HCRE filed its Proof of Claim*** in bad faith and willfully abused the judicial process.

2. NexPoint/HCRE's Litigation Strategy and Actions in the Prosecution of Its Proof of Claim Are Further Evidence of Its Bad Faith and Willful Abuse of the Judicial Process

Moreover, NexPoint/HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and a half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process***.

As noted in the Proof of Claim Disallowance Order, six months after Dondero signed and filed the Proof of Claim in April 2020, and in response to Highland's objection to its Proof of Claim,[34] NexPoint/HCRE fleshed-out the legal and factual bases for its claim:[35]

> After reviewing what documentation is available to [NexPoint/HCRE] with the Debtor, [NexPoint/HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NexPoint/HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [NexPoint/HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

The Response was filed by a new law firm—Wick Phillips Gould & Martin, LLP ("Wick Phillips") – not the law firm of Bonds Ellis, which had handled the filing of the Proof of Claim. In the course of discovery, Highland became aware that Wick Phillips had jointly represented NexPoint/HCRE and Highland in connection with at least some of the underlying transactions that were the subject of the Proof of Claim, and, on April 14, 2021, more than a year after NexPoint/HCRE filed its Proof of Claim, Highland moved to disqualify Wick Phillips.[36] Notably, Highland's Plan had been confirmed on February 22, 2021, over the objections of Dondero and his related entities (including NexPoint/HCRE).[37] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan.

---

[34] On July 30, 2020, Highland filed an objection to the allowance of the Proof of Claim, contending it had no liability under the Proof of Claim. *See Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims*, Dkt. No. 906.

[35] Response to Objection to Claim, 2-3, ¶¶ 5-6.

[36] Dkt. Nos. 2196-2198. On October 1, 2021, Highland filed a supplemental disqualification motion. Dkt. No. 2893.

[37] NexPoint/HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* on January 5, 2021. Dkt. No. 1673.

Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including Highland's 46.06% membership interest in SE Multifamily.

Meanwhile, NexPoint/HCRE vigorously fought the disqualification of Wick Phillips, filing its opposition to the disqualification motion on May 6, 2021,[38] and initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with the entry by this court on December 10, 2021, of its *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[39] resolving the disqualification motion by, among other things, disqualifying Wick Phillips from representing NexPoint/HCRE in the contested matter concerning the Proof of Claim, but specifically denying Highland's request that NexPoint/HCRE reimburse it all costs and fees incurred in making and prosecuting the disqualification motion.[40]

In the instant Sanctions Motion, Highland acknowledged that the court denied Highland's specific request for sanctions of reimbursement of Highland's costs and fees in making the Disqualification Motion in its December 2021 Disqualification Order.[41] The court notes that the denial was not "with prejudice"[42] to Highland's right to bring a sanctions motion in the future in connection with allegations that NexPoint/HCRE's filing and prosecution of its Proof of Claim, including its vigorous defense of the Disqualification Motion. Notably, while Highland includes

[38] Dkt. Nos. 2278 and 2279.

[39] Dkt. No. 3106.

[40] Disqualification Order, 4.

[41] *See* Sanctions Motion, 4, ¶8.

[42] The Disqualification Order stated, in relevant part, "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**."

a reference in the instant Sanctions Motion to the lengthy and expensive proceedings on the Disqualification Motion in its recitation of evidence in the record that supports Highland's allegations that NexPoint/HCRE engaged in bad faith conduct in the filing and prosecution of its Proof of Claim, it did ***not*** include them as part of the fees and costs for which Highland is seeking to be reimbursed by NexPoint/HCRE as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.[43]

In any event, following the disqualification of Wick Phillips, NexPoint/HCRE hired yet a third law firm, Hoge & Gameros, LLP, in connection with this matter, and the parties engaged in a second round of extensive discovery, which included the exchange of written discovery and document production and the service of various deposition notices and subpoenas. On August 12, 2022, just two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of NexPoint/HCRE's witnesses, Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[44] By this point, Highland had spent hundreds of thousands of dollars objecting to the Proof of Claim.

Query why might NexPoint/HCRE have done this? Just six months earlier, Dondero's family trust, The Dugaboy Investment Trust, had represented to the bankruptcy court that

[43] *See* Morris Declaration, 3-4, at ¶11 (Referencing the court's denial in its Disqualification Order of Highland's previous request for attorneys' fees incurred in connection with the Disqualification Motion, Morris stated "[W]e reviewed the PSZJ Invoices and redacted all entries relating to the Disqualification Motion; thus, for the avoidance of doubt, Highland does not seek any fee award with respect to any work done in connection with the Disqualification Motion.").

[44] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

Highland's 46.06% interest in SE Multifamily was worth $20 million,[45] and now, NexPoint/HCRE (which presumably also spent substantial sums prosecuting its Proof of Claim during the nearly two and a half years of litigation) appeared willing to walk away from its multi-million dollar challenge to Highland's 46.06% interest in SE Multifamily. Highland objected to NexPoint/HCRE's Motion to Withdraw, and the court held a hearing on September 12, 2022 (as required by Bankruptcy Rule 3006), following which the court entered an order denying NexPoint/HCRE's Motion to Withdraw, for the reasons set forth on the record,[46] and directing the parties to "confer in good faith to complete the depositions" of Dondero, McGraner, and NexPoint/HCRE and otherwise comply with the scheduling order that had been entered by the court on this matter, which included appearing for an evidentiary hearing on November 1, 2022.[47] The court denied NexPoint/HCRE's Motion to Withdraw, in part, because it was concerned that the timing of it all–just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE (*i.e.,* NexPoint/HCRE prosecuted its Proof of Claim for two and a half years, through and including the taking of depositions of Highland's witness, while shielding its own witnesses from testifying). The court was also concerned by NexPoint/HCRE's repeated attempts to preserve its claims against Highland for use against Highland in the future. In fact, the court entered its order denying NexPoint/HCRE's Motion to Withdraw only after: (1) NexPoint/HCRE refused to agree, at the

[45] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. As pointed out by Highland in its Response, "[t]here is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily." Response, 9, at ¶27 n. 4.

[46] The court noted in its order denying HCRE's Motion to Withdraw that, under the Bankruptcy Rules, a creditor does not have an absolute right to withdraw a proof of claim.

[47] Dkt. No. 3525.

September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily, and (2) counsel were thereafter unable, in the day or two after the hearing, to work out mutually acceptable language in an agreed order that protected both parties.[48] As noted in its order denying NexPoint/HCRE's Motion to Withdraw, the court had expressed concerns, during the hearing on the Motion to Withdraw, relating to the integrity of the bankruptcy system and claims process if it allowed NexPoint/HCRE to withdraw its Proof of Claim after two and a half years of litigation, and having caused Highland to spend hundreds of thousands of dollars litigating the Proof of Claim, while at the same time allowing NexPoint/HCRE to preserve its challenges to Highland's ownership interest in SE Multifamily to be used against Highland in the future. The court did not, at the time, make any express findings regarding NexPoint/HCRE's bad faith or abuse of the judicial process, only because Highland's mid-hearing Oral Sanctions Motion had not provided NexPoint/HCRE with adequate notice and an opportunity to respond.[49] With the instant Sanctions Motion, those due process concerns have been satisfied.

Having considered the evidence and argument of counsel at both the Trial on NexPoint/HCRE's Proof of Claim and the hearing on the Sanctions Motion, and the pleadings filed in connection with the Sanctions Motion, including NexPoint/HCRE's written Response, and based on the record as a whole, the court expressly finds and concludes that NexPoint/HCRE's

[48] At the end of the September 12 hearing, the court had expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw, Dkt. No. 3519, 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at docket number 3525, denying NexPoint/HCRE's Motion to Withdraw.

[49] As noted below, NexPoint/HCRE persisted to the end in arguing that the disallowance of its Proof of Claim could not bar NexPoint/HCRE from making future challenges to Highland's 46.06% membership interest in SE Multifamily.

litigation strategy and actions in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process on the part of NexPoint/HCRE.

3. NexPoint/HCRE's Admissions at Trial Are Further Evidence of its Bad Faith Filing and Willful Abuse of the Judicial Process

Following the denial of NexPoint/HCRE's Motion to Withdraw, the parties complied with the court's order to schedule the depositions of Dondero and McGraner at mutually agreeable times to complete discovery and then appeared at Trial on November 1, 2022. At the conclusion of the Trial, NexPoint/HCRE doubled-down on its request of the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[50] This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request. Nevertheless, NexPoint/HCRE continued to the end to try to limit any order disallowing its Proof of Claim so as to preserve its right to assert the very claims asserted in its Proof of Claim (for rescission, reformation and/or modification of the SE Multifamily Amended LLC Agreement to reallocate the membership percentages) for use in the future.[51]

The Trial testimony of Dondero and McGraner revealed that NexPoint/HCRE had no factual basis to claim that a mistake was made by any of the parties, much less a mutual mistake

[50] Trial Tr. 179:23-25; 180:8-9.

[51] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

of the parties, regarding the allocation of ownership percentages in SE Multifamily in corporate documentation,[52] and, in fact, "the evidence overwhelmingly point[ed] to the conclusion that both Mr. Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement."[53] The court specifically noted in the Proof of Claim Disallowance Order that Dondero admitted that he had not read or reviewed the Amended LLC Agreement or any drafts of it before he signed it—apparently the Amended LLC Agreement was one of those important, high-risk documents that Dondero was too busy to read or investigate before signing (like the Proof of Claim)—but he nevertheless testified that "the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland."[54] NexPoint/HCRE was also unable to produce any evidence at Trial to support its factual allegation that there was a "lack of consideration" or a "failure of consideration" with respect to the Amended LLC Agreement, such that NexPoint/HCRE would be entitled to a

[52] The court concluded, specifically, that

> HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor NexPoint/HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement.

Proof of Claim Disallowance Order, 30.

[53] *Id.*, 30-31.

[54] *Id.*, 31 n. 119.

reformation,[55] rescission,[56] or modification of it, to re-allocate the ownership percentages that the parties agreed to at the time of the execution of it.[57]

In fact, McGraner ultimately admitted in his Trial testimony that the only reason NexPoint/HCRE had for filing its Proof of Claim, which challenged Highland's title to its 46.06% membership interest in SE Multifamily, was, essentially, ***that NexPoint/HCRE was frustrated with the consequences of Dondero's decision in 2019 to seek bankruptcy protection for Highland (notably, the bankruptcy case was filed just a few months after the Amended LLC Agreement was executed), which resulted in Dondero losing control over Highland***, such that, as far as NexPoint/HCRE was concerned, its "partner" [in SE Multifamily] was no longer its "partner." The court noted in the Proof of Claim Disallowance Order that McGraner

> could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are –

---

[55] After noting that "neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what NexPoint/HCRE is seeking in its Proof of Claim)," the court concluded that "HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration." Proof of Claim Disallowance Order, 32 n. 120.

[56] The court noted in the Proof of Claim Disallowance Order that NexPoint/HCRE had not actually stated a claim for rescission of the Amended LLC Agreement with respect to its Proof of Claim, but that, if it had,

> Mr. Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.

Proof of Claim Disallowance Order, 33-34.

[57] *See* Proof of Claim Disallowance Order, 32-33 n. 120 (where the court found that "HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. . . . Under Delaware law, the courts 'limit [their] inquiry into consideration to its existence and not whether it is fair or adequate,' . . . . '[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain.' (citations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.").

> that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[58]

McGraner testified that "despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite 'all of the fears [he] had [related to Highland's bankruptcy filing],' HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because 'we didn't think it would be worth it')[ ][59] [and] 'because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves.'"[60] This is not a good-faith basis for filing and prosecuting the Proof of Claim, and it exhibits a willful abuse of the bankruptcy claims process by NexPoint/HCRE.

In summary, the admissions by Dondero and McGraner in their Trial testimony made clear that NexPoint/HCRE never had a factual or legal basis for the Proof of Claim. NexPoint/HCRE's principals knew, at the time of filing and through its prosecution of the Proof of Claim, that there was no factual basis for its claim of rescission, reformation, and/or modification of the Amended LLC Agreement to dispossess Highland of some or all of its 46.06% membership interest in SE Multifamily. This clearly and convincingly constitutes bad faith by NexPoint/HCRE and a willful abuse of the judicial process.

C. Reimbursement of Attorneys' Fees and Costs Incurred by Highland in the Proof of Claim Litigation Is an Appropriate Sanction for NexPoint/HCRE's Bad Faith

Having found and concluded by clear and convincing evidence that NexPoint/HCRE filed and prosecuted (and attempted withdrawal of) its Proof of Claim in bad faith and willfully abused the judicial process, this court may use its inherent powers under Bankruptcy Code section 105(a)

---

[58] Proof of Claim Disallowance Order, 27 (citing Trial Tr. 114:24-115:16, 118:6-15).

[59] *Id.* (citing Trial Tr. 121:24-122:9).

[60] *Id.* at 28 (citing Trial Tr. 122:20-125:21).

to sanction it for such conduct. Reimbursement of the opposing party's fees and costs incurred in responding to a bad faith filing or willful abuse of the judicial process has been upheld as an appropriate form of sanctions. *See Cleveland Imaging*, 26 F.4th at 294 (upholding the bankruptcy court's sanction order that required the parties who were found to have filed bankruptcy petitions in bad faith to reimburse the fees incurred by a post-confirmation litigation trust in responding to the bad faith filing); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017) (bankruptcy court did not abuse its discretion in ordering the debtors to "pay $49,432, which represents the amount of attorneys' fees incurred by [the bankruptcy trustee] in responding to certain instances of the [debtors'] bad faith conduct."); *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's use of its inherent powers to issue monetary sanctions for bad faith filing that were, in part, based upon the opposing parties' attorneys' fees and costs "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Paige*, 365 B.R. 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same). Any sanction imposed pursuant to a bankruptcy court's inherent powers for bad faith conduct or willful abuse of the judicial process "must be compensatory rather than punitive in nature." *In re Lopez*, 576 B.R. at 93 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994)). "[A] sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based[,]" and "[a] fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber*, 581 U.S.

at 108 (quoting *Bagwell*, 512 U.S. at 834). The fee award must be "limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith." *Id.* (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. at 104). The "'causal link' between the sanctionable conduct and the opposing party's attorney's fees" must be established "through a 'but-for test:' to wit, the complaining party may only recover the portion of fees that they would not have paid 'but-for' the sanctionable conduct." *Id.* (citing *Goodyear Tire & Rubber*, 581 U.S. at 108-109 (citing *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

Here, as earlier noted, Highland has requested, as a sanction, reimbursement of its attorneys' fees and costs incurred by it in responding to NexPoint/HCRE's filing and prosecution of its Proof of Claim. Specifically, Highland seeks reimbursement of an aggregate amount of **$825,940.55**, consisting of

- **$782,476.50** in attorneys' fees charged by its primary bankruptcy counsel, PSZJ, for the period August 1, 2021 through December 31, 2022, for work performed in connection with the litigation of the Proof of Claim;[61]
- **$16,164.05** in third-party expenses for court reporting services provided in connection with the Proof of Claim litigation;[62] and,

[61] *See* Morris Declaration, 3-4, at ¶¶ 8-13, and Ex. F. As stated in the Morris Declaration, the $782,476.50 amount does not include any fees relating to the Disqualification Motion or any fees that PSZJ concluded were inadvertently coded by a timekeeper to the NexPoint/HCRE Claim Objection category "or that were otherwise unrelated to services rendered in connection with the Proof of Claim litigation." *Id.*, 3-4, at ¶¶ 11 and 12. By way of specific example, Morris stated that "in 2022 and 2023 we charged Highland for services rendered in connection with our unsuccessful attempts to obtain SE Multifamily's books and records but excluded those charges here because they do not directly relate to the litigation of HCRE's Proof of Claim; Highland is seeking those fees in the Delaware Chancery Court where Highland was forced to commence an action against HCRE for specific performance (Case No. 2023-0493-LM))." *Id.*, 4, at ¶ 12.

[62] *See id.*, 4, at ¶ 14, and Ex. G.

- **$27,300.00** in attorneys' fees charged by David Agler for providing Highland with specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim.[63]

NexPoint/HCRE challenges Highland's request for reimbursement of its fees on several bases. ***First***, it argues that it cannot be ordered to reimburse the fees and expenses incurred by Highland ***after*** NexPoint/HCRE attempted to withdraw its Proof of Claim because they do not satisfy the "but for" test for establishing a "causal link" between those fees and costs and NexPoint/HCRE's filing and pursuit of its Proof of Claim—that Highland cannot show that "but for" NexPoint/HCRE's filing and prosecution of its Proof of Claim, Highland would not have incurred those fees and costs. NexPoint/HCRE urges the court to adopt its narrative of the proceedings that "instead of taking a win, [Highland] and its lawyers chose to generate fees to get the same result" and thus Highland's attorneys' efforts were "totally unnecessary" and a "waste of time and resources" that was "the fault of [Highland], not [NexPoint/HCRE]."[64] NexPoint/HCRE states in its Response that "[h]ere, ***it is undisputed*** that, had [Highland] agreed to the withdrawal of the Proof of Claim many months ago – before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim – [Highland] would have been exactly in the same position that it is in now, but at far less expense" and further that "[t]he real, practical difference between refusing to consent to the withdrawal of [NexPoint/HCRE]'s Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees" and, thus, "[t]he Motion abjectly fails any 'but–for' analysis."[65]

---

[63] *See id.*, 4-5, at ¶¶ 15 and 16, and Ex. H. A summary of the aggregate fees and expenses of which Highland is seeking reimbursement in the Sanctions Motion is attached as Exhibit I to the Morris Declaration. *See id.*, 5, at ¶ 17, and Ex. I.

[64] Response, 2.

[65] Response, 20, at ¶60 (emphasis added).

The court disagrees with NexPoint/HCRE's "narrative" and its view of the evidence established at Trial. Highland ***does*** dispute NexPoint/HCRE's contention that, if only it had allowed it to withdraw its Proof of Claim and accepted a "win," that Highland would have been "exactly in the same position that it is in now [after a Trial and ruling on the merits of the Proof of Claim], but at far less expense." The court does as well. As Highland has argued, NexPoint/HCRE's Motion to Withdraw was itself filed in bad faith. Highland was forced to oppose the withdrawal of the Proof of Claim because NexPoint/HCRE would not agree to a withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future.[66] The evidence clearly and convincingly established that any "win" or "victory" that Highland would have obtained through the withdrawal of the Proof of Claim[67]

> would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

The court finds and concludes, as argued by Highland, that there is clear and convincing evidence here that the fees and costs incurred by it, after NexPoint/HCRE sought to withdraw its Proof of Claim (*i.e.,* to prepare for the Trial and prosecute its objection to the Proof of Claim through a trial and ruling on the merits), would not have been incurred "but for" NexPoint/HCRE's bad faith. As pointed out by Highland and as noted above,[68] the court did not enter the Proof of Claim Disallowance Order in December 2022 in a vacuum. Rather, the court denied

---

[66] *See supra* note 45 and accompanying text.

[67] Response, 5, at ¶18.

[68] *See supra* at pages 16-17.

NexPoint/HCRE's Motion to Withdraw only ***after:*** (1) the court had expressed concerns that the timing and context of its filing of its Motion to Withdraw suggested gamesmanship on its part, and that the integrity of the bankruptcy system and claims process would be in jeopardy if the court were to simply allow withdrawal, without protecting Highland from future challenges to its membership interest in SE Multifamily (particularly, after Highland had spent hundreds of thousands of dollars to that point in objecting to the Proof of Claim); and (2) NexPoint/HCRE refused to agree to language in an order that would alleviate these expressed concerns. The court—having now made an express finding that NexPoint/HCRE's filing of its Motion to Withdraw was in bad faith and part of its willful abuse of the bankruptcy claims process that began with the filing of its Proof of Claim in April 2020—now expressly finds that the fees and costs incurred by Highland after NexPoint/HCRE filed its Motion to Withdraw were necessary for Highland to protect its interests and would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

Second, NexPoint/HCRE objects to Highland's fees ($809,776.50) and expenses ($16,164.05) as being "*per se* excessive for a single proof of claim objection."[69] Highland argues that "[s]pending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries." Per the Morris Declaration, Highland only seeks reimbursement of expenses and fees charged to Highland for expenses incurred and work performed in litigating the Proof of Claim (but—as noted earlier—specifically excluding any fees charged relating to the Disqualification Motion). The court agrees with Highland and finds that the fees and expenses incurred by it in objecting to the Proof of Claim,

[69] Response, 10, ¶34.

including the fees incurred ***after*** NexPoint/HCRE sought to withdraw its Proof of Claim, were reasonable and necessary for Highland to protect a valuable asset—it's 46.06% interest in SE Multifamily—and, thus, they are not excessive.

Third, NexPoint/HCRE complains, in its Response, that the fees charged by PSZJ were unreasonable and excessive because the PSZJ invoices show that it was seeking reimbursement for fees charged by "layers of timekeepers whose identities and roles have not been disclosed."[70] NexPoint/HCRE points out three professionals (two of whom billed one hour or less) who were identified in PSZJ's invoices only by their initials.[71] In its Reply, Highland identified the timekeepers by name—as a litigator who billed one hour of time; a bankruptcy attorney who billed 0.6 hours of time; and a bankruptcy partner who billed 15.1 hours of time—all of whom were "called upon to provide discrete support."[72] Collectively, the three previously "unidentified" attorneys charged just 0.023% of the total fee request.[73] PSZJ's identification of the "unidentified timekeepers" and explanation of the work performed by them satisfies the court that these fees were reasonable and necessary fees incurred as a direct result of NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim. The court rejects NexPoint/HCRE's suggestion that PSZJ overstaffed and overbilled the file because there were "layers of timekeepers." As pointed out in Highland's Reply, "over 82% of the charges related to one litigation partner . . . , one litigation associate . . . , and one paralegal" and "[t]wo other lawyers who have been on the Pachulski team since the inception of this engagement . . . billed relatively modest amounts of time over the course

[70] *Id.*, 13, ¶45.
[71] *Id.*, 12, ¶38.
[72] Reply, 9, ¶28.
[73] *Id.*

of this prolonged litigation."[74] There is simply no factual basis to support a conclusion that the matter was overstaffed.

Fourth, NexPoint/HCRE objects to $9,840 charged by two attorneys for travel time,[75] while acknowledging that those attorneys' non-working travel time was billed at half of the attorneys' regular hourly rate.[76] As pointed out by Highland in its Reply, Highland agreed to pay for travel time in its pre-petition engagement letter, so those "charges cannot come as a surprise to Mr. Dondero."[77] The court takes judicial notice of the fact that attorneys charging half of their hourly rates for non-working travel time, as PSZJ did here, pursuant to its engagement letter with Highland that was approved when the court authorized the retention of PSZJ as counsel for the Debtor, is common practice and is a commonly approved term of engagement of professionals in bankruptcy cases. The $9,840 charged by two attorneys for travel time in this matter was a reasonable and necessary expense incurred by Highland in responding to NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.

Fifth, and finally, NexPoint/HCRE objects to the fees charged by David Agler (39 hours of work performed at $700 per hour) for providing Highland with tax advice in August 2022, on the basis that the invoice attached as Exhibit H to the Morris Declaration "indicated that it was 'unbilled' work" and that "[w]hatever work he did, it did not manifest itself in the proceedings."[78] Highland pointed out that it ***had*** explained, in the Morris Declaration, that Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of

[74] *Id.*, 9, ¶28 n. 5.

[75] Response, 12, ¶37.

[76] *Id.*, 11, ¶36 (Table 1).

[77] Reply, 9-10, ¶29.

[78] Response, 12, ¶42.

Claim."[79] Highland provided a more detailed description of the services provided by Mr. Agler and why those services were necessary in its Reply: "Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits."[80] The court finds that the fees charged by David Agler for work performed for Highland that are set forth in Exhibit H to the Morris Declaration were reasonable and necessary expenses incurred by Highland in responding to HCRE's bad faith conduct and that they would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

The court has determined that the full amount of fees – $809,776.50 – and costs – $16,164.05 – that are set forth in detail in Exhibits F through H (and summarized on Exhibit I) of the Morris Declaration were reasonable and necessary for Highland to respond to, and would not have been incurred "but for," NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim, which the court has found to have been a willful abuse by NexPoit/HCRE of the judicial process. Under Fifth Circuit precedent, it is appropriate for the court, in the use of its inherent power under Bankruptcy Code § 105(a), to order NexPoint/HCRE, as a compensatory sanction for its bad faith conduct and willful abuse of the judicial process, to reimburse Highland the full amount of fees and costs requested by Highland, which, in the aggregate, total $825,940.55. NexPoint/HCRE's objections to such amounts as excessive, unnecessary, unreasonable, or unrelated to NexPoint/HCRE's bad faith conduct, are overruled.

---

[79] Reply, 10, ¶30 (citing Morris Declaration, ¶15).

[80] *See id.* (citing Morris Declaration, Ex. [E] (Trial Transcript) 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence)).

V. CONCLUSION AND ORDER

In summary, the court has determined that NexPoint/HCRE was given adequate notice and an opportunity to respond to the Sanctions Motion and that there is clear and convincing evidence that it filed and prosecuted its Proof of Claim, including its eleventh-hour attempt to withdraw its Proof of Claim, in bad faith and that it willfully abused the judicial process. Such conduct directly caused Highland to incur $825,940.55 in fees and expenses. In the exercise of its inherent power under Bankruptcy Code § 105(a), the court will grant Highland's Sanctions Motion and order NexPoint/HCRE to reimburse Highland for those fees and expenses as an appropriate sanction for NexPoint/HCRE's bad faith or willful abuse of the judicial process.

Accordingly, and based on the foregoing findings of fact and conclusions of law, including those findings and conclusions in this court's Proof of Claim Disallowance Order, which has been incorporated herein by reference,

IT IS ORDERED that the Sanctions Motion [Dkt. No. 3851] be, and hereby is **GRANTED**;

IT IS FURTHER ORDERED that, in order to compensate Highland for loss and expense resulting from NexPoint/HCRE's bad faith and willful abuse of the judicial process, in filing and prosecuting its Proof of Claim, NexPoint/HCRE is hereby directed to pay Highland the compensatory sum of **$825,940.55**.

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

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760

HAYWARD PLLC
Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

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

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

HIGHLAND'S OPPOSITION TO
MOTION FOR RELIEF FROM ORDER

Highland Capital Management, L.P., the reorganized debtor in this chapter 11 case ("**Highland**"), opposes the *Motion for Relief from Order* [Docket No. 4040] filed by NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC, "**HCRE**") (the "**Reconsideration Motion**").[1]

[1] This opposition is timely. *See Stipulation Regarding Briefing Schedule [Docket No. 4040]* [Docket No. 4046], dated April 2, 2024.

I. PRELIMINARY STATEMENT

1. After admitting that, without any review whatsoever, it executed a proof of claim that **in bold print** warns claimants that a fraudulent claim could subject them to imprisonment or a large fine, or both, and after further admitting that its Proof of Claim lacked any legal or factual basis, HCRE audaciously mischaracterizes the evidence this Court considered, how it considered it, and how that evidence and HCRE's counsel's own statements led to the Court's ruling on Highland's Sanctions Motion.[2] Building on its own sophistry, HCRE then attempts to persuade this Court that it made "mistakes"—centrally, that the Court was "mistaken" in finding that HCRE refused to withdraw the Proof of Claim with prejudice and not contest Highland's equity interest in SE Multifamily.

2. The only mistakes are HCRE's.[3] Overwhelming evidence existed and was presented to support the Court's findings of bad faith against HCRE and for assessing attorney fees as compensation to the Highland estate. The Court elucidated those bases—most of which constituted this Court's findings of fact after an evidentiary hearing—in a 39-page, scrupulously-detailed Sanctions Order. That HCRE does not like the result or the consequences of its many ill-considered actions does not mean the Court was wrong or "mistaken." HCRE has not—and cannot—meet the high standard for reconsideration under Bankruptcy Rule 9024.

---

[2] Capitalized terms used but not defined in this opposition retain the meanings given to them in the *Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) In Connection with Proof of Claim #146* [Docket No. 4039] (the "**Sanctions Order**").

[3] Among them is HCRE's bizarre allegation that "Highland's attorney, John Morris" asserted a $500,000 claim against Highland. Reconsideration Motion at 3. Given the ubiquity of the name "John Morris" (and the disabling conflict his filing of a proof of claim would have created under Bankruptcy Rule 2014) one would have expected HCRE's counsel—especially Ms. Ruhland who, only weeks earlier, was forced to withdraw a major pleading in this case on Rule 11 grounds due to her abject failure to investigate the merits of salacious but false claims against Highland's counsel—to be concerned enough about preserving their reputation and credibility with this Court to have undertaken even one minute's worth of diligence. Had they done so, they would have quickly determined that the John Morris who filed the proof of claim is not the same John Morris who has served as Highland's lead litigation counsel in every adversary proceeding and nearly every contested matter since the Petition Date. It's not hard—and it's mandatory under Rule 11.

3. HCRE is using Rule 60(b)(1) improperly. That rule cannot be used to "correct" some alleged "mistake" in a court's findings of fact. Rule 60(b)(1) may only be invoked when the court has made an obvious error of law. HCRE does not even allege that kind of mistake here.

4. Instead, the Reconsideration Motion is a collateral attack on this Court's final, non-appealable order denying HCRE's motion to withdraw the Proof of Claim, all in the guise of a motion to reconsider a separate, collateral order (*i.e.*, the Sanctions Order). HCRE's improper collateral attack ignores at least these undisputed facts:

a. Without justification or even explanation, HCRE filed its motion to withdraw the baseless Proof of Claim immediately *after* taking Highland's depositions but immediately *before* subjecting their witnesses to examination—one of the facts this Court considered when raising concerns about HCRE's abuse of the judicial process;

b. The Court ended the hearing on HCRE's motion to withdraw its proof of claim (the "**Withdrawal Hearing**") by affirming that, notwithstanding the Court's stated concerns about HCRE's conduct, it was still open to signing a mutually acceptable order that would have fully resolved the bad faith litigation,[4] yet HCRE never tendered a proposed order;[5]

[4] *See* Docket No. 3767 at 10–11 n.36: "In announcing its ruling from the bench, the court noted its concerns regarding the integrity of the bankruptcy system and claims process if it allowed HCRE to withdraw its Proof of Claim after two and a half years of litigation, causing the Debtor to spend hundreds of thousands of dollars litigating its Objection to a proof of claim The court expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties 'without the pressure of the Court hovering over you.'"

[5] It is indisputable that in its Motion to Withdraw, HCRE expressly sought to preserve its claims for another day. Docket No. 3443 at 5 and n.8. Moreover, HCRE violated Local Rule 7007-1(c) (made applicable to contested matters under Local Rule 9013-1(a)) by not including a proposed form of order with the Motion to Withdraw. Had HCRE included such a proposed form of order as required, it could have eliminated any doubt that HCRE intended

c. The primary basis for the Reconsideration Motion—that the Court could not find "bad faith" because HCRE offered to withdraw the Proof of Claim—is legally irrelevant because the Court denied the Motion to Withdraw only after making extensive factual findings that HCRE failed to meet ***any*** of the five *Manchester* factors;[6]

d. Validating the Court's concerns about "gamesmanship" during the Withdrawal Hearing, and contrary to the snippets of argument HCRE quotes in the Reconsideration Motion, HCRE's counsel clearly and unambiguously once again tried to preserve HCRE's baseless claims for another day during closing arguments at the November 1, 2022 hearing on Highland's objection to the Proof of Claim (the "**POC Hearing**").[7]

5. But none of it ultimately matters. HCRE cannot convince this Court of something the Court already knows to be false—the argument that HCRE's willingness to withdraw the Proof of Claim in September 2022 was the sole (or even primary) ground for the Court's bad faith findings. It wasn't. And the Court said so clearly in the Sanctions Order, citing numerous factual bases to find that HCRE's filing and prosecution of the Proof of Claim was in bad faith, irrespective of what occurred during the Withdrawal Hearing. HCRE's last-minute attempt to withdraw the Proof of Claim was relevant only to whether HCRE and Mr. Dondero would be

---

to withdraw the claim *with* prejudice and without condition. Indeed, HCRE failed to include the words "with prejudice" in its original motion, and its reply and failed to accept the Court's invitation to proffer a clean, unconditional proposed form of order following the Withdrawal Hearing. These are HCRE's "mistakes" and no one else's.

[6] *See* Transcript from Withdrawal Hearing, Docket No. 3519 at 50:14-55:21.

[7] *See Transcript of the Hearing on Debtor's Objection to HCRE's Proof of Claim,* November 1, 2022, Docket No. 3852-5 at 180:17–24 (HCRE counsel's closing argument): "They want you to make findings that we can't raise any of these other issues, recissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."

forced to sit for depositions and whether there would be a hearing on the merits, *not* whether HCRE had previously engaged in bad faith conduct during the preceding two and a half years.

6. The Reconsideration Motion is disingenuous and meritless and should be denied.

II. APPLICABLE STANDARD

7. HCRE's Reconsideration Motion omits even a cursory discussion of the applicable standard for reconsideration or relief from an order under Bankruptcy Rule 9024. That Rule incorporates Federal Rule of Civil Procedure 60 ("**Rule 60**") and provides that the court may relieve a party from an order for, among other things, "mistake." But the Fifth Circuit has emphasized that Rule 60(b)(1)

> may be invoked for the correction of judicial error, but **only** to rectify an **obvious error of law**, apparent on the record. Thus, it may be employed when the judgment **obviously** conflicts with a clear statutory mandate or when the judicial error involves a **fundamental misconception of the law**.[8]

This Court has noted that courts characterize "the standard under Rule 60(b)(1) as a 'nearly insurmountable hurdle.' *Jones v. Phipps*, 39 F.3d 158, 162 (7th Cir. 1994)."[9] In *Spears,* the only "mistake" alleged was a litigant's mistake, not the court's and, critically, **not an "obvious error of law."**[10]

8. Here, HCRE does not allege that the Court committed an "obvious error of law" or that the "mistake" involved a legal question at all, much less a "fundamental misconception of the law." Instead, HCRE simply quibbles with how the Court characterized the tortuous exchange between the Court and HCRE's counsel at the Withdrawal Hearing, ultimately and

---

[8] *Hill v. McDermott, Inc.*, 827 F.2d 1040, 1043 (5th Cir. 1987), quoted in *In re Afamia, Inc.*, 2007 Bankr. LEXIS 2329 *8–9 (Bankr. N.D. Tex. July 16, 2007) (emphasis added).

[9] *In re Spears*, 352 B.R. 79, 82 (Bankr. N.D. Tex. 2006).

[10] For example, Rule 60(b)(1) was properly used to vacate a discharge order in *Midkiff v. Stewart (In re Midkiff)*, 342 F.3d 1194, 1196 (10th Cir. 2003), because the bankruptcy court had mistakenly disregarded the legal effect of Bankruptcy Code § 1328(e).

falsely accusing the Court of having committed a "mistake" (for Rule 60(b)(1) purposes) of **fact**, not law.[11]

9. Even if the Court had explicitly found that HCRE had refused to withdraw the Proof of Claim with prejudice that day—of course, the Court made no such finding of fact—that would have been a "mistake" of fact, not of law. Alleged mistakes of fact are redressed by ordinary appeal—something HCRE has simultaneously begun—not by a Rule 60 motion. And HCRE cites no case discussing Rule 60, let alone one standing for the proposition that Rule 60(b)(1) can be used to "correct" a factual finding the moving party believes is wrong.

10. The Reconsideration Motion is also improper for another reason: it is composed mostly of arguments HCRE never made in its objection to Highland's motion for sanctions.[12] Even if the Reconsideration Motion were not really a collateral attack on the Court's final, non-appealable order denying HCRE's cynical Motion to Withdraw, HCRE still would not be entitled to raise new arguments for the first time in the Reconsideration Motion. It is improper.[13]

---

[11] Nothing in the Reconsideration Motion indicates that HCRE is basing its request for relief on Rule 60(a), which can only be used to correct a clerical oversight or omission. What HCRE alleges here is that the Court made a mistake in weighing evidence and finding facts. That's not a clerical oversight.

[12] HCRE's *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* [Docket No. 3995] set forth three objections to the Sanctions Motion: (a) "NREP Had a Good Faith Basis to File Proof of Claim No. 146" (*id*. ¶¶15-25); (b) "NREP's Proof of Claim Sought to Reallocate Equity Holdings" (*id*. ¶¶ 26-32); and (c) "The Debtor's Fee Demand is Excessive" (*id*. ¶¶33-45). HCRE referenced the Motion to Withdraw only as part of its recitation of background facts and made no argument based on anything that occurred during the Withdrawal Hearing. *Id*. ¶9.

[13] "A motion for reconsideration may not be used to rehash rejected arguments or introduce new arguments." *LeClerc v. Webb,* 419 F.3d 405, 412 n. 13 (5th Cir. 2005). *See also Encompass Office Solutions, Inc. v. La. Health Serv. & Indem. Co.*, 2017 U.S. Dist. LEXIS 206064, at *14 (N.D. Tex. 2017) ("introducing new arguments is improper in a motion for reconsideration"). This is a critical point. Based on the high legal standard and the underlying facts, HCRE must know the Reconsideration Motion is very likely to be denied. The only plausible explanation for filing the Motion (with new counsel, Ms. Ruhland) is that HCRE is attempting to raise new arguments for appellate review. Highland respectfully requests that the Court specifically address this issue in any order determining the Reconsideration Motion.

III. BAD FAITH BASED ON FACTS OTHER THAN TERMS OF WITHDRAWAL

11. Ultimately, it does not matter. This Court did not base its findings of bad faith or its imposition of compensatory sanctions on the peculiar colloquy between HCRE's counsel and the Court at the Withdrawal Hearing.

12. This Court could not have been clearer in its Sanctions Order about what it *did* rely on to find that HCRE had engaged in bad faith conduct for two and a half years. The Sanctions Order specifies that "HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim." [Sanctions Order at 4]. The Court makes no mention of what was or was not said at the Withdrawal Hearing about the terms of the Proof of Claim's withdrawal, yet HCRE bases its entire Reconsideration Motion on that insignificant epilogue to years of needless litigation. Instead, citing "overwhelming" evidence adduced at the Trial, this Court cited a litany of misdeeds, none of which concerned the back-and-forth at the Withdrawal Hearing:

- Mr. Dondero signed the Proof of Claim, which "was not in a liquidated amount and was somewhat ambiguous." [Sanctions Order at 2].
- HCRE assured the Court "that it would update the Proof of Claim to provide the exact amount of it 'in the next ninety days' but never did." [*Id.*]
- HCRE hired conflicted counsel, Wick Phillips, to represent it, then "vigorously fought the disqualification of Wick Phillips … initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with" the Disqualification Order. [*Id.* at 16].
- HCRE made "an eleventh-hour attempt … to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits." [*Id.* at 3].

- "HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum." [*Id.*, emphasis in original].[14]

- Mr. Dondero executed and authorized "the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence" despite "acknowledging that 'I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct' and that 'I declare under penalty of perjury that the foregoing is true and correct.' **The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it … which supports a finding that Donder's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.**" [Sanctions Order at 11–12, bold emphasis added].

- Mr. Dondero failed to conduct any diligence or uncover any basis to believe the Proof of Claim was truthful or grounded in facts.

- Mr. Dondero, Mr. McGraner and BH Equities, LLC all acknowledged that the SE Multifamily LLC agreement accurately reflected the parties' intent at the time it was signed, thereby rendering HCRE's claims for reformation and recission meritless. [Docket No. 3852-5 at 53:25–54:23, 93:24–94:20, 95:3–103:20, 105:11-107:22; Docket No. 3590, Ex. 3 at 45:20-48:14; 49-5-51:7; 52:4-53:4; 54:4-19; 55:12-19].

- "HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process.***" [Sanctions Order at 14, emphasis in original].

- "[J]ust two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of … Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim … the timing of it all—just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE …." [*Id.* at 17, emphasis in original].

- "HCRE's ***litigation strategy and actions*** in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the

[14] The Court had previously instructed the parties to work out an order providing for the withdrawal of the Proof of Claim "with prejudice." Given several opportunities for HCRE to put in writing its withdrawal with prejudice, HCRE never did.

> Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process …. [*Id.* at 19–20, emphasis in original].

- Noting that, at Trial, HCRE "did not produce any evidence, much less clear and convincing evidence" of a "mistake" or "lack of consideration," HCRE "doubled-down on its request of the court 'to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contributions[s].' This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request." [*Id.* at 20–21].

13. All of this and more[15]—entirely ignored in the Reconsideration Motion—comprises the tapestry of transgressions that this Court found constituted bad faith and a willful abuse of the judicial process. None of it depends on HCRE's efforts to wiggle itself off the hook at the Withdrawal Hearing after literally years of games-playing and after several hundred thousand dollars in unnecessary fees being charged to Highland's creditors. Again, the sole significance of HCRE's tap dance about withdrawing the Proof of Claim was whether HCRE and Mr. Dondero were going to have to sit for sworn depositions and, ultimately, participate in a Trial that merely *proved* the acts and omissions that had already constituted bad faith.[16] Had HCRE and Mr. Dondero given the Court the unequivocal commitments the Court sought, they may have avoided the depositions and the Trial, but HCRE would not have avoided a bad faith finding or the assessment of Highland's legal fees as a remedial sanction. The conduct giving

[15] Highland's opposition to HCRE's motion to withdraw [Docket No. 3487] demonstrated how highly prejudicial withdrawal under those circumstances would have been in all events, how Highland offered terms for withdrawal that would mitigate that prejudice but that HCRE ignored, and how HCRE made no attempt to meet the *Manchester* factors.

[16] HCRE characterizes that subsequent Trial as a "hearing it did not want and sought to avoid …." But if HCRE really wanted to avoid a trial and was really prepared to abandon not just its Proof of Claim but the theories upon which it was based (*e.g.*, reformation and recission), HCRE would have (a) filed its motion to withdraw ***before*** taking Highland's depositions, (b) complied with Local Rule 7007-1(c) and submitted a proposed form of order withdrawing its Proof of Claim with prejudice, (c) filed pleadings that stated it intended to withdraw its Proof of Claim with prejudice, (d) accepted the Court's offer and tendered a proposed form of order withdrawing its Proof of Claim with prejudice, and (e) directed its counsel ***not*** to argue that the Court should disallow the Proof of Claim but leave HCRE's claims for recission and reformation alone.

rise to that finding and that remedy was already a *fait accompli* before the POC Hearing was ever called to order.

14. Even if HCRE were right that the Court was "mistaken" at the Withdrawal Hearing in not fully crediting HCRE's offer to withdraw the Proof of Claim with prejudice—it's not—that "mistake" would be insignificant in the face of evidentiarily proven bad faith conduct and abuse of process occurring over the course of two and half years that cost Highland's creditors more than a million dollars in unnecessary fees.[17]

15. The Reconsideration Motion says nothing about the Court being "mistaken" when it found that HCRE signed the Proof of Claim under penalty of perjury without even reading it, much less investigating its merits. The Reconsideration Motion says nothing about the Court being "mistaken" when it found that, for two and a half years, HCRE prosecuted the meritless Proof of Claim in bad faith or petulantly opposed Wick Phillips' disqualification or refused to give up its claims for reformation or recission despite no factual or legal basis for those claims, or the cynical attempt to withdraw the Proof of Claim after forcing Highland's deposition but just before Messrs. Dondero and McGraner would have to sit for depositions. The Reconsideration Motion is silent about the Court's conclusions regarding the bringing and prosecuting of meritless claims, years of contumacious litigation, the games, lack of circumspection, and dishonesty.

16. How seriously the Court chose to take the colloquy HCRE quotes so extensively in its Reconsideration Motion has nothing to do with the unchallenged body of evidence supporting the Court's finding of bad faith. There's nothing to "reconsider."

[17] Highland incurred but did not seek, and was not awarded, fees in connection with disqualifying HCRE's conflicted counsel.

IV. THERE ARE NO "OTHER PROBLEMS"

17. The Reconsideration Motion attempts to make much of the Court's noting of the dozens of appeals the Dondero entities have taken in this case over the last three years. HCRE implies that the Court's taking note of the Dondero entities' vexatiousness was used "to bolster the Court's 'bad faith' finding." But no honest reading of the Sanctions Order would lead anyone to believe that the Court's noting of the number of Dondero appeals informed the Court's finding of bad faith. The Court took note of the appeals in a footnote and then never mentioned them again in the Sanctions Order.

18. The Court also did not "adopt" arguments made for the first time in Highland's reply brief in support of its motion seeking sanctions (the "**Reply**"). Highland merely directed the Court's attention to evidence HCRE itself already put into the record. The Court did not even base its Sanctions Order on HCRE's oral testimony at the Trial. Rather, it was Mr. McGraner's testimony at a previous hearing that formed a part of the basis for the Court's finding of bad faith. It's difficult even to understand what HCRE's concern is when it argues that the Court should not have adopted arguments made in Highland's reply brief [Reconsideration Motion at 20–21]. No matter what their intent, HCRE does not even bother to ask the Court to vacate its bad faith findings or give HCRE relief from the Sanctions Order on that basis.

19. And, of course, HCRE never raised any objection to (or even mentioned) purportedly "new arguments" or "new evidence" included in Highland's Reply. The time to raise an objection was when the Reply was filed on January 19, 2024, some four months ago. HCRE did not. This Court should not consider HCRE's now-waived objections.

V. CONCLUSION

20. The Reconsideration Motion improperly invokes Rule 60 in a vain attempt to get the Court to see the facts differently from the way HCRE sees them. That is not what Rule 60 does. Regardless, the Court did not commit a "mistake" of fact any more than it committed a "mistake" of law. HCRE is not entitled to relief from the Sanctions Order and should be left to pursue its already-filed umpteenth appeal in the District Court. The Court should deny the Reconsideration Motion.

Dated: April 22, 2024

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (admitted *pro hac vice*)
John A. Morris (admitted *pro hac vice*)
Gregory V. Demo (admitted *pro hac vice*)
Jordan A. Kroop (admitted *pro hac vice*)
Hayley R. Winograd (admitted *pro hac vice*)
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067
Tel: (310) 277-6910
Fax: (310) 201-0760
Email: jpomerantz@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
jkroop@pszjlaw.com
hwinograd@pszjlaw.com

-and-

HAYWARD PLLC

/s/ Zachery Z. Annable

Melissa S. Hayward
Texas Bar No. 24044908
MHayward@HaywardFirm.com
Zachery Z. Annable
Texas Bar No. 24053075
ZAnnable@HaywardFirm.com
10501 N. Central Expy, Ste. 106
Dallas, Texas 75231
Tel: (972) 755-7100
Fax: (972) 755-7110

Counsel for Highland Capital Management, L.P.

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr.
Texas Bar No. 00796956
Douglas Wade Carvell
Texas Bar No. 00796316
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Attorneys for NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC)

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case N. 19-34054 (SGJ)
Debtor.	

REPLY IN SUPPORT OF MOTION FOR RELIEF FROM ORDER

I. INTRODUCTION

Highland's Opposition to Motion for Relief From Order ("Opposition") is rife with inaccuracies, irrelevant arguments, and misstatements of law.[1] More importantly, it ignores (or fails to rebut) critical facts of record and legal argument set forth in HCRE's Motion. Stripped of all its vitriol, accusations, and aspersions, Highland's Opposition offers very little in the way of a meaningful response to HCRE's Motion. The Motion should be granted.

II. HIGHLAND'S OPPOSITION ARGUMENTS PROVIDE NO LEGITIMATE BASIS TO DENY THE RELIEF SOUGHT IN HCRE'S MOTION

Highland makes four core arguments in its Opposition, each of which is wrong or irrelevant, and many of which rely on mischaracterizations of the record and the facts. None of these arguments merit a denial of HCRE's Motion.

A. HCRE's Motion Directly and Clearly Seeks Relief from the Bankruptcy Court's "Bad Faith" Order and Is Not a Collateral Attack

Highland initially bizarrely suggests that HCRE's Motion is an improper "collateral attack" on the Bankruptcy Court's Order Denying Motion to Withdraw Proof of Claim as Moot (the "Withdrawal Order"), Opposition at ¶¶ 3-4. It is unclear how that could be so, when the entirety of HCRE's legal argument is devoted to explaining why the Bankruptcy Court's "bad faith" Order contained critical mistakes that should be corrected. Indeed, the only reference to the Withdrawal Order in HCRE's 20-page brief is a "*see also*" cite on page 10, where HCRE merely mentioned, as a matter of background, that the "Court issued an order denying HCRE's Motion to Withdraw 'for the reasons set forth in the record.'" Motion at 10.

To the extent Highland perceives HCRE's Motion as a "collateral attack" on the

[11] For example, in the very first sentence of its Opposition, Highland argues that HCRE "admitt[ed] that, without any review whatsoever, it executed a proof of claim," and also "admitt[ed] that is Proof of Claim lacked any factual or legal basis," but these are allegations that HCRE has repeatedly and consistently *disputed*. *See, e.g.*, Motion at 2-3 & n.1; Dkt. 3995 at 5-9.

Withdrawal Order, that may be because the Court's "bad faith" Order relies heavily on statements made at the hearing on HCRE's motion to withdraw its POC. As HCRE's Motion explains, the Court's iteration in the "bad faith" Order of what happened at the withdrawal hearing is wrong, which is precisely why HCRE's Motion was necessary. There is nothing improper about HCRE's referencing the very evidence the Bankruptcy Court relied upon in making its decision to sanction HCRE, and Highland's suggestion to the contrary misses the point.[2]

Highland also implies that HCRE's arguments about its willingness to withdraw its POC with prejudice are disingenuous because HCRE allegedly "never tendered a proposed order" and "failed to accept the Court's invitation to proffer a clean, unconditional proposed form of order following the Withdrawal Hearing." Opposition at ¶ 4(b) & n.5. Both of these contentions, while irrelevant to the relief sought in HCRE's Motion, are also highly misleading. At the withdrawal hearing, the Court invited *the parties* to attempt to agree on a proposed order that resolved Highland's objections to withdrawal of HCRE's POC. *See* Sept. 12, 2022 Hr'g Tr., Ex. C, at 32:22-33:4. Immediately after the hearing, counsel for HCRE attempted to confer with counsel for Highland to do just that. In response, Highland's counsel made a counteroffer containing a variety of additional, overreaching demands that went well beyond the type of order the Court invited the parties to propose. *See* Email from John Morris to Bill Gameros, Ex. E. HCRE could not agree to these additional demands, and the parties reached an impasse. That is why HCRE never filed a proposed order with the Court. Highland's statements that HCRE never attempted to reach an agreed, proposed order with Highland are false.

[2] Despite criticizing HRCE's invocation of the events that transpired at the withdrawal hearing, Highland devotes much of its brief to rearguing its positions taken in response to the motion to withdraw (*see, e.g.*, Opposition at ¶¶ 4(a)-(c), 5, 12, 13), all of which are irrelevant to whether the Court should reconsider its separate "bad faith" finding and sanctions order for the reasons set forth in HCRE's Motion.

B. Highland HCRE's Motion Properly Invokes Bankruptcy Rule 9024

Highland next argues that HCRE's Motion "omits even a cursory discussion of the applicable standard for reconsideration or relief from an order under Bankruptcy Rule 9024" and also gets the standard wrong (which is an odd argument to make if HCRE really did omit "even a cursory discussion" of the applicable standard). Opposition at ¶ 7. Again, Highland is wrong.

The very first sentence of the legal argument section in HCRE's Motion invokes the legal standard to be applied to motions for relief from an order under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60. *See* Motion at 13. As HCRE explained, the Court "may relieve a party from an order on one of several grounds, including because the Court made a 'mistake' or for 'any other reason that justifies relief.'" *Id.* (quoting Fed. R. Civ. Proc. 60(b)(1), (6)). In other words, HCRE's Motion does contain an iteration of the applicable standard under Rule 9024, which Highland just ignores.

Highland's argument that HCRE misapplies the Rule 60(b)(1) standard is also wrong. According to Highland, the "mistake" referenced in Rule 60(b)(1) only refers to an "obvious error of law" and not the type of mistake of fact discussed in HCRE's Motion. Opposition at ¶¶ 7-8. To support this proposition, Highland cites a Fifth Circuit opinion, *Hill v. McDermott, Inc.*, 827 F.2d 1040 (5th Cir. 1987). There are two problems with Highland's reliance on *Hill*: the case is entirely inapposite, and the Supreme Court of the United States has rejected *Hill*'s core holding.

In *Hill*, an injured seaman filed a lawsuit under the Jones Act against the vessel owner, seeking damages for his injury. *Id.* at 1041. The vessel owner moved to dismiss the lawsuit, arguing that the plaintiff was not a citizen or permanent resident of the United States with a right to file suit under the Jones Act. *Id.* The court agreed but gave the plaintiff an opportunity to clarify whether his claim was covered by other maritime law and to assert new claims. *Id.* at 1042. The

plaintiff did neither, and the court dismissed the lawsuit. *Id.* Thereafter, rather than filing an appeal, the plaintiff hired new counsel to file a motion for relief from order under Rule 60(b), nine months after the time for appeal had passed. *Id.* The motion argued simply that the court erred in dismissing the claim, rather than arguing that there was any change in circumstance or any aspect of the district court's ruling was wrong. *Id.* The district court denied the motion. *Id.* In addressing the narrow question of whether a Rule 60(b)(1) motion could be used to upend a legal ruling after the time for appeal has passed, the Fifth Circuit emphasized that Rule 60(b) was not designed to rectify the failure to file a timely appeal. *Id.* at 1042-43. Instead, in the context of a litigant claiming judicial error outside of the time to appeal, the error must be "an obvious error of law, apparent on the record." *Id.* at 1043. In other words, in *Hill*, the Fifth Circuit was not asked, and did not decide, whether an obvious mistake of fact is the type of error that could be rectified by a Rule 60(b) motion filed within the time for appeal. *Hill* does not preclude the relief HCRE seeks.

More importantly, the Supreme Court's opinion in *Kent v. United States* precludes the position Highland takes. In that case, the Court rejected the appellant's contention that the term "mistake" in Rule 60(b)(1) "encompasses only so-called 'obvious' legal errors." 596 U.S. 528, 535-36 (2022). The Court further clarified that "in its legal usage, 'mistake' includes errors 'of law or fact.'" *Id.* 534 (quoting Black's Law Dictionary 1195 (3d ed. 1933)). As the Court explained:

> Had the drafters of Rule 60(b)(1) intended a narrower meaning, they "easily could have drafted language to that effect." The difference between "mistake of fact" and "mistake of law" was well known at the time. Both lay and legal dictionaries identified them as distinct categories. Thus, Rule 60(b)(1)'s drafters had at their disposal readily available language that could have connoted a narrower understanding of "mistake." Yet they chose to include "mistake" unqualified.

Id. (internal citations omitted). And as the Fifth Circuit has repeatedly held, "the rule should be liberally construed in order to do substantial justice." *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396,

401 (5th Cir. 1981) (citing *Greater Baton Rouge Golf Ass'n v. Recreation & Park Comm'n*, 507 F.2d 227, 228-29 (5th Cir. 1975); *Laguna Royalty Co. v. Marsh*, 350 F.2d 817, 823 (5th Cir. 1965); *In re Casco Chem. Co.*, 335 F.2d 645, 651 n.18 (5th Cir. 1964); *Serio v. Badger Mutual Ins. Co.*, 266 F.2d 418, 421 (5th Cir.), *cert. denied*, 361 U.S. 832, 80 S. Ct. 81, 4 L.Ed.2d 73 (1959)). Highland's argument about the scope of Rule 60(b)(1) is wrong.[3]

Finally, Highland suggests that HCRE's Motion is improper because it raises arguments never made in response to Highland's motion for sanctions. Opposition at ¶ 10. This argument makes no sense. Highland obviously could not have raised an argument about factual errors made in the Bankruptcy Court's "bad faith" Order before the Court issued the Order. Nor could HCRE have anticipated what the Order would say at the time HCRE filed its objection to Highland's sanctions motion. If Highland means to suggest that HCRE needed to reiterate its willingness to withdraw its POC with prejudice as part of its response to Highland's sanctions motion, that too makes no sense. Highland's sanctions motion contained only two legal arguments: (1) that HCRE's POC was *filed* in bad faith; and (2) that an award of attorneys' fees and costs was an appropriate sanction. Motion at 11. As a result, HCRE had no reason to argue about whether its attempted withdrawal of the POC was in bad faith, because that was not a basis for the relief Highland sought. If anything, HCRE's failure to raise that issue was a problem of Highland's making.[4]

---

[3] Further, Highland just ignores that HCRE sought relief under *both* Rule 60(b)(1) and Rule 60(b)(6). The Northern District of Texas has previously granted relief from orders under Rule 60(b)(6) based on equitable factors, even where the Court found relief could not be awarded under Rule 60(b)(1). *See, e.g.*, *Hartline Dacus Barger Dreyer LLP v. Hoist Liftruck Mfg., Inc.*, 2017 WL 394526, at *2 (N.D. Tex. Jan. 6, 2017), report and recommendation adopted sub nom., *Hartline Dacus Barger Dreyer LLP v. Hoist Liftruck Mfg., Inc.*, 2017 WL 366372 (N.D. Tex. Jan. 25, 2017).

[4] As HCRE's Motion also explains, Highland argued for the first time in its reply brief on the motion for sanctions that HCRE did not just *file* the POC in bad faith, it *tried to preserve* the claim in bad faith. *See* Motion at 12; *see also* Highland Reply Brief, Dkt. 4023, at ¶ 2. Because Highland waited until its reply to raise this argument, HCRE had no opportunity to respond to it.

In short, HCRE properly invoked Rule 60(b) in its Motion, and Highland's arguments to the contrary are baseless.

C. Highland's Arguments About the Court's Reasoning Are Wrong and Irrelevant

Highland next argues that the Bankruptcy Court did not base its bad faith finding on "the peculiar colloquy between HCRE's counsel and the Court at the withdrawal hearing" but instead based that finding on a "litany" of other misdeeds. Opposition at ¶¶ 11-12. The "peculiar colloquy" that Highland references is a lengthy discussion on the record involving not just HCRE's counsel and the Court, but Highland's counsel, an in-house lawyer representing HCRE, and Mr. Dondero. *See* Motion at 7-9. The discussion occurred at the insistence of the Court and Highland's counsel, who both repeatedly demanded that HCRE withdraw its POC "with prejudice."[5]

In any event, Highland's suggestion that the Court *did not* base its finding of bad faith on HCRE's supposed refusal at the withdrawal hearing to withdraw its POC "with prejudice" ignores the record and the Court's Order. Indeed, Highland admits (as it must) that the Court's finding of bad faith (and its resulting sanction) *was* based, at least in part, on the Court's erroneous conclusion that "HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum." Order at (emphasis in original) (cited in Highland's Opposition at ¶ 12, p. 8). And this erroneous conclusion must have formed a core basis for the Court's sanctions order, because more than $375,000 of the $809,000 sanction was incurred *after* HCRE supposedly refused (in bad faith) to withdraw its claim with prejudice. To argue that this was not an important aspect of the Court's opinion is disingenuous at best.[6]

[5] As HCRE pointed out in its Motion, this demand made little sense. The Federal Rules of Bankruptcy Procedure do not require that a party seeking to withdraw a proof of claim do so "with prejudice," and not even the Court's order rejecting HCRE's proof of claim contains this language. *See* Motion at 16; Fed. R. Bankr. P. 3006.

[6] Notably, Highland also fails to address HCRE's argument that the Court's mistaken conclusion that HCRE refused

Finally, Highland criticizes HCRE for "entirely ignor[ing]" the other aspects of the Court's Order supporting its bad faith finding, but again Highland misapprehends the purpose of HCRE's Motion. To be sure, HCRE disagrees with much of the Court's Order, including the various factual findings supporting the Court's "bad faith" ruling. But those are issues for another day: HCRE filed a notice of appeal of the Court's Order, and HCRE will challenge the factual findings and conclusions mentioned by Highland at the appropriate time in the District Court. As a result, HCRE's Motion is not focused on those issues; instead, it is focused on the significant error the Court made in concluding that HCRE refused to withdraw its claim with prejudice at the withdrawal hearing (which was the core basis for the Court's conclusion that HCRE continued to pursue its POC in bad faith and that Highland continued to incur fees fighting the POC). That conclusion radically increased the sanction awarded—Highland spent another $375,000 fighting the POC after the withdrawal hearing.[7] Highland may wish to focus on what other aspects of the Court's ruling, but those are not at issue at this point. The majority of Highland's arguments are thus irrelevant.

D. Highland's Opposition Largely Ignores (or Fails to Meaningfully Defend) the Other Problems with the Court's Order

Finally, Highland does little to dispute the other issues raised in HCRE's Motion. Highland does not dispute the legal arguments made by HCRE about why the Court should not have taken judicial notice of a statement contained in an unrelated legal brief filed by Highland in another court. *See* Motion at 17-19 (explaining why judicial notice was inappropriate and citing the Federal Rules of Evidence and case law). Instead, Highland takes issue with HCRE's argument

to withdraw its POC "with prejudice" also infects (and renders erroneous) the Court's conclusion that "but for" Highland's refusal to withdraw the POC with prejudice, Highland would not have continued to incur fees and costs fighting the POC. *See* Motion at 15-16 (citing Order at 27).

[7] As a result, the error is by no means "insignificant," as Highland alternatively suggests. See Opposition at ¶ 14.

that the reason the Court took judicial notice was to bolster the Court's bad faith finding. Opposition at ¶ 17. If, as Highland contends, the judicial notice has nothing to do with the Court's conclusion that HCRE acted in bad faith, then Highland should not have any issue with the Court's retraction of the improper judicial notice. In any event, Highland provides no answer to HCRE's arguments about why judicial notice was improper, and the Court should grant this aspect of HCRE's Motion.

Highland next argues that the Court did not improperly adopt arguments made for the first time in Highland's reply brief, but Highland again fails to directly address the arguments made by HCRE. HCRE argued in its Motion that Highland raised several arguments for the first time in its reply brief—including (1) that HCRE acted in bad faith because it fought Highland's efforts to disqualify Wick Phillips and (2) that HCRE acted in bad faith because it continued *to pursue* its POC in bad faith. Motion at 19-20. Highland does not dispute that these arguments appeared for the first time in its reply brief or that HCRE did not have an opportunity to address these arguments. Instead, Highland contends that it does not matter because Highland's reply brief merely pointed to evidence that HCRE put into the record at trial, and the Court relied on different evidence in concluding that HCRE acted in bad faith. These arguments are meritless.

First, it does not matter than HCRE may have introduced some piece of evidence at the trial on HCRE's POC.[8] In filing a motion for sanctions after trial, it was Highland's burden as movant to marshal the evidence and arguments it was relying upon in seeking the relief at issue in the motion. That is precisely why, as HCRE pointed out in its Motion, "'[a] court need not consider late-filed evidence or new facts that are raised for the first time in a reply brief.'" Motion at 19

[8] Highland's argument lacks any citation to the supposed evidence introduced by HCRE, so there is no way to verify whether this is in fact the case.

(quoting *In re Reagor-Dykes Motors, LP*, 2022 WL 468065, at *4 (Bankr. N.D. Tex. Feb. 15, 2022)). Highland ignores this principle.

Second, Highland's contention that the Court did not rely on arguments and evidence raised for the first time in Highland's reply brief is demonstrably false. In its Opposition, Highland itself argues that the "Court *did* rely on" a "litany" of facts to support its bad faith finding, including that "HCRE hired conflicted counsel, Wick Phillips, to represent it, then 'vigorously fought the disqualification of Wick Phillips . . . initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion with' the Disqualification Order." Opposition at ¶ 12, p. 7 (quoting Order at 2). Notably, as HCRE explained in its Motion, HCRE threatened a motion to strike because this argument was raised by Highland for the first time in its reply brief. Motion at 13. As a result, Highland agreed to file an amended reply brief that excluded the argument. *Id.* (citing Amended Reply, Dkt. 4023, at ¶¶ 11-14). Yet the argument still featured prominently in the Court's Order, and incredibly, Highland now doubles down on it as a basis to deny HCRE's Motion. HCRE had no opportunity to address this argument in the context of Highland's motion for sanctions, and the Court's (and Highland's) reliance on it is inappropriate and inequitable.

For all the same reasons, Highland is flatly wrong that the Court did not rely on Highland's argument—also raised for the first time in reply—that HCRE acted in bad faith by *continuing to pursue* its POC. Again, Highland's own arguments belie this contention. Among the "litany" of supposed facts that Highland says the Court relied on it issuing its Order is the following: "'HCRE's ***litigation strategy and actions*** in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in

connection with the Motion to Withdraw) demonstrates bad faith and willful abuse of the judicial process . . . .'" Opposition at ¶ 12, pp. 8-9 (quoting Order at 19-20). In other words, Highland admits that the Court relied, at least in part, on arguments made by Highland for the first time in its reply brief, which is impermissible.[9]

Highland also argues that "HCRE never raised any objection to (or even mentioned) purportedly 'new arguments' or 'new evidence' included in Highland's Reply." Opposition at ¶ 19. That too is false. As set forth in the Motion and above, after receiving the reply brief, HCRE immediately raised these issues with Highland's counsel and threatened to file a motion to strike or for leave to file a sur-reply. Motion at 13; *see also* Email exchange between Bill Gameros and John Morris, Ex. F. As a result of this exchange, Highland agreed to remove the arguments regarding Wick Phillips but refused to remove the new argument related to HCRE's alleged bad faith pursuit of its POC. As a result, at the close of the hearing on Highland's sanctions motion, counsel for HCRE sought leave to file additional briefing. *See* Motion at 20 (citing Jan. 24, 2020 Hr'g Tr., Ex. D, at 69:12-16, 81:22-82:2). The Court rejected HCRE's request. As a result, Highland's specious argument that HCRE somehow "waived" its objections is wrong.

III. CONCLUSION

Highland's Opposition proffers no legitimate basis for the Court to deny HCRE's Motion. Highland does not dispute that HCRE and its counsel repeatedly offered to withdraw the POC "with prejudice," that the Court's Order concluding otherwise was wrong, or that the Court took improper judicial notice of legal argument and relied on evidence and argument raised for the first time in Highland's reply brief. All of this warrants the relief sought. HCRE's Motion should be

[9] Highland also inexplicably argues that "HCRE does not even bother to ask the Court to vacate its bad faith findings or give HCRE relief from the Sanctions Order on th[is] basis." Opposition at ¶ 18. But HCRE's Motion very clearly states that "[t]he Court's Order should be revised to account for this prejudice and to eliminate its reliance on the arguments raised by Highland for the first time in its Reply Brief." Motion at 20.

granted.

Dated: May 1, 2024

Respectfully Submitted,

REICHMAN JORGENSEN LEHMAN & FELDBERG

/s/ Amy L. Ruhland
Amy L. Ruhland
Texas Bar No. 24043561
aruhland@reichmanjorgensen.com
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102

HOGE & GAMEROS. L.L.P

Charles W. Gameros, Jr.
Texas Bar No. 00796956
bgameros@legaltexas.com
Douglas Wade Carvell
Texas Bar No. 00796316
wcarvell@legaltexas.com
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002

Attorneys for NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 1, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

EXHIBIT E

John A. Morris <jmorris@pszjlaw.com>
Sent: Thursday, September 22, 2022 4:49 PM
To: Bill Gameros <bgameros@legaltexas.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Wade Carvell <wcarvell@legaltexas.com>; LuCretia Milam <lmilam@legaltexas.com>
Subject: Highland: Counterproposal to HCRE

OFFER OF COMPROMISE
WITHOUT PREJUDICE PURSUANT TO FED. R. EVID. 408

Bill:

I am authorized to make the following counteroffer to you, as counsel to HCRE Partners, LLC (and successors and assigns, collectively, "HCRE"), on behalf of Highland Capital Management, L.P. ("HCMLP"):

1. HCMLP will (a) transfer and assign its entire interests in SEM, NHT, and NHT Holdco (collectively, the "Assets"), as of January 1, 2022, to HCRE or other designated assignee(s), and (b) dismiss the Notes Litigation with prejudice (only) as against HCRE, in exchange for a lump-sum cash payment of $34 million payable at closing.
2. HCRE will indemnify and hold HCMLP harmless against all liabilities and damages, including reasonable attorneys' fees, arising from or in connection with HCRE's service as SEM's Manager, including with respect to all federal and state tax filings and returns (the "Indemnity"). Please confirm that HCRE will provide the Indemnity in any written response because HCMLP will not proceed without it and we do not want to waste time on this otherwise.
3. Subject only to the Indemnity that HCRE shall tender to HCMLP, HCMLP and HCRE (on behalf of itself, its successors, and any designated assignee(s) of the Assets) will exchange mutual, general releases.
4. A written settlement agreement, subject only to the UST's office and Court approval, must be executed before the October 4, 2022 deposition of Mr. Dondero.

For the avoidance of doubt, any settlement discussions shall not be used to delay or adjourn the depositions and scheduled trial.

Regards,
John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com

vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

---

EXHIBIT F

From: John A. Morris <jmorris@pszjlaw.com>
Sent: Tuesday, January 23, 2024 8:53 AM
To: Bill Gameros <bgameros@legaltexas.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Wade Carvell <wcarvell@legaltexas.com>; LuCretia Milam <lmilam@legaltexas.com>
Subject: HCMLP's Bad Faith Motion Reply Brief [Conference re Motion to Strike]

Hi Bill.

As you can imagine, we disagree with your contentions, particularly with respect to paragraphs 22 and 23.

Paragraphs 16-19 of the Motion set forth Highland's argument, and the evidence it was relying on, to support its position that the Proof of Claim was filed in bad faith, including that the Amended LLC Agreement accurately reflected the parties' intent.

Paragraphs 26-32 of the Response set forth HCRE's argument, and the evidence it was relying on, to support its position that it had a "good reason to seek reallocation" and "Highland had an improperly large equity allocation."

Paragraphs 22 and 23 of the Reply set forth Highland's arguments, and the evidence it was relying on, that squarely rebut HCRE's contentions and show that there was no good faith basis to seek reallocation and Highland did not "improperly" receive a "large" equity allocation, but received exactly what the parties' agreed upon.

Having said that, solely for the purpose of avoiding delay and the cost and expense of further motion practice, Highland is prepared to promptly file an Amended Reply that deletes paragraph 14 on the condition that HCRE agree not to seek (a) to strike paragraphs 22 and 23 (or any other portion of the Reply), or (b) an adjournment of tomorrow's hearing.

Please let us know as soon as possible if that is acceptable. If not, please mark Highland down as "unopposed" to any request for relief on an emergency basis but "opposed" to all substantive relief that may be requested, including any motion to strike.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

From: Bill Gameros <bgameros@legaltexas.com>
Sent: Monday, January 22, 2024 5:44 PM
To: John A. Morris <jmorris@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>
Cc: Bill Gameros <bgameros@legaltexas.com>; LuCretia Milam <lmilam@legaltexas.com>; Wade Carvell <wcarvell@legaltexas.com>
Subject: HCMLP's Bad Faith Motion Reply Brief [Conference re Motion to Strike]

John,

We intend to file an emergency motion to strike portions of the reply brief filed on Friday in support of Highland's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners LLC in Connection with Proof of Claim 146.
Alternatively, we intend to seek leave to file a sur-reply within 3 business days and a continuance of the hearing scheduled for Wednesday.

The reply brief contains new argument and citations to evidence that appear nowhere in the motion and cannot fairly be described as responsive to NREP's brief. In particular, we intend to move to strike paragraphs 14, 22, and 23, including all citations to evidence therein.

Please let me know by noon tomorrow whether Highland will agree to either form of the requested relief. Otherwise we will file our motion.

Thank you,

Bill

Charles W. Gameros, Jr., P.C.
Hoge & Gameros, L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Telephone: (214) 765-6002

Facsimile: (214) 559-4905

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

Signed May 21, 2024

United States Bankruptcy Judge

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

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

ORDER DENYING MOTION OF NEXPOINT REAL ESTATE PARTNERS, LLC (F/K/A HCRE PARTNERS, LLC) SEEKING RELIEF FROM ORDER PURSUANT TO FED. R. OF BANKR. P. 9024 AND FED. R. CIV. P. 60(b)(1) & (6)

On March 18, 2024, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("HCRE") filed its *Motion for Relief from Order* (hereinafter, the "Rule 60(b) Motion"),[1] seeking reconsideration of and relief from this court's *Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) in connection with Proof*

[1] Bankr. Dkt. No. 4040.

of Claim # 146 ("HCRE Sanctions Order").[2] The parties stipulated to a briefing schedule and that the parties would seek a setting for a hearing ("Hearing") on the Rule 60(b) Motion. On April 22, 2024, Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor") filed its response ("Response") in opposition to the Rule 60(b) Motion,[3] and HCRE filed its reply ("Reply") thereto on May 1, 2024.[4] The parties presented oral argument at the Hearing that was held on May 16, 2024.

HCRE and its Proof of Claim. By way of background, HCRE is an entity whose sole manager is James D. Dondero, the former Chief Executive Officer of the Reorganized Debtor. HCRE and Highland were essentially friendly business partners prepetition—not terribly surprising, as they each had the same chief executive. In any event, HCRE and Highland were equity owners/members of a limited liability company named SE Multifamily Holdings, LLC ("SE").[5] SE owned valuable real estate. SE was only formed in March 2019 and was governed by an amended LLC Agreement ("SE's LLC Agreement"). After Highland filed Chapter 11 in October 2019, and later became managed by three new independent directors and a new CRO and then new CEO, James Seery, Highland and HCRE were no longer amicable business partners. In fact, HCRE filed a proof of claim in Highland's bankruptcy case (on April 8, 2020), for an unliquidated sum, which was electronically signed by Mr. Dondero. The proof of claim asserted that HCRE had a claim against Highland to reduce Highland's equity ownership and rights in SE and, further, that it had grounds to reform, rescind, or modify SE's LLC Agreement based on a mutual mistake.[6] Two years and four months after HCRE filed the proof of claim, on August 12,

[2] Bankr. Dkt. Nos. 4038 & 4039.
[3] Bankr. Dkt. No. 4052.
[4] Bankr. Dkt. No. 4055.
[5] Note that there was also an unrelated minority owner (6%) in SE called BH Equities, LLC.
[6] Claim No. 146 & Bankr. Dkt. No. 1212.

2022, and after significant discovery and litigation regarding the proof of claim, HCRE moved to withdraw the proof of claim.

HCRE's Motion to Withdraw its Proof of Claim. There's a rule for withdrawing a proof of claim: Fed. R. Bankr. P. 3006. The bankruptcy court set a hearing, on September 12, 2022, as required by this rule, on HCRE's motion to withdraw the proof of claim ("Sept. 12, 2022 Proof of Claim Withdrawal Hearing").[7] After extensive discussion on the record, the bankruptcy court denied HCRE permission to withdraw its proof of claim—primarily because HCRE declined to withdraw the proof of claim with prejudice to any future litigation in any forum pertaining to the issues raised in the proof of claim. In other words, HCRE would not state unequivocally that it would not re-urge in the future its alleged present entitlement to reform or rescind SE's LLC Agreement. To be clear, HCRE expressed that it would withdraw its proof of claim with prejudice to re-asserting it in the bankruptcy court, and with prejudice to filing any appeal of a bankruptcy court order on same. ***But this type of withdrawal meant little—because the deadline/bar date for filing proofs of claim in the Highland bankruptcy case had passed 16 months earlier anyway***. HCRE would be time-barred from asserting its proof of claim at this late stage in the Highland bankruptcy case. The bankruptcy court was concerned that HCRE was attempting to preserve its present claims against Highland for use in the future in a different forum.[8] If there was going to be litigation over these issues, Highland thought it was time to get on with such litigation. The bankruptcy court was persuaded that, indeed, Highland would be prejudiced if HCRE were allowed to withdraw its proof of claim without clear and unequivocal language in the order that HCRE would not be able to assert its claims and/or theories regarding rescission and/or

[7] Bankr. Dkt. No. 3519 (Transcript).
[8] At the time, it appeared that litigation might be on the horizon in state court involving these parties and regarding business records production.

reformation of the SE LLC Agreement in any future litigation in any court or forum (after all, future litigation is not what a "fresh start" of bankruptcy is about). Thus, the bankruptcy court issued its Order denying withdrawal of the HCRE proof of claim on September 14, 2022 ("Order Denying Withdrawal of HCRE Proof of Claim").[9]

Trial on the HCRE Proof of Claim. Thereafter, the bankruptcy court held a trial on November 1, 2022, on the merits of HCRE's proof of claim and ultimately disallowed the proof of claim ("Claim Disallowance Order").[10] There was no evidence presented of any sort of mistake, mutual or otherwise, in connection with SE's LLC Agreement or any other basis for reformation or rescission of SE's LLC Agreement. Moreover, Mr. Dondero testified that he had not even read the HCRE proof of claim or conducted any due diligence regarding the HCRE proof of claim before authorizing his electronic signature to be affixed to it. HCRE did not appeal the Claim Disallowance Order.

Highland Motion for Sanctions Against HCRE. Highland thereafter filed a written motion for sanctions pertaining to HCRE conduct surrounding the proof of claim—seeking a bad faith finding and reimbursement of Highland's attorney's fees caused by HCRE's actions. Several months later (after, among other things, renewed attempts at global mediation of the remaining issues in the Highland bankruptcy case), the bankruptcy court granted Highland's motion for sanctions, after a contested hearing ("Order Imposing Sanctions").[11] The Order Imposing Sanctions (which shifted to HCRE approximately $825,000 of the Reorganized Debtor's attorney's fees and expenses incurred by Highland in connection with the HCRE proof of claim—which was less than the entire amount that the Reorganized Debtor had incurred regarding the HCRE proof

[9] Bankr. Dkt. No. 3518.
[10] Bankr. Dkt. No. 3766 & 3767.
[11] Bankr. Dkt. No. 4039.

of claim during the more than three years since it was filed)[12] is the order now subject to HCRE's Rule 60(b) Motion.

The Rule 60(b) Motion. HCRE argues, primarily, that the bankruptcy court made two core, related "mistakes" in connection with its Order Imposing Sanctions that it should correct pursuant to Rule 60(b)(1). First, the bankruptcy court allegedly made a "mistake" in refusing to permit HCRE to withdraw its proof of claim based on a mistaken belief by the bankruptcy court that HCRE was not willing to withdraw it with prejudice for all purposes. HCRE now stresses that it was, indeed, willing to withdraw the proof of claim with prejudice to any future litigation in any court—not just in the bankruptcy court. Second, HCRE further argues that the bankruptcy court's mistake of fact on this point caused it to erroneously require an unnecessary trial on the proof of claim—the result of which was Highland incurring/billing unnecessary fees relating to the proof of claim. The bankruptcy court then shifted those fees to HCRE in the Order Imposing Sanctions. HCRE asserts that it is incorrect as a matter of law to conclude that these fees would not have been incurred "but for" HCRE's bad faith conduct. *See Goodyear Tire & Rubber v. Haeger*, 581 U.S. 101, 108 (2017). Therefore, the bankruptcy court should not have shifted them to HCRE as part of the Order Imposing Sanctions.

The court denies the Rule 60(b) Motion. To be sure, this court does not disagree with HCRE that a mistake of fact ***or*** mistake of law can be grounds for granting a Rule 60(b) motion. *See Kemp v. United States*, 596 U.S. 528, 535-36 (2022). The court also does not disagree with

[12] Highland sought attorney's fees and expenses incurred relating to the HCRE proof of claim from the time period of August 1, 2021 through December 31, 2022. The HCRE proof of claim was filed April 8, 2020. Highland not only did not seek any reimbursement for any time and expense for the first 16 months after HCRE filed its proof of claim, but Highland ultimately did not seek (and the bankruptcy court did not allow) any fees that Highland incurred in successfully moving to disqualify HCRE's counsel in this matter, Wick Phillips (note: Wick Phillips was actually the second law firm that HCRE retained pertaining to its proof of claim; a different law firm originally filed the HCRE proof of claim (Bonds Ellis), followed by Wick Philips, and then the Hoge & Gameros, L.L.P. law firm took over, and now the law firm of Reichman Jergensen Lehman & Feldberg LLP is representing HCRE in this matter.

HCRE that an award of fees relating to sanctionable conduct must be limited to fees that would not have been incurred "but for" the sanctionable conduct. *Goodyear Tire*, 581 U.S. 101 at 104, 108 (the "causal link" between the sanctionable conduct and the opposing party's attorney's fees must be established through a "but-for" test; the complaining party may only recover the portion of fees that would not have been paid but-for the sanctionable conduct). However, the bankruptcy court does not believe it made a mistake of fact or of law with regard to either of these points.

First, the bankruptcy court does not believe it made a mistake of fact in interpreting what HCRE was and was not willing to do in connection with its motion to withdraw its proof of claim at the Sept. 12, 2022 Proof of Claim Withdrawal Hearing. HCRE used hedging language, to the extent that it appeared to be willfully obtuse on this point. It was not willing to withdraw the proof of claim ***with prejudice to ever litigating the issues raised in the proof of claim***. It was not future conduct and future theories that HCRE was worried about preserving in future litigation, and the bankruptcy court was certainly not engaging in a mission to ban all future litigation between these parties in perpetuity. The sole concern was about ***claims/theories in the HCRE proof of claim*** being resurrected somewhere else in the future. The transcript of the September 12, 2022 hearing is clear that there was much discussion on this point, and the court even gave the parties a 24-hour break to go talk outside the presence of the court—to hopefully wordsmith an agreed order withdrawing the proof of claim. Apparently, the parties could not reach an agreement on this relatively simple concept. So, the court would not allow withdrawal of the HCRE proof of claim without clarity that the proof of claim issues would not be raised in future litigation somewhere. The court set a trial on the merits of the proof of claim a few weeks later, as the parties were close to being trial-ready. Moreover, a review of the September 12, 2022 Transcript reflects that the bankruptcy court focused on multiple factors in disallowing withdrawal of the HCRE proof of

claim—the so-called *Manchester* factors—not simply the failure of HCRE to withdraw the proof of claim with prejudice to all future litigation. *Manchester, Inc. v. Lyle (In re Manchester, Inc.)*, 2008 Bankr. LEXIS 3312, *11-12 (Bankr. N.D. Tex. Dec. 19, 2008) (the *Manchester* factors include: (1) the movant's diligence in bringing the motion to withdraw, (2) any "undue vexatiousness" on the part of the movant, (3) the extent to which the suit has progressed, including the effort and expense undertaken by the non-moving party to prepare for trial, (4) the duplicative expense of re-litigation, and (5) the adequacy of the movant's explanation for the need to withdraw the claim). In other words, there were several factors that caused the bankruptcy court to deny withdrawal of the HCRE proof of claim.

Moreover, even if the court did make a mistake of fact in interpreting what HCRE was and was not willing to do (i.e., in deciphering what "with prejudice" did or did not mean)—and, in relying on this as a basis to deny HCRE permission to withdraw its proof of claim--wouldn't this have been an error of the bankruptcy court in entering its Order Denying Withdrawal of HCRE Proof of Claim? This order—entered September 14, 2023—was not appealed. Nor was the subsequent Order Disallowing Claim. In some ways, the Rule 60(b) Motion smacks of being a collateral attack on the Order Denying Withdrawal of Proof of Claim which was never appealed. Had there been an appeal of it, it would have been apparent that it was a multi-faceted decision, based on many factors (i.e., the *Manchester* factors)—not merely the "with prejudice" issues.[13]

Which leads to the last issue—was there a mistake of law in allowing reimbursement of Highland's fees and expense incurred ***after*** the Order Denying Withdrawal of HCRE Proof of Claim? In particular, over $300,000 of fees were incurred by Highland (and shifted by the court in the Order Imposing Sanctions) associated with the preparation for and trial on the HCRE proof

[13] Bankr. Dkt. No. 3519 (Transcript, pp. 51-55).

of claim. Was this a mistake of law? Only if the bankruptcy court made a mistake in ordering that there would be a trial on the HCRE proof of claim (i.e., only if the bankruptcy court erred in entering its Order Denying Withdrawal of HCRE Proof of Claim, and, as noted above, that order was not appealed by HCRE). The court never would have ordered trial on the merits if not for HCRE's conduct (beginning with its bad faith filing of its proof of claim and including refusing to withdraw its proof of claim with prejudice to all future litigation on the issues raised in the proof of claim). Thus, Highland would not have incurred this $300,000+ in fees and expenses "but-for" HCRE's conduct.

Having considered the Rule 60(b) Motion, the Response, the Reply, and the argument of the parties, the court finds that there is no basis or justification for granting HCRE the relief requested in its Rule 60(b) Motion. Any arguments made in the Rule 60(b) Motion not herein addressed are denied.

Accordingly,

IT IS ORDERED that the Rule 60(b) Motion be, and hereby is, **DENIED**.

###END OF ORDER###

Amy L. Ruhland
Texas Bar No. 24043561
REICHMAN JORGENSEN LEHMAN & FELDBERG LLP
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Attorneys for NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

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

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case N. 19-34054 (SGJ)
Debtor.	

SECOND AMENDED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT, pursuant to 28 U.S.C. § 158(a) and Rules 8002 and 8003 of the Federal Rules of Bankruptcy Procedure, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) hereby appeals to the United States District for the Northern District of Texas from the *Memorandum Opinion and Order Granting Highland Capital Management,*

L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection With Proof of Claim # 146 [Dkt. Nos. 4038 and 4039], entered by the United States Bankruptcy Court for the Northern District of Texas on March 5, 2024 and *Order Denying Motion of NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Seeking Relief From Order Pursuant to Fed. R. of Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(1) & (6)* [Dkt. 4069] entered by the United States Bankruptcy Court for the Northern District of Texas on May 21, 2024 (collectively referred to as the "Orders"). True and correct copies of the Orders are attached hereto as Exhibit A, Exhibit B, and Exhibit C. The parties to the appeal are as follows:

Appellant/Respondent: NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

Attorneys:
Amy L. Ruhland
REICHMAN JORGENSEN LEHMAN & FELDBERG
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102
Email: aruhland@reichmanjorgensen.com

Charles W. Gameros, Jr., P.C.
Douglas Wade Carvell, P.C.
HOGE & GAMEROS. L.L.P.
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002
Email: bgameros@legaltexas.com
wcarvell@legaltexas.com

Appellee/Movant: Highland Capital Management, L.P.

Attorneys:
Jeffery N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
Email: jpomerantz@pszjlaw.com
ikharasch@pszjlaw.com
jmorris@pszjlaw.com
gdemo@pszjlaw.com
hwinofrad@pszjlaw.com

Dated: June 4, 2024

Respectfully Submitted,

REICHMAN JORGENSEN LEHMAN & FELDBERG

/s/Amy L. Ruhland
Amy L. Ruhland
Texas Bar No. 24043561
aruhland@reichmanjorgensen.com
901 S. Mopac Expwy, Suite 300
Austin, TX 78746
Tel.: (737) 227-3102

HOGE & GAMEROS. L.L.P

Charles W. Gameros, Jr., P.C.
Texas Bar No. 00796956
bgameros@legaltexas.com
Douglas Wade Carvell, P.C.
Texas Bar No. 00796316
wcarvell@legaltexas.com
6116 North Central Expressway, Suite 1400
Dallas, Texas 75206
Tel.: 214-765-6002

Attorneys for NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 4, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Amy L. Ruhland
Amy L. Ruhland

EXHIBIT A

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed March 4, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM # 146

I. INTRODUCTION

Before this court is a sanctions motion[1] filed by Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor"). [2] The motion seeks sanctions against

[1] *Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in connection with Proof of Claim 146* ("Sanctions Motion"). Dkt. No. 3851.

[2] Highland is a reorganized debtor under the confirmed *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Dkt. No. 1943.

NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("NexPoint/HCRE") for its filing, prosecution, and then abrupt attempt to withdraw a meritless proof of claim (after almost three years of protracted litigation).

NexPoint/HCRE filed the subject proof of claim, #146 on the claims register ("Proof of Claim"), on April 8, 2020.[3] The Proof of Claim was signed electronically by James D. Dondero ("Dondero") and was prepared and filed by a law firm that was representing him personally at that time.[4] The Proof of Claim was not in a liquidated amount and was somewhat ambiguous. It stated in an Exhibit A thereto, that NexPoint/HCRE, which was a limited partner, along with Highland, in a limited liability company called SE Multifamily Holdings, LLC ("SE Multifamily")—an entity which owned valuable real estate—"may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor" and added that Highland's equity interest "may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor." NexPoint/HCRE stated that it would update the Proof of Claim to provide the exact amount of it "in the next ninety days" but never did.

Highland objected to the Proof of Claim. Thereafter, NexPoint/HCRE (while still not providing any liquidated amount of its Proof of Claim) refined its position therein to argue that the organizational documents relating to SE Multifamily improperly allocated the ownership percentages of the equity members, due to mutual mistake, lack of consideration, and/or failure of consideration. NexPoint/HCRE essentially sought to reform, rescind, and/or modify the SE Multifamily limited liability company agreement (and possibly other documentation) to give Highland less ownership (or no ownership interest) in SE Multifamily and, accordingly,

[3] Claim No. 146.

[4] Bonds Ellis Eppich Schafer Jones LLP.

NexPoint/HCRE would have a larger ownership interest in SE Multifamily. Next, there occurred years of litigation between the parties, including: (a) a skirmish over Highland's motion to disqualify NexPoint/HCRE's newest counsel (*i.e.,* a law firm that had represented both Highland and NexPoint/HCRE in transactions involving SE Multifamily), which was ultimately granted, and (b) an eleventh-hour attempt by NexPoint/HCRE to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits. Highland objected to the withdrawal. The court held a hearing on that, as required by Bankruptcy Rule 3006. The court declined to allow withdrawal of the Proof of Claim, when the parties could not stipulate to an agreed form of order (*i.e.,* NexPoint/HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum).

Painfully, after all this, an evidentiary hearing was held on the merits of the Proof of Claim ("Trial") on November 1, 2022. During the Trial, Highland made an oral motion for a bad faith finding and assessment of attorneys' fees against NexPoint/HCRE in connection with its filing and prosecution of the Proof of Claim ("Oral Sanctions Motion"), which this court took under advisement, along with the consideration of the Proof of Claim as a whole.

On April 28, 2023, this court entered a 39-page memorandum opinion and order[5] sustaining Highland's objection to NexPoint/HCRE's Proof of Claim, but denying Highland's Oral Sanctions Motion, without prejudice, ***as procedurally deficient in that it was made orally and for the first time during the Trial.*** Thus, the Oral Sanctions Motion failed to provide NexPoint/HCRE sufficient notice and an opportunity to respond and, therefore, did not satisfy concerns of due process.

[5] *See Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* ("Proof of Claim Disallowance Order"). Dkt. No. 3767.

On June 16, 2023, Highland filed the instant Sanctions Motion, setting forth the legal and factual bases for the relief sought. The Sanctions Motion specifically seeks a finding of bad faith against NexPoint/HCRE and reimbursement of Highland's attorneys' fees and costs, as a sanction for NexPoint/HCRE's filing and prosecution of the Proof of Claim.

After due notice to NexPoint/HCRE, and a hearing held January 24, 2024 on the Sanctions Motion ("Sanctions Motion Hearing"), and after consideration of the pleadings filed, evidence in the record, and arguments of counsel, the court finds, for the reasons detailed in the findings of fact and conclusions of law below,[6] that NexPoint/HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim. Accordingly, NexPoint/HCRE will be required, as a sanction, to reimburse Highland's attorneys' fees and costs (totaling **$825,940.55)** incurred in connection with its objection to the Proof of Claim.

II. JURISDICTION

This court has jurisdiction and authority to determine and enter a final order in this matter, pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B), and (O) and 1334.[7]

III. BACKGROUND, PROCEDURAL HISTORY, AND FINDINGS OF FACT

A. Incorporation Herein of Proof of Claim Disallowance Order

As noted above, this court, on April 28, 2023, issued its 39-page Proof of Claim Disallowance Order, sustaining Highland's objection to NexPoint/HCRE's Proof of Claim

[6] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

[7] The Fifth Circuit recently confirmed the jurisdiction and authority of bankruptcy courts to issue sanctions orders in connection with bankruptcy cases and proceedings over which they exercise jurisdiction, because they are in the nature of ***civil contempt*** orders—which are considered "part of the underlying case" – "because the bankruptcy court had jurisdiction over the [ ] bankruptcy case, it had jurisdiction to enter the sanctions order, too." *Kreit v. Quinn (In re Cleveland Imaging and Surgical Hospital, L.L.C.)*, 26 F.4th 285, 294 (5th Cir. 2022) (cleaned up).

following the Trial on same. The Proof of Claim Disallowance Order sets forth extensive procedural history, findings of fact, and conclusions of law pertaining to NexPoint/HCRE's filing and prosecution of its Proof of Claim, which Highland alleges in the instant Sanctions Motion was conducted in bad faith. NexPoint/HCRE did not appeal the Proof of Claim Disallowance Order. Thus, it is a final and non-appealable order.[8] The court hereby incorporates by reference the Proof of Claim Disallowance Order (and all of the findings and conclusions therein), as if set forth verbatim herein.[9]

B. Highland Files Sanctions Motion

On June 16, 2023, Highland filed the instant Sanctions Motion. It was supported with a Declaration of John A. Morris in support of the Sanctions Motion ("Morris Declaration")[10] and 431 pages of attached exhibits as set forth in the following table:

Exhibit A	NexPoint/HCRE's Proof of Claim[11]
Exhibit B	Highland's Objection to NexPoint/HCRE's Proof of Claim[12]
Exhibit C	NexPoint/HCRE's Response to Objection to Claim[13]

[8] The Proof of Claim Disallowance Order is one of the few bankruptcy court orders issued in this bankruptcy case that was not appealed by Dondero or a Dondero-controlled entity. Although the court has not counted the exact number of appeals filed by Dondero and/or Dondero-controlled entities in this bankruptcy case and related proceedings, this court takes judicial notice of information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." *See Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12, at ¶ 24, filed on February 9, 2024. Dkt. No. 189 (NDTX Case No. 3:21-cv-00881-X).

[9] The Proof of Claim Disallowance Order was attached as Exhibit D to the Declaration of John A. Morris, Dkt. No. 3852, which was filed by Highland in connection with, and in support of, the relief requested in the Sanctions Motion.

[10] Dkt. No. 3852.

[11] Claim No. 146, filed April 8, 2020.

[12] *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection to Claim"), filed July 30, 2020. Dkt. No. 906.

[13] *NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Response to Objection to Claim"), filed October 19, 2020. Dkt. No. 1212.

Exhibit D	Proof of Claim Disallowance Order
Exhibit E	Transcript of November 1, 2022 Trial (on NexPoint/HCRE's Proof of Claim)
Exhibit F	Attorneys' Fees of Pachulski Stang Ziehl & Jones LLP ("PSZJ") for the period of August 1, 2021 through December 31, 2022 incurred in connection with the litigation on the NexPoint/HCRE Proof of Claim
Exhibit G	Invoices for court reporting services provided in connection with depositions taken and defended during the course of the Proof of Claim litigation
Exhibit H	Invoice for services rendered by David Agler, who provided specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim
Exhibit I	Summary of Fees and Expenses Incurred by Highland in Connection with NexPoint/HCRE's Proof of Claim

The Sanctions Motion (unlike the Oral Sanctions Motion made during the Trial) provided NexPoint/HCRE with due and appropriate notice of the legal and factual bases for Highland's request for a bad faith finding and reimbursement of attorneys' fees and costs incurred by it in litigating the Proof of Claim. As stated in the Sanctions Motion, the legal basis for Highland's request for reimbursement of its attorneys' fees as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim is the bankruptcy court's "inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith."[14] Highland referred to specific documentary and testimonial evidence adduced during the Trial that it alleges supports a finding that NexPoint/HCRE filed and prosecuted its Proof of Claim in bad faith, and attached invoices evidencing its attorneys' fees and costs incurred as a direct result of this alleged bad faith.

[14] *See* Sanctions Motion, 10, ¶25.

Before NexPoint/HCRE filed its response to the Sanctions Motion, the matter was stayed on August 2, 2023, pending court-ordered global mediation.[15] The mediation ultimately proved to be unsuccessful.[16] Thereafter, NexPoint/HCRE filed its *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* ("Response")[17] on December 22, 2023. NexPoint/HCRE denies that it filed and prosecuted its Proof of Claim in bad faith and argues it should not be sanctioned at all. It further argues that, even if the filing and prosecution of the Proof of Claim are found to have been in bad faith, the amount of the fees incurred by Highland in connection with the Proof of Claim litigation is "*per se* excessive for a single proof of claim objection"[18] and "extraordinarily high given that this dispute could have been brought to a swift close many months ago"—if only NexPoint/HCRE had been allowed to withdraw its Proof of Claim in September of 2022.[19] Highland's has sought reimbursement of more than $800,000 in attorneys' fees and more than $16,000 in expenses, identified in Exhibits F through H (and summarized in Exhibit I) of the Morris Declaration as having been incurred by Highland in connection with its litigation of the Proof of Claim.

Highland filed its *Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in*

---

[15] *See Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation*. Dkt. No. 3897. This was not the first time the bankruptcy court has ordered global mediation in the Highland case.

[16] *See Joint Notice of Mediation Report* filed on November 7, 2023. Dkt. No. 3995.

[17] Dkt. No. 3995.

[18] Response, 10, ¶34.

[19] Response, 13, ¶45. NexPoint/HCRE argues that, because it had sought to withdraw its Proof of Claim, any fees incurred by Highland after the filing of NexPoint/HCRE's motion to withdraw cannot be attributable to NexPoint/HCRE's alleged bad faith filing and prosecution of its Proof of Claim; rather, such fees were incurred by Highland as a result of Highland's decision to object to NexPoint/HCRE's withdrawal of its Proof of Claim and to proceed with the litigation, including taking depositions, and proceeding to "trial" on the merits instead of "taking a win" with NexPoint/HCRE's withdrawal of its Proof of Claim. *See* Response, 2.

Connection with Proof of Claim 146[20] on January 19, 2024, and filed an *Amended Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* ("Reply")[21] on January 23, 2024. Highland argues that "[n]othing in the Response warrants the denial of the [Sanctions] Motion or its requested award of attorneys' fees" and that "the record makes clear" that NexPoint/HCRE and its principals "clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, . . . ([b]) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and ([c]) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement")."[22]

The court held a hearing on the Sanctions Motion ("Hearing") on January 24, 2024, during which NexPoint/HCRE was given a full opportunity to respond to Highland's allegations of bad faith and request for sanctions.

IV. CONCLUSIONS OF LAW

A. The Sanctions Motion Satisfies Due Process Considerations

In invoking its inherent power to sanction bad faith conduct or a willful abuse of the judicial process, "[a] court must exercise caution . . . , and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018). As noted above, the court entered its Proof of Claim Disallowance Order on April 28, 2023, in which it sustained Highland's objection to, and disallowed, the Proof of Claim but denied, without prejudice, Highland's Oral Sanctions Motion

[20] Dkt. No. 4018.

[21] Dkt. No. 4023.

[22] Reply, 2, ¶2.

as being procedurally defective because, having been raised for the first time during Trial and not having been made in writing, it had not given NexPoint/HCRE adequate notice and an opportunity to respond to the specific allegations of bad faith being made against it. The court pointed out that it did not address or make any determination regarding the substance of Highland's requests in the Oral Sanctions Motion for a bad faith finding and sanctions against NexPoint/HCRE, subject to Highland's right seek a bad faith finding and sanctions against NexPoint/HCRE upon and after giving it proper notice and an opportunity to respond:

> Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny, without prejudice, [Highland's] request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Proof of Claim Disallowance Order, 38-39 (quoting *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010) ("[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond."); *In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) ("By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond.")).

The court concludes that the instant Sanctions Motion and Hearing have provided NexPoint/HCRE with the due process that was lacking in connection with the Oral Sanctions Motion. NexPoint/HCRE was given adequate notice of the legal authority invoked for sanctions (the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code) and NexPoint/HCRE's specific conduct (the filing and prosecution of its Proof of Claim) that Highland

alleges to have been in bad faith, and NexPoint/HCRE was given adequate opportunity to respond through briefing and at the Hearing on the Sanctions Motion.

With due process concerns having been now addressed and satisfied, the court is able to address the substantive questions raised in the instant Sanctions Motion of (1) whether NexPoint/HCRE did, indeed, act in bad faith in the filing and prosecution of its Proof of Claim and (2) if so, whether an award of reimbursement of Highland's attorneys' fees and costs incurred in connection with its litigation of the Proof of Claim is an appropriate sanction for such bad faith.

B. NexPoint/HCRE Filed and Prosecuted its Proof of Claim in Bad Faith and Willfully Abused the Judicial Process

A bankruptcy court may sanction a litigant for bad faith filing or litigation if the court makes specific findings, based on clear and convincing evidence, of bad faith or willful abuse of the judicial process. *See Cleveland Imaging*, 26 F.4th at 292 (A bankruptcy court may only sanction a party using its inherent authority if "(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence.") (citing *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729-30 (5th Cir. 2014)). The bankruptcy court's power to sanction bad faith or willful abuse of the judicial process derives from its inherent authority under 11 U.S.C. § 105(a) to issue civil contempt orders. *Id.* at 294, 294 n.14 (quoting the "relevant part" of Bankruptcy Code section 105(a), which provides that bankruptcy courts may "sua sponte, tak[e] any action . . . necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.") (cleaned up).

Having reviewed the record and the evidence adduced at Trial and NexPoint/HCRE's response to the Sanctions Motion (both in its Response and at the hearing on the Sanctions Motion), the court finds and concludes that there is clear and convincing evidence here that

NexPoint/HCRE filed and prosecuted is Proof of Claim in bad faith and that it willfully abused the judicial process.

1. *Dondero's Execution and Authorization of the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence Was in Bad Faith and a Willful Abuse of the Judicial Process*

As noted in the Proof of Claim Disallowance Order, NexPoint/HCRE filed its Proof of Claim in this Highland bankruptcy case on April 8, 2020, several months after the post-petition "nasty breakup" between Highland and its co-founder and president and chief executive officer, Dondero. NexPoint/HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[23]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

NexPoint/HCRE was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Dondero was the president and sole manager of NexPoint/HCRE, and an individual named Matt McGraner ("McGraner") was NexPoint/HCRE's vice president and secretary. NexPoint/HCRE had no employees of its own but instead relied on Highland's employees (and employees of other entities controlled by Dondero) to conduct business on its behalf. Dondero executed the Proof of Claim as the "person who is completing and signing this claim," checking

[23] Claim No. 146.

the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[24] The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it and without conducting any due diligence on, or investigation into, whether the statements made in the Proof of Claim were truthful and accurate, which supports a finding that Dondero's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.

At Trial, Dondero testified that he had authorized his electronic signature to be affixed to the document and to be filed on behalf of NexPoint/HCRE and admitted that he had not reviewed the document before doing so.[25] He further testified that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed,"[26] and, more specifically, that he did not, prior to authorizing his law firm (Bonds Ellis) to affix his electronic signature on, and to file, the Proof of Claim, review or provide comments to the Proof of Claim or its Exhibit A, review the SE Multifamily Amended LLC Agreement or any documents,[27] "check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it," or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of

[24] Proof of Claim, 3.

[25] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 55:2-22.

[26] Trial Tr. 56:20-23.

[27] Trial Tr. 55:10-22, 56:15-57:6.

HCRE."[28] Moreover, he testified that he did not know whose idea it was to file the Proof of Claim,[29] who at NexPoint/HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever communicated with anybody in the real estate group regarding [the Proof of Claim]."[30]

Dondero has argued that he had a good faith basis to sign and file the Proof of Claim on behalf of NexPoint/HCRE because "he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds"[31] and that he "ha[d] to rely on systems and processes[,]" because "[he] can't be directly involved in everything."[32] Dondero further testified that "[he] sign[s] a lot of high-risk documents and [has] to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this [Proof of Claim] is another one of those items."[33]

Dondero's "I'm-a-very-busy-person/too-busy-to-be-bothered-to-investigate" excuse is not a defense, as a matter of law, to his bad faith and willful abuse of the judicial process in connection with the filing of the Proof of Claim. Nor is Dondero's claimed reliance on systems and processes in connection with the execution and filing of this Proof of Claim, as a matter of fact, supported by the evidence. The court notes that the Proof of Claim is not a complex, lengthy legal or

[28] Trial Tr. 57:25-58:16.

[29] Trial Tr. 57:7-9.

[30] Trial Tr. 56:1-14.

[31] Response, 7, ¶16.

[32] Trial Tr. 57:25-58:7.

[33] Trial Tr. 57:25-59:2.

corporate document; Exhibit A to the Proof of Claim, which set forth the basis for the claim, is only one paragraph long, yet Dondero did not even bother to read it before signing under penalty of perjury that the information contained in the Proof of Claim, including Exhibit A, was truthful and accurate. And, Dondero's own testimony contradicts his assertion that he relied on "systems and processes" and on other people within the "sprawling and sophisticated corporate structure" and his outside counsel to ensure the accuracy of the Proof of Claim. He had no reasonable or justifiable basis to rely on anyone or any "process" that was allegedly in place in connection with his signing of "high risk" documents, because he asked no questions, conducted no due diligence, and made no effort, whatsoever, to verify that the information that he was swearing was accurate under penalty of perjury was, in fact, truthful.

The court finds and concludes that the foregoing admissions by NexPoint/HCRE, through Dondero, provide clear and convincing evidence that ***NexPoint/HCRE filed its Proof of Claim*** in bad faith and willfully abused the judicial process.

2. NexPoint/HCRE's Litigation Strategy and Actions in the Prosecution of Its Proof of Claim Are Further Evidence of Its Bad Faith and Willful Abuse of the Judicial Process

Moreover, NexPoint/HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and a half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process***.

As noted in the Proof of Claim Disallowance Order, six months after Dondero signed and filed the Proof of Claim in April 2020, and in response to Highland's objection to its Proof of Claim,[34] NexPoint/HCRE fleshed-out the legal and factual bases for its claim:[35]

> After reviewing what documentation is available to [NexPoint/HCRE] with the Debtor, [NexPoint/HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NexPoint/HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [NexPoint/HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

The Response was filed by a new law firm—Wick Phillips Gould & Martin, LLP ("Wick Phillips") – not the law firm of Bonds Ellis, which had handled the filing of the Proof of Claim. In the course of discovery, Highland became aware that Wick Phillips had jointly represented NexPoint/HCRE and Highland in connection with at least some of the underlying transactions that were the subject of the Proof of Claim, and, on April 14, 2021, more than a year after NexPoint/HCRE filed its Proof of Claim, Highland moved to disqualify Wick Phillips.[36] Notably, Highland's Plan had been confirmed on February 22, 2021, over the objections of Dondero and his related entities (including NexPoint/HCRE).[37] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan.

---

[34] On July 30, 2020, Highland filed an objection to the allowance of the Proof of Claim, contending it had no liability under the Proof of Claim. *See Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims*, Dkt. No. 906.

[35] Response to Objection to Claim, 2-3, ¶¶ 5-6.

[36] Dkt. Nos. 2196-2198. On October 1, 2021, Highland filed a supplemental disqualification motion. Dkt. No. 2893.

[37] NexPoint/HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* on January 5, 2021. Dkt. No. 1673.

Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including Highland's 46.06% membership interest in SE Multifamily.

Meanwhile, NexPoint/HCRE vigorously fought the disqualification of Wick Phillips, filing its opposition to the disqualification motion on May 6, 2021,[38] and initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with the entry by this court on December 10, 2021, of its *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[39] resolving the disqualification motion by, among other things, disqualifying Wick Phillips from representing NexPoint/HCRE in the contested matter concerning the Proof of Claim, but specifically denying Highland's request that NexPoint/HCRE reimburse it all costs and fees incurred in making and prosecuting the disqualification motion.[40]

In the instant Sanctions Motion, Highland acknowledged that the court denied Highland's specific request for sanctions of reimbursement of Highland's costs and fees in making the Disqualification Motion in its December 2021 Disqualification Order.[41] The court notes that the denial was not "with prejudice"[42] to Highland's right to bring a sanctions motion in the future in connection with allegations that NexPoint/HCRE's filing and prosecution of its Proof of Claim, including its vigorous defense of the Disqualification Motion. Notably, while Highland includes

[38] Dkt. Nos. 2278 and 2279.

[39] Dkt. No. 3106.

[40] Disqualification Order, 4.

[41] *See* Sanctions Motion, 4, ¶8.

[42] The Disqualification Order stated, in relevant part, "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**."

a reference in the instant Sanctions Motion to the lengthy and expensive proceedings on the Disqualification Motion in its recitation of evidence in the record that supports Highland's allegations that NexPoint/HCRE engaged in bad faith conduct in the filing and prosecution of its Proof of Claim, it did ***not*** include them as part of the fees and costs for which Highland is seeking to be reimbursed by NexPoint/HCRE as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.[43]

In any event, following the disqualification of Wick Phillips, NexPoint/HCRE hired yet a third law firm, Hoge & Gameros, LLP, in connection with this matter, and the parties engaged in a second round of extensive discovery, which included the exchange of written discovery and document production and the service of various deposition notices and subpoenas. On August 12, 2022, just two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of NexPoint/HCRE's witnesses, Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[44] By this point, Highland had spent hundreds of thousands of dollars objecting to the Proof of Claim.

Query why might NexPoint/HCRE have done this? Just six months earlier, Dondero's family trust, The Dugaboy Investment Trust, had represented to the bankruptcy court that

[43] *See* Morris Declaration, 3-4, at ¶11 (Referencing the court's denial in its Disqualification Order of Highland's previous request for attorneys' fees incurred in connection with the Disqualification Motion, Morris stated "[W]e reviewed the PSZJ Invoices and redacted all entries relating to the Disqualification Motion; thus, for the avoidance of doubt, Highland does not seek any fee award with respect to any work done in connection with the Disqualification Motion.").

[44] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

Highland's 46.06% interest in SE Multifamily was worth $20 million,[45] and now, NexPoint/HCRE (which presumably also spent substantial sums prosecuting its Proof of Claim during the nearly two and a half years of litigation) appeared willing to walk away from its multi-million dollar challenge to Highland's 46.06% interest in SE Multifamily. Highland objected to NexPoint/HCRE's Motion to Withdraw, and the court held a hearing on September 12, 2022 (as required by Bankruptcy Rule 3006), following which the court entered an order denying NexPoint/HCRE's Motion to Withdraw, for the reasons set forth on the record,[46] and directing the parties to "confer in good faith to complete the depositions" of Dondero, McGraner, and NexPoint/HCRE and otherwise comply with the scheduling order that had been entered by the court on this matter, which included appearing for an evidentiary hearing on November 1, 2022.[47] The court denied NexPoint/HCRE's Motion to Withdraw, in part, because it was concerned that the timing of it all–just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE (*i.e.,* NexPoint/HCRE prosecuted its Proof of Claim for two and a half years, through and including the taking of depositions of Highland's witness, while shielding its own witnesses from testifying). The court was also concerned by NexPoint/HCRE's repeated attempts to preserve its claims against Highland for use against Highland in the future. In fact, the court entered its order denying NexPoint/HCRE's Motion to Withdraw only after: (1) NexPoint/HCRE refused to agree, at the

[45] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. As pointed out by Highland in its Response, "[t]here is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily." Response, 9, at ¶27 n. 4.

[46] The court noted in its order denying HCRE's Motion to Withdraw that, under the Bankruptcy Rules, a creditor does not have an absolute right to withdraw a proof of claim.

[47] Dkt. No. 3525.

September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily, and (2) counsel were thereafter unable, in the day or two after the hearing, to work out mutually acceptable language in an agreed order that protected both parties.[48] As noted in its order denying NexPoint/HCRE's Motion to Withdraw, the court had expressed concerns, during the hearing on the Motion to Withdraw, relating to the integrity of the bankruptcy system and claims process if it allowed NexPoint/HCRE to withdraw its Proof of Claim after two and a half years of litigation, and having caused Highland to spend hundreds of thousands of dollars litigating the Proof of Claim, while at the same time allowing NexPoint/HCRE to preserve its challenges to Highland's ownership interest in SE Multifamily to be used against Highland in the future. The court did not, at the time, make any express findings regarding NexPoint/HCRE's bad faith or abuse of the judicial process, only because Highland's mid-hearing Oral Sanctions Motion had not provided NexPoint/HCRE with adequate notice and an opportunity to respond.[49] With the instant Sanctions Motion, those due process concerns have been satisfied.

Having considered the evidence and argument of counsel at both the Trial on NexPoint/HCRE's Proof of Claim and the hearing on the Sanctions Motion, and the pleadings filed in connection with the Sanctions Motion, including NexPoint/HCRE's written Response, and based on the record as a whole, the court expressly finds and concludes that NexPoint/HCRE's

[48] At the end of the September 12 hearing, the court had expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw, Dkt. No. 3519, 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at docket number 3525, denying NexPoint/HCRE's Motion to Withdraw.

[49] As noted below, NexPoint/HCRE persisted to the end in arguing that the disallowance of its Proof of Claim could not bar NexPoint/HCRE from making future challenges to Highland's 46.06% membership interest in SE Multifamily.

litigation strategy and actions in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process on the part of NexPoint/HCRE.

3. NexPoint/HCRE's Admissions at Trial Are Further Evidence of its Bad Faith Filing and Willful Abuse of the Judicial Process

Following the denial of NexPoint/HCRE's Motion to Withdraw, the parties complied with the court's order to schedule the depositions of Dondero and McGraner at mutually agreeable times to complete discovery and then appeared at Trial on November 1, 2022. At the conclusion of the Trial, NexPoint/HCRE doubled-down on its request of the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[50] This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request. Nevertheless, NexPoint/HCRE continued to the end to try to limit any order disallowing its Proof of Claim so as to preserve its right to assert the very claims asserted in its Proof of Claim (for rescission, reformation and/or modification of the SE Multifamily Amended LLC Agreement to reallocate the membership percentages) for use in the future.[51]

The Trial testimony of Dondero and McGraner revealed that NexPoint/HCRE had no factual basis to claim that a mistake was made by any of the parties, much less a mutual mistake

[50] Trial Tr. 179:23-25; 180:8-9.

[51] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

of the parties, regarding the allocation of ownership percentages in SE Multifamily in corporate documentation,[52] and, in fact, "the evidence overwhelmingly point[ed] to the conclusion that both Mr. Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement."[53] The court specifically noted in the Proof of Claim Disallowance Order that Dondero admitted that he had not read or reviewed the Amended LLC Agreement or any drafts of it before he signed it—apparently the Amended LLC Agreement was one of those important, high-risk documents that Dondero was too busy to read or investigate before signing (like the Proof of Claim)—but he nevertheless testified that "the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland."[54] NexPoint/HCRE was also unable to produce any evidence at Trial to support its factual allegation that there was a "lack of consideration" or a "failure of consideration" with respect to the Amended LLC Agreement, such that NexPoint/HCRE would be entitled to a

[52] The court concluded, specifically, that

> HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor NexPoint/HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement.

Proof of Claim Disallowance Order, 30.

[53] *Id.*, 30-31.

[54] *Id.*, 31 n. 119.

reformation,[55] rescission,[56] or modification of it, to re-allocate the ownership percentages that the parties agreed to at the time of the execution of it.[57]

In fact, McGraner ultimately admitted in his Trial testimony that the only reason NexPoint/HCRE had for filing its Proof of Claim, which challenged Highland's title to its 46.06% membership interest in SE Multifamily, was, essentially, ***that NexPoint/HCRE was frustrated with the consequences of Dondero's decision in 2019 to seek bankruptcy protection for Highland (notably, the bankruptcy case was filed just a few months after the Amended LLC Agreement was executed), which resulted in Dondero losing control over Highland***, such that, as far as NexPoint/HCRE was concerned, its "partner" [in SE Multifamily] was no longer its "partner." The court noted in the Proof of Claim Disallowance Order that McGraner

> could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are –

---

[55] After noting that "neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what NexPoint/HCRE is seeking in its Proof of Claim)," the court concluded that "HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration." Proof of Claim Disallowance Order, 32 n. 120.

[56] The court noted in the Proof of Claim Disallowance Order that NexPoint/HCRE had not actually stated a claim for rescission of the Amended LLC Agreement with respect to its Proof of Claim, but that, if it had,

> Mr. Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.

Proof of Claim Disallowance Order, 33-34.

[57] *See* Proof of Claim Disallowance Order, 32-33 n. 120 (where the court found that "HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. . . . Under Delaware law, the courts 'limit [their] inquiry into consideration to its existence and not whether it is fair or adequate,' . . . . '[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain.' (citations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.").

> that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[58]

McGraner testified that "despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite 'all of the fears [he] had [related to Highland's bankruptcy filing],' HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because 'we didn't think it would be worth it')[ ][59] [and] 'because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves.'"[60] This is not a good-faith basis for filing and prosecuting the Proof of Claim, and it exhibits a willful abuse of the bankruptcy claims process by NexPoint/HCRE.

In summary, the admissions by Dondero and McGraner in their Trial testimony made clear that NexPoint/HCRE never had a factual or legal basis for the Proof of Claim. NexPoint/HCRE's principals knew, at the time of filing and through its prosecution of the Proof of Claim, that there was no factual basis for its claim of rescission, reformation, and/or modification of the Amended LLC Agreement to dispossess Highland of some or all of its 46.06% membership interest in SE Multifamily. This clearly and convincingly constitutes bad faith by NexPoint/HCRE and a willful abuse of the judicial process.

C. Reimbursement of Attorneys' Fees and Costs Incurred by Highland in the Proof of Claim Litigation Is an Appropriate Sanction for NexPoint/HCRE's Bad Faith

Having found and concluded by clear and convincing evidence that NexPoint/HCRE filed and prosecuted (and attempted withdrawal of) its Proof of Claim in bad faith and willfully abused the judicial process, this court may use its inherent powers under Bankruptcy Code section 105(a)

---

[58] Proof of Claim Disallowance Order, 27 (citing Trial Tr. 114:24-115:16, 118:6-15).

[59] *Id.* (citing Trial Tr. 121:24-122:9).

[60] *Id.* at 28 (citing Trial Tr. 122:20-125:21).

to sanction it for such conduct. Reimbursement of the opposing party's fees and costs incurred in responding to a bad faith filing or willful abuse of the judicial process has been upheld as an appropriate form of sanctions. *See Cleveland Imaging*, 26 F.4th at 294 (upholding the bankruptcy court's sanction order that required the parties who were found to have filed bankruptcy petitions in bad faith to reimburse the fees incurred by a post-confirmation litigation trust in responding to the bad faith filing); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017) (bankruptcy court did not abuse its discretion in ordering the debtors to "pay $49,432, which represents the amount of attorneys' fees incurred by [the bankruptcy trustee] in responding to certain instances of the [debtors'] bad faith conduct."); *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's use of its inherent powers to issue monetary sanctions for bad faith filing that were, in part, based upon the opposing parties' attorneys' fees and costs "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Paige*, 365 B.R. 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same). Any sanction imposed pursuant to a bankruptcy court's inherent powers for bad faith conduct or willful abuse of the judicial process "must be compensatory rather than punitive in nature." *In re Lopez*, 576 B.R. at 93 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994)). "[A] sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based[,]" and "[a] fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber*, 581 U.S.

at 108 (quoting *Bagwell*, 512 U.S. at 834). The fee award must be "limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith." *Id.* (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. at 104). The "'causal link' between the sanctionable conduct and the opposing party's attorney's fees" must be established "through a 'but-for test:' to wit, the complaining party may only recover the portion of fees that they would not have paid 'but-for' the sanctionable conduct." *Id.* (citing *Goodyear Tire & Rubber*, 581 U.S. at 108-109 (citing *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

Here, as earlier noted, Highland has requested, as a sanction, reimbursement of its attorneys' fees and costs incurred by it in responding to NexPoint/HCRE's filing and prosecution of its Proof of Claim. Specifically, Highland seeks reimbursement of an aggregate amount of **$825,940.55**, consisting of

- **$782,476.50** in attorneys' fees charged by its primary bankruptcy counsel, PSZJ, for the period August 1, 2021 through December 31, 2022, for work performed in connection with the litigation of the Proof of Claim;[61]
- **$16,164.05** in third-party expenses for court reporting services provided in connection with the Proof of Claim litigation;[62] and,

[61] *See* Morris Declaration, 3-4, at ¶¶ 8-13, and Ex. F. As stated in the Morris Declaration, the $782,476.50 amount does not include any fees relating to the Disqualification Motion or any fees that PSZJ concluded were inadvertently coded by a timekeeper to the NexPoint/HCRE Claim Objection category "or that were otherwise unrelated to services rendered in connection with the Proof of Claim litigation." *Id.*, 3-4, at ¶¶ 11 and 12. By way of specific example, Morris stated that "in 2022 and 2023 we charged Highland for services rendered in connection with our unsuccessful attempts to obtain SE Multifamily's books and records but excluded those charges here because they do not directly relate to the litigation of HCRE's Proof of Claim; Highland is seeking those fees in the Delaware Chancery Court where Highland was forced to commence an action against HCRE for specific performance (Case No. 2023-0493-LM))." *Id.*, 4, at ¶ 12.

[62] *See id.*, 4, at ¶ 14, and Ex. G.

- **$27,300.00** in attorneys' fees charged by David Agler for providing Highland with specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim.[63]

NexPoint/HCRE challenges Highland's request for reimbursement of its fees on several bases. ***First***, it argues that it cannot be ordered to reimburse the fees and expenses incurred by Highland ***after*** NexPoint/HCRE attempted to withdraw its Proof of Claim because they do not satisfy the "but for" test for establishing a "causal link" between those fees and costs and NexPoint/HCRE's filing and pursuit of its Proof of Claim—that Highland cannot show that "but for" NexPoint/HCRE's filing and prosecution of its Proof of Claim, Highland would not have incurred those fees and costs. NexPoint/HCRE urges the court to adopt its narrative of the proceedings that "instead of taking a win, [Highland] and its lawyers chose to generate fees to get the same result" and thus Highland's attorneys' efforts were "totally unnecessary" and a "waste of time and resources" that was "the fault of [Highland], not [NexPoint/HCRE]."[64] NexPoint/HCRE states in its Response that "[h]ere, ***it is undisputed*** that, had [Highland] agreed to the withdrawal of the Proof of Claim many months ago – before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim – [Highland] would have been exactly in the same position that it is in now, but at far less expense" and further that "[t]he real, practical difference between refusing to consent to the withdrawal of [NexPoint/HCRE]'s Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees" and, thus, "[t]he Motion abjectly fails any 'but–for' analysis."[65]

---

[63] *See id.*, 4-5, at ¶¶ 15 and 16, and Ex. H. A summary of the aggregate fees and expenses of which Highland is seeking reimbursement in the Sanctions Motion is attached as Exhibit I to the Morris Declaration. *See id.*, 5, at ¶ 17, and Ex. I.

[64] Response, 2.

[65] Response, 20, at ¶60 (emphasis added).

The court disagrees with NexPoint/HCRE's "narrative" and its view of the evidence established at Trial. Highland ***does*** dispute NexPoint/HCRE's contention that, if only it had allowed it to withdraw its Proof of Claim and accepted a "win," that Highland would have been "exactly in the same position that it is in now [after a Trial and ruling on the merits of the Proof of Claim], but at far less expense." The court does as well. As Highland has argued, NexPoint/HCRE's Motion to Withdraw was itself filed in bad faith. Highland was forced to oppose the withdrawal of the Proof of Claim because NexPoint/HCRE would not agree to a withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future.[66] The evidence clearly and convincingly established that any "win" or "victory" that Highland would have obtained through the withdrawal of the Proof of Claim[67]

> would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

The court finds and concludes, as argued by Highland, that there is clear and convincing evidence here that the fees and costs incurred by it, after NexPoint/HCRE sought to withdraw its Proof of Claim (*i.e.,* to prepare for the Trial and prosecute its objection to the Proof of Claim through a trial and ruling on the merits), would not have been incurred "but for" NexPoint/HCRE's bad faith. As pointed out by Highland and as noted above,[68] the court did not enter the Proof of Claim Disallowance Order in December 2022 in a vacuum. Rather, the court denied

---

[66] *See supra* note 45 and accompanying text.

[67] Response, 5, at ¶18.

[68] *See supra* at pages 16-17.

NexPoint/HCRE's Motion to Withdraw only ***after:*** (1) the court had expressed concerns that the timing and context of its filing of its Motion to Withdraw suggested gamesmanship on its part, and that the integrity of the bankruptcy system and claims process would be in jeopardy if the court were to simply allow withdrawal, without protecting Highland from future challenges to its membership interest in SE Multifamily (particularly, after Highland had spent hundreds of thousands of dollars to that point in objecting to the Proof of Claim); and (2) NexPoint/HCRE refused to agree to language in an order that would alleviate these expressed concerns. The court—having now made an express finding that NexPoint/HCRE's filing of its Motion to Withdraw was in bad faith and part of its willful abuse of the bankruptcy claims process that began with the filing of its Proof of Claim in April 2020—now expressly finds that the fees and costs incurred by Highland after NexPoint/HCRE filed its Motion to Withdraw were necessary for Highland to protect its interests and would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

Second, NexPoint/HCRE objects to Highland's fees ($809,776.50) and expenses ($16,164.05) as being "*per se* excessive for a single proof of claim objection."[69] Highland argues that "[s]pending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries." Per the Morris Declaration, Highland only seeks reimbursement of expenses and fees charged to Highland for expenses incurred and work performed in litigating the Proof of Claim (but—as noted earlier—specifically excluding any fees charged relating to the Disqualification Motion). The court agrees with Highland and finds that the fees and expenses incurred by it in objecting to the Proof of Claim,

[69] Response, 10, ¶34.

including the fees incurred ***after*** NexPoint/HCRE sought to withdraw its Proof of Claim, were reasonable and necessary for Highland to protect a valuable asset—it's 46.06% interest in SE Multifamily—and, thus, they are not excessive.

Third, NexPoint/HCRE complains, in its Response, that the fees charged by PSZJ were unreasonable and excessive because the PSZJ invoices show that it was seeking reimbursement for fees charged by "layers of timekeepers whose identities and roles have not been disclosed."[70] NexPoint/HCRE points out three professionals (two of whom billed one hour or less) who were identified in PSZJ's invoices only by their initials.[71] In its Reply, Highland identified the timekeepers by name—as a litigator who billed one hour of time; a bankruptcy attorney who billed 0.6 hours of time; and a bankruptcy partner who billed 15.1 hours of time—all of whom were "called upon to provide discrete support."[72] Collectively, the three previously "unidentified" attorneys charged just 0.023% of the total fee request.[73] PSZJ's identification of the "unidentified timekeepers" and explanation of the work performed by them satisfies the court that these fees were reasonable and necessary fees incurred as a direct result of NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim. The court rejects NexPoint/HCRE's suggestion that PSZJ overstaffed and overbilled the file because there were "layers of timekeepers." As pointed out in Highland's Reply, "over 82% of the charges related to one litigation partner . . . , one litigation associate . . . , and one paralegal" and "[t]wo other lawyers who have been on the Pachulski team since the inception of this engagement . . . billed relatively modest amounts of time over the course

[70] *Id.*, 13, ¶45.
[71] *Id.*, 12, ¶38.
[72] Reply, 9, ¶28.
[73] *Id.*

of this prolonged litigation."[74] There is simply no factual basis to support a conclusion that the matter was overstaffed.

Fourth, NexPoint/HCRE objects to $9,840 charged by two attorneys for travel time,[75] while acknowledging that those attorneys' non-working travel time was billed at half of the attorneys' regular hourly rate.[76] As pointed out by Highland in its Reply, Highland agreed to pay for travel time in its pre-petition engagement letter, so those "charges cannot come as a surprise to Mr. Dondero."[77] The court takes judicial notice of the fact that attorneys charging half of their hourly rates for non-working travel time, as PSZJ did here, pursuant to its engagement letter with Highland that was approved when the court authorized the retention of PSZJ as counsel for the Debtor, is common practice and is a commonly approved term of engagement of professionals in bankruptcy cases. The $9,840 charged by two attorneys for travel time in this matter was a reasonable and necessary expense incurred by Highland in responding to NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.

Fifth, and finally, NexPoint/HCRE objects to the fees charged by David Agler (39 hours of work performed at $700 per hour) for providing Highland with tax advice in August 2022, on the basis that the invoice attached as Exhibit H to the Morris Declaration "indicated that it was 'unbilled' work" and that "[w]hatever work he did, it did not manifest itself in the proceedings."[78] Highland pointed out that it ***had*** explained, in the Morris Declaration, that Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of

[74] *Id.*, 9, ¶28 n. 5.

[75] Response, 12, ¶37.

[76] *Id.*, 11, ¶36 (Table 1).

[77] Reply, 9-10, ¶29.

[78] Response, 12, ¶42.

Claim."[79] Highland provided a more detailed description of the services provided by Mr. Agler and why those services were necessary in its Reply: "Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits."[80] The court finds that the fees charged by David Agler for work performed for Highland that are set forth in Exhibit H to the Morris Declaration were reasonable and necessary expenses incurred by Highland in responding to HCRE's bad faith conduct and that they would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

The court has determined that the full amount of fees – $809,776.50 – and costs – $16,164.05 – that are set forth in detail in Exhibits F through H (and summarized on Exhibit I) of the Morris Declaration were reasonable and necessary for Highland to respond to, and would not have been incurred "but for," NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim, which the court has found to have been a willful abuse by NexPoit/HCRE of the judicial process. Under Fifth Circuit precedent, it is appropriate for the court, in the use of its inherent power under Bankruptcy Code § 105(a), to order NexPoint/HCRE, as a compensatory sanction for its bad faith conduct and willful abuse of the judicial process, to reimburse Highland the full amount of fees and costs requested by Highland, which, in the aggregate, total $825,940.55. NexPoint/HCRE's objections to such amounts as excessive, unnecessary, unreasonable, or unrelated to NexPoint/HCRE's bad faith conduct, are overruled.

---

[79] Reply, 10, ¶30 (citing Morris Declaration, ¶15).

[80] *See id.* (citing Morris Declaration, Ex. [E] (Trial Transcript) 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence)).

V. CONCLUSION AND ORDER

In summary, the court has determined that NexPoint/HCRE was given adequate notice and an opportunity to respond to the Sanctions Motion and that there is clear and convincing evidence that it filed and prosecuted its Proof of Claim, including its eleventh-hour attempt to withdraw its Proof of Claim, in bad faith and that it willfully abused the judicial process. Such conduct directly caused Highland to incur $825,940.55 in fees and expenses. In the exercise of its inherent power under Bankruptcy Code § 105(a), the court will grant Highland's Sanctions Motion and order NexPoint/HCRE to reimburse Highland for those fees and expenses as an appropriate sanction for NexPoint/HCRE's bad faith or willful abuse of the judicial process.

Accordingly, and based on the foregoing findings of fact and conclusions of law, including those findings and conclusions in this court's Proof of Claim Disallowance Order, which has been incorporated herein by reference,

IT IS ORDERED that the Sanctions Motion [Dkt. No. 3851] be, and hereby is **GRANTED**;

IT IS FURTHER ORDERED that, in order to compensate Highland for loss and expense resulting from NexPoint/HCRE's bad faith and willful abuse of the judicial process, in filing and prosecuting its Proof of Claim, NexPoint/HCRE is hereby directed to pay Highland the compensatory sum of **$825,940.55**.

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

EXHIBIT B

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed March 4, 2024

United States Bankruptcy Judge

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

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

MEMORANDUM OPINION AND ORDER GRANTING HIGHLAND CAPITAL MANAGEMENT, L.P.'S MOTION FOR (A) BAD FAITH FINDING AND (B) ATTORNEYS' FEES AGAINST NEXPOINT REAL ESTATE PARTNERS LLC (F/K/A HCRE PARTNERS, LLC) IN CONNECTION WITH PROOF OF CLAIM # 146

I. INTRODUCTION

Before this court is a sanctions motion[1] filed by Highland Capital Management, L.P. ("Highland," the "Debtor," or the "Reorganized Debtor"). [2] The motion seeks sanctions against

[1] *Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in connection with Proof of Claim 146* ("Sanctions Motion"). Dkt. No. 3851.

[2] Highland is a reorganized debtor under the confirmed *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). Dkt. No. 1808. *See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* ("Confirmation Order"). Dkt. No. 1943.

NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC ("NexPoint/HCRE") for its filing, prosecution, and then abrupt attempt to withdraw a meritless proof of claim (after almost three years of protracted litigation).

NexPoint/HCRE filed the subject proof of claim, #146 on the claims register ("Proof of Claim"), on April 8, 2020.[3] The Proof of Claim was signed electronically by James D. Dondero ("Dondero") and was prepared and filed by a law firm that was representing him personally at that time.[4] The Proof of Claim was not in a liquidated amount and was somewhat ambiguous. It stated in an Exhibit A thereto, that NexPoint/HCRE, which was a limited partner, along with Highland, in a limited liability company called SE Multifamily Holdings, LLC ("SE Multifamily")—an entity which owned valuable real estate—"may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor" and added that Highland's equity interest "may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor." NexPoint/HCRE stated that it would update the Proof of Claim to provide the exact amount of it "in the next ninety days" but never did.

Highland objected to the Proof of Claim. Thereafter, NexPoint/HCRE (while still not providing any liquidated amount of its Proof of Claim) refined its position therein to argue that the organizational documents relating to SE Multifamily improperly allocated the ownership percentages of the equity members, due to mutual mistake, lack of consideration, and/or failure of consideration. NexPoint/HCRE essentially sought to reform, rescind, and/or modify the SE Multifamily limited liability company agreement (and possibly other documentation) to give Highland less ownership (or no ownership interest) in SE Multifamily and, accordingly,

[3] Claim No. 146.

[4] Bonds Ellis Eppich Schafer Jones LLP.

NexPoint/HCRE would have a larger ownership interest in SE Multifamily. Next, there occurred years of litigation between the parties, including: (a) a skirmish over Highland's motion to disqualify NexPoint/HCRE's newest counsel (*i.e.,* a law firm that had represented both Highland and NexPoint/HCRE in transactions involving SE Multifamily), which was ultimately granted, and (b) an eleventh-hour attempt by NexPoint/HCRE to withdraw its Proof of Claim (by its newest law firm—this one #3 regarding the Proof of Claim), on the eve of depositions of its principals, including Dondero, and just prior to a trial on the merits. Highland objected to the withdrawal. The court held a hearing on that, as required by Bankruptcy Rule 3006. The court declined to allow withdrawal of the Proof of Claim, when the parties could not stipulate to an agreed form of order (*i.e.,* NexPoint/HCRE was unwilling to withdraw the Proof of Claim ***with prejudice*** to asserting its claims again in any future litigation in any forum).

Painfully, after all this, an evidentiary hearing was held on the merits of the Proof of Claim ("Trial") on November 1, 2022. During the Trial, Highland made an oral motion for a bad faith finding and assessment of attorneys' fees against NexPoint/HCRE in connection with its filing and prosecution of the Proof of Claim ("Oral Sanctions Motion"), which this court took under advisement, along with the consideration of the Proof of Claim as a whole.

On April 28, 2023, this court entered a 39-page memorandum opinion and order[5] sustaining Highland's objection to NexPoint/HCRE's Proof of Claim, but denying Highland's Oral Sanctions Motion, without prejudice, ***as procedurally deficient in that it was made orally and for the first time during the Trial.*** Thus, the Oral Sanctions Motion failed to provide NexPoint/HCRE sufficient notice and an opportunity to respond and, therefore, did not satisfy concerns of due process.

[5] *See Memorandum Opinion and Order Sustaining Debtor's Objection to, and Disallowing, Proof of Claim Number 146 [Dkt. No. 906]* ("Proof of Claim Disallowance Order"). Dkt. No. 3767.

On June 16, 2023, Highland filed the instant Sanctions Motion, setting forth the legal and factual bases for the relief sought. The Sanctions Motion specifically seeks a finding of bad faith against NexPoint/HCRE and reimbursement of Highland's attorneys' fees and costs, as a sanction for NexPoint/HCRE's filing and prosecution of the Proof of Claim.

After due notice to NexPoint/HCRE, and a hearing held January 24, 2024 on the Sanctions Motion ("Sanctions Motion Hearing"), and after consideration of the pleadings filed, evidence in the record, and arguments of counsel, the court finds, for the reasons detailed in the findings of fact and conclusions of law below,[6] that NexPoint/HCRE acted in bad faith and willfully abused the judicial process in filing, prosecuting, and then pursuing an eleventh-hour withdrawal of its Proof of Claim. Accordingly, NexPoint/HCRE will be required, as a sanction, to reimburse Highland's attorneys' fees and costs (totaling **$825,940.55)** incurred in connection with its objection to the Proof of Claim.

II. JURISDICTION

This court has jurisdiction and authority to determine and enter a final order in this matter, pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B), and (O) and 1334.[7]

III. BACKGROUND, PROCEDURAL HISTORY, AND FINDINGS OF FACT

A. Incorporation Herein of Proof of Claim Disallowance Order

As noted above, this court, on April 28, 2023, issued its 39-page Proof of Claim Disallowance Order, sustaining Highland's objection to NexPoint/HCRE's Proof of Claim

[6] To the extent that any of the findings of fact should be construed as a conclusion of law, it shall be construed as such. To the extent that any of the conclusions of law should be construed as a finding of fact, it shall be construed as such.

[7] The Fifth Circuit recently confirmed the jurisdiction and authority of bankruptcy courts to issue sanctions orders in connection with bankruptcy cases and proceedings over which they exercise jurisdiction, because they are in the nature of ***civil contempt*** orders—which are considered "part of the underlying case" – "because the bankruptcy court had jurisdiction over the [ ] bankruptcy case, it had jurisdiction to enter the sanctions order, too." *Kreit v. Quinn (In re Cleveland Imaging and Surgical Hospital, L.L.C.)*, 26 F.4th 285, 294 (5th Cir. 2022) (cleaned up).

following the Trial on same. The Proof of Claim Disallowance Order sets forth extensive procedural history, findings of fact, and conclusions of law pertaining to NexPoint/HCRE's filing and prosecution of its Proof of Claim, which Highland alleges in the instant Sanctions Motion was conducted in bad faith. NexPoint/HCRE did not appeal the Proof of Claim Disallowance Order. Thus, it is a final and non-appealable order.[8] The court hereby incorporates by reference the Proof of Claim Disallowance Order (and all of the findings and conclusions therein), as if set forth verbatim herein.[9]

B. Highland Files Sanctions Motion

On June 16, 2023, Highland filed the instant Sanctions Motion. It was supported with a Declaration of John A. Morris in support of the Sanctions Motion ("Morris Declaration")[10] and 431 pages of attached exhibits as set forth in the following table:

Exhibit A	NexPoint/HCRE's Proof of Claim[11]
Exhibit B	Highland's Objection to NexPoint/HCRE's Proof of Claim[12]
Exhibit C	NexPoint/HCRE's Response to Objection to Claim[13]

[8] The Proof of Claim Disallowance Order is one of the few bankruptcy court orders issued in this bankruptcy case that was not appealed by Dondero or a Dondero-controlled entity. Although the court has not counted the exact number of appeals filed by Dondero and/or Dondero-controlled entities in this bankruptcy case and related proceedings, this court takes judicial notice of information contained in a vexatious litigant motion filed by Highland in the district court (before Judge Brantley Starr), reflecting that Dondero and his controlled entities have "filed over 35 total appeals." *See Highland Capital Management, L.P.'s Reply to Objections to Motion to Deem the Dondero Entities Vexatious Litigants and for Related Relief*, 12, at ¶ 24, filed on February 9, 2024. Dkt. No. 189 (NDTX Case No. 3:21-cv-00881-X).

[9] The Proof of Claim Disallowance Order was attached as Exhibit D to the Declaration of John A. Morris, Dkt. No. 3852, which was filed by Highland in connection with, and in support of, the relief requested in the Sanctions Motion.

[10] Dkt. No. 3852.

[11] Claim No. 146, filed April 8, 2020.

[12] *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Objection to Claim"), filed July 30, 2020. Dkt. No. 906.

[13] *NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ("Response to Objection to Claim"), filed October 19, 2020. Dkt. No. 1212.

Exhibit D	Proof of Claim Disallowance Order
Exhibit E	Transcript of November 1, 2022 Trial (on NexPoint/HCRE's Proof of Claim)
Exhibit F	Attorneys' Fees of Pachulski Stang Ziehl & Jones LLP ("PSZJ") for the period of August 1, 2021 through December 31, 2022 incurred in connection with the litigation on the NexPoint/HCRE Proof of Claim
Exhibit G	Invoices for court reporting services provided in connection with depositions taken and defended during the course of the Proof of Claim litigation
Exhibit H	Invoice for services rendered by David Agler, who provided specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim
Exhibit I	Summary of Fees and Expenses Incurred by Highland in Connection with NexPoint/HCRE's Proof of Claim

The Sanctions Motion (unlike the Oral Sanctions Motion made during the Trial) provided NexPoint/HCRE with due and appropriate notice of the legal and factual bases for Highland's request for a bad faith finding and reimbursement of attorneys' fees and costs incurred by it in litigating the Proof of Claim. As stated in the Sanctions Motion, the legal basis for Highland's request for reimbursement of its attorneys' fees as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim is the bankruptcy court's "inherent authority under section 105 of the Bankruptcy Code to issue sanctions after making a finding of bad faith."[14] Highland referred to specific documentary and testimonial evidence adduced during the Trial that it alleges supports a finding that NexPoint/HCRE filed and prosecuted its Proof of Claim in bad faith, and attached invoices evidencing its attorneys' fees and costs incurred as a direct result of this alleged bad faith.

[14] *See* Sanctions Motion, 10, ¶25.

Before NexPoint/HCRE filed its response to the Sanctions Motion, the matter was stayed on August 2, 2023, pending court-ordered global mediation.[15] The mediation ultimately proved to be unsuccessful.[16] Thereafter, NexPoint/HCRE filed its *Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees* ("Response")[17] on December 22, 2023. NexPoint/HCRE denies that it filed and prosecuted its Proof of Claim in bad faith and argues it should not be sanctioned at all. It further argues that, even if the filing and prosecution of the Proof of Claim are found to have been in bad faith, the amount of the fees incurred by Highland in connection with the Proof of Claim litigation is "*per se* excessive for a single proof of claim objection"[18] and "extraordinarily high given that this dispute could have been brought to a swift close many months ago"—if only NexPoint/HCRE had been allowed to withdraw its Proof of Claim in September of 2022.[19] Highland's has sought reimbursement of more than $800,000 in attorneys' fees and more than $16,000 in expenses, identified in Exhibits F through H (and summarized in Exhibit I) of the Morris Declaration as having been incurred by Highland in connection with its litigation of the Proof of Claim.

Highland filed its *Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in*

[15] *See Order Granting in Part and Denying in Part Motion to Stay and to Compel Mediation*. Dkt. No. 3897. This was not the first time the bankruptcy court has ordered global mediation in the Highland case.

[16] *See Joint Notice of Mediation Report* filed on November 7, 2023. Dkt. No. 3995.

[17] Dkt. No. 3995.

[18] Response, 10, ¶34.

[19] Response, 13, ¶45. NexPoint/HCRE argues that, because it had sought to withdraw its Proof of Claim, any fees incurred by Highland after the filing of NexPoint/HCRE's motion to withdraw cannot be attributable to NexPoint/HCRE's alleged bad faith filing and prosecution of its Proof of Claim; rather, such fees were incurred by Highland as a result of Highland's decision to object to NexPoint/HCRE's withdrawal of its Proof of Claim and to proceed with the litigation, including taking depositions, and proceeding to "trial" on the merits instead of "taking a win" with NexPoint/HCRE's withdrawal of its Proof of Claim. *See* Response, 2.

Connection with Proof of Claim 146[20] on January 19, 2024, and filed an *Amended Reply in Further Support of Its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146* ("Reply")[21] on January 23, 2024. Highland argues that "[n]othing in the Response warrants the denial of the [Sanctions] Motion or its requested award of attorneys' fees" and that "the record makes clear" that NexPoint/HCRE and its principals "clearly and convincingly acted in bad faith by (a) knowingly filing and prosecuting a baseless Proof of Claim, . . . ([b]) seeking an unfair litigation advantage by trying to withdraw its Proof of Claim ***after*** taking Highland's depositions but ***before*** subjecting its own witnesses to questioning, and ([c]) trying at all times to preserve for another day the claims it asserted (*i.e.*, to "reform, rescind and/or modify the agreement")."[22]

The court held a hearing on the Sanctions Motion ("Hearing") on January 24, 2024, during which NexPoint/HCRE was given a full opportunity to respond to Highland's allegations of bad faith and request for sanctions.

IV. CONCLUSIONS OF LAW

A. The Sanctions Motion Satisfies Due Process Considerations

In invoking its inherent power to sanction bad faith conduct or a willful abuse of the judicial process, "[a] court must exercise caution . . . , and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *In re Correra*, 589 B.R. 76, 125 (Bankr. N.D. Tex. 2018). As noted above, the court entered its Proof of Claim Disallowance Order on April 28, 2023, in which it sustained Highland's objection to, and disallowed, the Proof of Claim but denied, without prejudice, Highland's Oral Sanctions Motion

[20] Dkt. No. 4018.

[21] Dkt. No. 4023.

[22] Reply, 2, ¶2.

as being procedurally defective because, having been raised for the first time during Trial and not having been made in writing, it had not given NexPoint/HCRE adequate notice and an opportunity to respond to the specific allegations of bad faith being made against it. The court pointed out that it did not address or make any determination regarding the substance of Highland's requests in the Oral Sanctions Motion for a bad faith finding and sanctions against NexPoint/HCRE, subject to Highland's right seek a bad faith finding and sanctions against NexPoint/HCRE upon and after giving it proper notice and an opportunity to respond:

> Here, where the Reorganized Debtor's generic oral request for a finding of bad faith and for "an award costs for a bad faith filing" did not articulate the legal basis for such an award and was raised for the first time during the Trial, HCRE was not given sufficient notice and an opportunity to respond, and, therefore, the court will deny, without prejudice, [Highland's] request for reimbursement of its costs incurred in connection with its objection to HCRE's Proof of Claim.

Proof of Claim Disallowance Order, 38-39 (quoting *In re Emanuel*, 422 B.R. 453, 464 (Bankr. S.D.N.Y. 2010) ("[A] person facing possible sanctions is entitled to due process. . . . At a minimum, the respondent is entitled to notice of the authority for the sanctions, notice of the specific conduct or omission that forms the basis of possible sanctions and the opportunity to respond."); *In re Magari*, 2010 WL 817327 at **2-3 (Bankr. N.D. Tex. Mar. 4, 2010) ("By requesting the sanctions award, the Trustee has raised due process concerns that can only be satisfied by providing to the affected party sufficient notice and opportunity to respond.")).

The court concludes that the instant Sanctions Motion and Hearing have provided NexPoint/HCRE with the due process that was lacking in connection with the Oral Sanctions Motion. NexPoint/HCRE was given adequate notice of the legal authority invoked for sanctions (the bankruptcy court's inherent powers under section 105 of the Bankruptcy Code) and NexPoint/HCRE's specific conduct (the filing and prosecution of its Proof of Claim) that Highland

alleges to have been in bad faith, and NexPoint/HCRE was given adequate opportunity to respond through briefing and at the Hearing on the Sanctions Motion.

With due process concerns having been now addressed and satisfied, the court is able to address the substantive questions raised in the instant Sanctions Motion of (1) whether NexPoint/HCRE did, indeed, act in bad faith in the filing and prosecution of its Proof of Claim and (2) if so, whether an award of reimbursement of Highland's attorneys' fees and costs incurred in connection with its litigation of the Proof of Claim is an appropriate sanction for such bad faith.

B. NexPoint/HCRE Filed and Prosecuted its Proof of Claim in Bad Faith and Willfully Abused the Judicial Process

A bankruptcy court may sanction a litigant for bad faith filing or litigation if the court makes specific findings, based on clear and convincing evidence, of bad faith or willful abuse of the judicial process. *See Cleveland Imaging*, 26 F.4th at 292 (A bankruptcy court may only sanction a party using its inherent authority if "(1) the bankruptcy court finds that the party acted in bad faith or willfully abused the judicial process and (2) its finding is supported by clear and convincing evidence.") (citing *Cadle Co. v. Moore (In re Moore)*, 739 F.3d 724, 729-30 (5th Cir. 2014)). The bankruptcy court's power to sanction bad faith or willful abuse of the judicial process derives from its inherent authority under 11 U.S.C. § 105(a) to issue civil contempt orders. *Id.* at 294, 294 n.14 (quoting the "relevant part" of Bankruptcy Code section 105(a), which provides that bankruptcy courts may "sua sponte, tak[e] any action . . . necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.") (cleaned up).

Having reviewed the record and the evidence adduced at Trial and NexPoint/HCRE's response to the Sanctions Motion (both in its Response and at the hearing on the Sanctions Motion), the court finds and concludes that there is clear and convincing evidence here that

NexPoint/HCRE filed and prosecuted is Proof of Claim in bad faith and that it willfully abused the judicial process.

1. *Dondero's Execution and Authorization of the Filing of the Proof of Claim Without First Having Read the Document or Conducting Any Due Diligence Was in Bad Faith and a Willful Abuse of the Judicial Process*

As noted in the Proof of Claim Disallowance Order, NexPoint/HCRE filed its Proof of Claim in this Highland bankruptcy case on April 8, 2020, several months after the post-petition "nasty breakup" between Highland and its co-founder and president and chief executive officer, Dondero. NexPoint/HCRE described the basis of its claim in Exhibit A attached to its Proof of Claim:[23]

Exhibit A

> HCRE Partner, LLC ("Claimant") is a limited partner with the Debtor in an entity called SE Multifamily Holdings, LLC ("SE Multifamily"). Claimant may be entitled to distributions out of SE Multifamily, but such distributions have not been made because of the actions or inactions of the Debtor. Additionally, Claimant contends that all or a portion of Debtor's equity, ownership, economic rights, equitable or beneficial interests in SE Multifamily does [not] belong to the Debtor or may be the property of Claimant. Accordingly, Claimant may have a claim against the Debtor. Claimant has requested information from the Debtor to ascertain the exact amount of its claim. This process is on-going. Additionally, this process has been delayed due to the outbreak of the Coronavirus. Claimant is continuing to work to ascertain the exact amount of its claim and will update its claim in the next ninety days.

NexPoint/HCRE was one of the many non-debtor Dondero-controlled entities affiliated with Highland. Dondero was the president and sole manager of NexPoint/HCRE, and an individual named Matt McGraner ("McGraner") was NexPoint/HCRE's vice president and secretary. NexPoint/HCRE had no employees of its own but instead relied on Highland's employees (and employees of other entities controlled by Dondero) to conduct business on its behalf. Dondero executed the Proof of Claim as the "person who is completing and signing this claim," checking

[23] Claim No. 146.

the box that indicates he is "the creditor's attorney or authorized agent" and acknowledging that "I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct" and that "I declare under penalty of perjury that the foregoing is true and correct."[24] The evidence overwhelmingly supports a finding that Dondero signed and authorized the filing of the Proof of Claim (that the court ultimately determined was lacking in any factual or legal support) without having even read it and without conducting any due diligence on, or investigation into, whether the statements made in the Proof of Claim were truthful and accurate, which supports a finding that Dondero's signing and filing of the Proof of Claim on behalf of NexPoint/HCRE was done in bad faith and constituted a willful abuse of the judicial process.

At Trial, Dondero testified that he had authorized his electronic signature to be affixed to the document and to be filed on behalf of NexPoint/HCRE and admitted that he had not reviewed the document before doing so.[25] He further testified that he could not recall "personally [doing] any due diligence of any kind to make sure that Exhibit A was truthful and accurate before [he] authorized it to be filed,"[26] and, more specifically, that he did not, prior to authorizing his law firm (Bonds Ellis) to affix his electronic signature on, and to file, the Proof of Claim, review or provide comments to the Proof of Claim or its Exhibit A, review the SE Multifamily Amended LLC Agreement or any documents,[27] "check with any member of the real estate group to see whether or not they believed [the Proof of Claim] was truthful and accurate before [he] authorized Bonds Ellis to file it," or do "anything . . . to make sure that this proof of claim was truthful and accurate before [he] authorized [his] electronic signature to be affixed and to have it filed on behalf of

[24] Proof of Claim, 3.

[25] Transcript of the November 1, 2022 Trial on Debtor's Objection to HCRE's Proof of Claim ("Trial Tr.")[Dkt. No. 3616] 55:2-22.

[26] Trial Tr. 56:20-23.

[27] Trial Tr. 55:10-22, 56:15-57:6.

HCRE."[28] Moreover, he testified that he did not know whose idea it was to file the Proof of Claim,[29] who at NexPoint/HCRE worked with, or provided information to, Bonds Ellis to enable Bonds Ellis to prepare the Proof of Claim, what information was given to Bonds Ellis that enabled them to formulate the Proof of Claim, or whether "Bonds Ellis ever communicated with anybody in the real estate group regarding [the Proof of Claim]."[30]

Dondero has argued that he had a good faith basis to sign and file the Proof of Claim on behalf of NexPoint/HCRE because "he had a host of responsibilities across a sprawling and sophisticated corporate structure and relied on numerous individuals within that structure to help manage the day-to-day operations of Highland and its subsidiaries and managed funds"[31] and that he "ha[d] to rely on systems and processes[,]" because "[he] can't be directly involved in everything."[32] Dondero further testified that "[he] sign[s] a lot of high-risk documents and [has] to rely on the process and the people and internally and externally as part of the process to sign it without direct validation from or verification from me, and this [Proof of Claim] is another one of those items."[33]

Dondero's "I'm-a-very-busy-person/too-busy-to-be-bothered-to-investigate" excuse is not a defense, as a matter of law, to his bad faith and willful abuse of the judicial process in connection with the filing of the Proof of Claim. Nor is Dondero's claimed reliance on systems and processes in connection with the execution and filing of this Proof of Claim, as a matter of fact, supported by the evidence. The court notes that the Proof of Claim is not a complex, lengthy legal or

[28] Trial Tr. 57:25-58:16.

[29] Trial Tr. 57:7-9.

[30] Trial Tr. 56:1-14.

[31] Response, 7, ¶16.

[32] Trial Tr. 57:25-58:7.

[33] Trial Tr. 57:25-59:2.

corporate document; Exhibit A to the Proof of Claim, which set forth the basis for the claim, is only one paragraph long, yet Dondero did not even bother to read it before signing under penalty of perjury that the information contained in the Proof of Claim, including Exhibit A, was truthful and accurate. And, Dondero's own testimony contradicts his assertion that he relied on "systems and processes" and on other people within the "sprawling and sophisticated corporate structure" and his outside counsel to ensure the accuracy of the Proof of Claim. He had no reasonable or justifiable basis to rely on anyone or any "process" that was allegedly in place in connection with his signing of "high risk" documents, because he asked no questions, conducted no due diligence, and made no effort, whatsoever, to verify that the information that he was swearing was accurate under penalty of perjury was, in fact, truthful.

The court finds and concludes that the foregoing admissions by NexPoint/HCRE, through Dondero, provide clear and convincing evidence that ***NexPoint/HCRE filed its Proof of Claim*** in bad faith and willfully abused the judicial process.

2. NexPoint/HCRE's Litigation Strategy and Actions in the Prosecution of Its Proof of Claim Are Further Evidence of Its Bad Faith and Willful Abuse of the Judicial Process

Moreover, NexPoint/HCRE's ***litigation strategy and actions*** taken in the course of prosecuting its Proof of Claim over the next two and a half years, after filing it, ***provide further support for a finding that NexPoint/HCRE engaged in bad faith and willfully abused the judicial process***.

As noted in the Proof of Claim Disallowance Order, six months after Dondero signed and filed the Proof of Claim in April 2020, and in response to Highland's objection to its Proof of Claim,[34] NexPoint/HCRE fleshed-out the legal and factual bases for its claim:[35]

> After reviewing what documentation is available to [NexPoint/HCRE] with the Debtor, [NexPoint/HCRE] believes the organizational documents relating to SE Multifamily Holdings, LLC (the "SE Multifamily Agreement") improperly allocates the ownership percentages of the members thereto due to mutual mistake, lack of consideration, and/or failure of consideration. As such, [NexPoint/HCRE] has a claim to reform, rescind and/or modify the agreement.
>
> However, [NexPoint/HCRE] requires additional discovery, including, but not limited to, email communications and testimony, to determine what happened in connection with the memorialization of the parties' agreement and improper distribution provisions, evaluate the amount of its claim against the Debtor, and protect its interests under the agreement.

The Response was filed by a new law firm—Wick Phillips Gould & Martin, LLP ("Wick Phillips") – not the law firm of Bonds Ellis, which had handled the filing of the Proof of Claim. In the course of discovery, Highland became aware that Wick Phillips had jointly represented NexPoint/HCRE and Highland in connection with at least some of the underlying transactions that were the subject of the Proof of Claim, and, on April 14, 2021, more than a year after NexPoint/HCRE filed its Proof of Claim, Highland moved to disqualify Wick Phillips.[36] Notably, Highland's Plan had been confirmed on February 22, 2021, over the objections of Dondero and his related entities (including NexPoint/HCRE).[37] The effective date ("Effective Date") of the Plan occurred on August 11, 2021, and Highland became the Reorganized Debtor under the Plan.

---

[34] On July 30, 2020, Highland filed an objection to the allowance of the Proof of Claim, contending it had no liability under the Proof of Claim. *See Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims, (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims*, Dkt. No. 906.

[35] Response to Objection to Claim, 2-3, ¶¶ 5-6.

[36] Dkt. Nos. 2196-2198. On October 1, 2021, Highland filed a supplemental disqualification motion. Dkt. No. 2893.

[37] NexPoint/HCRE, represented by Wick Phillips, filed its *Objection to Debtor's Fifth Amended Plan of Reorganization* on January 5, 2021. Dkt. No. 1673.

Pursuant to the Plan, on or after the Effective Date, all or substantially all of the Debtor's assets vested in the Reorganized Debtor or the claimant trust ("Claimant Trust") created under the terms of the Plan, including Highland's 46.06% membership interest in SE Multifamily.

Meanwhile, NexPoint/HCRE vigorously fought the disqualification of Wick Phillips, filing its opposition to the disqualification motion on May 6, 2021,[38] and initiating a more than six-month period of expensive discovery and side litigation that culminated, after a lengthy hearing on the disqualification motion, with the entry by this court on December 10, 2021, of its *Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP As Counsel to HCRE Partners, LLC and for Related Relief* ("Disqualification Order"),[39] resolving the disqualification motion by, among other things, disqualifying Wick Phillips from representing NexPoint/HCRE in the contested matter concerning the Proof of Claim, but specifically denying Highland's request that NexPoint/HCRE reimburse it all costs and fees incurred in making and prosecuting the disqualification motion.[40]

In the instant Sanctions Motion, Highland acknowledged that the court denied Highland's specific request for sanctions of reimbursement of Highland's costs and fees in making the Disqualification Motion in its December 2021 Disqualification Order.[41] The court notes that the denial was not "with prejudice"[42] to Highland's right to bring a sanctions motion in the future in connection with allegations that NexPoint/HCRE's filing and prosecution of its Proof of Claim, including its vigorous defense of the Disqualification Motion. Notably, while Highland includes

[38] Dkt. Nos. 2278 and 2279.

[39] Dkt. No. 3106.

[40] Disqualification Order, 4.

[41] *See* Sanctions Motion, 4, ¶8.

[42] The Disqualification Order stated, in relevant part, "Highland's request that HCRE reimburse it all costs and fees incurred in making and prosecuting the Motion, including reasonable attorneys' fees, is **DENIED**."

a reference in the instant Sanctions Motion to the lengthy and expensive proceedings on the Disqualification Motion in its recitation of evidence in the record that supports Highland's allegations that NexPoint/HCRE engaged in bad faith conduct in the filing and prosecution of its Proof of Claim, it did ***not*** include them as part of the fees and costs for which Highland is seeking to be reimbursed by NexPoint/HCRE as a sanction for NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.[43]

In any event, following the disqualification of Wick Phillips, NexPoint/HCRE hired yet a third law firm, Hoge & Gameros, LLP, in connection with this matter, and the parties engaged in a second round of extensive discovery, which included the exchange of written discovery and document production and the service of various deposition notices and subpoenas. On August 12, 2022, just two business days after NexPoint/HCRE completed the depositions of Highland's witnesses, and a day after NexPoint/HCRE made a supplemental production of more than 4,000 pages of documentation, and two business days before the consensually scheduled depositions of NexPoint/HCRE's witnesses, Dondero and McGraner, were set to occur, NexPoint/HCRE filed a motion to withdraw its Proof of Claim ("Motion to Withdraw").[44] By this point, Highland had spent hundreds of thousands of dollars objecting to the Proof of Claim.

Query why might NexPoint/HCRE have done this? Just six months earlier, Dondero's family trust, The Dugaboy Investment Trust, had represented to the bankruptcy court that

[43] *See* Morris Declaration, 3-4, at ¶11 (Referencing the court's denial in its Disqualification Order of Highland's previous request for attorneys' fees incurred in connection with the Disqualification Motion, Morris stated "[W]e reviewed the PSZJ Invoices and redacted all entries relating to the Disqualification Motion; thus, for the avoidance of doubt, Highland does not seek any fee award with respect to any work done in connection with the Disqualification Motion.").

[44] *See Motion to Withdraw Proof of Claim* [Dkt. No. 3442].

Highland's 46.06% interest in SE Multifamily was worth $20 million,[45] and now, NexPoint/HCRE (which presumably also spent substantial sums prosecuting its Proof of Claim during the nearly two and a half years of litigation) appeared willing to walk away from its multi-million dollar challenge to Highland's 46.06% interest in SE Multifamily. Highland objected to NexPoint/HCRE's Motion to Withdraw, and the court held a hearing on September 12, 2022 (as required by Bankruptcy Rule 3006), following which the court entered an order denying NexPoint/HCRE's Motion to Withdraw, for the reasons set forth on the record,[46] and directing the parties to "confer in good faith to complete the depositions" of Dondero, McGraner, and NexPoint/HCRE and otherwise comply with the scheduling order that had been entered by the court on this matter, which included appearing for an evidentiary hearing on November 1, 2022.[47] The court denied NexPoint/HCRE's Motion to Withdraw, in part, because it was concerned that the timing of it all–just two business days ***after*** completing Highland's depositions but two business days ***before*** the consensually-scheduled depositions of NexPoint/HCRE's witnesses were to take place—reflected gamesmanship on the part of NexPoint/HCRE (*i.e.,* NexPoint/HCRE prosecuted its Proof of Claim for two and a half years, through and including the taking of depositions of Highland's witness, while shielding its own witnesses from testifying). The court was also concerned by NexPoint/HCRE's repeated attempts to preserve its claims against Highland for use against Highland in the future. In fact, the court entered its order denying NexPoint/HCRE's Motion to Withdraw only after: (1) NexPoint/HCRE refused to agree, at the

[45] *See Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust* [Docket No. 3382]. As pointed out by Highland in its Response, "[t]here is no dispute that HCRE is the manager of SE Multifamily and therefore—through Mr. Dondero—would be best positioned to opine on the value of Highland's interest in SE Multifamily." Response, 9, at ¶27 n. 4.

[46] The court noted in its order denying HCRE's Motion to Withdraw that, under the Bankruptcy Rules, a creditor does not have an absolute right to withdraw a proof of claim.

[47] Dkt. No. 3525.

September 12 hearing, to language in an order allowing withdrawal of the Proof of Claim that stated, unequivocally, that NexPoint/HCRE waived the right to relitigate or challenge the issue of Highland's 46.06% ownership interest in SE Multifamily, and (2) counsel were thereafter unable, in the day or two after the hearing, to work out mutually acceptable language in an agreed order that protected both parties.[48] As noted in its order denying NexPoint/HCRE's Motion to Withdraw, the court had expressed concerns, during the hearing on the Motion to Withdraw, relating to the integrity of the bankruptcy system and claims process if it allowed NexPoint/HCRE to withdraw its Proof of Claim after two and a half years of litigation, and having caused Highland to spend hundreds of thousands of dollars litigating the Proof of Claim, while at the same time allowing NexPoint/HCRE to preserve its challenges to Highland's ownership interest in SE Multifamily to be used against Highland in the future. The court did not, at the time, make any express findings regarding NexPoint/HCRE's bad faith or abuse of the judicial process, only because Highland's mid-hearing Oral Sanctions Motion had not provided NexPoint/HCRE with adequate notice and an opportunity to respond.[49] With the instant Sanctions Motion, those due process concerns have been satisfied.

Having considered the evidence and argument of counsel at both the Trial on NexPoint/HCRE's Proof of Claim and the hearing on the Sanctions Motion, and the pleadings filed in connection with the Sanctions Motion, including NexPoint/HCRE's written Response, and based on the record as a whole, the court expressly finds and concludes that NexPoint/HCRE's

[48] At the end of the September 12 hearing, the court had expressed concerns about gamesmanship, but, at the same time, assured the parties that it was still open to signing an agreed order regarding withdrawal of the Proof of Claim, if counsel could work out mutually acceptable language that protected both parties "without the pressure of the Court hovering over you." *See* Transcript of Hearing on Motion to Withdraw, Dkt. No. 3519, 50:14-59:14. Apparently, counsel were unable to reach an agreement on the terms of an agreed order, and so the court signed the order at docket number 3525, denying NexPoint/HCRE's Motion to Withdraw.

[49] As noted below, NexPoint/HCRE persisted to the end in arguing that the disallowance of its Proof of Claim could not bar NexPoint/HCRE from making future challenges to Highland's 46.06% membership interest in SE Multifamily.

litigation strategy and actions in prosecution of its Proof of Claim (including vigorous opposition to the Disqualification Motion, the timing of the Motion to Withdraw, and its repeated and overt attempts to preserve the very claims upon which its Proof of Claim was based in connection with the Motion to Withdraw) demonstrates bad faith and a willful abuse of the judicial process on the part of NexPoint/HCRE.

3. NexPoint/HCRE's Admissions at Trial Are Further Evidence of its Bad Faith Filing and Willful Abuse of the Judicial Process

Following the denial of NexPoint/HCRE's Motion to Withdraw, the parties complied with the court's order to schedule the depositions of Dondero and McGraner at mutually agreeable times to complete discovery and then appeared at Trial on November 1, 2022. At the conclusion of the Trial, NexPoint/HCRE doubled-down on its request of the court "to grant the proof of claim and reallocate the equity [in SE Multifamily] based on the capital contribution[s]."[50] This was despite admissions by Dondero and McGraner in their Trial testimony that made it clear that NexPoint/HCRE did not, and never did, have a factual or legal basis for its request. Nevertheless, NexPoint/HCRE continued to the end to try to limit any order disallowing its Proof of Claim so as to preserve its right to assert the very claims asserted in its Proof of Claim (for rescission, reformation and/or modification of the SE Multifamily Amended LLC Agreement to reallocate the membership percentages) for use in the future.[51]

The Trial testimony of Dondero and McGraner revealed that NexPoint/HCRE had no factual basis to claim that a mistake was made by any of the parties, much less a mutual mistake

[50] Trial Tr. 179:23-25; 180:8-9.

[51] Trial Tr. 179:21-24 ("They want you to make findings that we can't raise any of these other issues, rescissions, stays, et cetera, going forward. That's not proper relief on a proof of claim."); 200:8-12 ("If Your Honor's going to deny the proof of claim, I would ask that you simply deny the proof of claim. We don't have an adversary proceeding here. There wasn't one started. Mr. Morris considered that and then didn't follow that path, because all we have here today is a proof of claim.").

of the parties, regarding the allocation of ownership percentages in SE Multifamily in corporate documentation,[52] and, in fact, "the evidence overwhelmingly point[ed] to the conclusion that both Mr. Dondero and Mr. McGraner understood that the allocation of 46.06% membership interest to Highland, and a total capital contribution by Highland of $49,000 in the Amended LLC Agreement, reflected the intent of the parties prior to, and at the time of, the execution of the Amended LLC Agreement."[53] The court specifically noted in the Proof of Claim Disallowance Order that Dondero admitted that he had not read or reviewed the Amended LLC Agreement or any drafts of it before he signed it—apparently the Amended LLC Agreement was one of those important, high-risk documents that Dondero was too busy to read or investigate before signing (like the Proof of Claim)—but he nevertheless testified that "the capital contributions and membership allocations contained in Schedule A of the Amended LLC Agreement comported with his understanding and intent when he signed the Amended LLC Agreement on behalf of HCRE and Highland."[54] NexPoint/HCRE was also unable to produce any evidence at Trial to support its factual allegation that there was a "lack of consideration" or a "failure of consideration" with respect to the Amended LLC Agreement, such that NexPoint/HCRE would be entitled to a

[52] The court concluded, specifically, that

> HCRE did not produce any evidence, much less clear and convincing evidence, that the parties to the Amended LLC Agreement – HCRE, Highland, BH Equities, and Liberty – had come to a specific and understanding, prior to the execution of the Amended LLC Agreement in March 2019, that the allocation of percentage membership interests in SE Multifamily was different from the percentage allocations contained in the Amended LLC Agreement. When asked on cross-examination, Mr. McGraner, HCRE's officer and co-owner who was most involved in the negotiations of the terms of the Amended LLC Agreement, was unable to identify any specific mistake made in the drafting of the Amended LLC Agreement. Neither he nor NexPoint/HCRE's other witness, Mr. Dondero, were able to point to a specific meeting of the minds of the members of SE Multifamily prior to (or after, for that matter) the execution of the Amended LLC Agreement that the parties intended Highland's allocation of SE Multifamily membership interests to be any percentage other than the 46.06% allocation attributed to Highland in the written Amended LLC Agreement.

Proof of Claim Disallowance Order, 30.

[53] *Id.*, 30-31.

[54] *Id.*, 31 n. 119.

reformation,[55] rescission,[56] or modification of it, to re-allocate the ownership percentages that the parties agreed to at the time of the execution of it.[57]

In fact, McGraner ultimately admitted in his Trial testimony that the only reason NexPoint/HCRE had for filing its Proof of Claim, which challenged Highland's title to its 46.06% membership interest in SE Multifamily, was, essentially, ***that NexPoint/HCRE was frustrated with the consequences of Dondero's decision in 2019 to seek bankruptcy protection for Highland (notably, the bankruptcy case was filed just a few months after the Amended LLC Agreement was executed), which resulted in Dondero losing control over Highland***, such that, as far as NexPoint/HCRE was concerned, its "partner" [in SE Multifamily] was no longer its "partner." The court noted in the Proof of Claim Disallowance Order that McGraner

> could not point to any provision of the Amended LLC Agreement that was either "wrong" or a "mistake;" rather, he testified that the "mistake" was "when the bankruptcy was filed and we can't amend it" because "[o]ur partners aren't our partners" – "if you have good partners and you're working with partners that are –

---

[55] After noting that "neither lack of consideration nor failure of consideration are bases for reformation of a contract under Delaware law (which is what NexPoint/HCRE is seeking in its Proof of Claim)," the court concluded that "HCRE is not entitled to reformation of the Amended LLC Agreement to reallocate the members' membership interests as requested based on its allegations of lack of consideration and/or failure of consideration." Proof of Claim Disallowance Order, 32 n. 120.

[56] The court noted in the Proof of Claim Disallowance Order that NexPoint/HCRE had not actually stated a claim for rescission of the Amended LLC Agreement with respect to its Proof of Claim, but that, if it had,

> Mr. Dondero's admission that he did not read the Amended LLC Agreement (or even have the terms explained to him by counsel or anyone else) prior to signing it on behalf of HCRE and Highland would bar any claim by HCRE for rescission of the Amended LLC Agreement. Moreover, even if HCRE's claim for rescission was not barred by Mr. Dondero's failure to read the Amended LLC Agreement prior to signing it, HCRE did not present any evidence of the other elements of a rescission claim: that the parties were mistaken as to a basic assumption on which the Amended LLC Agreement was made and that the mistake had a material effect on the agreed-upon exchange of performances.

Proof of Claim Disallowance Order, 33-34.

[57] *See* Proof of Claim Disallowance Order, 32-33 n. 120 (where the court found that "HCRE has not shown that there was a lack or failure of consideration on behalf of Highland in connection with the Amended LLC Agreement. . . . Under Delaware law, the courts 'limit [their] inquiry into consideration to its existence and not whether it is fair or adequate,' . . . . '[E]ven if the consideration exchanged is grossly unequal or of dubious value, the parties to a contract are free to make their bargain.' (citations omitted). Here, it is undisputed that Highland made a cash capital contribution of $49,000, that Highland was a jointly and severally liable coborrower under the KeyBank Loan, and that SE Multifamily (and HCRE), having no employees of their own, relied on Highland's employees to conduct business. Thus, HCRE's claim, to the extent it is based on alleged lack and/or failure of consideration fails.").

> that are known to you, then you make amendments to reflect the contributions of those partners, whether monetary or otherwise . . . [a]nd my understanding is I can't do that right now."[58]

McGraner testified that "despite Mr. Dondero being in control of both HCRE and Highland prior to the bankruptcy filing, and despite 'all of the fears [he] had [related to Highland's bankruptcy filing],' HCRE made no effort to amend the agreement before the bankruptcy or post-bankruptcy (because 'we didn't think it would be worth it')[ ][59] [and] 'because [it] hoped that the issues that caused the bankruptcy filing would resolve themselves.'"[60] This is not a good-faith basis for filing and prosecuting the Proof of Claim, and it exhibits a willful abuse of the bankruptcy claims process by NexPoint/HCRE.

In summary, the admissions by Dondero and McGraner in their Trial testimony made clear that NexPoint/HCRE never had a factual or legal basis for the Proof of Claim. NexPoint/HCRE's principals knew, at the time of filing and through its prosecution of the Proof of Claim, that there was no factual basis for its claim of rescission, reformation, and/or modification of the Amended LLC Agreement to dispossess Highland of some or all of its 46.06% membership interest in SE Multifamily. This clearly and convincingly constitutes bad faith by NexPoint/HCRE and a willful abuse of the judicial process.

C. Reimbursement of Attorneys' Fees and Costs Incurred by Highland in the Proof of Claim Litigation Is an Appropriate Sanction for NexPoint/HCRE's Bad Faith

Having found and concluded by clear and convincing evidence that NexPoint/HCRE filed and prosecuted (and attempted withdrawal of) its Proof of Claim in bad faith and willfully abused the judicial process, this court may use its inherent powers under Bankruptcy Code section 105(a)

---

[58] Proof of Claim Disallowance Order, 27 (citing Trial Tr. 114:24-115:16, 118:6-15).

[59] *Id.* (citing Trial Tr. 121:24-122:9).

[60] *Id.* at 28 (citing Trial Tr. 122:20-125:21).

to sanction it for such conduct. Reimbursement of the opposing party's fees and costs incurred in responding to a bad faith filing or willful abuse of the judicial process has been upheld as an appropriate form of sanctions. *See Cleveland Imaging*, 26 F.4th at 294 (upholding the bankruptcy court's sanction order that required the parties who were found to have filed bankruptcy petitions in bad faith to reimburse the fees incurred by a post-confirmation litigation trust in responding to the bad faith filing); *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017) (bankruptcy court did not abuse its discretion in ordering the debtors to "pay $49,432, which represents the amount of attorneys' fees incurred by [the bankruptcy trustee] in responding to certain instances of the [debtors'] bad faith conduct."); *In re Yorkshire, LLC*, 540 F.3d 328, 332 (5th Cir. 2008) (affirming bankruptcy court's use of its inherent powers to issue monetary sanctions for bad faith filing that were, in part, based upon the opposing parties' attorneys' fees and costs "following an extensive hearing in which the bankruptcy court heard testimony from the parties and witnesses and made certain credibility determinations," and "made specific findings that Appellants acted in bad faith."); *In re Paige*, 365 B.R. 632, 637-399 (Bankr. N.D. Tex. 2007) (awarding attorneys' fees against debtor for their "bad faith" conduct during bankruptcy case, noting "[t]he sanction here is derived from the Court's inherent power to sanction" under section 105(a)); *In re Lopez*, 576 B.R. 84, 93 (S.D. Tex. 2017) (same). Any sanction imposed pursuant to a bankruptcy court's inherent powers for bad faith conduct or willful abuse of the judicial process "must be compensatory rather than punitive in nature." *In re Lopez*, 576 B.R. at 93 (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (citing *Mine Workers v. Bagwell*, 512 U.S. 821, 826-30 (1994)). "[A] sanction counts as compensatory only if it is 'calibrate[d] to [the] damages caused by' the bad-faith acts on which it is based[,]" and "[a] fee award is so calibrated if it covers the legal bills that the litigation abuse occasioned." *Goodyear Tire & Rubber*, 581 U.S.

at 108 (quoting *Bagwell*, 512 U.S. at 834). The fee award must be "limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith." *Id.* (quoting *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. at 104). The "'causal link' between the sanctionable conduct and the opposing party's attorney's fees" must be established "through a 'but-for test:' to wit, the complaining party may only recover the portion of fees that they would not have paid 'but-for' the sanctionable conduct." *Id.* (citing *Goodyear Tire & Rubber*, 581 U.S. at 108-109 (citing *Fox v. Vice*, 563 U.S. 826, 836 (2011)).

Here, as earlier noted, Highland has requested, as a sanction, reimbursement of its attorneys' fees and costs incurred by it in responding to NexPoint/HCRE's filing and prosecution of its Proof of Claim. Specifically, Highland seeks reimbursement of an aggregate amount of **$825,940.55**, consisting of

- **$782,476.50** in attorneys' fees charged by its primary bankruptcy counsel, PSZJ, for the period August 1, 2021 through December 31, 2022, for work performed in connection with the litigation of the Proof of Claim;[61]
- **$16,164.05** in third-party expenses for court reporting services provided in connection with the Proof of Claim litigation;[62] and,

[61] *See* Morris Declaration, 3-4, at ¶¶ 8-13, and Ex. F. As stated in the Morris Declaration, the $782,476.50 amount does not include any fees relating to the Disqualification Motion or any fees that PSZJ concluded were inadvertently coded by a timekeeper to the NexPoint/HCRE Claim Objection category "or that were otherwise unrelated to services rendered in connection with the Proof of Claim litigation." *Id.*, 3-4, at ¶¶ 11 and 12. By way of specific example, Morris stated that "in 2022 and 2023 we charged Highland for services rendered in connection with our unsuccessful attempts to obtain SE Multifamily's books and records but excluded those charges here because they do not directly relate to the litigation of HCRE's Proof of Claim; Highland is seeking those fees in the Delaware Chancery Court where Highland was forced to commence an action against HCRE for specific performance (Case No. 2023-0493-LM))." *Id.*, 4, at ¶ 12.

[62] *See id.*, 4, at ¶ 14, and Ex. G.

- **$27,300.00** in attorneys' fees charged by David Agler for providing Highland with specialized tax advice concerning SE Multifamily and other matters related to the Proof of Claim.[63]

NexPoint/HCRE challenges Highland's request for reimbursement of its fees on several bases. ***First***, it argues that it cannot be ordered to reimburse the fees and expenses incurred by Highland ***after*** NexPoint/HCRE attempted to withdraw its Proof of Claim because they do not satisfy the "but for" test for establishing a "causal link" between those fees and costs and NexPoint/HCRE's filing and pursuit of its Proof of Claim—that Highland cannot show that "but for" NexPoint/HCRE's filing and prosecution of its Proof of Claim, Highland would not have incurred those fees and costs. NexPoint/HCRE urges the court to adopt its narrative of the proceedings that "instead of taking a win, [Highland] and its lawyers chose to generate fees to get the same result" and thus Highland's attorneys' efforts were "totally unnecessary" and a "waste of time and resources" that was "the fault of [Highland], not [NexPoint/HCRE]."[64] NexPoint/HCRE states in its Response that "[h]ere, ***it is undisputed*** that, had [Highland] agreed to the withdrawal of the Proof of Claim many months ago – before engaging in costly additional discovery and preparing for and attending a trial on the merits of the claim – [Highland] would have been exactly in the same position that it is in now, but at far less expense" and further that "[t]he real, practical difference between refusing to consent to the withdrawal of [NexPoint/HCRE]'s Proof of Claim and instead prosecuting the Objection to its end is several hundred thousand dollars in attorneys' fees" and, thus, "[t]he Motion abjectly fails any 'but–for' analysis."[65]

---

[63] *See id.*, 4-5, at ¶¶ 15 and 16, and Ex. H. A summary of the aggregate fees and expenses of which Highland is seeking reimbursement in the Sanctions Motion is attached as Exhibit I to the Morris Declaration. *See id.*, 5, at ¶ 17, and Ex. I.

[64] Response, 2.

[65] Response, 20, at ¶60 (emphasis added).

The court disagrees with NexPoint/HCRE's "narrative" and its view of the evidence established at Trial. Highland ***does*** dispute NexPoint/HCRE's contention that, if only it had allowed it to withdraw its Proof of Claim and accepted a "win," that Highland would have been "exactly in the same position that it is in now [after a Trial and ruling on the merits of the Proof of Claim], but at far less expense." The court does as well. As Highland has argued, NexPoint/HCRE's Motion to Withdraw was itself filed in bad faith. Highland was forced to oppose the withdrawal of the Proof of Claim because NexPoint/HCRE would not agree to a withdrawal, with prejudice, to NexPoint/HCRE's right to challenge Highland's title to its 46.06% membership interest in SE Multifamily in the future.[66] The evidence clearly and convincingly established that any "win" or "victory" that Highland would have obtained through the withdrawal of the Proof of Claim[67]

> would have been pyrrhic because ***HCRE—in a clear act of bad faith—tried to withdraw its Proof of Claim while preserving the substance of it claims for another day***. Had HCRE's duplicitous strategy been successful, Highland's interest in SE Multifamily would have remained subject to challenge—an untenable result for anyone, let alone a post-confirmation entity seeking to implement a court-approved asset monetization plan.

The court finds and concludes, as argued by Highland, that there is clear and convincing evidence here that the fees and costs incurred by it, after NexPoint/HCRE sought to withdraw its Proof of Claim (*i.e.,* to prepare for the Trial and prosecute its objection to the Proof of Claim through a trial and ruling on the merits), would not have been incurred "but for" NexPoint/HCRE's bad faith. As pointed out by Highland and as noted above,[68] the court did not enter the Proof of Claim Disallowance Order in December 2022 in a vacuum. Rather, the court denied

---

[66] *See supra* note 45 and accompanying text.

[67] Response, 5, at ¶18.

[68] *See supra* at pages 16-17.

NexPoint/HCRE's Motion to Withdraw only ***after:*** (1) the court had expressed concerns that the timing and context of its filing of its Motion to Withdraw suggested gamesmanship on its part, and that the integrity of the bankruptcy system and claims process would be in jeopardy if the court were to simply allow withdrawal, without protecting Highland from future challenges to its membership interest in SE Multifamily (particularly, after Highland had spent hundreds of thousands of dollars to that point in objecting to the Proof of Claim); and (2) NexPoint/HCRE refused to agree to language in an order that would alleviate these expressed concerns. The court—having now made an express finding that NexPoint/HCRE's filing of its Motion to Withdraw was in bad faith and part of its willful abuse of the bankruptcy claims process that began with the filing of its Proof of Claim in April 2020—now expressly finds that the fees and costs incurred by Highland after NexPoint/HCRE filed its Motion to Withdraw were necessary for Highland to protect its interests and would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

Second, NexPoint/HCRE objects to Highland's fees ($809,776.50) and expenses ($16,164.05) as being "*per se* excessive for a single proof of claim objection."[69] Highland argues that "[s]pending less than 5% of the value of an asset (according to Mr. Dondero's family trust) to obtain good, clear title is economically rational and consistent with the Claimant Trust's duty to maximize value for the benefit of the Claimant Trust's beneficiaries." Per the Morris Declaration, Highland only seeks reimbursement of expenses and fees charged to Highland for expenses incurred and work performed in litigating the Proof of Claim (but—as noted earlier—specifically excluding any fees charged relating to the Disqualification Motion). The court agrees with Highland and finds that the fees and expenses incurred by it in objecting to the Proof of Claim,

[69] Response, 10, ¶34.

including the fees incurred ***after*** NexPoint/HCRE sought to withdraw its Proof of Claim, were reasonable and necessary for Highland to protect a valuable asset—it's 46.06% interest in SE Multifamily—and, thus, they are not excessive.

Third, NexPoint/HCRE complains, in its Response, that the fees charged by PSZJ were unreasonable and excessive because the PSZJ invoices show that it was seeking reimbursement for fees charged by "layers of timekeepers whose identities and roles have not been disclosed."[70] NexPoint/HCRE points out three professionals (two of whom billed one hour or less) who were identified in PSZJ's invoices only by their initials.[71] In its Reply, Highland identified the timekeepers by name—as a litigator who billed one hour of time; a bankruptcy attorney who billed 0.6 hours of time; and a bankruptcy partner who billed 15.1 hours of time—all of whom were "called upon to provide discrete support."[72] Collectively, the three previously "unidentified" attorneys charged just 0.023% of the total fee request.[73] PSZJ's identification of the "unidentified timekeepers" and explanation of the work performed by them satisfies the court that these fees were reasonable and necessary fees incurred as a direct result of NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim. The court rejects NexPoint/HCRE's suggestion that PSZJ overstaffed and overbilled the file because there were "layers of timekeepers." As pointed out in Highland's Reply, "over 82% of the charges related to one litigation partner . . . , one litigation associate . . . , and one paralegal" and "[t]wo other lawyers who have been on the Pachulski team since the inception of this engagement . . . billed relatively modest amounts of time over the course

[70] *Id.*, 13, ¶45.
[71] *Id.*, 12, ¶38.
[72] Reply, 9, ¶28.
[73] *Id.*

of this prolonged litigation."[74] There is simply no factual basis to support a conclusion that the matter was overstaffed.

Fourth, NexPoint/HCRE objects to $9,840 charged by two attorneys for travel time,[75] while acknowledging that those attorneys' non-working travel time was billed at half of the attorneys' regular hourly rate.[76] As pointed out by Highland in its Reply, Highland agreed to pay for travel time in its pre-petition engagement letter, so those "charges cannot come as a surprise to Mr. Dondero."[77] The court takes judicial notice of the fact that attorneys charging half of their hourly rates for non-working travel time, as PSZJ did here, pursuant to its engagement letter with Highland that was approved when the court authorized the retention of PSZJ as counsel for the Debtor, is common practice and is a commonly approved term of engagement of professionals in bankruptcy cases. The $9,840 charged by two attorneys for travel time in this matter was a reasonable and necessary expense incurred by Highland in responding to NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim.

Fifth, and finally, NexPoint/HCRE objects to the fees charged by David Agler (39 hours of work performed at $700 per hour) for providing Highland with tax advice in August 2022, on the basis that the invoice attached as Exhibit H to the Morris Declaration "indicated that it was 'unbilled' work" and that "[w]hatever work he did, it did not manifest itself in the proceedings."[78] Highland pointed out that it ***had*** explained, in the Morris Declaration, that Mr. Agler provided "specialized tax advice concerning SE Multifamily and other matters related to the Proof of

[74] *Id.*, 9, ¶28 n. 5.

[75] Response, 12, ¶37.

[76] *Id.*, 11, ¶36 (Table 1).

[77] Reply, 9-10, ¶29.

[78] Response, 12, ¶42.

Claim."[79] Highland provided a more detailed description of the services provided by Mr. Agler and why those services were necessary in its Reply: "Mr. Agler provided his services in August 2022 in conjunction with Highlands's deposition preparation, including the deposition of SE Multifamily's accountant. These services were necessary because—as Mr. Dondero and Mr. McGraner admitted and as the evidence showed—Highland's participation in SE Multifamily was expected to provide substantial tax benefits."[80] The court finds that the fees charged by David Agler for work performed for Highland that are set forth in Exhibit H to the Morris Declaration were reasonable and necessary expenses incurred by Highland in responding to HCRE's bad faith conduct and that they would not have been incurred "but for" NexPoint/HCRE's bad faith conduct and willful abuse of the judicial process.

The court has determined that the full amount of fees – $809,776.50 – and costs – $16,164.05 – that are set forth in detail in Exhibits F through H (and summarized on Exhibit I) of the Morris Declaration were reasonable and necessary for Highland to respond to, and would not have been incurred "but for," NexPoint/HCRE's bad faith filing and prosecution of its Proof of Claim, which the court has found to have been a willful abuse by NexPoit/HCRE of the judicial process. Under Fifth Circuit precedent, it is appropriate for the court, in the use of its inherent power under Bankruptcy Code § 105(a), to order NexPoint/HCRE, as a compensatory sanction for its bad faith conduct and willful abuse of the judicial process, to reimburse Highland the full amount of fees and costs requested by Highland, which, in the aggregate, total $825,940.55. NexPoint/HCRE's objections to such amounts as excessive, unnecessary, unreasonable, or unrelated to NexPoint/HCRE's bad faith conduct, are overruled.

---

[79] Reply, 10, ¶30 (citing Morris Declaration, ¶15).

[80] *See id.* (citing Morris Declaration, Ex. [E] (Trial Transcript) 43:2-14; 83:17-84:2; 191:23-193:21 (citing to testimony and tax returns that were admitted into evidence)).

V. CONCLUSION AND ORDER

In summary, the court has determined that NexPoint/HCRE was given adequate notice and an opportunity to respond to the Sanctions Motion and that there is clear and convincing evidence that it filed and prosecuted its Proof of Claim, including its eleventh-hour attempt to withdraw its Proof of Claim, in bad faith and that it willfully abused the judicial process. Such conduct directly caused Highland to incur $825,940.55 in fees and expenses. In the exercise of its inherent power under Bankruptcy Code § 105(a), the court will grant Highland's Sanctions Motion and order NexPoint/HCRE to reimburse Highland for those fees and expenses as an appropriate sanction for NexPoint/HCRE's bad faith or willful abuse of the judicial process.

Accordingly, and based on the foregoing findings of fact and conclusions of law, including those findings and conclusions in this court's Proof of Claim Disallowance Order, which has been incorporated herein by reference,

IT IS ORDERED that the Sanctions Motion [Dkt. No. 3851] be, and hereby is **GRANTED**;

IT IS FURTHER ORDERED that, in order to compensate Highland for loss and expense resulting from NexPoint/HCRE's bad faith and willful abuse of the judicial process, in filing and prosecuting its Proof of Claim, NexPoint/HCRE is hereby directed to pay Highland the compensatory sum of **$825,940.55**.

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

EXHIBIT C

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

Signed May 21, 2024

United States Bankruptcy Judge

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

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

ORDER DENYING MOTION OF NEXPOINT REAL ESTATE PARTNERS, LLC (F/K/A HCRE PARTNERS, LLC) SEEKING RELIEF FROM ORDER PURSUANT TO FED. R. OF BANKR. P. 9024 AND FED. R. CIV. P. 60(b)(1) & (6)

On March 18, 2024, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) ("HCRE") filed its *Motion for Relief from Order* (hereinafter, the "Rule 60(b) Motion"),[1] seeking reconsideration of and relief from this court's *Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees against NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) in connection with Proof*

[1] Bankr. Dkt. No. 4040.

of Claim # 146 ("HCRE Sanctions Order").[2] The parties stipulated to a briefing schedule and that the parties would seek a setting for a hearing ("Hearing") on the Rule 60(b) Motion. On April 22, 2024, Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor") filed its response ("Response") in opposition to the Rule 60(b) Motion,[3] and HCRE filed its reply ("Reply") thereto on May 1, 2024.[4] The parties presented oral argument at the Hearing that was held on May 16, 2024.

HCRE and its Proof of Claim. By way of background, HCRE is an entity whose sole manager is James D. Dondero, the former Chief Executive Officer of the Reorganized Debtor. HCRE and Highland were essentially friendly business partners prepetition—not terribly surprising, as they each had the same chief executive. In any event, HCRE and Highland were equity owners/members of a limited liability company named SE Multifamily Holdings, LLC ("SE").[5] SE owned valuable real estate. SE was only formed in March 2019 and was governed by an amended LLC Agreement ("SE's LLC Agreement"). After Highland filed Chapter 11 in October 2019, and later became managed by three new independent directors and a new CRO and then new CEO, James Seery, Highland and HCRE were no longer amicable business partners. In fact, HCRE filed a proof of claim in Highland's bankruptcy case (on April 8, 2020), for an unliquidated sum, which was electronically signed by Mr. Dondero. The proof of claim asserted that HCRE had a claim against Highland to reduce Highland's equity ownership and rights in SE and, further, that it had grounds to reform, rescind, or modify SE's LLC Agreement based on a mutual mistake.[6] Two years and four months after HCRE filed the proof of claim, on August 12,

[2] Bankr. Dkt. Nos. 4038 & 4039.
[3] Bankr. Dkt. No. 4052.
[4] Bankr. Dkt. No. 4055.
[5] Note that there was also an unrelated minority owner (6%) in SE called BH Equities, LLC.
[6] Claim No. 146 & Bankr. Dkt. No. 1212.

2022, and after significant discovery and litigation regarding the proof of claim, HCRE moved to withdraw the proof of claim.

HCRE's Motion to Withdraw its Proof of Claim. There's a rule for withdrawing a proof of claim: Fed. R. Bankr. P. 3006. The bankruptcy court set a hearing, on September 12, 2022, as required by this rule, on HCRE's motion to withdraw the proof of claim ("Sept. 12, 2022 Proof of Claim Withdrawal Hearing").[7] After extensive discussion on the record, the bankruptcy court denied HCRE permission to withdraw its proof of claim—primarily because HCRE declined to withdraw the proof of claim with prejudice to any future litigation in any forum pertaining to the issues raised in the proof of claim. In other words, HCRE would not state unequivocally that it would not re-urge in the future its alleged present entitlement to reform or rescind SE's LLC Agreement. To be clear, HCRE expressed that it would withdraw its proof of claim with prejudice to re-asserting it in the bankruptcy court, and with prejudice to filing any appeal of a bankruptcy court order on same. ***But this type of withdrawal meant little—because the deadline/bar date for filing proofs of claim in the Highland bankruptcy case had passed 16 months earlier anyway***. HCRE would be time-barred from asserting its proof of claim at this late stage in the Highland bankruptcy case. The bankruptcy court was concerned that HCRE was attempting to preserve its present claims against Highland for use in the future in a different forum.[8] If there was going to be litigation over these issues, Highland thought it was time to get on with such litigation. The bankruptcy court was persuaded that, indeed, Highland would be prejudiced if HCRE were allowed to withdraw its proof of claim without clear and unequivocal language in the order that HCRE would not be able to assert its claims and/or theories regarding rescission and/or

[7] Bankr. Dkt. No. 3519 (Transcript).
[8] At the time, it appeared that litigation might be on the horizon in state court involving these parties and regarding business records production.

reformation of the SE LLC Agreement in any future litigation in any court or forum (after all, future litigation is not what a "fresh start" of bankruptcy is about). Thus, the bankruptcy court issued its Order denying withdrawal of the HCRE proof of claim on September 14, 2022 ("Order Denying Withdrawal of HCRE Proof of Claim").[9]

Trial on the HCRE Proof of Claim. Thereafter, the bankruptcy court held a trial on November 1, 2022, on the merits of HCRE's proof of claim and ultimately disallowed the proof of claim ("Claim Disallowance Order").[10] There was no evidence presented of any sort of mistake, mutual or otherwise, in connection with SE's LLC Agreement or any other basis for reformation or rescission of SE's LLC Agreement. Moreover, Mr. Dondero testified that he had not even read the HCRE proof of claim or conducted any due diligence regarding the HCRE proof of claim before authorizing his electronic signature to be affixed to it. HCRE did not appeal the Claim Disallowance Order.

Highland Motion for Sanctions Against HCRE. Highland thereafter filed a written motion for sanctions pertaining to HCRE conduct surrounding the proof of claim—seeking a bad faith finding and reimbursement of Highland's attorney's fees caused by HCRE's actions. Several months later (after, among other things, renewed attempts at global mediation of the remaining issues in the Highland bankruptcy case), the bankruptcy court granted Highland's motion for sanctions, after a contested hearing ("Order Imposing Sanctions").[11] The Order Imposing Sanctions (which shifted to HCRE approximately $825,000 of the Reorganized Debtor's attorney's fees and expenses incurred by Highland in connection with the HCRE proof of claim—which was less than the entire amount that the Reorganized Debtor had incurred regarding the HCRE proof

[9] Bankr. Dkt. No. 3518.
[10] Bankr. Dkt. No. 3766 & 3767.
[11] Bankr. Dkt. No. 4039.

of claim during the more than three years since it was filed)[12] is the order now subject to HCRE's Rule 60(b) Motion.

The Rule 60(b) Motion. HCRE argues, primarily, that the bankruptcy court made two core, related "mistakes" in connection with its Order Imposing Sanctions that it should correct pursuant to Rule 60(b)(1). First, the bankruptcy court allegedly made a "mistake" in refusing to permit HCRE to withdraw its proof of claim based on a mistaken belief by the bankruptcy court that HCRE was not willing to withdraw it with prejudice for all purposes. HCRE now stresses that it was, indeed, willing to withdraw the proof of claim with prejudice to any future litigation in any court—not just in the bankruptcy court. Second, HCRE further argues that the bankruptcy court's mistake of fact on this point caused it to erroneously require an unnecessary trial on the proof of claim—the result of which was Highland incurring/billing unnecessary fees relating to the proof of claim. The bankruptcy court then shifted those fees to HCRE in the Order Imposing Sanctions. HCRE asserts that it is incorrect as a matter of law to conclude that these fees would not have been incurred "but for" HCRE's bad faith conduct. *See Goodyear Tire & Rubber v. Haeger*, 581 U.S. 101, 108 (2017). Therefore, the bankruptcy court should not have shifted them to HCRE as part of the Order Imposing Sanctions.

The court denies the Rule 60(b) Motion. To be sure, this court does not disagree with HCRE that a mistake of fact ***or*** mistake of law can be grounds for granting a Rule 60(b) motion. *See Kemp v. United States*, 596 U.S. 528, 535-36 (2022). The court also does not disagree with

[12] Highland sought attorney's fees and expenses incurred relating to the HCRE proof of claim from the time period of August 1, 2021 through December 31, 2022. The HCRE proof of claim was filed April 8, 2020. Highland not only did not seek any reimbursement for any time and expense for the first 16 months after HCRE filed its proof of claim, but Highland ultimately did not seek (and the bankruptcy court did not allow) any fees that Highland incurred in successfully moving to disqualify HCRE's counsel in this matter, Wick Phillips (note: Wick Phillips was actually the second law firm that HCRE retained pertaining to its proof of claim; a different law firm originally filed the HCRE proof of claim (Bonds Ellis), followed by Wick Philips, and then the Hoge & Gameros, L.L.P. law firm took over, and now the law firm of Reichman Jergensen Lehman & Feldberg LLP is representing HCRE in this matter.

HCRE that an award of fees relating to sanctionable conduct must be limited to fees that would not have been incurred "but for" the sanctionable conduct. *Goodyear Tire*, 581 U.S. 101 at 104, 108 (the "causal link" between the sanctionable conduct and the opposing party's attorney's fees must be established through a "but-for" test; the complaining party may only recover the portion of fees that would not have been paid but-for the sanctionable conduct). However, the bankruptcy court does not believe it made a mistake of fact or of law with regard to either of these points.

First, the bankruptcy court does not believe it made a mistake of fact in interpreting what HCRE was and was not willing to do in connection with its motion to withdraw its proof of claim at the Sept. 12, 2022 Proof of Claim Withdrawal Hearing. HCRE used hedging language, to the extent that it appeared to be willfully obtuse on this point. It was not willing to withdraw the proof of claim ***with prejudice to ever litigating the issues raised in the proof of claim***. It was not future conduct and future theories that HCRE was worried about preserving in future litigation, and the bankruptcy court was certainly not engaging in a mission to ban all future litigation between these parties in perpetuity. The sole concern was about ***claims/theories in the HCRE proof of claim*** being resurrected somewhere else in the future. The transcript of the September 12, 2022 hearing is clear that there was much discussion on this point, and the court even gave the parties a 24-hour break to go talk outside the presence of the court—to hopefully wordsmith an agreed order withdrawing the proof of claim. Apparently, the parties could not reach an agreement on this relatively simple concept. So, the court would not allow withdrawal of the HCRE proof of claim without clarity that the proof of claim issues would not be raised in future litigation somewhere. The court set a trial on the merits of the proof of claim a few weeks later, as the parties were close to being trial-ready. Moreover, a review of the September 12, 2022 Transcript reflects that the bankruptcy court focused on multiple factors in disallowing withdrawal of the HCRE proof of

claim—the so-called *Manchester* factors—not simply the failure of HCRE to withdraw the proof of claim with prejudice to all future litigation. *Manchester, Inc. v. Lyle (In re Manchester, Inc.)*, 2008 Bankr. LEXIS 3312, *11-12 (Bankr. N.D. Tex. Dec. 19, 2008) (the *Manchester* factors include: (1) the movant's diligence in bringing the motion to withdraw, (2) any "undue vexatiousness" on the part of the movant, (3) the extent to which the suit has progressed, including the effort and expense undertaken by the non-moving party to prepare for trial, (4) the duplicative expense of re-litigation, and (5) the adequacy of the movant's explanation for the need to withdraw the claim). In other words, there were several factors that caused the bankruptcy court to deny withdrawal of the HCRE proof of claim.

Moreover, even if the court did make a mistake of fact in interpreting what HCRE was and was not willing to do (i.e., in deciphering what "with prejudice" did or did not mean)—and, in relying on this as a basis to deny HCRE permission to withdraw its proof of claim--wouldn't this have been an error of the bankruptcy court in entering its Order Denying Withdrawal of HCRE Proof of Claim? This order—entered September 14, 2023—was not appealed. Nor was the subsequent Order Disallowing Claim. In some ways, the Rule 60(b) Motion smacks of being a collateral attack on the Order Denying Withdrawal of Proof of Claim which was never appealed. Had there been an appeal of it, it would have been apparent that it was a multi-faceted decision, based on many factors (i.e., the *Manchester* factors)—not merely the "with prejudice" issues.[13]

Which leads to the last issue—was there a mistake of law in allowing reimbursement of Highland's fees and expense incurred ***after*** the Order Denying Withdrawal of HCRE Proof of Claim? In particular, over $300,000 of fees were incurred by Highland (and shifted by the court in the Order Imposing Sanctions) associated with the preparation for and trial on the HCRE proof

[13] Bankr. Dkt. No. 3519 (Transcript, pp. 51-55).

of claim. Was this a mistake of law? Only if the bankruptcy court made a mistake in ordering that there would be a trial on the HCRE proof of claim (i.e., only if the bankruptcy court erred in entering its Order Denying Withdrawal of HCRE Proof of Claim, and, as noted above, that order was not appealed by HCRE). The court never would have ordered trial on the merits if not for HCRE's conduct (beginning with its bad faith filing of its proof of claim and including refusing to withdraw its proof of claim with prejudice to all future litigation on the issues raised in the proof of claim). Thus, Highland would not have incurred this $300,000+ in fees and expenses "but-for" HCRE's conduct.

Having considered the Rule 60(b) Motion, the Response, the Reply, and the argument of the parties, the court finds that there is no basis or justification for granting HCRE the relief requested in its Rule 60(b) Motion. Any arguments made in the Rule 60(b) Motion not herein addressed are denied.

Accordingly,

IT IS ORDERED that the Rule 60(b) Motion be, and hereby is, **DENIED**.

###END OF ORDER###