Docket #4671 Date Filed: 05/27/2026

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

IN RE:	Case No. 19-34054-SGJ-11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Chapter 11
Debtor.	
	Thursday, May 21, 2026
	9:02 A.M.

TRANSCRIPT OF CONTINUED HEARING ON
MOTION TO RECONSIDER (RE: DOCUMENT 4297 ORDER ON MOTION TO COMPROMISE CONTROVERSY) AND MOTION TO VACATE FILED BY PARTNER DUGABOY INVESTMENT TRUST (4513)
BEFORE THE HONORABLE BRAD W. ODELL
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor, Highland Capital Management:

Pachulski Stang Ziehl & Jones LLP
BY: JOHN A. MORRIS, ESQUIRE
1700 Broadway, Suite 36th Floor
New York, New York 10019

Willkie Farr & Gallagher LLP
BY: JOSHUA LEVY, ESQUIRE
787 Seventh Avenue
New York, New York 10019

APPEARANCES CONTINUED ON THE NEXT PAGE.

Audio Recorder: Nicholas Noble
Earle Cabell Federal Building
501 West 10th Street
Dallas, Texas 75242

Transcription Service: Liberty Transcripts
9107 Topridge Drive
Austin, Texas 78750
(847) 848-4907
DBPATEL1180@GMAIL.COM

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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

IN RE:	.	Case No. 19-34054-SGJ-11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	.	Chapter 11
Debtor.	.	
	.	Thursday, May 21, 2026
. . . . .	.	9:02 A.M.

TRANSCRIPT OF CONTINUED HEARING ON
MOTION TO RECONSIDER (RE: DOCUMENT 4297 ORDER ON MOTION TO COMPROMISE CONTROVERSY) AND MOTION TO VACATE FILED BY PARTNER DUGABOY INVESTMENT TRUST (4513)
BEFORE THE HONORABLE BRAD W. ODELL
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor, Highland Capital Management:

Pachulski Stang Ziehl & Jones LLP
BY: JOHN A. MORRIS, ESQUIRE
1700 Broadway, Suite 36th Floor
New York, New York 10019

Willkie Farr & Gallagher LLP
BY: JOSHUA LEVY, ESQUIRE
787 Seventh Avenue
New York, New York 10019

APPEARANCES CONTINUED ON THE NEXT PAGE.

Audio Recorder: Nicholas Noble
Earle Cabell Federal Building
501 West 10th Street
Dallas, Texas 75242

Transcription Service: Liberty Transcripts
9107 Topridge Drive
Austin, Texas 78750
(847) 848-4907
DBPATEL1180@GMAIL.COM

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

APPEARANCES (CONTINUED):

For the Debtor, Highland Capital Management:

Willkie Farr & Gallagher LLP
BY: MARK STANCIL, ESQUIRE
1875 K Street, NW
Washington, DC 20006

For the Movant, Dugaboy Investment Trust:

Morgan, Lewis & Bockius LLP.
BY: MICHAEL EDNEY, ESQUIRE
1717 Main Street, Suite 3200
Dallas, Texas 75201

Morgan, Lewis & Bockius LLP.
BY: MARTHA B. STOLLEY, ESQUIRE
101 Park Avenue
New York, New York 10178

Morgan, Lewis & Bockius LLP.
BY: TORSTEN KRACHT, ESQUIRE
101 Park Avenue
New York, New York 10178

For Shields Legal Group, P.C., CLO Holdco, Ltd., Kelly Hart & Pitre ("HMIT Entities"):

Kelly Hart & Pitre
BY: LOUIS M. PHILLIPS, ESQUIRE
301 Main Street, Suite 1600
Baton Rouge, Louisiana 70801

For the United States Trustee:

Office of the United States Trustee
BY: ELIZABETH ZIEGLER-YOUNG, ESQUIRE
1100 Commerce Street, Room 976
Dallas, Texas 75242

For Margot MacInnis:

Ferguson Braswell Fraser Kubasta PC
BY: DOUGLAS J. BUNCHER, ESQUIRE
2500 Dallas Parkway, Suite 600
Plano, Texas 75093

INDEX

	PAGE
WITNESSES	
FOR THE DEBTOR:	
JAMES SEERY	
Direct Examination by Mr. Morris	23
Cross-Examination by Mr. Edney	37
FOR THE MOVANT (REBUTTAL):	
LUCY BANNON	
Direct Examination by Ms. Stolley	104
Cross-Examination by Mr. Morris	126
JAMES DONDERO	
Direct Examination by Mr. Edney	134
Cross-Examination by Mr. Morris	148
Redirect Examination by Mr. Edney	160
Recross-Examination by Mr. Morris	163
MARGOT MacINNIS	
Direct Examination by Ms. Stolley	166
Cross-Examination by Mr. Morris	176
EXHIBITS	

	ID	EVD
FOR THE DEBTOR:		
55	81	96
56	81	96
57	81	96
77	91	98
80 through 86	63	66
87	63	66
88	63	67
89	63	--
90 through 97	63	67
94	63	68
FOR THE MOVANT:		
300	100	100

(The proceedings commenced at 9:03 a.m.)

THE CLERK: All rise. The United States Bankruptcy Court for the Northern District of Texas is now in session; the Honorable Brad W. Odell presiding.

THE COURT: You may be seated.

(Pause)

THE COURT: All right. We are here on the Highland Capital Management case, Case Number 19-34054. Again, we are here and we continue hearing on the motion to reconsider the order on compromise and to vacate filed by Dugaboy Investment Trust, and both objections filed by Highland Capital Management and joinder by the HMIT Entities.

So why don't I go ahead and start off by getting appearances of counsel. Let's see where things stand, if there's been any developments or anything that needs to be brought to the Court's attention to start. If Movant's counsel wants to go first.

MR. EDNEY: Good morning, Your Honor.

Michael Edney from the Morgan Lewis Law Firm for the Movant, here with my colleagues, Martha Stolley and Torsen Kracht. Perhaps I'll defer some of the opening matters until everybody has appearances. Does that make sense, Your Honor?

THE COURT: That will be fine.

MR. EDNEY: Thank you, Your Honor.

THE COURT: Mr. Morris?

MR. MORRIS: Good morning, Your Honor.

John Morris, Pachulski Stang Ziehl & Jones for Highland Capital Management, L.P.

THE COURT: Okay.

MR. STANCIL: Mark Stancil from Willkie Farr & Gallagher for Highland Capital with my partner, Josh Levy.

THE COURT: Okay. Mr. Phillips, did you want to make an appearance?

MR. PHILLIPS: Good morning, Your Honor.

Louis M. Phillips, Kelly Hart, on behalf of the HMIT Entities.

THE COURT: Okay, thank you. All right.

MS. YOUNG: Good morning, Your Honor.

Liz Ziegler-Young for the U.S. Trustee.

THE COURT: Good morning. Mr. --

MR. BUNCHER: I suppose I'll make an appearance, Your Honor. Doug Buncher here with -- I am here for the witness, Margot MacInnis.

THE COURT: Okay.

MR. BUNCHER: And we sent an email about her situation to the Court.

THE COURT: Yes.

MR. BUNCHER: And I'll address that whenever the Court would like.

THE COURT: Okay. I'm sure we'll get to that in a

few seconds. So --

MR. BUNCHER: Yes, sir.

THE COURT: All right. Mr. Edney, are we going to be standing with various members on this matter?

MR. EDNEY: Yes, Your Honor.

So I guess the one logistical issue is that despite, as forecasted, we do intend to call Ms. MacInnis to rebut the testimony of Mark Patrick, elicited in the case-in-chief of Highland. Ms. MacInnis made a heroic effort to be here this morning, but kind of weather got in the way a bit. The airports got shut down in New York and ultimately her flight was canceled. I think she's still endeavoring to be here, but I think under these circumstances when we come to it, we would like to ask the Court permission that she be able to testify remotely. Otherwise, we'll have to defer that to when she can manage to get here.

I can tell you that it was, I mean short of chartering private jet, right, there was pretty extraordinary efforts taken to get her here for court on time, and the intervention of the weather events got in the way.

THE COURT: Okay.

MR. EDNEY: And I do -- I hate to bring this to the Court's attention so late, but the towel was thrown in pretty late last night itself. I think it was almost midnight by the time final cancellation happened.

THE COURT: Okay. So let me ask you how do you envision what today and going forward looks like?

MR. EDNEY: Yes, Your Honor. So my plan is as follows. We would like to call Mr. Dondero to the stand, and that will include our case-in-chief. I do understand we have a potential issue to deal with with that. And then I would hand the baton over to Mr. Morris for his case-in-chief and for any witnesses that he wishes to call.

And then we would have two rebuttable witnesses, both of whom we've seen before. One is Lucy Bannon, and the second is Margot MacInnis. And their testimony is principally directed at the sponsored testimony of Mr. Patrick.

THE COURT: Okay.

MR. EDNEY: And then that would conclude our presentation of evidence, Your Honor. I do anticipate the rebuttal witnesses to be short. I anticipate my direct examination of Mr. Dondero to be relatively brief as well, Your Honor.

THE COURT: Okay. Mr. Morris?

MR. MORRIS: Good morning, Your Honor.

When the Court deems it appropriate, I'd like to address the issue of Mr. Dondero testifying on Dugaboy's case-in-chief. Other than that, we are going to try very hard and think there is no reason not to complete this hearing today. Depending on what happens with Your Honor's ruling with

respect to Mr. Dondero, we may or may not call Mr. Seery. We may or may not call Mr. Dondero.

I have prepared my closing argument. If we did call Mr. Seery, it would be 30 minutes at most, and I've got I think a four-page cross for Mr. Dondero, depending on what Your Honor rules. But I would like the opportunity to be heard because I think it's improper to have Mr. Dondero testify in Dugaboy's case-in-chief today.

THE COURT: Okay. So let me make sure I'm understanding what your comments are, Mr. Morris. This is not about Mr. Dondero testifying or not. I'm just trying to understand the timeline here of what we're expecting. So if the Court does not allow for Dugaboy to call Mr. Dondero in his case-in-chief --

(Audio interference from speaker from Webex)

THE COURT: Okay. We've got a caller showing with a 213 area code ending in 3-0. Could you please announce who you are?

(No audible response)

THE COURT: Does anyone in the courtroom recognize that number? 213 is the area code and 3-0 is the last two digits.

MR. EDNEY: The Movant doesn't, Your Honor.

THE COURT: Okay. All right, I'm going to ask again, the number, the party showing the number, area code 213 ending

in 3-0, please announce to the Court who you are. If you fail to announce, we're going to exclude you from the hearing.

(No audible response)

THE COURT: Okay. All right. So, Mr. Morris, if I'm understanding what you're saying, and please correct me if I'm wrong, but if the Court does not allow for Mr. Dondero to be called in their case-in-chief, it's not your intention to actually call Mr. Dondero?

MR. MORRIS: That's right, Your Honor.

THE COURT: And then Mr. Seery, you would also not -- potentially --

MR. MORRIS: Mr. Seery would likely testify in that circumstance, and it would be a half an hour. We could be done by 10:00.

THE COURT: Okay.

MR. MORRIS: 10:15.

THE COURT: Well, this is what your, and then they would put on any of their rebuttal witnesses that they would choose to put on.

MR. MORRIS: And they would have the opportunity to cross Mr. Seery --

THE COURT: Cross Mr. Seery.

MR. MORRIS: -- on all aspects because he would therefore be a witness called by Highland.

THE COURT: Okay. I'm assuming, Mr. Morris, you

learned this morning, like the Court did, or maybe you learned it last night about the situation of Ms. MacInnis?

MR. MORRIS: I got in at 12:45 this morning myself. I'm very sympathetic, and we have absolutely no objection to her testifying by Zoom or Webex.

THE COURT: Okay. All right. That will be fine, then. It doesn't look like she's on -- so that's good.

Okay. Well, then I guess let's go ahead and I'll hear argument first from Mr. Edney as to whether or not Mr. Dondero should be called, or if the Court should allow him to call Mr. Dondero and then I'll hear from Mr. Morris.

MR. EDNEY: Yes, Your Honor. Thank you.

THE COURT: Mr. Edney, if you'll --

MR. EDNEY: Yes, Your Honor. Of course.

THE COURT: -- argue at the podium.

MR. EDNEY: Yes, Your Honor. We do think that we should be able to call Mr. Dondero in our case-in-chief.

On our initial witness list, and this was Friday before the commencement of these proceedings, I guess this was May 8th, we listed as our witnesses Ms. MacInnis and Ms. Bannon and Mr. Patrick, and we cross-designated those that would be designated by the other party. Mr. Dondero had just been deposed earlier that day, and we certainly anticipated that he would be called either way.

On Monday evening, I informed Mr. Morris by

electronic communication, this is Monday evening, May 11th, that we did intend to call him directly in our case-in-chief, anticipating that he would, and suggesting that for the sake of efficient presentation of evidence, that we go first, followed by cross-examination, and then redirect and recross because it would make for a tighter presentation.

Mr. Morris pointed out that he wasn't on our witness list by name, and he took the position by cross-designation that he should be able to go first on that if he called him. On Friday, in advance of the resumption of these hearings, we did file an amended witness list that put Mr. Dondero on it.

Your Honor, I do think that we've all had plenty of -- I think it's been clear for a long time that Mr. Dondero is a very important part of these proceedings. I think that the witnesses that we put on on Monday probably would not have been questioning differently if there was a conception in the mind's eye that Mr. Dondero would not take the stand.

In the event that Your Honor rules that we cannot put on Mr. Dondero in the case-in-chief, we do intend to put him on as a rebuttal witness because I do think there's a lot of things regarding the presentation so far, particularly the testimony of Mr. Patrick, on which Mr. Dondero has percipient fact witness testimony to rebut it.

But I think the better course, Your Honor, and there is an absence of prejudice here is to allow us to put him on in

our case-in-chief. We will be efficient. This is a tight direct examination that we anticipate to take less than an hour and to be followed by Mr. Morris's cross-examination.

Again, I do emphasize that our intentions in this regard have been clear since at least the night of Monday, May 11th, and have been further formalized in our amended witness list. And I would ask Your Honor's permission, given the lack of prejudice, to let him go on in the case-in-chief.

Thank you, Your Honor.

THE COURT: So let me just ask this question.

MR. EDNEY: Sure.

THE COURT: If Mr. Dondero was or is important, as you've put it in your argument, why wasn't he listed as a witness? I mean, he's your principal, he's your client principal. It is not a surprise. I'm trying to understand why you didn't list him if as you stated he was very important.

MR. EDNEY: Yeah, I mean, I think he is important in light of the testimony that's coming in.

THE COURT: So far, all the testimony, other than cross-examination, all the testimony has been your witness's testimony.

MR. EDNEY: That's true, although the case-in-chief testimony from Mr. Patrick, sponsored by Highland, is an exception to that and a significant exception. But, Your Honor, again, if you want my -- going back to Friday, May 8th,

we had just come off a deposition of Mr. Dondero from Mr. Morris. Hours later we filed the witness list and we had every expectation that Mr. Morris would call him. That's why we cross-designated in that way.

Should we have put him on our witness list? I wish we had. I wish we had, Your Honor, but I think that was the thinking behind it in a case that was moving very quickly indeed. So I would -- to the extent that that was a lapse, Your Honor, I would suggest that it was a lapse that has not caused substantial prejudice. It was one that was quickly corrected by notice to Opposing Counsel. And we have now had in our collective understanding for 10 days that it was our intention to call Mr. Dondero as our final witness.

And I would ask, to the extent the cross-designation didn't get it accomplished, Your Honor, I would ask Your Honor to excuse his omission from the initial witness list and to allow us to present him in our case-in-chief.

THE COURT: Thank you.

MR. EDNEY: Thank you, Your Honor.

THE COURT: Mr. Morris?

MR. MORRIS: Your Honor, they didn't leave Mr. Dondero off of their witness list by mistake. It wasn't Counsel's negligence. It was a very strategic choice.

There's a suggestion that the questioning of other witnesses would have been different had they known that

Mr. Dondero would not be permitted to testify on their case-in-chief. All of that is false. And how do we know it's false? Because after Ms. MacInnis testified last Monday, you pointedly asked Mr. Edney at Page 201 of the transcript, "I mean Mr. Edney, I don't know how many more witnesses we have for your presentation of the case." That's what you asked him.

And on Page 202, from Lines 15 to 19, Mr. Edney responded, "So as far as my witness plans, Your Honor, we only have two witnesses remaining. We have Ms. Bannon and Mr. Patrick, and that is our case-in-chief." This is the representation that he made to you. Highland relied both on the witness list and on that statement.

Litigation is a chess game. Litigation is full of strategic choices. They made their strategic choice on Friday. They ratified and reaffirmed that strategic choice to you on Monday afternoon. And they should not be permitted now to change their minds, simply because they feel the case is going against them.

Highland will be prejudiced. It will be severely prejudiced. And it will be prejudiced because Mr. Dondero will now be permitted to testify about anything that he wants. And we never had that expectation on Friday. We never had that expectation when the trial started. And we certainly didn't have that expectation on Monday afternoon when Mr. Edney told you that their only two witnesses before they rested would be

Ms. Bannon and Mr. Patrick.

If they are permitted now to call Mr. Dondero in their case-in-chief, I dare say, Your Honor, there is no purpose to having witness lists. People can just call whoever they want, whenever they want, without notice. And I don't think that's the right thing. We abided by the witness list.

And I will also point out the language relied upon in their witness list is clear, and it makes a lot of sense, and we do it all the time. It's probably in my witness list, too. We reserve the right to call anybody who's called by the other side.

We do not intend to call Mr. Dondero. So they do not get to open the door in this manner. This is highly prejudicial, and it's not right. And we strenuously hope that the Court will deny Mr. Dondero the opportunity to testify on Dugaboy's case-in-chief.

THE COURT: Mr. Morris, let me ask him a couple of questions. One, regarding prejudice, if I were to allow for Mr. Dondero to be called, but allow you to be the first to do basically direct examination and limiting examination of Mr. Dondero to cross, does that alleviate the prejudice that you are expressing about Mr. Dondero being able to testify on anything?

MR. MORRIS: We've made the decision not to call him. So I think the short answer is no. I'll just leave it at that.

THE COURT: Okay. You all did depose him. I mean, he has been deposed in regards to this motion.

MR. MORRIS: Correct.

THE COURT: And what we're here about.

MR. MORRIS: Your Honor, can you just give me one brief moment so I can consult with my colleague and look at some of my notes to answer that question? We don't have to take a break. It will take 30 seconds.

THE COURT: No. Let me just, before you consult with them, let me also state the fact that if I don't allow for Mr. Dondero to be called in their case-in-chief and you all choose not to call him, obviously they have a right to call him as a rebuttal witness, and a rebuttal witness doesn't have to be listed, right?

And so, I mean, again, I ask the question of their ability to call him as a rebuttal witness, how does that address the issue of prejudice? So, if you want to before you answer that or however you want to --

MR. MORRIS: I'm going to answer that question, and then I'd like to consult with Mr. Stancil.

By all means, they can call Mr. Dondero as a rebuttal, and that's the strategic point that litigators need to be sensitive to. If he comes on rebuttal, he is limited in what he can testify to. He can only testify to things that we have adduced during our case-in-chief. He doesn't have the

ability, as they're trying to do now, to testify about anything he wants.

So, we're fully aware that he can testify in rebuttal. We're cognizant that any rebuttal testimony would be limited to the issues that we have adduced during our case-in-chief, and that's the way it ought to be. But if you can just give me one moment.

(Pause)

MR. MORRIS: My colleague, I'm grateful that I don't fly solo. As my client knows, I hate to do that. And the reason is because you don't always see everything yourself. And what I failed to see that Mr. Stancil points out is that at the time that we deposed Mr. Dondero, it was Friday during the day, the 8th of May, the last business day before the hearing, we didn't even have the benefit of Dugaboy's reply brief.

And as Your Honor will recall, because I've mentioned this at every single hearing, we did not learn of the identity of the so-called newly-discovered evidence until we got their reply brief on Friday night. It wasn't in their motion papers. It wasn't presented even after I pointed it out. We served document requests that are just a jumble, most of which aren't even on their exhibit list at this point.

Mr. Dondero did testify because I want to be in full candor. When I asked him about newly-discovered evidence during his deposition, he testified about five very broad

categories of information. But I did not have the ability during that deposition to ask him about each of the items that are in the Dugaboy reply brief because that wasn't filed until Friday night, and that was the very first time that we ever learned of what the so-called newly-discovered evidence was. So that's why even the deposition was insufficient to prepare for today's broad examination.

THE COURT: Okay. Anything further, Mr. Morris?

MR. MORRIS: No, Your Honor. I'm sorry.

THE COURT: Okay. That's okay.

Mr. Edney, did you want to respond to anything, or are you good with what you've argued?

MR. EDNEY: Your Honor, just briefly, yes.

Yes. On May 8th, there was a --

THE COURT: Mr. Edney, if you wouldn't mind coming --

MR. EDNEY: Oh, of course, Your Honor.

On May 8th, which is prior to the submission of the initial witness list, there was a relatively lengthy deposition of Mr. Dondero by Mr. Morris. I think to the extent there's a concern about the sequencing of the depositions in the reply brief, I mean, that's the schedule we had. I think there were some suggestions to move it out. I think Mr. Morris was opposed to that. So we've tried to make Mr. Dondero very available for any questions Mr. Morris might have, and he certainly had a lengthy opportunity to ask them.

Again, Your Honor, I thank Your Honor for considering this. I'm sorry that he was not on the initial witness list. I do think that we've provided lots of notice to Opposing Counsel about our intentions with respect to this, and I thank Your Honor for considering the issue.

THE COURT: All right, thank you. I'm going to take a 15-minute recess. I want to look at some of the things here and a little bit of preparation. But I want to take a look at something a little bit closer. So I'm going to take a 15-minute recess and we'll be back out and I'll rule.

THE CLERK: All rise.

(Recess at 9:28 a.m., recommencing at 9:43 a.m.)

THE CLERK: All rise.

THE COURT: You may be seated.

Okay, the Court has considered the request by Dugaboy Investment Trust to call Mr. James Dondero in their case-in-chief and considered the arguments made by counsel with regard to this request. The Court has also reviewed the witness list that was filed by Dugaboy on May 8th of this year in anticipation of the hearing. In particular, the witnesses that were listed, the witnesses which can be found at Docket Number 4605, specifically list three parties, Lucy Bannon, Margot MacInnis, and Mark Patrick.

As with most witness and exhibit lists, of course, Dugaboy included language regarding reservation. In

particular, this language states, "Dugaboy also reserves the right to call or cross-examine any witness called" -- and I emphasize the word "called" -- "by any other party, to supplement or amend the witnesses and to call additional witnesses as necessary to rebut testimony or evidence."

Leading up to today's hearings, we had multiple hearings on discovery matters in which the Court directed the parties to follow and review this Court's judge-specific guidelines. In particular, my specific guidelines provide as follows. With regard to witnesses, it says, "Except in unusual circumstances, exhibits not exchanged" -- let me back up.

Witness and exhibits, it says, "Exhibits other than rebuttal or impeachment exhibits for trials and contested matters must be marked and exchanged three calendar days in advance of the first date set for the docket call or hearing. List of witnesses and exhibits must be filed and exchanged three calendar days in advance of the first date set for the docket call or hearing. Except in unusual circumstances, exhibits not exchanged in this manner will not be admitted, nor will testimony be allowed from witnesses who are not on the witness list."

Based on our local rules requiring witness and exhibit lists to be filed three days in advance of the hearing, and my judge-specific guidelines, as well as the language in the witness list that was filed by Dugaboy, the Court is going

to deny the request to allow Mr. Dondero to be called in the case-in-chief of Dugaboy. They're all allowed in the event that he is called by Highland to obviously cross-examine him as a separate -- based on the reserved language, if he is called, they are allowed to also call him. He is allowed, of course, to testify to the extent necessary as a rebuttal witness.

So that will be the ruling of the Court. Mr. Dondero will not be allowed to testify in the case-in-chief because he was not properly designated on the witness and exhibit list, which was required to be filed within three days of the hearing or according to the scheduling that we have in place, but in particular with my local judge-specific guidelines. So that is the ruling of the Court with regard to calling Mr. Dondero in the case-in-chief.

Mr. Edney, where does that leave us?

MR. EDNEY: Your Honor, it leaves us with our witnesses will be coming in rebuttal, so our case-in-chief is included.

THE COURT: Okay. All right, Mr. Morris?

MR. EDNEY: Now if I may intervene for just a second. There's one more --

THE COURT: If you'll come to the podium.

MR. EDNEY: Yes, Your Honor. Of course.

I guess there's one more logistical issue today. It's a matter of closing arguments, Your Honor. We are -- if

the presentation of evidence ends today, at some point, we're prepared to close today. We do think perhaps a better course would be to let the presentation of evidence end, get the transcripts in so we can provide a more fluid and complete presentation to Your Honor on closing arguments at a later date. But we, of course, leave that issue to Your Honor's discretion.

THE COURT: Okay. We'll get to closing arguments once we have closed with the presentation of evidence. So we can really address this issue, but if we're done today, I think it would be best to just get everything done.

MR. EDNEY: Okay. Your Honor.

THE COURT: We'll address that, so let's get the evidence done and then we can get deal with closing arguments at that time, okay?

MR. EDNEY: Thank you, Your Honor.

THE COURT: All right, thank you.

Mr. Morris?

MR. MORRIS: Thank you, Your Honor.

Highland Capital Management calls James P. Seery Jr. to the stand.

THE COURT: Okay.

Good morning. Mr. Seery, before you take a seat, I'll have my law clerk swear you in.

JAMES P. SEERY, JR., DEBTOR'S WITNESS, SWORN

THE CLERK: Thank you.

THE COURT: You may proceed, Mr. Morris.

MR. MORRIS: Thank you.

DIRECT EXAMINATION

BY MR. MORRIS:

Q Are you prepared, Mr. Seery, to go ahead?

A Yes, I do.

Q Okay. Good morning, Mr. Seery.

A Good morning.

Q Can you just describe your current role at Highland for the Court?

A I am the CEO of Highland Capital Management, L.P. I was the Claimant Trustee of the Highland Claimant Trust, and I am the administrator of the Highland Indemnity Trust.

Q Can you describe for the Court how you first became involved in Highland?

A In January of 2020, I was appointed as an independent director in the Highland bankruptcy case by the Bankruptcy Court, having had no connection with either Highland or the creditors at that time. Subsequently, I was -- my appointment to CEO was approved by the bankruptcy court in July of 2020, as well.

Q And did there come a time when the Court confirmed a plan of reorganization for Highland?

A Yes.

Q Can you describe generally how the priority scheme is set forth in the plan?

A Sure. The plan, in a quick summary, is a monetization plan. It sets up a class of creditors. There's actually nine classes of creditors and two classes of equity. The plan was essentially to have me and my team manage the assets, monetize the assets, and then distribute the proceeds from the monetization/liquidation to each of the classes in order, so it's a strict waterfall.

The first seven classes were really priority and secured claims, and they were paid on the effective date. Class 8 was the general unsecured creditors. Class 9 was subordinated creditors. And then Class 10 and 11 are the equity. There's senior equity that went to HMIT, which was the 99-1/2 percent holder of the senior partnership interest in Highland. And then there's the junior equity, which is Class 11 which was the remaining, which is a small bit which included 0.18 percent interest of Dugaboy.

Importantly, those two classes, Class 10 and 11, don't vest and don't become a subject or part of the trust unless and until Classes 1 through 9 are paid in full or those classes otherwise agree.

Q Let's talk about the settlement agreement. You're aware that Dugaboy has moved to set aside the order entered last June approving the settlement between the Highland Entities and the

HMIT Entities?

A Yes, I am.

Q Were you involved in the negotiation of the agreement that the Court approved?

A Yes, I was.

Q Do you recall when those negotiations began?

A They began after March I think it's 18th, 2025. We had worked on an NDA at the end of I believe it was end of, beginning of March, end of February, beginning of March. It probably took five days. So the NDA, or the nondisclosure agreement, was signed on, I believe it was March 18th, and then we began negotiations. We certainly didn't have any negotiations nor would we have had any negotiations or exchanged any information unless we had an ironclad nondisclosure agreement.

Q Do you recall when the negotiations concluded?

A They concluded on, I should remember this off the top of my head, but I believe it's May 19th, which is the signing of the agreement, which was the settlement agreement that was approved by the Court in June of 2025.

Q Can you describe generally for the Court how the negotiations progressed over time?

A Sure. We have been very transparent. We'd been sued by HMIT multiple times, so HMIT had brought an action which was deemed non-colorable by the bankruptcy court, and that was on

appeal.

HMIT had also brought -- these were in '23 and '24, frankly, and into the beginning of '25. One was just concluded in '26 -- two other motions. Those motions were jointly with Dugaboy. One was to get a valuation of the trust, which since they're not beneficiaries of the trust until they vest, they weren't entitled to. The second was to remove me as trustee. Again, they're not beneficiaries of the trust, so they weren't entitled to that. Those both were denied.

In fact, the second one after we settled with HMIT was just rejected by the Fifth Circuit in March of this year. So we had those negotiations -- we had those litigations and we wanted to make sure, our principal goal was to make sure that we could settle those negotiations finally, fully, completely, that there was no chance that there would be any other litigation that could attack this estate, and that we could move towards completing the case and closing the case.

HMIT wanted money. They wanted their claim allowed. They wanted assets. They wanted money. I believe they were the next in the waterfall, but it was clear that neither Class 10 nor 11, frankly nor 9, could get paid until all indemnity obligations were paid off. And those are not only actual indemnities, but potential risks and threats of losses. So we weren't going to pay them anything unless we knew we had a complete and total settlement.

And that negotiation was arm's length, back and forth, mostly with me and Mr. Patrick as the leads. But we both had our teams and our counsel in each of these negotiations and discussions.

Q Would you characterize those negotiations as arm's length?

A Yeah, undoubtedly. The --

Q Why was that?

A Because there's a give and take. I previously testified on this in 9019. My goal was to get everything for the estate upfront and give nothing until the very end, perhaps years down the road. Mr. Patrick's goal was to get as much upfront as they could from us, from the estate and allowance, and be able to move on to distrust.

So there was a give and take in two opposite ends of the goals. And we met in a place that I think was a good outcome for the estate.

Q In the end, do you believe that the settlement agreement was in the estate's best interests?

A Completely. We couldn't close the case. We couldn't move forward without a resolution of the HMIT litigations.

My view, which I think has been confirmed, is they're frivolous. The were driven for years in this Court with multiple hearings, and then in courts in other places around the world. So we couldn't close the case.

Our expenses continued to grind. We couldn't pay off the

9s. And we would never pay anything to the 10s until we knew fully, completely done -- that we were fully and completely done with all litigation and all risk.

MR. MORRIS: I'd like to have put up on the screen Highland Exhibit 73, which is the agreement itself. I think that'll just take a moment.

Here we go. And if we can turn to the signature pages on Pages 22 and 23.

BY MR. MORRIS:

Q Mr. Seery, am I correct that the first party listed there, Hunter Mountain Investment Trust, is the only party to this settlement agreement that had an interest under the Highland Claimant Trust?

A That's correct. Well, Highland does as a trust sponsor but yes.

Q Okay. Can you explain to the Court why the other HMIT Entities are party to this agreement?

A As I stated earlier, I've been involved in this case now for, I mean I think in my seventh year. I thought it was going to last six or nine months. This -- what we wanted to make sure is that we could cut off all avenues and all potential avenues for litigation. And so any entity that was a control entity that sat above another in the context of the HMIT structure, we wanted to make sure was a party to this settlement.

In addition, one of the entities, because we were getting full releases, as well as other litigation protections in addition to releases, we wanted to make sure we got all of them. One of the parties, the Rand Fund I, was also a defendant in one of our litigations, the estate's litigations against a number of defendants so we needed then as a party. So Hunter Mountain, Hunter Mountain's sole beneficiary, Beacon. The Rand Fund sat above Beacon.

The Advisors to the Rand Fund and the Atlas Fund, which sat above Rand were all parties to the settlement. I wanted to make sure that I tied off every consent.

Q Prior to executing this agreement, did you take any steps to satisfy yourself that Mark Patrick was authorized to enter into this agreement on behalf of the HMIT Entities?

A Yes, I did.

Q Can you describe for the Court what steps you took to do that?

A Just like every other agreement they enter into, you want to make sure that you have all the right parties. And again, to meet the objectives that we had for settlement of all litigation, closing off all risk, we wanted to make sure we had all those parties. We then needed to make sure that every one of the parties was being executed by the right person. And we went through and checked each of the corporate documents related to each of these entities, so each of the constituent

documents.

Frankly, we knew that Mark Patrick controlled HMIT and Beacon Mountain. How do we know that? Because he had been in Court testifying on behalf of HMIT. He had previously sued us on behalf of HMIT. He had brought motions with Dugaboy in '23 and '24 to remove me. So he knew the control party was there, and we wanted to make sure we tied off every other risk.

Q Were you aware of what was going on in the Cayman Islands at the time?

A We were aware of it, so I would say generally. We knew that there had been a filing in the Caymans, and that was all related to the DAF structure, not to the Highland -- to the HMIT side. And so we knew there had been a filing, we knew there had been a supervision application by this point. And I don't know. We had the supervision application, but we didn't know about the liquidation proceedings in the Caymans.

Q Prior to June 24th, had any of the liquidators reached out to you for any reason at all?

A Prior to June 24th, no, not at all.

Q Prior to June 24th, had anybody from Dugaboy reached out to you in any way to discuss what was going on in the Cayman Islands?

A No, not at all.

Q Prior to June 24th, had anybody from any of what are called the supporting organization reached out to you at all

with respect to what was going on in the Cayman Islands?

A I hesitate only because the objection filed by the Dallas Foundation, I don't know if that included any support. It did not. So no, the answer to that question is no. No one had reached out from any of those Dondero foundations.

Q And did you reach any conclusion prior to entering into this agreement in May of 2019 -- withdrawn.

Did you reach any conclusion prior to entering into this agreement in May of 2025 as to whether or not the Cayman proceedings involved Highland and the settlement agreement at all?

A Yes.

Q What conclusion did you reach?

A They didn't involve Highland at all. They didn't involve Hunter Mountain at all. They didn't involve any of the HMIT Entities at all.

Q Are you aware that Mr. Patrick caused the Rand PE Fund to sell its interest in Beacon Mountain?

A Yes, I was aware of it at the time we executed the agreement.

Q Okay. And can you describe your understanding of the sale of Beacon Mountain?

A Mr. Patrick sold Beacon Mountain, the interest in Beacon Mountain, which is, again, the sole beneficiary of HMIT, which he controlled, from one entity he controlled and I forget the

name of that. I think it was called Charitable DAF something. They're all the same names. CDH is Charitable DAF Holding. They're all -- it's a Highland way, I guess. So he sold it from one entity that he controlled another entity that he controlled. So he sold it from the first entity that had that interest to another entity that he controlled.

Q So in your view, did the sale of Beacon Mountain have any impact on Mr. Patrick's control over the HMIT Entities?

A None whatsoever.

Q And why is that?

A Because he controlled each of the HMIT Entities before the sale of the Beacon Mountain interest, and he controlled each of the HMIT Entities after the sale of the Beacon Mountain interest.

Q Okay. Let's just finish up here on the issue of discovery. Do you recall that after Highland filed its motion seeking court approval of the settlement agreement, that certain parties filed objections?

A Yes.

Q Are you aware that among the objecting parties were Dugaboy and the Dallas Foundation and an entity called Crown Global?

A Yes. And just to be precise, it was the Dallas Foundation, Crown Global Insurance, and then it's a strange objection because it says it's on behalf of separate accounts,

as well.
Q Okay. Do you have any recollection as to the substance of Dugaboy's objection?
A Yes. Dugaboy -- Dugaboy had a very simple objection that they claimed it wasn't -- the settlement wasn't authorized by the plan and then the releases went too far according to Dugaboy.
Q Do you recall that the Dallas Foundation and Crown Global also filed an objection?
A Yes.
Q What do you recall about that?
A The Dallas Foundation and Crown objected, basically arguing that while Patrick had control, Mark Patrick had control of these entities, that somehow he had breached his fiduciary duty or his duties in some opaque respect with respect to the restructuring, I believe it related more to the DAF restructuring, and that somehow there was an interest that they had in this settlement, even though they didn't have any privity with any of the entities that were parties to our settlement.
Q After the objections were filed, did Highland participate in discovery?
A Yes.
Q Can you describe the discovery that Highland provided?
A We received numerous requests for production,

interrogatories. We provided really everything that we had related to the negotiations and the settlement, frankly, knowing there would be an objection from Dondero. We had started preparing those materials even as we filed the -- as we filed the motion.

So, we produced those documents very early. It was a fulsome production of everything, every negotiation that we had with Mr. Patrick up to the -- and his team up to the day of signing. We also gave depositions. I was deposed. David Klos, our CFO, was deposed. Mark Patrick was deposed. Shawn Raver was deposed.

And I believe that we took two depositions. One of Ms. Diaz, who was the President of the Dallas Fund, she's also I think a Vice President of the Dondero Foundation, the Highland Dallas Foundation, and of their CFO, I believe his name is Torrey Littleton.

MR. MORRIS: Okay. Can I ask that Exhibit 54 be put up on the screen? Okay. If we could just scroll down a bit.

BY MR. MORRIS:

Q We can look at as much of this as you need to, Mr. Seery, but do you recall that Highland provided written responses to Dugaboy's document requests and interrogatories?

A I do. For some reason, it looks like the heading's cut off. Yes, there we go. Yes, I do.

Q Okay. And scrolling through this document, is this the

document that you caused the Highland Entities to serve on Dugaboy in response to their document requests and interrogatories?

A That's correct. I'm not sure if this was just to Dugaboy or to both Dugaboy and to -- I don't recall if we had one document request. I know Dugaboy gave us one. In any event, we served the Dallas Foundation with these materials, as well, is my recollection.

MR. MORRIS: Okay. If we could just scroll down a little bit to show the Court the nature and extent of the request for production and the interrogatories that were served by Dugaboy. Thank you.

BY MR. MORRIS:

Q And do you see it's dated June 13th?

A Yes.

Q Okay. Is that the date that Highland produced their documents to Dugaboy and to the Dallas Foundation?

A I don't recall specifically that date. That's the date we obviously produced this response. We may have even started producing documents earlier. I just don't -- I don't recall.

Q Okay. Do you have any recollection as to the volume of documents that were produced?

A It was more than 4,000. It was not a blunderbuss production. It was specific to their request, but we produced everything that we had related to the settlement negotiations

and the settlement agreement.

Q And did that include the documents that the HMIT Entities provided to the Highland Entities as part of the negotiations?

A Yes.

Q Can you describe to the Court the nature of those documents?

A Ours really related to the finances, the structure, what we had left in the estate, what they could get out of. The ones that they produced to us were their organizational documents assuring that they had the proper parties. I'm trying to recall if there was any other specific ones, but I don't recall it. Certainly the organizational documents. We had most of those, frankly, because these entities were formed under Highland. And so we have a Highland system. Highland before the bankruptcy essentially had all of the documents for all of those entities.

Q Do you recall whether the Court or any party placed any limits on the scope of discovery that the objecting parties could seek?

A I do recall that there were no such limitations. And we had, I know my depositions tend to go a little bit.

Q Do you recall whether Dugaboy or any objecting party ever moved to compel the production of any information in connection with discovery?

A I do recall, and they did not.

Q Do you recall whether Dugaboy or any objecting party lodged any objection of any kind to any aspect of discovery that was provided in response to the objections filed against the 9019 motion?

A I do recall, and they did not.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: Mr. Edney, before you start, let me just make sure Mr. Phillips, I'm assuming you don't have any --

MR. PHILLIPS: No questions, Your Honor.

THE COURT: Mr. Edney.

CROSS-EXAMINATION

BY MR. EDNEY:

Q Good morning, Ms. Seery. My name is Mike Edney. I represent the Dugaboy Investment Trust in this matter. Thank you for being here today.

A Thank you.

Q Let me start where Mr. Morris left off. Do you remember being asked some questions by Mr. Morris about the scope of discovery in the 9019 proceedings?

A I do.

Q Did you attend the depositions taken of Mr. Patrick and Mr. Raver?

A Not physically. I don't recall if I listened to them. I just don't recall.

Q And do you recall counsel for Mr. Patrick and Mr. Raver

objecting to any questions being asked of them regarding the restructuring in the Cayman Islands?

A I'm sorry. Do I recall whether Mr. Patrick's counsel objected?

A Yes.

Q I assume they did. I've definitely read the transcripts. In like every deposition, they objected to a myriad of things.

Q And they asked for that line of questioning to be cut off as irrelevant. Do you remember that?

A I don't recall that specifically, but I'm sure that there would be relevance objections, just as I read Mr. Dondero's deposition and you lodged the same things.

Q All right. Hunter Mountain's counsel initiated the discussions that led to the settlement agreement in May of 2025. Isn't that right?

A I think they did, but I don't recall. We had had specifically. I think that they initiated it, but we may have because we had discussions with them on other things prior to that.

Q And those discussions started in January or early February of 2025. Isn't that right?

A To settle this? No, that's not right.

Q Okay. Do you recall providing testimony at the 9019 hearing --

A Yes, I do.

Q -- that led to this matter? Let's -- and do you recall being asked questions about the course of negotiations between the parties?

A I do.

Q Okay. Do you recall stating that sometime, I believe, in January or early February, there was contact between HMIT's counsel about potential settlement?

A I don't recall that specific testimony. no. Could you read it to me?

Q Okay. I'd be happy to.

MR. EDNEY: Let's pull up the Exhibit 35, please, the transcript of the hearing, Page 88.

BY MR. EDNEY:

Q Now you see up there at the top, this is a direct examination of a gentleman named Seery. Is that right?

A That's what it says, yes.

Q All right. And do you recall direct examination of you during the 9019 hearing on June 25th, 2025?

A I did testify, yes.

Q Okay. I want to direct your attention to Line 10, which reads as follows, "Shortly after that, sometime, I believe, in January or early February, there was contact between HMIT counsel and our counsel about a potential settlement."

Do you see that?

A I see that, yeah.

Q Was there contact sometime in January, early February between HMIT'S counsel and our counsel about a potential settlement?
A I don't know if exactly what the dates were, because you see above it relates to HCLOF, which was a different thing. That was the first contact we had with -- between counsel. And then I believe that sometime in that February, January time frame, there was a discussion about potentially doing something.
But we didn't have -- you asked me about negotiations, I believe. And I don't think we had -- I know we didn't have any discussions with -- about the specifics of any settlement until after we had a nondisclosure agreement, because we were very concerned that this could be a ruse by Mr. Dondero and that Mr. Patrick and Mr. Dondero were continuing to work together.
Q Okay. So let me ask my question a different way. Did discussions regarding the potential settlement between the Hunter Mountain Entities and Highland begin in January or early February of 2025?
A No.
Q All right. But you did provide the testimony that we've outlined at Line 10. Isn't that correct?
A Where it says contact, yes.
Q Okay. All right. As a part of those discussions, as you just referenced, you -- the parties signed a nondisclosure

agreement. Isn't that right?

A That wasn't a part of the discussions. That's the entry door. You don't have discussions until you have the NDA.

Q So to begin the discussions, there was the conclusion of a nondisclosure agreement between the HMIT Entities and Highland. Isn't that right?

A That's correct.

Q And under that nondisclosure agreement, you were enabled to obtain any document that you might have wanted from the HMIT Entities and hold that in confidence. Isn't that right?

A I don't know if I could have obtained every document. I think that they would have said, well, that's a privilege document or something. We were exchanging information that would lead to a settlement, not examining what other things they might have done.

So anything related to what we needed, I believe we could get. There wasn't a requirement that they turn everything over. It was a business negotiation.

Q I understand. You asked for some documents pursuant to that nondisclosure agreement. Is that right?

A I think in the course of the negotiations, we did. Most of the information was us giving information. They were giving facts about Highland and the potential that we -- what a settlement could be and what they could achieve and knowing what our objectives were up.

Q Okay. But you did ask for some documents under that nondisclosure agreement from the Hunter Mountain Entities. Isn't that right?
A I believe I was -- I don't recall asking. I believe I received the corporate docs that -- if we didn't have them. But as I said earlier, a lot of the stuff was on Highland's system because all these entities were formed when Dondero controlled it all and Highland set these things up.
Q Prior to entering into the settlement agreement, you reviewed the organization documents of the entities in the Hunter Mountain chain of ownership, didn't you?
A Yes.
Q And you did this to assure yourself that Mr. Patrick had authority to enter into the settlement agreement. Is that right?
A I did it to assure myself that Mr. Patrick had full authority over those entities and the entities could enter into those -- into the settlement agreement.
Q Okay. I'll take that answer. So you wanted to find out that when Mr. Patrick signed on behalf of those entities, that he would be acting with authority on behalf of those entities. Is that right?
A Absolutely not. I already knew that.
Q Okay.
A I was confirming the structure, that the entities that

could enter into these agreements and that he continued to have authority to enter into those agreements. Making sure that I didn't have to go get somebody else's approval.

Q Prior to entering into the settlement agreement, you looked at the organizational documents of the entities that were going to enter into that agreement, didn't you?

A Yes.

Q And you did so to satisfy yourself that Mr. Patrick had authority to enter into the settlement agreement on behalf of each of the HMIT Entities, didn't you?

A I think that's what I just said. I wanted to make sure that the entities could do it and that he had the authority to do it. I frankly knew that he had the authority for most of them because, again, with HMIT or Beacon, we knew that he had already brought actions in the bankruptcy court against us.

Q Is the answer to my question yes, Mr. Seery?

A I think I had already given the answer before, and then you asked me the same question again.

Q No, I appreciate your views on my questions. I would like to see if the answer to my question is yes.

A Can you ask the question again?

Q Absolutely. Did you look at the organizational documents of the HMIT Entities to satisfy yourself that Mr. Patrick had the authority to enter into the settlement agreement on behalf of each of the HMIT Entities?

A Again, I did look at them for that reason. I already knew he had authority at least with respect to most of them.

MR. EDNEY: All right. Let's pull up Page 97 of this, Exhibit 35.

BY MR. EDNEY:

Q Your answer is a little bit more complicated than it was back then. So I want to take you to Line 12. You were asked a question, read along with me, "Let's talk for a moment about Mr. Patrick's authority. Before entering into the settlement agreement, did you do anything to satisfy yourself that Mr. Patrick had the authority to enter into the settlement agreement on behalf of the HMIT Entities?" Do you see that?

A I see it.

Q And do you see your answer?

A I said "Yes."

Q And then you were asked, "What did you do to satisfy yourself?" And you said, "Well, as a default rule, I always look at the agreements that I'm going to enter into in the organizational docs." Do you see that?

A Yes.

Q In order to satisfy yourself that Mr. Patrick had the authority to enter into the settlement agreement on behalf of each of the HMIT Entities, did you look at the organizational docs of those entities?

A Yes. As a default rule, I always look at those, those

agreements.

Q All right. The documents that you looked at were identified on Highland's exhibit list for that hearing, weren't they?

A I believe they were. Yes.

Q As a matter of fact, further down in this hearing, you were asked what documents you looked at, correct?

A I'm sure I was. If you could show me it, I'm sure that that's the case.

Q Yeah, if you go down to Lines 23 and 24. Are those the documents that are in the exhibit list from 70 to 104? Do you see that?

A I see that it says that, yes.

Q So --

THE COURT: Hold on one second, Mr. Edney.

MR. MORRIS: Your Honor, I object to this line of questioning. The transcript is in evidence already. It speaks for itself. If he wants to impeach Mr. Seery and look at the transcript, by all means. But otherwise, he should just be asking the questions, not just validating the transcript.

THE COURT: Response, Mr. Edney?

MR. EDNEY: Your Honor, I do think I am trying to hold Mr. Seery's testimony to his previous questions and answers in the May 19, 2025 hearing. I think I am using it for an appropriate impeachment purpose.

THE COURT: I don't know the rule. What I am going to say, if you can move this along. I mean, we do have the transcript, but if you've got specific questions where you believe he's not answering the same way and you want to use this, go ahead.

MR. EDNEY: All right. Thank you, Your Honor.

BY MR. EDNEY:

Q So the documents that you looked at to confirm Mr. Patrick's authority, they were listed on the exhibit list of Highland leading to that hearing, weren't they?

A I believe so. I said I'd have to check the actual numbers. It looks like I'm cut off, but we tried to put everything into evidence at the 9019. And we put on a very robust 9019 case by going through every one of the documents, but it was on direct and we didn't beat the dead horse.

Q Fair enough.

MR. EDNEY: Let's go to the exhibit list for the 9019 hearing filed by Highland on June 24, 2025. If we could pull that up, please.

THE COURT: I'm sorry, which exhibit is this, Mr. Edney?

MR. EDNEY: It's not an exhibit.

THE COURT: Okay.

MR. EDNEY: It's for purposes of cross-examination.

THE COURT: Okay.

MR. EDNEY: It's a filing in the main bankruptcy case, Your Honor.

All right. If we could go to Page 8, please.

BY MR. EDNEY:

Q There's a heading there that says "Patrick Authority." Do you see that?

A Yes. And there's a series of exhibits that follow.

MR. EDNEY: If we could scroll down to the next page, 9. And then 10 and then 11.

BY MR. EDNEY:

Q Then there's a heading break that says "Dugaboy Note." Do you see that?

A Yes.

Q So Exhibits 70 through 104 are under the heading "Patrick Authority." Do you see that?

A I'm looking at the Dugaboy Note, but I saw it before. Yes, 70 to 104 under the -- we broke this out so it would be really easy to understand in each of the categories of things we were covering.

Q And Exhibits 70 through 104 were the exhibits, were the documents that you looked at, the organizational documents you looked at to confirm Mr. Patrick's authority. Isn't that right?

A I believe that's most of them, if not all.

Q Okay. As a matter of fact, you stated on the record back

in that hearing that those were the exhibits, Exhibits 70 through 104.

A I stated those were the exhibits. I don't know if that's every document I looked at, but I looked at all 34 of those documents. Yeah.

MR. EDNEY: Okay. All right. Let's go up to the -- I think we're at the right page here. As we do this, let's pull up side-by-side Exhibit 242, Slide 12, please. Do we have that capability to do two at a time?

Just bear with us for a second. I promise this will speed things up.

(Pause)

MR. EDNEY: All right. That's good.

BY MR. EDNEY:

Q Can you see both?

A I can see both, but I apologize because it's going to be hard for me to read this.

Q Yeah, we'll blow it up a touch.

Okay, all right. So one of the documents you reviewed was Exhibit 70, which was the trust agreement at Hunter Mountain, right?

A Yes.

Q And that's the Hunter Mountain Investment Trust in the second to bottom square on this chart. Isn't that right?

A Yes. But to be clear, your chart's incorrect. But okay

-- but that is in that box, yes.
Q Okay. And then at Exhibit 73, we have the Limited Liability Company Agreement of Atlas IDF GP. Do you see that?
A Yes.
Q And that entity is in green on this chart. Isn't that right?
A Yes.
MR. EDNEY: Let's go to the next page of the exhibit list.
BY MR. EDNEY:
Q Now, Exhibits 75 through 85 are documents regarding HMIT, right? See that?
A That's the appointment of Mark Patrick as the successor administrator, yes.
Q And then several organizational documents for Rand Entities and Atlas Entities. Do you see that?
A Yes. Just let me --
Q If you can take him down to 85, please.
A Some are consents. Some are the constituent docs, yes.
Q Okay. But they all concern the Rand and Atlas Entities, right?
A I believe so looking at each of these headings, yes.
Q And these entities, these --
A Just to be clear, I'm looking at the list, not the document.

Q Correct, right. And these Rand and Atlas Entities, they are on this chart over here, Exhibit 242, Slide 15. Aren't they?
A I'd have to check each one, but you certainly have Rand Entities and you certainly have an Atlas entity. And, again, there's so many mistakes in your chart, it's hard to use it. But you have those names listed, yes.
Q All right. So then if we go to the next page, Exhibit Numbers 86 through 93, those are also organizational documents from the various Rand and Atlas Entities. Isn't that right?
A Some are. Some are other documents related to their organization are not organization or constituent documents, yes.
Q But they all concern the Rand and Atlas Entities. Isn't that right?
A They are documents that concern those entities. You're going up to what number?
Q 94. 93, I'm sorry. 86 through 93.
A Yes.
Q Okay. And then Exhibit 94, that concerns Beacon Mountain, LLC. Isn't that right?
A Yes.
Q As does Exhibit 95?
A That's correct.
Q And then Exhibits 96 through 100 concern the Okada Family

Foundation, the Empower Dallas Foundation, and the Crown Global Company. Do you see that?

A I see that, but those are Crown Global Policies.

Q Uh-huh.

A And a term sheet.

Q But they concern the Crown Global Company, right?

A I believe they concern the policy that the entities Empower and Okada Family Trust purchased. I don't believe they concern the Crown Global Company.

Q Okay. They relate to the Crown Global Company, don't they, Mr. Seery?

A To the extent that a policy they issued relates to it. Everything else you've shown is a constituent document, so if you're trying to tie that to being constituent document, I believe you know what that term means, these are not those.

Q All right, Mr. Seery. And the Crown Global Insurance Company, the Empower Dallas Foundation, the Okada Family Trust, they're listed over on the right of Slide 15 of Exhibit 242. Do you see that in pink?

A I see that you have them on your chart, yes.

Q All right. If we go to the next page, we have Exhibits 101 and 102. Those relate to Crown Global, correct?

A Again, those relate to the policies that Crown Global issued, yes.

Q And then we have two HMIT opinions from 2016. Isn't that

right?
A Those are the opinion letters that were -- there's a rep letter, which is Dondero swearing that he's read the opinion and he abides by all of the representations in the opinion. And the opinion which blessed the Hunter Mountain, you know, tax scheme.
Q Mr. Seery, were you aware that by the time of the June 25th hearing, that Hunter Mountain had been sold out of the stack of companies that the Rand PE Fund was a part of?
A Certainly by the hearing, yes. Hold on a second. Can you repeat the question? I think I misunderstood what you said.
Q Sure. By the time of the June 25th hearing, 2025, you were aware that Beacon Mountain and Hunter Mountain had been sold out of the stack of companies that involved Rand PE Fund I, L.P. Isn't that right?
A No. So the interest in Beacon Mountain was sold from one -- I was aware that the interest in Beacon Mountain was sold from one entity that Patrick controlled to another entity that Patrick controlled called CLO Holdco, LLC. It's on our chart that we used as a demonstrative and then your prior counsel used to cross in the 9019 hearing.
Q Okay. And after reviewing Documents 70 through 104 on this exhibit list, you concluded Mr. Patrick had complete authority to enter into the settlement agreement. Isn't that right?

A Yes.
Q And you concluded that the proceedings in the Cayman Islands had no impact on Mr. Patrick's authority over any of the entities in the chain of entities that owned Hunter Mountain. Is that right?
A That's correct, yes.
Q And you concluded that the relevant entities to Hunter Mountain run up to companies he owns and controls, and it's a structure that was set up a long time ago. Is that right?
A That's a pretty broad brush. But I concluded that he had authority over each of the entities and these were entities that I wanted to have as counterparties to the settlement agreement.
Q You had not concluded that the relevant entities to Hunter Mountain were in a structure that was set up a long time ago?
A The Hunter Mountain structure was set up in 2015 to shelter hundreds of millions of dollars of income from taxes that Dondero and Okada were going to be hit with. So I'm very familiar with the structure.
Q All right.
A It was set up in 2015. Yeah, that's I guess a pretty long time.
MR. EDNEY: Let's go to Exhibit 35. Page 99, please.
BY MR. EDNEY:
Q All right. Going to Line 13. At the June 25, 2025

hearing, were you asked the following question, "So based on the work that you did and the documents you reviewed, did you form a view as to whether or not Mr. Patrick is authorized to enter into the settlement agreement on behalf of each of the HMIT Entities?" And your answer was "Yes." Do you see that?

A Yes.

Q And then were you asked the question, "What view did you reach?" And the answer follows, "He has complete authority over each of these entities. They run up to entities that he controls or he owns, and he's had that. It's a structure that was set up a long time ago, and any changes to that structure are consistent with the documents that let him do those things." Did I accurately read that question and answer?

A Yes.

Q Did the Hunter Mountain Entities concern a structure that was set up a long time ago?

A That's exactly what I just testified to in 2015.

Q All right. And you concluded that the Dallas Foundation had no rights with respect to the -- at all with respect to the management of these entities because Crown Global had only issued an annuity policy. Isn't that right?

A It was the entire structure of the Crown policy and the layers that they separated those entities from control of the entity. Yes, they had no voting, no consent. Virtually no rights at all, other than to receive the payments from Crown.

Q But by the time of this testimony, Hunter Mountain and Beacon Mountain had been sold out from under the Crown Global structure. Isn't that right?

A Again, you keep doing this, and it's not fair and it's not correct. Be specific. Hunter Mountain, the interest in Beacon Mountain was sold. Yes.

Q And it was sold away from the Crown Global structure. Isn't that right?

A It was sold away -- I've got to look back at the structure. It was sold by Rand through the multiple layers of the structure. And they didn't have any rights to consent. And it was between two entities that Mr. Patrick controlled.

I'm not trying to be difficult. That's exactly what I testified to. That's what the documents say, and that's what we've done. And as you know, the Dallas Foundation objection and withdrew their objection, so go ahead.

Q Before entering into the settlement agreement, did you ask Mr. Patrick to provide Highland with any of the documents from the Cayman Islands proceedings concerning the Charitable DAF?

A I don't -- I don't know. I know I had some of them. I had the supervision application, for sure. I don't know that I asked him to provide them. I don't know where I got them. I think we may have gotten those elsewhere, but I don't know.

Q All right. Now, Mr. Morris asked you a question about whether the liquidators had been in touch with you regarding

the potential settlement prior to the June 25th hearing, right?
A If he -- no, he asked me if they had been in touch with me prior to June 24th.
Q I see.
A No, that's the question he asked. You can look at the transcript. You can see or not see. You don't have to be snide with me. I'm sorry, Your Honor.
THE COURT: Yeah. Let's make sure both for witness and attorney, let's make sure that we're keeping our comments professional and we don't need snide marks.
BY MR. EDNEY:
Q So did they get in touch with you on June 24th, 2025?
A I received a letter, it's in evidence, that came on June 24th for -- it may have come late and I might have gotten it the morning of the 25th.
Q And what did that letter say?
A That letter said, we're aware of the transactions that were the -- we've seen the CDMCFAD that collapsed on the DAF side, a number of entities, and that removed those DAF structures from the entity that the JOLs were now appointed for. So they were aware of the redemption -- the dilution and redemption transaction, as they've so described, and asked for a 45-day stay of the hearing.
Q So did the Cayman Island Liquidators ask the Court to delay the approval of the settlement agreement for 45 days?

A No, they did not.
Q Did they ask for a stay of the hearing for 45 days?
A No, they did -- they asked myself. They didn't ask the Court anything. They sent a letter to me and asked if I would delay the hearing for 45 days.
Q And what was your response, if any?
A I didn't respond, but the answer would have been no.
MR. EDNEY: All right. Let's go back to Exhibit 242, Slide 12, please.
BY MR. EDNEY:
Q One of the entities that you reviewed documents regarding was Rand Advisors, LLC. Isn't that right?
A Yes.
Q And were you aware from reviewing those documents that Rand Advisors, LLC was a registered investment advisor?
A I don't recall if I was aware of that at the time. I probably was. I just don't recall.
Q But if the documents that we looked at, Exhibits 70 through 104 of the May 19th -- of the June 25th, 2025 hearing, had documents regarding that status, you would have been aware of it. Is that right?
A Yes.
Q Okay. And is it your understanding that any sale that Mr. Patrick effected of any interest in Beacon Mountain was done through his authority as the person in charge of Rand

Advisors, LLC?

A I believe it was either done through the GP -- it was the fund selling. It would have been the Rand PE Fund selling. I don't know if it's the Advisors. I just don't recall if it's the Advisors or the GP that is executing in that sale.

Q Do you have any reason to doubt that Rand Advisors, LLC has an investment advisor relationship with Rand PE Fund I, L.P.?

A I don't recall. I mean you've got it listed here. I don't know if that's correct or not. I'd have to look at the management agreement, but I believe that's how they set it up.

Q Okay. So the Highland bankruptcy estate, it has two trusts now. Is that right?

A No.

Q How many trusts does it have?

A The Highland bankruptcy estate has one trust. That's the Highland Claimant Trust.

Q Okay.

A Outside of the Highland bankruptcy estate sits the Highland Indemnity Trust. That trust was set up specifically to provide identification because we couldn't get D&O insurance because there's something in the D&O insurance markets called the Dondero exclusion. There's testimony on this. That structure was approved by the Fifth Circuit.

MR. EDNEY: All right. I'm going to move to strike

the rest of that answer as nonresponsive.

BY MR. EDNEY:

Q I asked you whether there are one or two trusts. Is the answer to my question two?

A I think you asked me if there was one -- if there were two trusts in the estate --

Q Why don't we let --

A -- and I said no.

Q Why don't we let His Honor rule on my motion to strike first.

THE COURT: Okay. It's overruled.

BY MR. EDNEY:

Q Okay. Are there two trusts? Again, there's one trust in the Highland estate. There's a separate trust outside of the Highland estate. That's the Highland Indemnity Trust.

Q Okay. Are there two trusts related to the Highland bankruptcy estate?

A They're both a product of the Highland bankruptcy estate. Yes.

Q Okay.

A But again, we're post-exit and the effective date, that formed -- an effective date the Claimant Trust was formed and the Indemnity Trust was formed. And the Claimant Trust has the relationship with the classes of creditors and the plan and then there's the Indemnity Trust.

Q What is the value of assets that the Highland Claimant Trust currently holds?
A De minimis.
Q Do you know the number?
A It would be less than a couple million dollars. And it will be all cash.
Q Does the Highland Claimant Trust currently have ongoing expenses?
A The Claimant Trust does have ongoing expenses because there's the Claimant Trust, then there's Highland Capital Management Limited Partnership, which is separate. And then there's the Indemnity Trust.
Q Okay. What are the ongoing expenses of the Highland Claimant Trust?
A Certain operational expenses, depending on the matter. Certain litigation expenses. Compensation provided to -- on the Claimant Trust to me, some of it. Some of it would be from HCMLP.
Q All right. In 2025, do you have a ballpark figure of what the expenses of the Highland Claimant Trust were?
A I don't. Because you have the Claimant Trust with its operations, and then if you want to throw in attorney's fees dealing with all of this, some of which are Indemnity Trust, some are not. I don't have a number for you.
Q So some expenses of ongoing operations are charged to the

Indemnity Trust. Is that right?

A The operations are done out of the HCMLP. The Claimant Trust has a portion of my trustee compensation and some other operating expenses.

Q Highland Capital Management, L.P. has some assets. Is that correct?

A Highland Capital Management has some -- no assets anymore. Really, everything's been reduced to cash. We're going to close this case.

Q Okay. And so what is the total value of assets, including cash, at Highland Capital Management, L.P.?

MR. MORRIS: Your Honor, I object. At this point, I see absolutely, positively, no connection between this line of inquiry and anything that's happening with this motion to vacate. I think this is just discovery, and I respectfully request that Mr. Seery not be required to divulge how much money he still has left for indemnification purposes or for any other reason. It's completely irrelevant.

THE COURT: Mr. Edney, response?

MR. EDNEY: Your Honor, it goes to Mr. Patrick's efforts to fight rigorously on behalf of the charities or whoever owned the entities at the time of the settlement. One of the goals was to liberate cash, and the question is about how much cash was available.

THE COURT: Okay, I'm going to sustain the objection.

We're not here to try a settlement motion. We're here based on your motion and your client's motion to vacate that order. We're not here to try whether or not this was an appropriate settlement. That's already been approved.

MR. EDNEY: All right, Your Honor. In light of that, I have no further questions for this witness.

THE COURT: Okay. Mr. Morris, do you have any redirect?

MR. MORRIS: I do not, Your Honor.

THE COURT: Okay. Let me make sure. I just don't believe there's any other questions by any other counsel, but let me just make sure.

Ms. Ziegler-Young, questions?

MS. YOUNG: No questions, Your Honor.

THE COURT: All right. You can step down, Mr. Seery.

THE WITNESS: Thank you, Your Honor.

(Witness excused)

MR. MORRIS: Before Highland rests, Your Honor, I have a number of exhibits I'd like to move into evidence --

THE COURT: Okay.

MR. MORRIS: -- that I believe, some of which are consensual, some of which are subject to some objections. So I'd like to begin with the consensual ones first.

THE COURT: Okay. Is this -- let me make sure. We did this at the beginning of the hearing, so are we talking

about different exhibits than those?

MR. MORRIS: There are certain exhibits that weren't addressed at the beginning of the hearing. There were certain exhibits that were objected to at that time, and we didn't address those objections. I'm doing it now before I rest because there are certain exhibits I want to come into evidence.

THE COURT: Okay. You may proceed, then.

MR. MORRIS: Thank you. So first, Your Honor, and I apologize, I don't have the docket numbers, but Highland filed -- let me back up. Let me explain to you why we're going through this process, because at the time we appeared in court last Monday morning, we had met and conferred about Exhibits 1 through 79. And later that day, before the trial had started, we filed a couple of amended exhibit lists that the parties never had the opportunity to meet and confer about.

THE COURT: Okay.

MR. MORRIS: So that's what I'm going to address in the first instance. It's Exhibits 80 through 97, and subject to Mr. Edney's confirmation. There is no objection as to any of those exhibits, although I want to point out to the Court that Exhibit 87 is a demonstrative exhibit. It's not being offered into evidence. It's merely included on the docket pursuant to Your Honor's rules.

So if Mr. Edney can just confirm that, then I would

move Exhibits 80 through 97 into evidence but for Exhibit 87.

THE COURT: Okay. Mr. Edney?

MR. EDNEY: Your Honor, Mr. Morris and I talked this morning, and we talked about Exhibits 80 through 89. And with respect to that, I told Mr. Morris that we had no objection to the admission of Exhibits 80 through 86. We understand that Exhibit 87 was his opening demonstrative and, as a demonstrative, we have no objection to that being part of the docket in this case, but not as admission into evidence. I don't think Mr. Morris is intending to do so.

We have no objection to 88. 89 is a lengthy transcript from the Cayman proceedings. We do object to that. As to 90 through 97, we did not discuss that this morning. I would say that Mr. Morris and I have been working well to clear out the easy exhibit issues and pre-admit some of them. But where we haven't done that, we've endeavored to do and perhaps it's adding to the -- perhaps we've taken too long to do it. We've sponsored those exhibits through witnesses.

I've not agreed to or I don't think there's a process to just admit a bunch of exhibits not through a witness and not through pre-agreement. So, but having said that, I didn't want to belabor the time of the Court. So, when he brought 80 through 89 to my attention, I took our position on those, which I've read into the record. 90 through 97 is a different thing.

I suspect, Your Honor, that if you look at 90 through

92, I suspect that Mr. Morris was going to use those in his examination of Mr. Dondero, as he did in Mr. Dondero's deposition. And now we're doing this in the middle of that. I probably do object to that.

MR. MORRIS: Your Honor, if I may, and with apologies to Mr. Edney, he's simply mistaken. I've got email communications on which he's copied. We met and conferred. Mr. Gaddis communicated with me on behalf of Dugaboy. I've got an email dated May 12th, sent to me at 8:25 a.m., copying -- from Mr. Gaddis to me, copying Mr. Edney and others, where he specifically says, we reviewed and have no objection to Exhibits Numbers 91 to 97. And then he responded a few moments later and said, ditto for 90.

So, I understand this is a big process and that Mr. Edney may not have recalled this exchange, but we've already been through this. And so with the agreement that's reflected in this email, and I'll represent to the Court, that's exactly what it says. I would respectfully move for the admission of all of the Exhibits 80 through 97, although I do want to address 89, if the Court will allow.

THE COURT: Okay. Here's what I'm going to do. I'm going to go through these, as I understand them, and we're going to get to all these issues. So, I've got an offer for the admission of 80 through 86, Highland's 80 through 86. It's my understanding there's no objection. Is that correct,

Mr. Edney?

MR. EDNEY: That's correct, Your Honor. Thank you.

THE COURT: Okay, those will be admitted.

(Debtor's Exhibits 80 through 86 admitted into evidence)

THE COURT: I have Exhibit 87. Now, I'm sure you all know better than I do that the Rules of Evidence recently changed, and I believe that there is -- I'm not going to remember the rule, you all may know better. There is a rule regarding document or illustrative exhibits where they may not be admitted necessarily for the truthfulness or the truth of the matter being asserted in them but for purposes of use by the Court. So, I want to make sure, is that what we're offering 87 for?

MR. MORRIS: That's exactly right, Your Honor.

THE COURT: Okay. And there's no objection to it being admitted for that purpose?

MR. EDNEY: For that limited purpose, Your Honor, exactly. Thank you, Your Honor.

THE COURT: Okay. All right, so Exhibit 87, and forgive me, I don't recall the rule off the top of my head, but it will be admitted for illustrative purposes as part of the record, but will not be admitted for the truth of the matter asserted therein.

(Debtor's Exhibit 87 admitted into evidence)

THE COURT: All right, that will be 88. We've got an

offer for admission of that. I believe that one is not objected to. Is that correct, Mr. Edney?

MR. EDNEY: That's correct, Your Honor.

THE COURT: Okay, so Exhibit 88 will be admitted.

(Debtor's Exhibit 88 admitted into evidence)

THE COURT: 89, we've got an objection to. We'll get to that here in a second.

Next we've got Exhibits 90 through 97. And is Mr. Gaddis still in the courtroom?

MR. GADDIS: Yes, Your Honor.

THE COURT: All right, will you come to the podium, please, Mr. Gaddis?

So, Mr. Gaddis, Mr. Morris is representing that there's an email exchange between you and him that states that on behalf of Dugaboy, there are no objections to Exhibits 90 through 97. Is that accurate?

MR. GADDIS: Yes, I remember writing that email.

THE COURT: Okay, all right. Exhibits 90 through 97 will be admitted.

(Debtor's Exhibits 90 through 97 admitted into evidence)

THE COURT: All right, Mr. Morris, if you'd like to state your response to what objection to 89. Let me pull up 89 real quick.

MR. EDNEY: Your Honor, if I may interject for just a moment. I do think the illustrative issue that you identified

with respect to 87 also applies to 94.

MR. MORRIS: That's fine, Your Honor.

MR. EDNEY: It appears to be a duplicate perhaps but --

MR. MORRIS: It's not a duplicate. It may be, but be that as it may, I'm perfectly fine with Mr. Edney's request to treat Exhibit 94 in the same way that we treated 87.

THE COURT: Okay. All right. And for the record, so that it's clear, Exhibit 94 will likewise be admitted for illustrative purposes and not for the truth of the matter asserted.

(Debtor's Exhibit 94 admitted into evidence)

THE COURT: All right, 89, Mr. Morris?

MR. MORRIS: So, very simply, let me just remind the Court of Ms. MacInnis' testimony. If Your Honor will recall that in early February the Cayman Trial Court issued an order with respect to the writ that had been filed the prior summer.

I'm going to try hard to avoid characterizing Ms. MacInnis' testimony and just say that after that order was entered, the Joint Official Liquidators filed what's called a summons in the Appellate Court, which is effectively, in our language, a petition for injunctive relief pending appeal. And that's what Exhibit 88 is. And it was --

THE COURT: 89?

MR. MORRIS: No, that's what 88 is.

THE COURT: Oh, 88. I'm sorry.

MR. MORRIS: So you start with 88.

THE COURT: Okay.

MR. MORRIS: So 88 is the request. The Trial Court had just rejected the JOLs' request for a proprietary injunction. The JOLs filed notice of appeal. And Exhibit 88 is the JOLs' request for interim injunctive relief pending the appeal.

THE COURT: Okay.

MR. MORRIS: Are you with me?

THE COURT: Yes.

MR. MORRIS: So what Exhibit 89 is the transcript from the hearing on that application for interim injunctive relief. And if Your Honor will recall, there was some testimony over whether the relief that was granted by the Appellate Court in the Cayman Islands was consistent with the rule, the consensual Rule 11 agreement that had been entered between Mr. Patrick and the supporting organizations the prior July. And we're offering the transcript to show that the Cayman Appellate Court stated what it stated. Okay?

And, I mean, I could characterize it. I'm not here to make an argument. I'm just saying that it's relevant because it flows exactly from the testimony the other day. It will allow the Court to see exactly what the Cayman Appellate Court said vis-a-vis the consensual Rule 11 consent decree that

was issued as part of the Texas Business proceedings.

I hope I've been clear. Maybe I middled it.

THE COURT: So this is the transcript of that hearing with their ruling.

MR. MORRIS: Yes.

THE COURT: Is the ruling not down in writing? Do you not have an order of the court? It has been --

MR. MORRIS: There is. I believe it's Exhibit 93.

THE COURT: Okay.

MR. MORRIS: But I don't know that Exhibit 93 specifically refers. In fact, I'm quite confident that Exhibit 93 does not specifically refer to the Rule 11 consensual order. And the point that we're trying to make to the Court is that all the Cayman Court did, they may have added a couple of parties, but effectively all the Cayman Court did was say, since you consented to the Rule 11 order in Texas, we're just going to adopt it down here on the Cayman Islands.

And I point out again, because I'm getting help from a friend, that under Rule 201, the Court could take judicial notice of facts. It's generally known within the Trial Court's territorial jurisdiction or can be accurately and readily determined from sources whose accuracy can't be reasonably questioned.

So there's no question that this is the transcript. We're offering it in order to show the Court that contrary to

some suggestions that have been made, the Cayman Islands Trial Court was not reversed in any way. All that happened was interim injunctive relief was granted pending appeal that will not be heard until September. And that interim injunctive relief was largely if not wholly consistent with the consensual order that was entered in Texas the prior July.

THE COURT: Sorry, give me one second.

MR. MORRIS: Yeah.

THE COURT: I'm going back over my notes. We don't have testimony or evidence if this by Ms. MacInnis?

MR. MORRIS: Your Honor, I don't want to belabor the point. This should not require extensive argument. We respectfully request that it be admitted into evidence. If Your Honor wants to overrule the objection, just note our objection to that ruling. This is not going to make or break anybody's case.

THE COURT: I'm going to sustain the objection, and I'm not going to admit it because I believe we've already got testimony to the issue. And so the Court notes that it sustains the objection to the admission of Exhibit 89 and so, therefore, Exhibit 89 will not be admitted.

MR. MORRIS: Okay. The next matter I'd like to take up, Your Honor, is Exhibit 300. If you will recall, Exhibit 300 was the document that I used to impeach Ms. MacInnis. It's the one that showed Mr. Leventon's modification of her third

affidavit prior to the date that it became public. And --

THE COURT: Hold on one second, Mr. Morris. I've got your binders up here that go through 97. Did you all file -- oh, hold on one second here. If I'm not mistaken, I think I do know what you're talking about. I don't know -- maybe it may be over there. Give me one second.

MR. MORRIS: I may have an extra copy if Your Honor would like it.

THE COURT: Give me one moment. It might be in one of these binders, too.

MR. MORRIS: I'm sorry, Your Honor.

THE COURT: Okay. Yes, okay. This is the screenshot. I'm going to call it a screenshot, but it's basically the review by -- this has the affidavit. It has a text box that looks to be metadata regarding a possible review by another party. Is that correct? Is that --

MR. MORRIS: That's exactly right.

THE COURT: Okay.

MR. MORRIS: And I want to make clear that the boldface type at the top of the document was prepared by counsel, and all it is really are instructions as to how to find the metadata. We used it to impeach already and so, therefore, we think it should properly -- a document that was used to impeach should properly come into evidence.

THE COURT: All right. I have an offer for

admission, Exhibit -- Highland Exhibit 300. Do we have any objections?

MR. EDNEY: Yes, Your Honor, we do object to it. Mr. Morris did use it for purposes of impeachment, and it was incorporated in his questioning. But that's not grounds to admit it into evidence. It is a document that is created by counsel. There was no testimony sponsored as to how it was created. And I think he has his record on its use, and it's not proper to admit the document into evidence in this case.

MR. MORRIS: Just a brief response, Your Honor. We are not offering the boldface type at the top. Those are instructions, but I don't see how an Appellate Court could properly assess the testimony without having this document before it. And you could follow the instructions right now, I believe, and satisfy yourself that what we're representing is true.

THE COURT: Okay. The Court's going to reserve its ruling on the admission of this exhibit and then I'll issue its rulings when it rules on the -- to the extent necessary, will issue its ruling on the admission of this exhibit at the time that it issues its ruling on the motion.

MR. MORRIS: Okay. Would it be helpful, Your Honor, if we filed it on the docket?

THE COURT: Yes, it would be.

MR. MORRIS: Okay. We'll do that either now or at

the very next break.

THE COURT: Okay. And, again, please file it as Highland Exhibit 300?

MR. MORRIS: Okay. If you'd just give me one second, Your Honor. I just have a few more issues to address that I see.

(Pause)

MR. MORRIS: Okay. Next, I just really just have a couple of more exhibits. I'm going to just make this a little bit cleaner, and I will say that Highland withdraws Exhibits 42, 69, and 71.

THE COURT: 42, 69, and 71?

MR. MORRIS: Yes.

THE COURT: Okay.

MR. MORRIS: So that leaves five remaining exhibits, three of which I'm going to handle at once, and they are Exhibits 55, 56, and 57. And those exhibits are the deposition transcripts of Mr. Raver, Ms. Diaz, and Ms. Littleton that were taken in advance of the June 25th hearing as part of the discovery on the 9019 motion.

We filed those exhibits on the docket because I don't think there's any disagreement, because it's in an email that I have that all three witnesses are more than 100 miles from the courthouse. And there is no evidence that their absence has been procured by Highland in any way. And we believe that they

should all come into evidence under Rule 32(a)(4)(B), which states that a party may use for any purpose the deposition of a witness, whether or not a party, if the Court finds that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition.

So we believe that these transcripts should come in for that purpose. We initially conferred about these particular transcripts last Sunday, and the two principal objections that we received at that time were that they were hearsay and that we hadn't provided deposition designations. We are not offering any of these three transcripts for the purpose of the truth of the matter asserted, so that hearsay does not apply.

And in the intervening days, we provided Dugaboy with very specific page and lines designations of these transcripts so they knew exactly what it is we were offering the transcripts for. We think that these transcripts are vital, and they're vital because it shows, right, there's a Rule 60 motion. Under Rule 60(b)(2), Dugaboy is required to show not only that they have newly-discovered evidence, but that it couldn't have reasonably been discovered prior to the date for a new trial.

And here, Dugaboy has claimed that they were unaware

of certain facts until after the date for a new trial, and yet these transcripts show the testimony, particularly Mr. Raver. I mean, they may have qualms about Mr. Patrick, but Mr. Raver answered everything. And the Dallas Foundation witnesses, the parties who you're told are the economic beneficiaries of HMIT, we disagree with that, but let's say it's true from their perspective.

They're the ones who challenged Mr. Patrick's authority, and they're the ones who withdrew their objection with prejudice and entered into a consensual binding term sheet with Mr. Patrick that left him fully in place. I think Dugaboy needs to be charged with the knowledge of the facts that were induced during those three depositions. And so both because it plainly comes in under Rule 32(a)(4)(B) and because it couldn't be more relevant, we'd move for their admission.

I do want to point out, Your Honor, that if Dugaboy succeeds, and maybe it's a hypothetical question, but I think it's one that illustrates the injustice that's being done here. If Dugaboy contends that there's a fact that they were unaware of, and yet the transcript shows that they were, in fact, aware of that particular fact, and the transcript is excluded, is Dugaboy now allowed to just basically say, because the transcript was excluded, now we get to pretend that we were unaware of that fact?

I don't think that makes any sense at all. I think

these transcripts plainly come in under Rule 32. I think they're highly relevant. And to exclude them would be another opportunity for mischief, which the Court should quash right now.

THE COURT: Okay. Do you want to give the Court the line designations that we're talking about?

MR. MORRIS: Can we email that to the Court the -- because I don't have them handy, but I could do that on a short break. I'm happy to do that.

THE COURT: We'll get back to the line designations. Let me hear from Mr. Edney.

MR. MORRIS: And I actually could do that, if you give me a moment. I just have to find each one in my notes, because I know that I have them right here.

(Pause)

MR. MORRIS: Okay, so Mr. Raver, would you like me to do this orally, or is there a more efficient way to do it?

THE COURT: No, orally is fine. But can you give me the exhibit number that we're talking about?

MR. MORRIS: Yes, so Raver is Exhibit 55.

THE COURT: Okay.

MR. MORRIS: And I believe for Raver we have Page 7, Line 5 through 10; Page 11, Line 6 through Page 14, Line 6.

THE COURT: Okay. Sorry, say that one again. Page 11?

MR. MORRIS: Line 6.

THE COURT: And that's through?

MR. MORRIS: Through Page 14, Line 6.

THE COURT: Okay.

MR. MORRIS: Then we have Page 15, Line 6 -- that's just a coincidence -- through Page 16, Line 2.

THE COURT: Okay.

MR. MORRIS: Page 16, Line 25.

THE COURT: 16?

MR. MORRIS: Yes.

THE COURT: Okay.

MR. MORRIS: Through Page 17, Line 15. Page 30, Line 4 through Line 25.

THE COURT: Okay.

MR. MORRIS: You know what, Your Honor? Respectfully, I request a short break, because I'd like to do this from the transcript.

THE COURT: Okay.

MR. MORRIS: And make sure that I have this right.

THE COURT: That will be fine. We'll take a 10-minute recess?

MR. MORRIS: That would be plenty.

THE COURT: Okay. We'll take a 10-minute recess.

MR. MORRIS: I just want to make sure I'm giving to you what I gave to them.

THE COURT: Okay.

THE CLERK: All rise.

MR. MORRIS: Thank you.

(Recess at 11:16 a.m., recommencing at 11:31 a.m.)

THE CLERK: All rise.

THE COURT: You may be seated.

Okay, Mr. Morris?

MR. MORRIS: Your Honor, I greatly appreciate the Court's indulgence and allowing me to take a few minutes to get the information that I should have had when I walked in the courtroom.

So let's start with Mr. Raver again.

THE COURT: Okay.

MR. MORRIS: And pursuant to an email that I sent to Mr. Edney and Mr. Gaddis, along with the designations, the proper designations from Highland are as follows: Page 6, Line 22 through Page 7, Line 10. Page 11, Line 6 through Page 14, Line 6. Page 15, Line 6 through Page 16, Line 2. Page 16-25, through Page 17, Line 15. Page 22, Line 5 through Page 28, Line 17. And Page 30, Line 4 through Line 25.

THE COURT: Okay.

MR. MORRIS: That's all for Mr. Raver.

THE COURT: That's Exhibit 55, correct?

MR. MORRIS: Correct.

THE COURT: Okay.

MR. MORRIS: Next, Exhibit 56 is the deposition transcript of Julie Diaz. We've designated the following portions of that transcript: Line 21 -- withdrawn. Line -- withdrawn. Page 9, Line 21 through Page 10, Line 16. Page 11, Line 3 through Page 13, Line 6. Page 14, Line 12 through Page 15, Line 7. Page 17, Line 4 through Page 29, Line 4. Page 29, Line 21 through Page 30, Line 24. Page 5 [sic], Line 1 through Page 36 --

THE COURT: Hold on. Sorry, you said Page 35?

MR. MORRIS: Yes, Your Honor. Page 35, Line 1 through Page 36, Line 12. Page 38, Line 17 through Page 39, Line 3. Page 46, Line 14 through Page 47, Line 25. Page 49, Line 6 through Page 55, Line 22. Page 57, Line 12 through Page 62, Line 6. Page 65, Line 18 through Page 67, Line 13. And Page 74, Line 5 through Page 76, Line 4.

And then finally, we have the deposition designations from the deposition of Torrey Littleton, which was lodged as Exhibit Number 57. We have the following designations: Page 11, Line 4 through Page 11, Line 14. Page 12, Line 4 through Page 13, Line 20. Page 15, Line 24 through Page 16, Line 11. Page 16, Line 24 through Page 19, Line 1. Page 19, Line 16 through Page 23, Line 8. Page 23, Line 17 through Page 27, Line 15. Page 32, Line 2 through Page 40, Line 1. Page 42, Line 5 through Page 57, Line 11. Page 59, Line 8 through Page 61, Line 11. Page 66, Line 19 through Page 67, Line 8. Page

68, Line 21 through Page 70, Line 9. And Page 70, Line 13 through Page 75, Line 14.

So Highland offers the designations of those transcripts subject to any objections that were lodged during the deposition. I think, as Your Honor reviews the transcripts, those are certainly live objections.

I had invited Dugaboy over the weekend to provide any counter-designations or any objections, and they simply lodged a categorical objection to any of the deposition transcripts. So I didn't get any specific counter-designations. I didn't get any specific objections. So Highland is prepared to live with the Court's rulings on those objections that were lodged in the depositions if these deposition designations are admitted into evidence.

THE COURT: All right. I have an offer of Exhibits 55, 56, and -- Highland's 55, 56, and 57. In particular, the page and line designations which have been previously stated into the record. Do I have objection to the admission of these exhibits and those designations.

MR. EDNEY: Yes, Your Honor, the Movant does object. It objects for several reasons that I previously shared with Mr. Morris, but I'll put them on the record here.

First of all, Mr. Raver, Mr. Littleton, and Ms. Diaz were not named on any of Highland's timely filed witness lists. Therefore, their testimony is not allowed under this Court's

local procedures. As the procedures point out, testimony will not be allowed for witnesses who are not on the witness list. This issue has gone up to the Fifth Circuit in a case called Tramonte v. Fibreboard Corp. That's 947 F.2d 762. It's at Page 763. The Fifth Circuit there --

THE COURT: Sorry, can you give me the citation again? 947 F.2d?

MR. EDNEY: Yeah, 762. Then the page cite is 763. I think it's in Footnote 1. This is a 1991 Fifth Circuit case that lays out that for purposes of witness list deadlines, depositions are treated the same as live testimony. Again, just as Mr. Morris was concerned about curating his case to potential witness testimony on the stand, we would have had similar views with respect to curating our presentation of evidence for potential witness testimony presented to deposition.

Our second objection is that under the relevant Rule of Civil Procedure, we don't believe any of these people were unavailable. Yes, they all reside in the Dallas area. But as this Court has graciously permitted, the parties do have the ability to seek the presentation of remote testimony upon application of the parties and the showing of good cause.

If there were an effort to bring these folks to participate here at Lubbock and that effort failed, there was an alternative available to Highland, and it's not one of which

they availed themselves. That would have permitted for any discussion of what potentially was said back then, but also a discussion of issues that are pertinent to this particular case. And there was no request made for any of these folks related to the fact that they weren't on the witness list to begin with.

Third, we don't believe Highland has made a showing that any of these folks or the entities of which they were officers are adverse to Highland for purposes of allowing the designation of deposition testimony under Federal Rule of Civil Procedure 32(a)(3).

I note that Mr. Raver, I think you've heard testimony about this, is an officer of CDMCFAD, LLC, and several other HMIT Entities, which I think are arm-in-arm with Highland on this particular issue. There's been much made of the fact that the Dallas Foundation withdrew their objection to the settlement going forward, and there's a lack of adversity issued there. So I don't think under those circumstances these folks are available -- that Highland is in a position to take the deposition testimony in on unavailability grounds.

And so I think those are our main reasons. Obviously, there were objections made to particular questions therein, and Mr. Morris graciously noted that those objections stand and would have to be ruled upon. But this is a situation where particularly with respect to Mr. Raver, who I think is

aligned with Highland and the HMIT Entities, he could have made his way here to Lubbock. All these people should have been put on the witness list if we were going to sponsor testimony from them, either through deposition designations or live testimony. And for the unavailability analysis, there was absolutely the option to go remote from Dallas and bring in whatever Highland deemed appropriate from these witnesses.

This does not fall within the limited circumstances in which deposition testimony is the substitute for what happens here in the courtroom, whether it's the remote virtual courtroom or the live one that's occurring right here in Lubbock, Texas. Those are the grounds for our objection to the admission of these exhibits, Your Honor.

THE COURT: Okay. And then either or Mr. Morris can answer these questions. Raver, he is with HMIT. Is that correct?

MR. MORRIS: I believe so. So he's got -- I think the evidence shows that he -- we heard from Mr. Patrick that he's on the board of the DFW Charitable Foundation. He -- I think he has other roles with various HMIT Entities. We can go back and look at that. I do know that he has an officer position with respect to this entity that's been important in this case, CDMCFAD, LLC. That's in the Charitable DAF structure.

And as Your Honor knows, Hunter Mountain today and at

the time of the 9019 hearing is controlled under that Charitable DAF stack of companies. It has really no staff other than the control companies telling them what to do.

THE COURT: I'm going to have Mr. Morris -- I appreciate what you've stated, but I want to understand who these people are. Because I think what you're arguing is that 32(a)(3) should apply to either some or all of these potential witness or deponents. And I believe what they're arguing is, is that 32(a)(4) is what applies to all of these because -- and I want to make sure I understand who these people are and whether it's (a)(3) or (a)(4) that the Court should be looking at.

So, Mr. Morris, if you can at least provide the Court with the information of who are these parties and what entities they are associated with.

MR. MORRIS: I appreciate the question, Your Honor.

I'll start with Ms. Diaz. Ms. Diaz is, as I recall, the President of the Dallas Foundation, and she is also at least a director of each of the Highland Kansas City Foundation, the Highland Santa Barbara Foundation, and the Highland Dallas Foundation.

Mr. Littleton, as I recall, is the Chief Financial Officer of the Dallas Foundation. I don't know if he was also an officer or director of the Highland Foundations.

Mr. Raver, and I'm just reading from his answer in

the deposition, says that he is employed by that entity with that awful acronym CDMCFAD, LLC.

So that's just directly responsive to Your Honor's questions, but I do have rebuttal for the arguments.

THE COURT: Can you give me the --

MR. MORRIS: The acronym again?

THE COURT: Yes, the (indiscernible).

MR. MORRIS: CDMCFAD, LLC. And that testimony will be found on Page 6 of his deposition transcript at Lines 22 through 25.

THE COURT: Okay. All right. Ms. Morris, you may take a seat. I want to make sure I'm asking the questions of Mr. Edney here.

(Pause)

THE COURT: Okay. So, Mr. Edney, I want to make sure I'm understanding your argument. But your argument is that all of these witnesses should be considered adverse witnesses of the Debtor, and that's a requirement under the rules? Or is there just a particular witness, Mr. Raver, that you had stated is not considered -- well, should not be considered adverse?

MR. EDNEY: Right. So, under 32(a)(3), Mr. Raver, we believe, has close association with the HMIT Entities.

THE COURT: Okay.

MR. EDNEY: They are, in addition to what Mr. Morris listed, you heard testimony from Mr. Patrick that he serves as

co-director of the DFW Charitable Foundation, which is now at the top of the economic beneficiaries of the Hunter Mountain Entities due to the reorganization. We think that they're sufficiently in league that there's no adversity.

On top of that and these proceedings, as Mr. Morris has pointed out on numerous occasions, the Dallas Foundation and, as a result, Ms. Diaz in her role there is not a party to this motion and is not opposing Mr. Morris's position here. So we don't think that the 32(a)(3) route is available for Mr. Littleton or Ms. Diaz.

32(a)(4), we don't think they're unavailable for -- because they could have been called remotely. But across both prongs of Rule 32(a), Your Honor, if their testimony was going to be sponsored by Highland, either through historical deposition or through live testimony, they should have been on the witness list provided to Your Honor at the beginning of these proceedings.

We've had discussions about the importance of that today. They were not. Had they been and we may have taken steps of our own to provide for their live testimony, at least to ask. I think on all those grounds, putting their deposition testimony in is not the right course.

THE COURT: Okay. Mr. Morris, any response?

MR. MORRIS: The fact of the matter is we're not moving under (a)(3). We're only moving under (a)(4)(B).

(a)(4)(B) is very clear. It's unambiguous, and it's really quite simple. A party may use for any purpose the deposition of a witness. All three of these people cannot possibly be characterized as anything other than witnesses, whether or not they're a party. So even if they were a party, it doesn't matter. But adversity is just not an issue for the Court's consideration under (a)(4)(B).

So a party may use for any purpose the deposition of a witness, whether or not a party. If the Court finds that the witness is more than 100 miles from the place of the hearing or is outside the United States, unless it appears that the witness's absence was procured by a party offering the deposition. It's really quite simple.

And while I think all of us in the bar are grateful for Your Honor's willingness to hear testimony by Zoom or Webex, just as you did this morning, I can't imagine that Your Honor was somehow amending the Federal Rules of Civil Procedure to require people who lived more than 100 miles away to testify by Zoom.

I think Your Honor has graciously created a manner of convenience for parties which they could seek court approval to obtain. And that's what happened this morning. And we appreciate that. But that doesn't amend the Federal Rule of Civil Procedure to enable parties to require the appearance of witnesses who are more than 100 miles away.

Lastly, I mean, I hear him say they weren't on the witness list, but they were certainly -- this is an exhibit. Here's the thing, Your Honor. We have no desire to call any of these people. This is like -- their testimony here is like a certificate of incorporation. It's used to rebut the idea that information wasn't known to them prior to the date for moving for a new trial.

If they were to come here and testify, Your Honor, if I had done that, what a waste of time and money it would have been because the only thing I would have asked any of them were, "Were you asked this question and did you give that answer" to every one of the depositions that I just provided to the Court? Why would we want people to do that? They had notice. They knew the transcripts were being offered into evidence. They objected on hearsay grounds and lack of designations.

We agreed that this wouldn't be offered for the truth of the matter asserted. We've provided the designations. There's no dispute that there's more than 100 miles away. I'm not looking to procure their absence because I have no interest in them being here. I'm simply offering the transcripts to show what Dugaboy knew or should have known. They sat in the depositions before the time for a new trial.

So I think they're properly coming into evidence. I think Rule 32(a)(4)(B) is unambiguous. I'd ask the Court to

admit into evidence the designations that have been offered.

THE COURT: Hold on, Mr. Morris, before you sit down, let me ask this question. So we've got this issue that's outstanding. After this, there's nothing more that you're -- go ahead and --

MR. MORRIS: Do you want the -- actually, it's the last two exhibits.

THE COURT: Yes, let's go ahead. I'm going to stew over this issue.

MR. MORRIS: Okay.

THE COURT: We're at least at the noon hour. We'll take a recess, but I kind of want to understand what we have left as way of evidence from all parties so that we can properly define the time of our recess.

MR. MORRIS: We'll rest as soon as we're done with these last couple of items. But I do want to emphasize again that Dugaboy contends that they were unaware of certain facts until after the time for a new trial. Our position is the deposition designations provided that information. And so if this were excluded, I'm going to raise the question now, is Dugaboy then able to pretend that they weren't aware of the facts because these transcripts were excluded?

I mean, it's a rhetorical question, but that's really the dilemma here because I think ultimately you wind up with a fraud on the Court. You wind up with a position where they

say, oh, I wasn't aware of facts. And the only reason that we don't have that fact in evidence is because they've objected to a transcript. They shouldn't be then allowed to pretend that they weren't aware of the fact.

But let me move on. Exhibit 77 is the deposition transcript of Mr. Dondero. Now we'll get to (a)(3). We get to (a)(1) and (a)(3).

Rule 32(a)(1) says at a hearing or trial, all or part of a deposition may be used against the party under these conditions. The party was represented. It's used to the extent it would otherwise be admissible. And it's allowed under 32(a)(2) through (a)(8). And we believe it's certainly allowed under (a)(3) because pursuant to the stipulation that was filed with the Court on the eve of trial, Mr. Dondero testified as the agent of Dugaboy. I don't have it handy, but I can get quickly the docket entry. But I believe it was filed on Sunday evening.

You'll see there is a stipulation concerning Mr. Dondero's appointment as the agent for Dugaboy. And it specifically says for all purposes relating to this litigation. And in fact, if you read the transcript, there was some back and forth with Mr. Dondero. I don't want to go there. I just want to say that during that transcript, at a certain point, he stated that he was testifying as Dugaboy's agent. It's reflected in the stipulation.

And therefore, under Rule 32(a)(1), it is a deposition that's being used against a party, in this case Dugaboy, because under (a)(3), Mr. Dondero testified as Dugaboy's agent. And I'm informed, again, grateful for the help, that the stipulation could be found at Docket 4615. That's all I have on that one.

THE COURT: All right. Let me go ahead. I have an offer for admission into evidence Exhibit 77. Do we have any objections?

MR. EDNEY: Your Honor, we have a hearing here that's for purposes of live testimony. I guess we could have had a situation where we just took depositions and then read deposition excerpts into the record. They've made the decision not to call Mr. Dondero in this case-in-chief and keep him to whatever he said in his deposition on May 8th.

I don't think that this is an appropriate use of 32(a)(3) in the context of a witness who's here, a witness that was on their witness list, a witness that could have been questioned by Mr. Morris for relevant purposes. He's chosen not to call him and now wants to put the entire deposition transcript in. I don't think that's appropriate.

THE COURT: Okay. Anything further Mr. Edney?

MR. EDNEY: No, Your Honor.

THE COURT: Okay. Mr. Morris, I'm assuming you want the entire deposition of Mr. Dondero admitted and not just

doing line designations?

MR. MORRIS: That's correct. Just as --

THE COURT: Okay.

MR. MORRIS: Just as Highland is entitled to under 32(a)(1) where it talks about all or a part of the deposition may be used.

THE COURT: Okay. I believe there's one more exhibit?

MR. MORRIS: There is the last one, Your Honor. It's Exhibit 70, which is MacInnis' third declaration. I would say that we're offering it solely as it relates to the metadata issue. And so because that's the live document on PACER. I think -- I'm offering it really, I'll put it this way, for the sole purpose of authenticating Exhibit 300.

THE COURT: Okay. I have an offer for admission Exhibit -- Highland Exhibit 70. Do I have any objections?

MR. EDNEY: 70.

THE COURT: That's my understanding. Highland Exhibit 70.

MR. EDNEY: I have Highland Exhibit 70 as the third affidavit of Margot MacInnis. Is that correct?

MR. MORRIS: That's exactly right, Your Honor. That's the one where if you follow the instructions on Exhibit 300, you'll find the metadata. And so we want it admitted into evidence because it's on the Court's docket. We're offering it

into evidence for the singular purpose of authenticating Exhibit 300.

MR. EDNEY: Your Honor, I mean, they could have laid a foundation for that when they were questioning Ms. MacInnis both as to authenticity and relevance and moved its admission then. But again, I don't think that there's this overtime period with respect to the admission of exhibits that were relevant to Mr. Morris' cross-examination. And we would object to the admission of it now.

THE COURT: Thank you. All right. Mr. Edney, while I have you up there, how many rebuttal witnesses are we expecting?

MR. EDNEY: Three, Your Honor.

THE COURT: Okay.

MR. EDNEY: Ms. Bannon, Ms. MacInnis, and Mr. Dondero.

THE COURT: Okay. Mr. Morris, are you -- I'm assuming you will just have cross on those witnesses?

MR. MORRIS: Yes. To be clear, subject to the Court's decision on those last handful of documents, Highland rests. We are very mindful now of what the scope of our case-in-chief is due to Mr. Seery's testimony. And it is the cross-examination by Mr. Reed of Mr. Patrick. And we're going to be keeping an eye to make sure that rebuttal is not reduced to cleanup and (indiscernible). But on that basis, I believe

relatively (indiscernible). I see absolutely no reason why we can't conclude this trial today.

THE COURT: Okay.

MR. EDNEY: Your Honor, if I may, I'm sorry. I'm sorry to do this. I know Your Honor hasn't ruled on it yet, but the Exhibit 77. I do note, this is the deposition transcript of Mr. Dondero, I do note that that particular rule applies to -- this is 31(a)(3), I believe, applies to witnesses that were testified in a 30(b)(6) capacity or a 31(a)(4) capacity.

I do note that Mr. Dondero was not noticed in that capacity. I mean, we know what a 30(b)(6) deposition is where somebody needs to get prepared with all the information of the organization and come ready to testify. And that was not the notice that we received from Opposing Counsel. So I do not believe that 31(a)(3) applies in this particular instance. And we would elaborate our objection to Exhibit 77 on those grounds.

THE COURT: Okay. All right. Here's what we're going to do. We're going to take a recess. I'm going to look at these last exhibits, the issues raised. We'll reconvene at 1:30. That will give plenty of time for lunch, but it will also give time for the Court to take a look at these last exhibit issues. So with that, we'll be in recess until 1:30.

THE CLERK: All rise.

(Recess at 12:05 p.m., recommencing at 1:38 p.m.)

THE CLERK: All rise.

THE COURT: You may be seated.

All right. The Court is back on the record in the Highland Capital Management case, Case Number 19-34054. Prior to the Court's recess, we had the offer for admission into evidence Exhibits 55, 56, and 57 with objections raised by Counsel for the Movant Dugaboy.

Based upon Rule 32(a)(4), the Court finds that these deposition transcripts can be admitted into evidence for limited purposes provided as well as not being for the truth of the matter asserted. So the Court will admit each of those exhibits into evidence based on the page and line designations that were provided to the Court on the record.

(Debtor's Exhibits 55, 56, and 57 admitted into evidence)

THE COURT: All right. I've got some questions I want to follow up with on Exhibit 77 which is the deposition of Mr. Dondero.

So Mr. Edney, if you'll please come to the podium.

MR. EDNEY: Yes, Your Honor.

THE COURT: All right. So as I understand it, Highland had subpoenaed both Mr. Dondero as well as the Dugaboy Investment Trust for a deposition. There was a stipulation between the parties, as I understand it, in which Ms. Dondero stipulated and stated that basically she's ceded, for lack of a

better way to put it, all of the duties that she would have as a trustee to Mr. Dondero for purposes of all this litigation.

So in response to the subpoena to Dugaboy Investment Trust, who was produced to respond or to answer the deposition?

MR. EDNEY: Your Honor, I would -- just to back up a little bit, I would clarify something. I believe that Highland issued subpoenas to Mr. Dondero and --

THE COURT: Correct.

MR. EDNEY: -- to Ms. Dondero. They never issued an organizational subpoena to the Dugaboy Investment Trust.

THE COURT: They issued the subpoena to Ms. Dondero as the Trustee of the Dugaboy Investment Trust.

MR. EDNEY: They issued the subpoena to Ms. Dondero because she was the Trustee of the Dugaboy Investment Trust.

THE COURT: Correct. And that's who has to receive service.

MR. EDNEY: No. Your Honor, I mean I think the key clarification here is they're seeking Ms. Dondero's testimony in her personal capacity as a percipient fact witness because she had a role with the Dugaboy Investment Trust. As I understand it, Highland never issued an organizational subpoena to the Dugaboy Investment Trust. And parties do that, right? We could have done it. we could have issued a 30(b)(6) deposition notice to Highland. They could have issued an organizational deposition to us. They could have issued a

30(a)(4) deposition based on written question to the organizations. That didn't happen.

We all had some witnesses that we thought might have relevant testimony, and Mr. Morris and I reached an agreement to narrow the list of depositions given the time we had to do them down to two. As a part of that, I stipulated that Mr. Dondero was acting, was the agent for the Dugaboy Investment Trust for various --

THE COURT: Okay, thank you.

MR. EDNEY: -- various matters.

THE COURT: All right, thank you. That's what I needed to hear. So the Court has before it the offer for admission of Exhibit 77, which is the deposition of Mr. Dondero. Based on Rule 32(a)(1) and (a)(3), the Court does allow the admission of Exhibit 77 into evidence as the testimony or deposition of a party opponent. Dugaboy Investment Trust is obviously an adverse party to Highland Capital Management.

(Debtor's Exhibit 77 admitted into evidence)

THE COURT: All right. I believe that leaves now Exhibit 70, if I'm correct, which is the exhibit or Ms. MacInnis' third declaration and found at Exhibit 70. I am going to sustain the objection to the admission of that exhibit and not allow the admission of Exhibit 70.

So those are the rulings of the Court regarding those

exhibit issues or evidentiary issues on exhibits.

I believe with that, Mr. Morris, you all have rested your case-in-chief?

MR. MORRIS: That's -- we have rested subject to Your Honor's rulings. I've heard what the Court has to say. I think there's just one more, Exhibit 300.

THE COURT: Correct, and I've reserved that.

MR. MORRIS: Okay.

THE COURT: So --

MR. MORRIS: Fair enough. Then Highland rests, Your Honor.

THE COURT: All right. So Mr. Edney, if you want to call your first rebuttal witness.

MR. EDNEY: Yes, Your Honor. Just two housekeeping matters. In the cross-examination of Mr. Seery, I used the amended exhibit list of Highland in advance of the June 25th, 2025 9019 hearing. I'd like to move the admission of that exhibit list.

THE COURT: Okay. Can you give me the docket number?

MR. EDNEY: Yes, Your Honor.

THE COURT: Because this is one that was not on your witness and exhibit list and I don't have an actual physical exhibit, do I?

MR. EDNEY: Yes, Your Honor. It's Docket Number -- bear with me for just a moment. It's Docket Number 4280, Your

Honor.

THE COURT: Okay. And this was the witness -- Highland's witness and exhibit list for the actual 9019 hearing, correct?

MR. EDNEY: Yes, Your Honor.

THE COURT: Okay. And what are we calling this exhibit? What would this be? What number are we on?

MR. EDNEY: Why don't we make it Dugaboy Exhibit 300, Your Honor.

(Movant's Exhibit Number 300 marked for identification)

THE COURT: Okay. I have an offer for admission into evidence what's being called Dugaboy Exhibit 300, which is found at Docket Number 4280, which is Highland's witness and exhibit list for the 9019 hearing held on June 25th of 2025.

MR. MORRIS: The only question I have, Your Honor, is whether the exhibits are also going to be admitted into evidence or just the witness and exhibit list.

MR. EDNEY: No, Your Honor, we're only seeking admission of the exhibit list.

THE COURT: Okay.

MR. MORRIS: No objection, Your Honor.

THE COURT: All right. Dugaboy Exhibit 300 will be admitted.

(Movant's Exhibit Number 300 admitted into evidence)

MR. EDNEY: Your Honor, finally, in light of the

Court's ruling with respect to the admission of Mr. Dondero's deposition, I do have a question about whether we are now regarding Mr. Dondero as having been called to provide testimony in this proceeding, such that I may question him for any purpose.

THE COURT: Well, I think that you can cover anything in rebuttal that's in his deposition.

MR. EDNEY: Right, Your Honor. In or --

THE COURT: And anything that's been put -- I mean, it's part of their case-in-chief, so you're entitled to do the rebuttal examination on anything that's within the deposition as well as any evidence that was part of their case-in-chief.

MR. EDNEY: Right. I note that on May 8th, we did designate as our own witnesses any witness that has been called by the other side. And previously, when we were arguing about this, Mr. Dondero was not called, but now there's been an offer of his testimony effectively calling him, albeit in a written form.

THE COURT: I'm sorry. Give me one moment. We have a technology issue that I now need to address. Forgive me for that.

(Pause)

THE COURT: Okay. Now the response?

MR. STANCIL: Yes, Your Honor. I think that's incorrect to say that because the deposition was admitted for

the limited purposes that Your Honor identified it, including not for the truth of the matter asserted, that it would be treated as if Mr. Dondero had been called in the case-in-chief as a live percipient witness.

Mr. Edney secured a limiting instruction on its admission. He is not a witness. It's in the same way that every author of every document admitted in our case-in-chief isn't treated as a witness.

THE COURT: Okay. I want to make sure, Mr. Stancil, I'm understanding your objection. What you all are seeking to have the purpose of Mr. Dondero's deposition admitted. I just heard you state that you are only seeking to have the deposition admitted not for the truth of what's asserted in the deposition?

MR. STANCIL: That's how I understood, Your Honor's limiting instruction allowing it to come in for the limited purpose.

THE COURT: Well, I limited that for 55, 56, and 57. Those were specifically stated as those were being sought to be admitted not for the truth of the matter asserted. Is that -- you all are also only wanting Exhibit 77 to be admitted for the purpose of -- or not for the truth of the matter asserted?

MR. STANCIL: Correct. It's to show that questions were asked and answers were given. Whether those answers were correct or not correct is not -- that would be, if we were

trying to say this is a correct statement, that would be for the truth of the matter asserted. If it were this question was asked and this answer was given, historically, that is a -- that's a different matter.

I grant, Your Honor, that it's a nuance, but I think it's an important one.

THE COURT: Okay. All right. Well, let me make sure the record is clear, then. The Court is only admitting Exhibit 77, which is the deposition of Mr. Dondero, not for the truth of the matter asserted and only for the evidence that a deposition was taken and questions were asked and answered.

So, I guess, Mr. Edney, I'll come back to you on this.

MR. EDNEY: Okay, Your Honor. Thank you, Your Honor. If the deposition is admitted for that limited purpose, then I withdraw my request for clarification.

THE COURT: Okay.

MR. EDNEY: Thank you, Your Honor.

THE COURT: All right. It's still your rebuttal witness, Mr. Edney.

MR. EDNEY: Thank you, Your Honor. The Movant calls Lucy Bannon. And my colleague, Ms. Stolley, will be taking questioning.

THE COURT: Okay.

MR. EDNEY: Thank you, Your Honor.

THE COURT: Okay. Ms. Bannon, before you have a seat, my law clerk will swear you in again.

LUCY BANNON, MOVANT'S REBUTTAL WITNESS, SWORN

THE COURT: You may proceed, Ms. Stolley.

MS. STOLLEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. STOLLEY:

Q Good afternoon, Ms. Bannon.

A Good afternoon.

Q You testified in this hearing on May 10th. Is that correct?

A Correct.

Q And since then, have you had an opportunity to review Mark Patrick's testimony, which was on May 12th?

A I have.

Q Do you recall in reviewing that testimony, Mr. Patrick referring to discretionary economic beneficiaries and specifically labeling the supporting organizations as discretionary economic beneficiaries?

A I do.

Q Are you familiar with that term?

A I am now, after reviewing the testimony.

Q Is that the first time that you became familiar with that term?

A I may have seen it sometime over the last six months but

was not really aware of it until reviewing it several times in the transcript.

Q Now, just as a brief reminder, can you identify who are the supporting organizations that we're discussing here?

A The supporting organizations are the Highland Kansas City Foundation, the Highland Dallas Foundation, and the Highland Santa Barbara Foundation.

Q And what is your role? We spoke last week about your role as Chief Communications Officer, but do you also have a role in respect of the supporting organizations?

A Yes, I am officer of all three of these supporting organizations.

Q In your experience, does the term "discretionary economic beneficiaries" relate in any way to the supporting organizations?

A No, that's not an accurate description of the supporting organizations or a term that's used in the philanthropic world.

Q And how so? I mean, why is it inaccurate to use in that context?

A So, it wrongly suggests that Mr. Patrick, in his capacity as GP, has discretion over who the economic beneficiaries of the DAF assets are, i.e., what charities the DAF Entities support. And that is not within his discretion.

Q Now, just following on that term "discretionary," is it correct, as Mr. Patrick testified, that the term

"discretionary" meant that he could swap out the supporting organizations at any time at his discretion?

MR. MORRIS: Objection, Your Honor. No foundation.

THE COURT: I'm sorry, state --

MR. MORRIS: She's asking her --

UNIDENTIFIED SPEAKER: Legal conclusion.

MR. MORRIS: Yeah, it's a legal conclusion.

THE COURT: I'll overrule the objection.

BY MS. STOLLEY:

Q Do you need me to repeat the question?

A Yes, please.

Q Is it correct, as Mr. Patrick testified, that the term discretionary meant he could swap out the supporting organizations at any time at his discretion?

A That was his believe and his testimony, but that was not an accurate characterization of his discretion.

Q Why not? I mean, in what way is it not?

A So, the supporting organizations are the indirect charitable owners of the DAF assets via their equity ownership in the -- in Charitable DAF Holdco, which is the LP of the DAF Fund.

Mr. Patrick, in his capacity as general partner of that fund, does not have the discretion to determine who the actual economic beneficiaries of the assets are and does not have the discretion to change those indirect charitable owners. Doing

so would be wholly inconsistent with his fiduciary duties to the supporting organizations.

In his capacity as GP to the DAF Fund, which are the indirect charitable owners, and in his capacity as managing member of the Charitable DAF Holdco, for which the supporting organizations are the participating shareholders.

MR. MORRIS: Your Honor, I move to strike the reference of breach of fiduciary duty. I don't think this witness is qualified to make legal determinations as to whether or not somebody breached their fiduciary duties.

THE COURT: Any response, Ms. Stolley?

MS. STOLLEY: I could rephrase the question. Would it be inconsistent with his role?

THE COURT: Hold on one second. Let me rule on the objection. So, if you have no response, I'm going to strike any part of the testimony that references that that would be a breach of his fiduciary duties. If you'd like to rephrase the question or ask another question, you may.

BY MS. STOLLEY:

Q Ms. Bannon, you're familiar with the agreement that memorializes the fund, is that correct, the Charitable --

A Yes.

Q Okay. What you just described, aside from what you categorized as breach of fiduciary duty, would what you just described be inconsistent with what is written in that

agreement?

A Yes.

Q Now, as indirect charitable owners, did the supporting organizations typically seek distributions from the DAF?

A Yes. The supporting organizations would seek distributions as indirect charitable owners related to grant making activities and distributions would fund those grants as well as other operating expenses.

They also received routine recurring distributions that are often related to known pre-determined fees, and those were not distributions that were proactively sought by the supporting orgs that were just delivered to them on a recurring basis.

Q Now, Mr. Patrick also testified that all of the distributions from the DAF to the supporting organizations were entirely at his own discretion. Is that consistent with your experience and understanding?

A No.

Q Please explain why not.

A So his discretion over distributions related to the process and, again, was within the confines of fiduciary application he had to the supporting organizations.

So he would have been required to balance the cash, the status of the funds, liquidity, other things like that, with the charitable needs of the supporting organizations as

indirect charitable owners, other operating fees and expenses. And that would be the capacity that he would have discretion over distributions.

He would not have discretion over whether the indirect charitable owners, i.e., the supporting organizations, are entitled them.

MR. LEVY: We, again, object and move to strike to the extent that the testimony opines on Mr. Patrick's fiduciary defense as a legal conclusion.

MS. STOLLEY: I disagree that that's a legal conclusion, Your Honor. I think that she's testifying within her ken, based not only on the agreement but her experience within the supporting organizations.

THE COURT: I'm going to overrule the objection or the motion to strike.

BY MS. STOLLEY:

Q Have any of the supporting organizations received any distributions from the DAF Fund since the end of 2024?

A No.

Q Now, Mr. Patrick also testified that the assets of the DAF are owned by the general partner rather than by the supporting organizations that were the participation shareholders. Is that consistent with your understanding of how the DAF was structured?

A No. The supporting organizations are the indirect owners

of the DAF assets, and that refers to Charitable DAF Holdco and the Charitable DAF Fund and the underlying assets there. And that ownership was through their equity ownership in the Charitable DAF Holdco.

Q Are there any documents or is there a particular document that conveys this information?

A The Charitable DAF Fund Limited Partnership Agreement outlines that ownership.

MS. STOLLEY: If you could pull up Exhibit Number 5 in evidence, Dugaboy's Exhibit Number 5.

BY MS. STOLLEY:

Q And is this the amended and restated exempted LPA of Charitable DAF Fund LP that you were just referencing?

A Am I supposed to see it on the screen?

Q Yes.

A Okay.

Q I'll be more patient, sorry.

A Yes.

MS. STOLLEY: Now if we could scroll down to Page 3, top of Page 3 of the document. At the top, it should say 7 of 22. There we go.

BY MS. STOLLEY:

Q Starting with the word "except," can you please read that, Ms. Bannon?

A "Except as otherwise expressly provided in this agreement,

the general partner is hereby granted the right, power, and authority to do on behalf of the partnership all things which, in the general partner's sole discretion, are necessary or appropriate to manage the partnership's affairs and fulfill the purposes of the partnership, provided, however, that the partnership's assets and investments shall be for the benefit of the limited partners and not for the economic benefit of the general partner."

Q Can you define implications of that particular section, specifically the last phrase, "for the supporting organizations?"

A So, for the supporting organizations, the DAF Fund assets and investments must be managed for their benefits, benefit as the intellectual owners, and benefits through their equity ownership in the limited partner referred to here, which is Charitable DAF Holdco.

Q And in connection with that, what are the implications of this section, specifically that phrasing, for Mr. Patrick?

A As the general partner, he must manage the assets and investments for the supporting organizations' benefits.

Q Now, you're aware that there is a second amended LPA, correct?

A Yes.

Q And did you have a chance to review that agreement?

A I did.

Q And are the -- is it the same language in the second amended LPA?
A Yes.
Q And so the implications are the same, correct?
A Correct.
Q Now, beyond the LPAs, is there any other documentation that captures or reflects the ownership interests of the supporting organizations?
A So, there are several documents. The Form 990s that the supporting organizations file annually would reflect ownership, as well as other documents related to supporting organization fees that are calculated based on ownership of assets.
Q Okay, I want to show you what has been marked as Dugaboy's Exhibits 292 through 297. And why don't we start with 292? We might need to scroll down, Ms. Bannon, but do you recognize what this is?
MS. STOLLEY: Can you scroll down to Page -- keep going. There you go.
THE WITNESS: This is --
MR. LEVY: Where are these located The last exhibit list we saw only went through 291, the sixth amended exhibit list.
MS. STOLLEY: These are rebuttal exhibits.
MR. LEVY: So, these are exhibits that have not been provided to us before and have not been disclosed to us before?

MS. STOLLEY: Well, the 20 -- correct, they're rebuttal evidence exhibits.

MR. LEVY: Okay.

MS. STOLLEY: But when we get to the 2024 990s, I believe you marked those in evidence under different exhibit numbers, but we are providing a complete version.

MR. STANCIL: Can we see the whole document?

MS. STOLLEY: It's 410 pages long, so we don't have --

THE COURT: Is this the only way we have them, electronically?

MS. STOLLEY: Yes.

THE COURT: Okay. I mean, they have the right to see the document.

MS. STOLLEY: We're only referring to a couple of sections of it. Given that they admitted the 2020 -- not admitted, but they offered the 2024 990s for all three supporting organizations as exhibits for themselves, albeit they limited just the report itself with none of the exhibits, they're clearly familiar with the documents.

MR. STANCIL: Your Honor, what we don't know is what sections she's not referring to. I mean, this may be nothing, but we just need to know what is and isn't being referred to. And if there are portions that are not being referred to that are probative, we would -- that's why we need the document.

MS. STOLLEY: We can provide electronically the documents. But again, this is a publicly accessible document.

MR. STANCIL: There are a lot of publicly accessible documents, Your Honor, that --

MS. STOLLEY: But we're talking about this document.

MR. STANCIL: -- we're not trying to memorize before court.

THE COURT: So, these are 2023, these are the Form 990s?

MS. STOLLEY: Yes, Your Honor.

THE COURT: Okay.

THE WITNESS: It looks like the extension page is up on the screen. Yeah, that's the cover.

MR. LEVY: Can we make this bigger?

UNIDENTIFIED SPEAKER: Is it possible to --

MR. LEVY: Yeah. It's 15 percent.

THE COURT: And what exhibit in Highland (indiscernible)? It's another one of these.

MS. STOLLEY: Let me ask my team the specific exhibit number.

(Pause)

MS. STOLLEY: So, Exhibit 90 is the excerpted Form 990 for Highland Santa Barbara Foundation and 91 is Highland KC and 92 is Highland Dallas Foundation.

MR. STANCIL: Those are the portions or the

(indiscernible)?

MS. STOLLEY: Those are -- I believe they're just the report. What we could do, Your Honor, is just offer as evidence the three pages that we're discussing. I mean, this is a public record. It's not like we're hiding anything that's in the Form 990. But we're going to be focusing on a total of four pages, I believe, or three pages in each of the 990s.

MR. STANCIL: Your Honor, we'd be happy to just reserve our objection until we find out what questions they're going to ask. I don't want to slow us all down if this is a nothingburger.

THE COURT: Yeah, I mean, right now, you can continue with your questions. Obviously, as best as you can -- I'm sorry, I don't recall your last name.

MS. STOLLEY: Stolley.

THE COURT: But as best as you can -- your last name (indiscernible) whose controlling the exhibits.

MS. STOLLEY: Oh, sorry.

THE COURT: If you can make sure that the party can see all of the exhibit as you scroll through it, that would be greatly appreciated. Okay.

MS. STOLLEY: Thank you, Your Honor.

BY MS. STOLLEY:

Q So let's start with 292, which is on the screen. Can you tell us what this is, Ms. Bannon?

A This is the Form 990 filed by the supporting organization, the Highland Kansas City Foundation, for the calendar year 2023.

Q And would you have seen this document in the ordinary course of your work?

A Yes.

Q And when I say your work, not necessarily as Chief Communications Officer, but rather as an officer of the supporting organizations. Is that right?

A Yes.

Q If you could go to -- oh, sorry about that. Before your testimony today, did you have the opportunity to review not only this, but the other five documents?

A Yes.

Q Specifically the portions that we're going to ask questions about.

A I was going to say not all 400-some pages, but.

Q No. Right.

A Yes.

Q But specifically the pages we will talk about. And to your understanding, are they fair and accurate copies of the Tax Form 990 for each of the supporting organizations for 2023 and 2024?

A Yes.

MS. STOLLEY: At this time, I would like to admit the

exhibits into evidence, or we could just do the specific pages and do that instead.

MR. EDNEY: Do you want to ask some questions (indiscernible). Ask questions about it.

MS. STOLLEY: Okay. I'll ask questions about it.

THE COURT: Yeah. I mean so far, all we've seen is what I believe is 292 and one part of it. So --

MS. STOLLEY: So -- I'm sorry, Your Honor. I cut you off. I apologize.

THE COURT: Go ahead. You can ask the witness questions.

BY MS. STOLLEY:

Q Can you explain for us briefly what a Form 990 is, Ms. Bannon?

A So a Form 990 is a regulatory filing that tax-exempt organizations file with the IRS as part of their reporting requirements. And it also serves as a public disclosure document for public charities to provide transparency into the organization's operations, assets, investments, governance, grant-making, and other activities.

Q And do you play a role in assisting at all the supporting organizations in respect of their Form 990s?

A Yes. Me or my team would participate, often providing records or a compilation of grant-making activities and then other information in coordinating the extensive work that goes

into filing these.

Q And who prepared the Tax Form 990 for Highland Kansas City Foundation?

A It would be provided by a tax and accounting firm in this case, Deloitte.

MR. LEVY: We object as beyond the scope of our model. We didn't put in any testimony about any of these issues. It's not clear what this is rebutting.

MS. STOLLEY: I'm about to get to the point.

THE COURT: I'm going to overrule the objection with no prejudice. Please do get to the point.

MS. STOLLEY: Yep, right now.

BY MS. STOLLEY:

Q Ms. Bannon, where in the 990 is there information about Highland Kansas City Foundation's ownership of assets in the DAF?

A So, ownership would be reflected in several places, but one of the first instances and clearest would probably be on this first page where the total assets are listed probably down on Row 20 or net assets on 22.

Q Okay. And where would you find the disclosure of net assets? That's the total assets line that you're talking about?

A Yeah, net assets Line 22.

Q 22. And what is the number listed there?

A At the end of the year, $91,007,570.
Q And what does that number represent?
A That represents assets held by the Highland Kansas City Foundation and, in this case, directly proportionate to their ownership in the DAF assets.
MR. STANCIL: Objection, Your Honor. I think now she's opining on tax law and on the legal conclusion of who owns what. There's no foundation that she's qualified to make any statement as to what that number represents as a legal matter.
THE COURT: I'm going to overrule the objection.
MS. STOLLEY: Thank you, Your Honor.
BY MS. STOLLEY:
Q And you said the assets were the participation shares of Charitable DAF Holdco?
A Yes. That reflects their assets in the DAF Entities via the participation shares held by Highland Kansas City Foundation in CLO or in Charitable DAF Holdco.
Q Now in this same 990, is there anywhere else where you would find evidence of ownership?
A Probably it would be in several other places, including in investment disclosures as well as interest disclosures and form corporations. So those would be at Form 5471. And it would appear there, given the Charitable DAF assets Cayman Islands location. So that would have a trigger a foreign corporation

disclosure.

Q So can we turn to Page 255 of this exhibit? Is that the Form 5471 that you were referencing?

A Scroll up to the top.

MR. STANCIL: Your Honor, I think we have to renew out objection, please.

THE COURT: Yeah. They haven't had a chance to even see this exhibit. You're going through it. While I see it's 400 and something pages long, the parties are entitled to receive the exhibit that you're going to be using as a rebuttal exhibit. And you haven't done that.

MS. STOLLEY: As I said, we can send it to them electronically. And we're discussing three pages in here, and it goes directly --

THE COURT: You're asking not only them but the Court to sift through 400 pages for you all to talk about three pages? I'm going to sustain the objection, okay.

MS. STOLLEY: What you could do, Your Honor, is just lift out those three pages. I mean, they --

THE COURT: I'm going to sustain the objections of the Exhibits 292 through 297 and not allow them to be admitted in evidence. If you want to ask Ms. Bannon questions regarding what she understands the assets of the DAF to be in 2024, you're welcome to do that. But you haven't provided these exhibits to Opposing Counsel and that's required for them to be

admitted into evidence.

MS. STOLLEY: Understood. I understood it because it was a publicly filed document that is accessible. Got it.

BY MS. STOLLEY:

Q So in your understanding, Ms. Bannon, in assisting the supporting organizations to file these public disclosures each year, is part of the disclosure determining the level of their ownership in the Charitable DAF Holdco assets?

A Yes. One of the most important components of the disclosures and Form 990 is the disclosure of assets by the disclosing organization. So in the instance of Highland Kansas City, one of the supporting organizations, it would disclose its ownership in the Charitable DAF Entities and Charitable DAF Fund. And there are references throughout the 990 to its ownership. As I mentioned, the mere fact that it's filing Form 5471 indicates interest or ownership in Charitable DAF Holdco, which is explicitly referenced in those forms.

Q And is that true of all three of the supporting organizations?

A So the participation shares of Charitable DAF Holdco would appear identically across Highland Kansas City, Highland Santa Barbara, and Highland Dallas Foundations, given they each own 100 percent participation shares. Highland Dallas Foundation, however, owns other assets, unlike the other two supporting organizations where those are the primary assets of the

supporting organization.

So Highland Dallas Foundation's Form 990s would look a little different, just because there would be additional assets reported.

Q But they would still contain something about the Holdco assets?

A Correct.

Q And when we talk about the DAF Holdco assets, are we talking about the $270 million in assets that have been discussed throughout this hearing?

A Yes.

Q Are you aware of whether -- or actually in your understanding, would Mr. Patrick have received those, the 2023 or 2024 990s?

A Yes. And would be a part of the filing, especially in his position as GP of the Charitable DAF Fund.

Q Now you mentioned, in addition to the 990s, you mentioned fees that show ownership interest through the supporting organizations?

A Correct.

Q Can you explain what those fees are?

A So the supporting organizations, in their operating agreements with their supported organizations, which are the community foundations, all include some kind of fees owed to the community foundations in exchange for the services they

provide to the supporting organizations. And in each instance, those fees are based on ownership of assets at the supporting organization level.

Q And what do those fees prove as it relates to that ownership interest?

MR. LEVY: We object, again, based on scope. There was no testimony at all used in the case-in-chief about these fees. This is not proper rebuttal testimony.

THE COURT: Any response?

MS. STOLLEY: Your Honor, we are directly rebutting Mr. Patrick's repeated claim that he had sole ownership of the assets.

MR. LEVY: Mr. Patrick never testified that he had sole ownership, and there was no testimony at all about fees or ownership or control of the assets during our case-in-chief. This is a continuation of their --

THE COURT: Okay.

MR. LEVY: -- Dugaboy's case-in-chief and not proper rebuttal.

THE COURT: All right, thank you. I'm going to overrule the objection. Ms. Stolley, please focus the questions. We seem to be getting afar off from where we need to be going. We're getting close to basically having Ms. Bannon testifying as if this is your case-in-chief. This is a rebuttal. Please keep the questions to rebuttal, please.

MS. STOLLEY: Your Honor, if I could be heard, just about the scope of rebuttal.

THE COURT: Okay. Go ahead. I'm listening.

MS. STOLLEY: It is our position that we're permitted this type of rebuttal as opposing evidence because Mark Patrick was a hostile witness and is a representative of a party opponent.

THE COURT: But you're still really giving a rebuttal to what was presented in their case-in-chief. You had an opportunity to cross-examine Mr. Patrick, as well as call his view in your case-in-chief to put on evidence of these things.

So I understand that you're certainly allowed to ask her a question here on things that Mr. Patrick testified to that you would like to rebut. I don't believe Mr. Patrick testified to this extent as to Form 990s.

If you want to ask her questions about the assets of DAF, what they were, whether or not the DAF, whether or not he had the right to designate other beneficiaries, remove beneficiaries. Okay, but I believe we're getting to the point where we're going beyond what rebuttal is around.

BY MS. STOLLEY:

Q Okay, just a few more questions, Ms. Bannon. We spoke previously --

MS. STOLLEY: Just a minute, Your Honor, I'm sorry. If I could say one final thing, if it's okay, Your Honor.

THE COURT: Go ahead.

MS. STOLLEY: Okay. We talked about Mr. Patrick's testimony, Ms. Bannon.

THE COURT: Okay, hold on, Ms. Stolley. Are you directing this to me or to the witness?

MS. STOLLEY: No, Ms. Bannon. Excuse me.

THE COURT: Okay. Sorry, I thought you were wanting me to say that you had something still to say to me.

MS. STOLLEY: Oh. Well, this does contradict what Mr. Patrick testified about, which is that he is the owner and the controller of the assets and that he has the discretion to essentially issue dividends or not, as was his whim, that he could swap out the charitable organizations at his whim. And we are rebutting that particular testimony that it is clear that the supporting organizations do in fact have an ownership interest in the assets of the Charitable DAF Holdco.

THE COURT: Okay. Have a seat, Mr. (indiscernible).

Okay. I'm going to allow you to question the witness to rebut testimony and evidence. You've already asked Ms. Bannon whether or not she believes, or it's her understanding, if Mr. Patrick had the right, unilaterally, is my term, unilaterally to move the DAF assets, as has been stated, to a different entity. But the target has been announced. I mean, we've already covered this. What I'm getting at is we've got limited time here. We seem to be

beating the same horse.

MS. STOLLEY: Okay.

BY MS. STOLLEY:

Q Okay. Has Mr. Patrick authorized the distribution of the fees that we just discussed to the supporting organizations consistently?

A Yes. Those were part of the proactive recurring fees that were issued to the supporting organizations on an ongoing basis without their request, part of kind of predetermined calculation.

Q And when was the last time any of the fees were distributed to the supporting organizations?

A The third quarter of 2024.

MS. STOLLEY: If I could have just a moment, Your Honor.

THE COURT: That's fine.

(Pause)

MS. STOLLEY: Nothing further, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Hi, Ms. Bannon.

A Hello.

Q When did you become an officer of the supporting organizations?

A In the fall of 2004.
Q Okay. It's your view that Mr. Patrick did not have the right, I think, to use your term to swap out the economic beneficiaries. Do I have that right?
A Correct.
Q When did you learn that he had done that?
A When he had, which part of it? When he had changed the general partner, changed the -- inserted an entity in the structure, issued the diluted participation shares?
Q Whatever you mean when you use the phrase, swap out the economic beneficiaries. When did you say that's what he did?
A We put the pieces together over some time. I can't point to a specific date as to when it was abundantly clear that the supporting organizations that were the rightful, indirect charitable owners had been replaced by DFW Charitable because there have been several other changes in the organizational chart prior to that that facilitated that change.
Q You certainly knew it before the hearing on the 9019 motion, right?
A I can't speak to that exact date.
Q Are you familiar with the petition for court supervision in the Cayman Islands that was filed by the supporting organizations?
A Yes.
Q Is it one of the reasons they sought court supervision,

because Mr. Patrick had allegedly swapped out the economic beneficiaries?

A They sought court supervision for a number of suspicions and reasons, including recognition that that first GP change had been made, among other things.

Q Okay. So you would agree that before the 9019 hearing, the supporting organizations were aware of the swap?

A The supporting organizations were, again, aware of changes that removed a lot of the economic benefits of the structure to them. Again, I can't speak to the specifics of what exactly they were aware of at that time.

Q What do you mean a lot of the economics? Didn't it swap out all of it?

A Well, at one point, there were the diluted participation shares issued to the new charity. At one point, then, there was the liquidation of the partnership. That gave minimal economics to the supporting organizations I think far detached from the actual value. But removed all the economics is not necessarily an accurate characterization.

Q When you talk about the supporting organizations, you're only talking about Highland Dallas Foundation, Highland Kansas City Foundation, and Highland Santa Barbara Foundation, correct?

A Correct.

Q And none of those entities ever had a participation

interest in Hunter Mountain or any affiliate of Hunter Mountain, correct?

A Not directly.

Q And not indirectly. Is that right?

A Well, they would have through the Charitable DAF Holdings I believe is the correct entity name, that was a part of the DAF org chart in 2022.

Q They don't have participating shares in the entity that directly or indirectly owned Hunter Mountain, correct?

A The only participating shares they hold is in Charitable DAF Holdings. And then through those participating shares, they have the LP interest in a structure that then ultimately flows down to Hunter Mountain under Charitable DAF Holdings as one of the subsidiaries.

Q How come the supporting organizations didn't object to Highland's settlement?

MS. STOLLEY: Objection.

MR. MORRIS: Okay. Withdrawn.

BY MR. MORRIS:

Q The supporting organizations did not object to the Highland --

MS. STOLLEY: Objection.

THE COURT: Let him finish this question.

BY MR. MORRIS:

Q Ma'am, the supporting organizations did not object to the

settlement agreement that was proposed last June, correct?

MS. STOLLEY: Objection, Your Honor.

THE COURT: Basis?

MS. STOLLEY: This is far outside the scope of my rebuttal.

THE COURT: Response?

MR. MORRIS: She testified that Mark Patrick couldn't swap out the entities, and I'm establishing that the supporting organizations knew full well that that's exactly what he had done prior to the hearing, and yet the supporting organizations were nowhere to be found.

THE COURT: I'm going to overrule the objection.

MS. STOLLEY: May I be heard, Your Honor?

THE COURT: Go ahead.

MS. STOLLEY: One has nothing to do with the other. I mean, the fact that she said that he doesn't have the control or the power to swap out the economic beneficiaries does not then lead to whether the supporting organizations agreed with the settlement.

THE COURT: Okay. I've overruled the objection. You may proceed.

BY MR. MORRIS:

Q The supporting organizations did not object to the settlement between the HMIT Entities and the Highland Entities, correct?

A No, they did not issue any objection at the hearing.
Q Okay. Is it your understanding that Crown Global had a limited partnership interest in the entity that indirectly owned Beacon Mountain?
MS. STOLLEY: Objection, Your Honor. Outside the scope.
MR. MORRIS: This is the exact same theory, Your Honor. What I'm looking to establish is that the testimony we just heard about the supporting organizations is actually completely irrelevant to HMIT and to the settlement.
THE COURT: Okay. I'm going to overrule it but, again, I'm going to give you the same instruction. Let's stick to what we need to accomplish here. I don't want to go far afield.
MR. MORRIS: Fair enough.
THE WITNESS: Could you repeat the question?
MR. MORRIS: No. I'll try.
BY MR. MORRIS:
Q You testified about the DAF agreement, the Limited Partnership Agreement, right?
A Correct.
Q That's an agreement that was known to you and to the supporting organizations before last June, correct?
A Correct.
Q And the Form 990s were known to you and the supporting

organizations before last June, correct?
A Let's see. The 2024 would have been filed in November of 2025.
Q But Form 990s were generally available to you guys, right?
A Which ones specifically?
Q The ones that you just referred to.
A So the 2024 Form 990s would not have been because they did not get filed until November of 2025.
Q You said that you weren't familiar with the phrase "discretionary economic beneficiaries." Is that right?
A Not until testimony last week. Again, I may have read it but didn't necessarily register as a significant or common term.
Q You're not a lawyer. Is that fair?
A No. No.
Q No part of your job responsibilities has to do with giving legal interpretation of documents. Is that fair?
A No.
Q Is that fair?
A Yes, that's fair.
Q Okay. And you know the Cayman Islands Court issued a decision in February relating to the supporting organizations.
A I'm aware of that as well as subsequent decisions on some of the same matters.
Q Are you aware that the Cayman Islands Court actually used

the phrase "discretionary beneficiaries?"
A I am aware that Mr. Patrick referenced that, but did not hear that directly from the Cayman Court.
Q Since his testimony, did you take the time to look at that decision?
A No, I have not, did not reference that in the last week.
Q As an officer of the supporting organizations, have you ever read that decision?
A Yes.
Q And do you recall whether or not it specifically refers to discretionary beneficiaries?
A As I said, I remember reading the term but did not register that at the time as kind of a specific term of art.
MR. MORRIS: I have nothing further, Your Honor.
THE COURT: Ms. Stolley, anything further?
MS. STOLLEY: Nothing further, Your Honor.
THE COURT: Okay. Ms. Bannon, you may step down. Thank you.
THE WITNESS: Thank you.
(Witness excused)
THE COURT: Mr. Edney?
MR. EDNEY: Yes, Your Honor.
THE COURT: Your next witness?
MR. EDNEY: Movant calls James Dondero as a rebuttal witness.

THE COURT: Mr. Dondero, before you take a seat, my law clerk will have you sworn in.

JAMES DONDERO, MOVANT'S REBUTTAL WITNESS, SWORN

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. EDNEY:

Q Good afternoon, Mr. Dondero. I'm going to ask you a handful of questions about some things that Mr. Patrick said on the stand. Before I do that, can you tell the Court what your current position is?

A President of NexPoint.

Q And what is NexPoint?

A It's a registered investment advisor managing 16 to 18 billion dollars in the retail space, in the real estate space, and in insurance and banking.

Q And prior to the initiation of this bankruptcy, did you have a role in Highland Capital Management?

A Yes, I was the president and founder of Highland Capital.

Q And what was Highland Capital Management?

A Highland Capital Management was an alternative manager managing a lot of the same things, maybe a bit more on the corporate side and on the CLO side.

Q Can you give me a sense of its mix of assets?

A Sure. A lot of structure products, CLO, CMBS, a lot of retail products, a lot of REITs, a lot of esoteric products

like life settlements and other distressed-type investments.

Q All right. For that mix of assets, did you have any other competitors in the Texas region?

A Not for the -- the mix we had was fairly unique for Texas.

Q Okay. You were here when Mr. Patrick testified, were you?

A Yes.

Q Okay. And do you remember Mr. Patrick talking about the structure, what's called the Charitable DAF?

A Yes.

MR. EDNEY: Let's pull up Exhibit 242, Slide 2, please.

BY MR. MORRIS:

Q Prior to the restructuring that we've been talking about throughout the hearings over the last few days, do you recognize this as the structure of the Charitable DAF prior to 2024?

A Yes.

Q Okay. And did you have a role in standing this structure up?

A Yes, I was the original grantor in 2011, 2012. We originally seeded it with $32 million of assets for which we received a tax deduction at the time.

Q And why did you do that?

A We were establishing a charitable legacy. We did exemplary performance on the asset side and on the giving side.

From the original $32 million, we gave out $55 million over the years, and we grew the $32 million corpus to $270 million over a 12-year period. We never had a losing investment in the portfolio.

Q The supporting organizations, the ones that are in pink, two from the bottom, do you know what those are?

A Yes.

Q And did you have a role in selecting those?

A Yes.

Q And what was your principal purpose in selecting those?

A When we originally put the structure together in 2011, 2012, we were looking for nationally renowned charities that had similar giving strategies as we did.

Q Okay. And was there any aspect of allowing you to maintain some control over where the charitable assets went in selecting those entities?

A We purposely chose this DAF structure versus a foundation or other vehicle because we wanted to be able to manage the assets, and we wanted to pick where most of the specific charitable giving ultimately went. So we would pay a significant discretionary fee to all the underlying charities that they could use at their own discretion every year, but then we would, Lucy and I would allocate to bigger charities.

Q And through this function, what are some of the charities that you selected?

A We were very active over the years in veteran charities, Reserve Aid, Center For Brain Health, more than a million dollars, multiple millions of dollars in all of those, seven figures in snowball, other military charities. We were $15 million into the -- and original donor into the Bush Center. And then the rest of the focus was generally education-based. We did the gymnasium in the building for the Cristo Rey High School in Dallas and things like that.

Q Okay. Did you understand the Charitable DAF to be structured for the benefit of the supporting organizations?

A Yes. And for the donor, also.

Q And what do you mean by for the donor?

A Well, the structure has the donor and donor-advised. We have a lot of input into where the money is ultimately allocated, and then we have the ability to manage the money. And then the picking of local and charitable things in the region is helpful to our real estate business and our presence in the community.

Q All right. Let me, prior to 2015, who owned the limited partnership interest in Highland Capital Management, LP?

A It was 75 percent myself and 25 percent Mark Okada.

Q And did there come a time when you and Mr. Okada decided to give those interests to a new entity?

A Yes. We gave the ultimate residual interest to the Dallas Foundation and a separate subsidiary below Dallas Foundation.

Q And what was that lower entity called?
A Hunter Mountain.
Q Okay. And did some of those interests come from the Dugaboy Investment Trust?
A Yes. Some of them came from Dugaboy. Some of them came from Okada and myself personally.
MR. EDNEY: Let's go to Exhibit 242, Slide 14, please. I'm sorry. Let's go to 242, Slide 13, please.
BY MR. EDNEY:
Q The structure of entities at Slide 13, do you recognize that?
A Yes.
Q Is that the structure that you set up?
A No.
Q Do you recognize that as the Hunter Mountain structure prior to February 2025?
A I'm sorry. I was focusing on Mark Patrick's -- well, yeah, this is after Mark Patrick took it from -- I'm sorry, purchased it from John Honis.
Q I see, okay. And the ultimate beneficiary of this Hunter Mountain structure, what was that supposed to be?
A The ultimate beneficiary goes back to -- I don't know if it's on this chart.
Q What was the ultimate beneficiary supposed to be charitable, Mr. Dondero?

A Yes, it was supposed to be charitable and to Dallas

Q Dallas? I'm sorry. Dallas the city or?

A No, Dallas the charity. I'm sorry.

Q All right.

A Julie Diaz's group.

Q Do you remember what that's called, Mr. Dondero?

A It wasn't the Empower Dallas. It wasn't Highland Dallas. It was called something else.

Q Okay. Did you form the Hunter Mountain structure for a charitable purpose?

A Yes.

Q All right. Now, prior to 2024, did you have a role in where charitable funds out of both of these structures would be spent?

A Yes. That was Lucy. Lucy and I would meet regularly on that.

Q And were you kept abreast of the asset status and available cash in both of these entities?

A Yes. We always ran them with some cash.

Q And for the Hunter Mountain structure, prior to Mark Patrick, the administrator was who?

A John Honis.

Q And did John Honis have a role in what charitable endeavors were supported by the Hunter Mountain structure?

A No.

Q For the Charitable DAF structure, the person that was running that prior to Mark Patrick, who was that?

MR. LEVY: Your Honor, we again object on scope. This is just direct testimony. It's not rebutting anything that's been adduced in the trial.

THE COURT: Response, Mr. Edney?

MR. EDNEY: Your Honor, a big part of Mr. Patrick's sponsored testimony was that, you know, he got to make the call. He had the discretion to decide who would be the charitable beneficiaries of this. We were trying to establish that the course of conduct for years prior to 2024 was the exact opposite, that it was Mr. Dondero and his colleagues who were making that call in consultation with the charities.

MR. LEVY: We're just walking through org charts. we've walked through at least five times already. This is just direct testimony.

THE COURT: Okay, Mr. Levy.

Mr. Morris, I don't know, are you standing --

MR. MORRIS: No, I'm just getting (indiscernible).

THE COURT: Okay. All right, I'm going to overrule the objection. But again, Mr. Edney, let's make sure that we're not going far afield.

MR. EDNEY: Well, we'll stay right on target, Your Honor. Thank you, Your Honor.

BY MR. EDNEY:

Q Okay. So prior to, I think this is where I was, but prior to Mr. Patrick taking over a role in the Charitable DAF structure, who had that role?
A Overall, it was Grant Scott in the DAF structure.
Q And when Mr. Scott had that position, did he have a role in deciding what charitable endeavors would be supported?
A It was about four hours a month of work. He got paid $60,000 a year. It was just an independence function on the overseeing on the investment side. But all the charitable decisions were made by myself and Lucy, and all the investments percolated up from the investment department.
Q And prior to 2024, did Mark Patrick, in either of these roles, for Hunter Mountain or for the Charitable DAF structure, have a role in deciding what charitable endeavors would be supported?
A He never had input on the charitable side or on the investment side.
Q Prior to 2024, did Mark Patrick ever object to you having a role in deciding what charitable projects would be supported?
A No, that's what donor-advised funds are.
Q Prior to 2024, did Mark Patrick ever deny the charities a requested distribution to fund a charitable project?
A No.
Q Prior to October 2024, did Mark Patrick work for an entity called Skyview?

A Yes.
Q In the wake of Mark Patrick's departure from Skyview in October 2024, did Mark Patrick make any statements to the charities regarding the future of the structure?
A He represented to the charities that nothing would change and that it would be best --
MR. LEVY: Objection, hearsay.
THE COURT: I'm sorry?
MR. LEVY: This is hearsay. He's testifying to what Mark Patrick said to organizations.
THE COURT: Okay. I'm going to sustain the objection, but allow for you to ask questions that may deal with this.
MR. EDNEY: Thank you, Your Honor.
BY MR. EDNEY:
Q Mr. Dondero, after October 2024, without telling me what the statements are, did you become aware of any statements Mr. Patrick made to the charities regarding the future of the Charitable DAF structure?
A Yes.
Q And were those -- were what you heard about those statements important to you in deciding what action or not to take against Mr. Patrick and when?
A Yes.
Q Mr. Dondero, what were those statements?

MR. LEVY: Objection.

THE COURT: You're asking him to state what Mr. Patrick said. I'm going to sustain the objection as hearsay.

MR. EDNEY: Your Honor, I'd like to ask a question with the limiting instructor. I'm not offering it for the proof of the matter asserted, but rather going directly to Mr. Dondero's state of mind and his calculations about whether and how to act against Mr. Patrick.

THE COURT: Okay. With that limitation, you can ask the question. You can lodge the objection, but let's see what the question is.

MR. EDNEY: All right.

BY MR. EDNEY:

Q Mr. Dondero, what was your understanding of what Mr. Patrick told the charities after October 2024?

MR. LEVY: Same objection. That exceeds the scope of effect on the listener.

THE COURT: I'm sorry?

MR. LEVY: That exceeds the scope of effect on the listener.

THE COURT: He's asking for what his understanding of the statements were. He's not asking for direct statements were. I'm going to overrule the objection.

BY MR. EDNEY:

Q I'm sorry, Mr. Dondero, do you remember my question?
A Yes, I think I have a good answer.
Q Okay.
A For four years prior to his departure on this org chart that's in front of us, he was a controlling key person at Rand Advisors, which was a registered investment advisor with duty of care and duty of loyalty and fiduciary responsibility to investors. He also --

MR. LEVY: Objection and move to strike. That's beyond the scope and it's legal conclusion.

THE WITNESS: That's not a legal conclusion.

THE COURT: Okay, Mr. Dondero.

THE WITNESS: Sorry.

THE COURT: I'll handle the ruling on the objections. I'm going to sustain the objection as nonresponsive.

BY MR. EDNEY:

Q All right, Mr. Dondero. I probably should have repeated the question, so I'll do it again. Those statements that Mr. Patrick made after his October 2024 departure to the charities, what was your understanding of what he said?
A He would behave consistent with his fiduciary responsibilities as an RIA and a compliant Cayman entity.
Q And did you have any understanding of any statements he might have made regarding potential changes to the structure?
A He specifically told the charities that there wouldn't be

any changes.
Q Just going back for a second, the Charitable DAF structure, did the Dugaboy Investment Trust contribute any of the assets into that?
A Yes.
Q Are you familiar with a liquidation process in the Cayman Islands?
A Yes.
Q And did you become aware that the charities being supported under the DAF structure sought to participate in it?
A Yes.
Q And did you have any understanding that there was an objection made to those charities participating on the liquidating committee of the Cayman liquidation process?
A Yes.
Q And do you have an understanding as to who made that objection?
A Not only did Mark Patrick object, but I think he sued all the professionals personally in the Caymans.
Q All right. With respect to the charities' participation on the liquidating committee, do you have an understanding as to how that was resolved?
A His objection was that information gleaned in Cayman could be used against him in the U.S. And Grant Thornton and Maples people working the case in the Cayman agreed not to provide any

information to me or my representatives as the case went on.

Q And did the charities agree not to provide you with any information from the Caymans as the case went on?

A Correct.

Q Mr. Dondero, were you here when Mr. Patrick testified regarding some justifications for the restructuring being accomplished?

A I didn't hear any meaningful justifications.

Q Okay. Do you remember Mr. Patrick saying that your involvement with the charities would put their tax-exempt status at risk?

A He never mentioned that before yesterday.

Q All right. Are you aware of Mr. Patrick informing you or the charities that your involvement with them was putting their tax-exempt status at risk?

A Again, he had a limited trustee role. No one's ever seen a trustee try and take a charity before. He could have represented he had concerns verbally. He could have asked to cure in writing.

MR. LEVY: Move to strike as nonresponsive.

THE WITNESS: He could have -- he could have resigned as trustee.

THE COURT: Hold on one second, Mr. Edney.

MR. LEVY: Move to strike as nonresponsive.

THE COURT: Yeah, I'm going to sustain it.

BY MR. EDNEY:

Q All right. Mr. Dondero, I'm sorry. I have to ask questions, and then we have to have answers that are responsive to it. So let me ask the question again, and I'll try to make it a little bit more clear. Are you aware of Mr. Patrick informing you or the charities that your involvement with them was putting their tax-exempt status at risk?

A Not while he was employed.

Q Okay. Are you aware of Mr. Patrick ever identifying any problematic conduct to you or to the charities and asking either you or them to stop it?

A Not while he was employed. Not verbally. Not in writing. Never.

Q Did you ever ask Mr. Patrick to transfer funds from the DAF structure to a noncharitable account controlled by you?

A No.

Q Did you ever provide Mr. Patrick instructions on a cocktail napkin?

A No, and I've never had a cocktail with Mr. Patrick, either.

Q If Mr. Patrick was concerned about the conduct of you or others and its effect on the DAF, what do you think Mr. Patrick should have done?

A He should have resigned. He could have papered it to anybody involved in the structure or any regulatory body he

wanted to. But he wasn't supposed to move all the assets to himself.

Q All right, Mr. Dondero. Thank you for your time this afternoon.

MR. EDNEY: I have no further questions on rebuttal examination.

THE COURT: You may proceed, Mr. Morris.

MR. MORRIS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, Mr. Dondero.

A Good afternoon.

Q Mark Patrick had complete control over the DAF Fund. Isn't that right?

A He had a GP control share, I guess is what you're saying.

Q And that meant that he had complete control over the DAF Fund. Isn't that right?

A No, not without -- not without acknowledging the broad fiduciary responsibilities in both the Cayman and as a registered investment advisor.

Q You were aware that back in 2021, he obtained the management chairs of the DAF Fund, correct?

A Yes.

Q And you do understand that as the holder of the management chairs, Mr. Patrick had complete control of the fund, right?

A Not without the caveat and the structural limits and the -- the structural limits and obligation in the GP and LP agreements.

MR. MORRIS: Okay. Can I ask that Exhibit 48 be put up on the screen?

THE COURT: Just to be clear, this is Highland Exhibit 48?

MR. MORRIS: Yes. Thank you for the clarification. Highland Exhibit 48. And if we could go to the first page.

BY MR. MORRIS:

Q Do you see this is an affidavit from you?

A Yes.

Q Do you recall filing an affidavit in the Cayman Islands on behalf of the supporting organizations in April of 2025?

A Yes.

Q Did you review this affidavit before you signed it?

A Yes.

MR. MORRIS: Can we go to Paragraph 12, please?

BY MR. MORRIS:

Q I'm going to read the first two sentences, Paragraph 12, and let me know if I've read them correctly.

Paragraph 12 says, "In addition to the participation shares, the LP issued 100 management chairs, defined as the management chairs, with the only voting rights for any and all shareholders in the LP. In essence, the articles and the ARLPA

therefore grant complete control of the fund structure to the holder of the management chairs in the LP and the entirety of the issued share capital of the GP."

Have I read that correctly?

A Yes.

Q And this was your sworn statement submitted to the Cayman Islands in April of 2025, correct?

A Yes, it's consistent.

Q And the holder of the management chairs was Mark Patrick, correct?

A Yes.

Q Thank you.

MR. MORRIS: Can we take this down, please? And can we put up Dugaboy Exhibit 242, Slide 2?

BY MR. MORRIS:

Q Okay. Can you see that, Mr. Dondero?

A Yes.

Q You were asked about that in your direct testimony. Do you remember that?

A Yes.

Q Can you show me where on this chart the HMIT Entities are?

A They're not on this chart.

Q They're not on this chart, correct?

A Correct.

Q Thank you very much. And this is what's known as the DAF

structure, correct?

A Generally, yes.

MR. MORRIS: Okay. Can we go to Slide 13, please?

BY MR. MORRIS:

Q This is the Hunter Mountain structure, correct?

A Yes.

Q And neither the Dallas Foundation nor Empower Dallas nor the Okada Family Trust had any direct or indirect ownership interest in Hunter Mountain, correct?

A Repeat that question again, please.

Q Sure. The Dallas Foundation received support from Empower Dallas and the Okada Family Trust, correct?

A Correct.

Q And Empower Dallas and the Okada Family Trust received cash flow via an annuity policy that was underwritten by Crown Global, correct?

A Correct.

Q So the Dallas Foundation, Empower Dallas, and the Okada Family Trust had no direct or indirect interest in Hunter Mountain, correct?

A That's not true.

THE WITNESS: The only one that had a direct or indirect interest, at least as of the entities in pink, are Crown Global and Dolomiti and Hakusan, correct?

MR. EDNEY: Objection, Your Honor. Asked and

answered.

THE WITNESS: That's not true as I understand it.

THE COURT: I'm going to overrule the objection.

BY MR. MORRIS:

Q Do you understand that this is a chart that was submitted by Dugaboy, the entity on whose behalf you're acting as the agent?

A Yes.

Q Okay. And Crown Global has a limited partnership interest in Atlas IDF. Do you see that?

A Yes. And Atlas IDF has an indirect interest in Hunter Mountain, correct?

A Yes.

Q Okay. But Empower Dallas and Okada Family Trust and Dallas Foundation do not have limited partnership interests in Atlas IDF or any entity below it, correct?

A That's not how I understand it. I can't speak to this chart, but Hunter Mountain spills into Dallas Foundation somehow.

Q But you don't know how. Is that fair?

A I'm just saying I can't see how it does on this chart.

Q Okay. So you can't see how it does it on this chart and you can't explain how it does it otherwise. Fair?

A It's a subsidiary of Dallas Foundation, the residual interest in Hunter Mountain.

Q You're aware that Crown Global was one of the objecting parties to the 9019 motion, correct?
A Yes.
Q And the Dallas Foundation, on behalf of Empower Dallas and Okada Family Trust, was the other objecting party together with Crown Global, correct?
A Yes.
Q And you understand that the Dallas Foundation and Crown Global objected to the settlement on the ground that Mr. Patrick purportedly did not have authority to enter into the settlement on behalf of the HMIT Entities, correct?
MR. EDNEY: I'm going to object to this question as beyond the scope of my direct examination.
MR. MORRIS: Your Honor, the witness was asked about this chart and he was asked about Mr. Patrick's authority. I'm putting the two of them together in one question.
THE COURT: I'm going to overrule the objection.
THE WITNESS: Can you restate the question, please?
BY MR. MORRIS:
Q Sure. The Dallas Foundation, on behalf of Empower Dallas and the Okada Family Trust, together with Crown Global, objected to the Highland proposed settlement with the HMIT Entities on the ground that Mr. Patrick purportedly did not have authority to bind the HMIT Entities. Do you recall that?
A Yes.

Q And do you recall that the Dallas Foundation, on behalf of Empower Dallas and the Okada Family Trust, together with Crown Global, after taking discovery, after participating in discovery, withdrew their objection with prejudice?

MR. EDNEY: I'm going to renew my objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: That isn't how I understand it.

BY MR. MORRIS:

Q No, you don't understand that they withdrew their objection with prejudice?

A I understand Julie Diaz got notice for a deposition on a Saturday for a Sunday deposition and she got badgered and she panicked. That's what I understand.

Q Are you aware that the Dallas Foundation was represented by counsel?

A Yes.

Q And are you aware, and this is the question, are you aware that the Dallas Foundation and Crown Global, with the advice of counsel, withdrew its objection to the Highland proposed settlement with prejudice?

A Yes.

Q Thank you. And are you aware that the Dallas Foundation and Crown Global also entered into a binding term sheet with Mr. Patrick that left him in control of the HMIT Entities?

A I don't have as much awareness of that.
Q As you sit here right now, you don't know that the Dallas Foundation and Crown Global entered into a binding term sheet that left Mr. Patrick in control of the HMIT Entities?
A No, I don't.
Q Okay. In 19 -- wow, I'm dating myself. In 2025, you or entities acting on behalf of entities you owned or controlled entered into a series of agreements with Mr. Patrick or entities that Mr. Patrick purportedly controlled. Is that fair?
MR. EDNEY: I'm going to object to this question beyond the scope of my direct examination which --
THE COURT: I will sustain.
BY MR. MORRIS:
Q Okay. You testified that there was some agreement in place that prevented you from getting information from the Cayman Islands proceeding. Is that right?
A Yes.
MR. MORRIS: Can we put up Exhibit 41, please?
THE COURT: This is Highland (indiscernible)?
MR. MORRIS: Yes, thank you again, Your Honor.
BY MR. MORRIS:
Q Do you see this as a consent order?
A Yes.
Q And do you see that it's dated July 31st, 2025?

A Yes.
Q Have you ever seen this document before?
A Not yet. Is it only one page?
Q No, I'll take you there in a moment. I just want to know if you're familiar with it at all.
A Not yet.
MR. MORRIS: Okay. If we could go to the third page, 3 of 16. And you understand -- stop there.
BY MR. MORRIS:
Q You understand that Maples and Calder represents the Joint Official Liquidators?
A Yes.
Q And the other law firms that are depicted on this page represent the defendants in the Cayman proceeding, correct?
A Mark Patrick has 30 law firms. I don't know which ones are which.
Q You either know or you don't know?
A I don't know.
Q Okay. Thank you.
A I don't know all 30 of them.
Q Thank you. Nobody asked you that.
MR. MORRIS: Can we go to Schedule A, Paragraph 6?
BY MR. MORRIS:
Q This is a consent order as we saw, correct?
A (No audible response)

Q Correct?
A Yes.
Q Okay. And in the middle of Paragraph 6, it says, Any information of whatever nature, relating to any member of the defendants or the CDM entities, which is provided to the JOLs pursuant to this Paragraph 5, shall not be disclosed to or shared with Mr. Dondero, the supporting organizations, or any known affiliates or service providers of these individual or entities.

I've summarized that just a bit, but is that a fair characterization of those words?
A Yes.
Q Okay. So, really, the only restriction that was placed on the flow of information to you was that which related to any member of the defendants or the CDM Entities, which was provided to the JOLs. Is that fair?
A (No audible response).
Q Let me try this. Let me try this. That wasn't a good question. Let me try this better. Withdrawn.

Looking at this provision, would you agree with me that this is a restriction on the flow of information to you and the supporting organizations?
A I thought the supporting organizations were relatively informed, but I know for sure I wasn't informed.
Q Okay. And that's because you thought that there were

agreements in place that prevented you from being informed. Correct?

A That's what I was told.

Q And this --

A That's what our organization was told.

Q And this is an agreement that prevents certain information from flowing to you. Correct?

A If you say so. Like I said, I never saw the agreement that limited it. The supporting organizations were on the creditors' committee. The creditors' committee, I think, was posted by the Grant Thornton and whatever, but I was not posted.

Q Did you ever see an agreement of any kind that prevented any of the supporting organizations from providing information to you with respect to the Cayman proceeding?

A Like I said, there's three other lawsuits in the Cayman against the professionals personally. So I know there was an apprehension, and I know -- I don't know what document it covered, but I know there was a blackout to myself and my organization.

Q What organization are you referring to?

A NexPoint or Dugaboy or just anything in my purview.

Q Can you describe that document for me? Because I haven't seen it.

A No. Doesn't this cover some of it or most of it or?

Q That's a great question. That's what I'd like to ask you. Is this the provision that you had in mind in terms of the restriction of the information flow to you out of the Cayman Islands?

A I don't know. I don't know what document governed it.

THE COURT: Mr. Morris, if you have a minute where we can take a short recess.

MR. MORRIS: You know, I may be done. Can I just consult with my colleague?

THE COURT: That will be fine.

MR. MORRIS: I may be done, Your Honor.

THE COURT: Okay.

MR. MORRIS: I've got nothing further, so if Your Honor would like to take a short recess.

THE COURT: We're going to take a short recess, and of course, Mr. Edney, you'll have your chance to redirect. So we'll take a 10-minute recess.

THE CLERK: All rise.

UNIDENTIFIED SPEAKER: Do you want this in the box?

MR. MORRIS: Your Honor, may I have an instruction not to consult with counsel?

MR. EDNEY: I won't. How about that?

THE COURT: Okay, yes. Mr. Dondero, you are instructed not to consult with counsel. I will also remind you when we come back that you will be under oath still.

THE WITNESS: Yes.

MR. MORRIS: Thank you, Your Honor.

(Recess at 3:18 p.m., recommencing at 3:30 p.m.)

THE CLERK: All rise.

THE COURT: You may proceed, Mr. Edney.

MR. EDNEY: Thank you, Your Honor.

THE COURT: Oh. Let me just again, Mr. Dondero, you are still under oath.

REDIRECT EXAMINATION

BY MR. EDNEY:

Q Mr. Dondero, I want to take you to Highland Exhibit 41, please.

MR. EDNEY: And that will be the first page of the exhibit. All right, let's stop there.

BY MR. EDNEY:

Q Mr. Dondero, do you see there on the -- this is the order of the Caymans Court that you were questioned about by Mr. Morris. Do you remember that?

A Yes.

Q Do you see on the front page there, there's a listing of defendants?

A Yes.

Q Could you read those for us?

A Mark Patrick, Paul Murphy, CDMCFAD, LLC, DFW Charitable Foundation, CDH GP Limited as general partner for and on behalf

of the Charitable DAF Fund in its capacity as general partner, and CLO Holdco.

Q All right. Mr. Dondero, did the charities wall you off from information regarding what was going on in the Cayman Islands?

A Yes.

MR. EDNEY: Let's pull up Exhibit 242, Slide 12, please.

THE WITNESS: Yes.

BY MR. EDNEY:

Q Mr. Dondero, did you transfer your ownership interest in Highland Capital Management to the Hunter Mountain Investment Trust for a charitable purpose?

A Yes.

Q And what charity was that meant to benefit?

A It was meant to flow through to Dallas Foundation.

Q Now, Mr. Dondero, do you understand that subsequently in 2025, Mr. Patrick sold the equity interests in the Highland Capital Management Company and his interest in Hunter Mountain Investment Trust to another structure of entities?

A I'm sorry, what was the date? What was the -- I'm sorry.

Q Yeah, okay. Fair enough.

Mr. Dondero, do you understand that in 2025, Mr. Patrick effected the sale of the Hunter Mountain Entities to another corporate structure?

MR. MORRIS: Objection, Your Honor. That is completely inaccurate. And it's outside the scope.

THE COURT: Can you rephrase the question?

BY MR. EDNEY:

Q Do you know if Mr. Patrick sold Hunter Mountain to another corporate structure?

A I believe he did.

Q And do you know if today under that restructuring, the Dallas Foundation, does it have an interest in Hunter Mountain anymore?

A It does not.

Q Does that bother you, Mr. Dondero?

A Yes.

MR. MORRIS: Objection, Your Honor. Beyond the scope.

THE COURT: All right. Mr. Morris, can you please stand when making objections. And I'll overrule the objection.

THE WITNESS: Yes.

BY MR. EDNEY:

Q Why?

A It had a charitable purpose. I expected the residual to be -- I think in the books of Hunter Mountain, it was carried at over $100 million. I thought ultimately it would be worth several hundreds of millions of dollars.

Mark Patrick, when he stepped in Honis' shoes was a

registered investment advisor. That is a prohibited cross-trade, no matter how you look at it.

MR. EDNEY: All right. I have no further questions.

Thank you, Mr. Dondero.

RECROSS-EXAMINATION

BY MR. MORRIS:

Q How many hundreds of millions of dollars did you think Hunter Mountain was worth?

A There's $700 million missing from the Highland estate.

MR. MORRIS: Can we please call back up Exhibit 48?

BY MR. MORRIS:

Q And again, this is your affidavit, right?

A Yes.

Q And you swore it was true at the time that you signed it, right?

A Yes.

Q And you read it before you signed it, right?

A Yes.

Q And you submitted it to a court of law, correct?

A Yes.

MR. MORRIS: Can we go to Paragraph 38, please?

BY MR. MORRIS:

Q And in Paragraph 38, the last sentence, it says, "According to Hunter Mountain's own filings, this value has been calculated in excess of $100 million gross with

approximately $17 million net value."

Have I read that correctly?

A Yes.

Q So you swore to the Cayman Court last April that Hunter Mountain was worth $17 million on a net value basis, correct?

A No, read what it says. It just said in their own filings. We were just -- I was just repeating that. I think Hunter Mountain is worth hundreds of millions of dollars.

Q Does it own any asset other than its interest in the Class 10 of the Highland Claimant Trust?

A That's its primary asset.

Q Okay. And you're aware that as the holder of a Class 10 interest, Hunter Mountain's interest is subordinated to indemnification obligations under the Highland Capital Management Plan, correct?

A Not if it's unwound.

Q I'm not asking you if it's unwound. I'm asking you to state the facts as you know them today. As of today, and for every single day since the plan has been confirmed, Hunter Mountain's Class 10 interest has been subordinated to, among other things, the indemnification obligations under the Highland Capital Management Plan, correct?

A I don't know specifically.

Q You don't know that?

A I don't know the amounts in the indemnification. We

haven't gotten financials on this estate in five years. I don't know what you're asking.

Q Did you look at the information that was provided in discovery in connection with the 9019 motion?

A No.

Q Well, maybe --

MR. MORRIS: I don't want to make commentary, Your Honor. No further questions.

THE COURT: Anything further, Mr. Edney?

MR. EDNEY: No, Your Honor. Thank you.

THE COURT: All right. Mr. Dondero, you may step down.

(Witness excused)

THE COURT: All right. Mr. Edney, any further rebuttal witnesses?

MR. EDNEY: Your Honor, the Movant calls us its final rebuttal witness, Margot MacInnis, by remote means.

Ms. Stolley will be handling the examination.

THE COURT: Okay. Ms. MacInnis, can you please unmute yourself and turn on your video and state your name?

MS. MacINNIS: Margot MacInnis.

THE COURT: Okay. Ms. MacInnis, my law clerk will swear in your name.

THE CLERK: Please raise your hand.

MARGOT MacINNIS, MOVANT'S REBUTTAL WITNESS, SWORN

THE CLERK: Thank you.

THE COURT: You may proceed, Ms. Stolley.

MS. STOLLEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. STOLLEY:

Q Ms. MacInnis, thank you for joining us after your travails yesterday and last night. You testified earlier in this proceeding, correct?

A Yes.

Q Have you had the opportunity to review Mark Patrick's testimony from this hearing?

A Yes, I have.

Q Now, at various points during his testimony, Mr. Patrick referenced the Mercer Report. Do you recall seeing those portions of his testimony?

A Yes, I do.

Q And did you review the Mercer Report as part of your investigation in your role as JOL?

A Yes, I did.

MR. LEVY: Objection to scope. Highland did not use any evidence whatsoever about the Mercer Report or Mr. Patrick's compensation. This is just a continuation of the direct examination.

(Pause)

THE COURT: I'm going to allow you to respond,

Ms. Stolley. se to that. I'm reviewing my notes. I don't have a copy of the transcript in front of me, nor would I have the ability to read it that quickly. But based on my notes, I do not see where there was any examination by Highland about Mr. Patrick's compensation. I do show that you all, on direct examination, questioned Mr. Patrick on his compensation. I do show that. So, do you have a response, Ms. Stolley?

MS. STOLLEY: Your Honor, we -- Your Honor, it is proper rebuttal testimony to impeach his testimony on the facts.

MR. LEVY: No.

MS. STOLLEY: And he was deemed an adverse witness?

MR. LEVY: Impeachment is properly done by cross-examination and redirect. They had ample opportunity to do that. Your Honor's notes are entirely correct that we didn't ask any questions at all about Mercer compensation. These are all questions that could have been posed to Mr. Patrick last week. And it is not proper testimony on rebuttal.

THE COURT: Hold on. But she's rebutting Mr. Patrick's testimony regarding his compensation with Ms. MacInnis. My notes do show that they asked questions. And he testified as to those things.

MR. LEVY: In their own case-in-chief, they presented evidence about Mr. Patrick's compensation. And to quote from, this is Cates v. Sears, Roebuck & Co., 928 F.2d 679 (5th Cir.

1991), "Rebuttal must be kept in perspective. It is not to be used as a continuation of the case-in-chief."

Dugaboy presented evidence about Mr. Patrick's compensation in their case-in-chief. They had ample opportunity to do this last week. This is just a continuation and not proper rebuttal.

THE COURT: I'm going to overrule the objection. We have a situation where we had a witness that was called for both the case-in-chief as well as yours. So go ahead.

MS. STOLLEY: Thank you, Your Honor.

BY MS. STOLLEY:

Q Ms. MacInnis, I believe I asked if you had reviewed the Mercer Report as part of your investigation in your role as JOL.

A Yes, I did.

Q Can you briefly describe for us what is the Mercer Report?

A It was a report that Mark Patrick had contracted to be prepared to support his compensation and his compensation for back pay and bonus.

Q And his compensation in respect of the Charitable DAF Fund structure?

A DAF structure, yes.

Q And you gave us the context in which Mr. Patrick raised the Mercer Report, correct?

A Yes, he -- it was raised in the context of supporting,

defending the position of the compensation paid to him from that structure.

Q And you said that you've reviewed the Mercer Report. So in your view, did the report validate the level of compensation that Mr. Patrick has been paid for his work relating to the DAF Entities?

A No.

Q Can you explain for us how so?

A The report didn't take account of the skills and qualifications of Mr. Patrick and the fact that he didn't have investment management experience and that his sole qualification around investment management was his previous experience in relation to the control figure for the DAF structure.

It also sought to compare the Charitable DAF structure to a private equity fund that managed assets between $400 million and $1 billion. The Charitable DAF structure really only held cash, cash equivalents and some other kind of real estate investments. It wasn't a private equity fund managing multi-portfolio investments.

And the report also cited six interviews it had with people who were supporting the level of compensation or the work that Mr. Patrick was doing. Those individuals, at least five of the six, were service providers or paid, either worked for Mr. Patrick in the structure or were paid to provide

reports or services to the structure.

Q Are you able to name any of those individuals?

A I recall there was Steven Hastings from ValueScope. So that was the entity that provided the valuation to the structure. Shawn Raver, who was a control officer within the corporate structure. I know he's in the DFW structure as well as has roles in the DAF structure. Paul Murphy, who was a co-director of Charitable DAF Holdco. Jim Shields for Shields Law provided the work plan that was used to carry out the restructuring.

Q You mentioned Steve Hastings and the ValueScope and evaluation. Which evaluation was that? The date?

A Well, they provided -- ValueScope provided more than one, I recall, but it was the March, March 30, 2025. If I got that date right.

MR. LEVY: We object again based on scope. Highland did not adduce any evidence about evaluation.

THE COURT: Ms. Stolley, response?

MS. STOLLEY: This is not about the valuation. This is about the individuals, the five or six individuals who are related in some way to Mr. Patrick, who provided summary interviews as part of this Mercer Report, that Mr. Patrick held up as the basis for his compensation levels.

THE COURT: Okay. I'm going to again overrule the objection. But I'm going to direct the parties to keep this

moving in the right direction. Let's not got afield, please.

MS. STOLLEY: Sure.

BY MS. STOLLEY:

Q Ms. MacInnis, what was the -- the report was dated when? You said that he commissioned it in this context. But what was the time period covered?

A Well, I think it looked -- it looked back. I think there was some debate about the report. But I seem to recall it was looking back as to the period from when he was appointed the control figure from 2021 through to, I think the report was around the last quarter of 2024. October, I seem to recall.

Q And as part of your review of the Mercer Report, did you do any sort of comparison about his compensation versus his immediate predecessor?

A Yes, we looked, we looked into previously that before, before Mark was appointed, the person in that role was earning $60,000 a year. And Mark's compensation following, I think within two weeks of receiving that report, was increased substantially. In 2024, he was paid $10.5 million.

Q Now --

MR. LEVY: Your Honor, we object again based on scope, particularly in respect that there's now an extended amount of testimony regarding a document that's not in evidence.

THE COURT: Okay.

MS. STOLLEY: I'm moving on, Your Honor, if that makes a difference.

THE COURT: Yeah, I'm trying -- you all are objecting to the or are seeking for this Court to reconsider the order approving the settlement. What does Mr. Patrick's compensation have to do with any of that? So let's move on.

MS. STOLLEY: Sure.

BY MS. STOLLEY:

Q Ms. MacInnis, Mr. Patrick testified about how many law firms he engaged for the DAF Entities. And he testified, quote, closer to a dozen than half a dozen. Do you remember that testimony?

A Yes.

Q And is that accurate?

A No.

Q How do you know?

A We received, from the books and records, we received, I understand, in 2025, based on our review, there were more, there were 31 law firms retained in connection with the DAF structure.

Q Mr. Patrick testified that he, as general partner, owns and controls all of the DAF assets, meaning the $270 million of assets. Do you --

MR. LEVY: Objection, misstates prior testimony.

MS. STOLLEY: Do you agree with Mr. --

THE COURT: Let's let her finish the question and then you can stand up and --

BY MS. STOLLEY:

Q Do you agree with Mr. Patrick's characterization?

THE COURT: Okay.

MR. LEVY: And we object that it misstates Mr. Patrick's testimony.

THE COURT: Response?

MS. STOLLEY: I'm sorry, Your Honor?

THE COURT: Do you have a response?

MS. STOLLEY: I can cite the transcript. It's Page 54. Actually, it starts probably at Page 53, Line 25, and goes through 54, Line 9, where he states, "So you own all the assets of the DAF, the $270 million?"

"I do not own those assets, the general partner does." Question --

THE COURT: Okay, I'm going to sustain the objection.

MR. LEVY: Thank you, Your Honor.

BY MS. STOLLEY:

Q Ms. MacInnis, is it correct to say that the general partner owns the assets or the benefits of the assets for itself?

A No.

MR. LEVY: Objection again to scope. The portion of the transcript we're referring to is Mr. Patrick's direct

testimony.

THE COURT: Okay. Mr. Levy, I hear your objection. I understand you both, we agreed that the parties would basically do cross and direct at the same time because you both designated Mr. Patrick as witnesses. Okay, so you've put the Court in a situation where we're now asking you to parse out whether it's cross or direct. And it's just because they went first, they got to ask that question first.

I don't know how -- let me just put it this way. Objection's overruled.

MR. LEVY: Understood.

THE COURT: I believe she answered, but.

MS. STOLLEY: I believe she did, too.

BY MS. STOLLEY:

Q By control, does the GP have the authority to manage and direct the partnership's assets?

A Yes.

Q When the general partner exercises control over the partnership's assets, does it do so for its own benefit?

A No.

Q Why not?

A It is controlling the assets in the structure in the company for the benefit of the economic stakeholders and the limited partners, in this case, in the partnership.

Q So how would you accurately describe the general partner's

role with respect to the assets, here the $270 million?
A The general partner is the steward. They hold the voting shares and the management control of assets, which is -- and it's held in a fiduciary capacity to act in the best interest of the economic stakeholders, which are the limited partners in the partnership.
Q And who owns those assets?
A The economic interest in the assets belongs to the limited partners.
Q Now, Mr. Patrick testified that the supporting organizations are "discretionary economic beneficiaries." Do you agree with that characterization?
A No.
Q Why not?
A Placing discretionary in front of economic beneficiary seems to suggest there's some flexibility. The economic interest in the structure is clear. It sits with the limited partners. The discretionary piece, I believe he's probably referring to distributions. And certainly, as a general partner, you would have some discretion over the quantum and timing of distributions or dividends being paid out of the structure.
Q But would there be discretion as to who received those dividends?
A No. The discretion doesn't -- the discretion, again,

would be largely over timing and amounts of what's going to be paid. It's not -- the to whom is the economic interest and stakeholders in the structure.

So, Charitable DAF Holdco is the limited partner in Charitable DAF LP, and Charitable DAF Holdco is entitled to the economic benefit out of Charitable DAF LP. And the discretion would come from how Holdco would take that economic interest and distribute it or dividend it to its economic stakeholders, the four Highland Foundation supporting organizations.

MS. STOLLEY: Okay. Just a moment, Your Honor, please.

THE COURT: Okay.

(Pause)

MS. STOLLEY: Nothing further. Thank you very much, Ms. MacInnis.

CROSS-EXAMINATION

BY MR. MORRIS:

Q Good afternoon, ma'am. Can you hear me okay?

A Good afternoon. I can.

MR. MORRIS: Can I ask my colleague to please put up on the screen Exhibit 72?

BY MR. MORRIS:

Q And while she does that, I just want to confirm that you answered a number of questions just now pertaining to something called the Mercer Report. Do I have that right?

A Yes.
Q And the Mercer Report was a report that was commissioned by Mr. Patrick to address certain compensation issues, correct?
A Yes.
Q And you believe the Mercer Report did not support Mr. Patrick's compensation. Is that right?
A Yes.
Q Okay. Do you recall in February the Cayman Court issued a decision?
A Are you referring to the ruling on the injunction?
Q Yes.
A Yes.
MR. MORRIS: Can we go to Paragraph 206, please?
BY MR. MORRIS:
Q Can you read? Do you see Paragraph 206, ma'am?
A Someone will have to make it bigger because it's very small on my screen.
Q Sure.
Perfect. Is that better?
A Yeah. I think I can manage.
Q Can you read Paragraph 206 into the record, please?
A 206?
Q Yep.
A "Having reviewed the affidavit evidence on this question, including the detailed report dated 26 August 2024 from Mercer,

the Court finds that there is no serious issue to be tried, that this remuneration was excessive and in breach of the duty to the company."

Q So you have your view and the Cayman Court came to its own conclusion, fair?

A The court at first instance came to its own conclusion and we've appealed that decision and the Court of Appeal has indicated that there is a serious issue to be tried on our statement of claim. This was the injunction hearing, not the merits of the statement of claim.

Q Okay. Can you go to Paragraph 193, please? Is it fair to say that the Cayman Trial Court also concluded that Holdco had only the right to be considered for discretionary distributions by the general partner?

A Can you repeat your question? Sorry, because I was reading. I was the paragraph.

Q Sure. You mentioned on questioning a few moments ago, you talked about the nature of discretionary interests. Do I have that right?

A She asked about discretionary economic beneficiary and I'm saying that discretionary isn't in relation to the economic beneficiary. The discretion is in relation to distributions.

Q Okay. So you agree and you don't dispute that that's what the Cayman Court found, correct?

A This is what the court at first instance found. Again,

I'm going to repeat that our statement of claim and all of the issues are live in Cayman and have not been determined.

Q Well, they were determined by the Trial Court, correct?

A No, the Trial Court determined an injunction, which isn't the same as the statement of claim and all of the issues underpinning the statement of claim. It was just whether or not assets should be injuncted from being used until we get to the point of arguing about the statement of claim in front of the Court.

Q And that's because the Cayman Court found that Holdco has no proprietary interest in any of the fund's assets, correct?

A That's what the court at first instance found. The Court of Appeal said very directly that that issue of proprietary interest is a seriously arguable issue because -- and it cited a Privy Counsel case called Ackpoint (phonetic) that says the opposite of what Justice Parker said.

Q Did you make Justice Parker aware of that case before he rendered his ruling?

MS. STOLLEY: Objection.

THE WITNESS: I believe it was cited in the --

THE COURT: Hold on one second.

THE WITNESS: -- at the injunction hearing.

THE COURT: Ms. MacInnis, hold on one second. We have an objection here. I understand you may not be able to hear it because of the microphones.

Basis for the objection?

MS. STOLLEY: I'm waiting to stand up. This is going farther and farther and farther (indiscernible).

THE COURT: You've asked her about the Mercer Report and his compensation. He's doing redirect. You asked her about discretionary distributions and I believe that's what this testimony is. So I'm going to overrule the objection.

BY MR. MORRIS:

Q And just the last couple of questions. Ma'am, you're not a lawyer, are you?

A No, I'm not a lawyer.

Q And you're not rendering any legal conclusions in your testimony today, correct?

A No, I'm not.

MR. MORRIS: I have no further questions, Your Honor.

THE COURT: Okay. Any --

MS. STOLLEY: Nothing further, Your Honor.

THE COURT: Okay. Thank you very much, Ms. MacInnis.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Any further witnesses, Mr. Edney?

MR. EDNEY: No, Your Honor. That concludes our rebuttal case.

THE COURT: Okay. Mr. Morris, do you have anything in the way of surrebuttal?

MR. MORRIS: No, Your Honor.

THE COURT: Okay. All right. So, that goes to closing arguments. We're at 4:05. I understand what you would like to do. Are the parties in agreement to that? If you wouldn't mind either sharing the podium or getting closer to a microphone.

MR. MORRIS: Your Honor, it's 4:00. This is the third day of what was expected to be a one-day hearing. We are prepared to close. We would urge the Court to allow us to do that.

While I don't know that you have any control of it, we did mention, and I think the Court is aware, that there is a fully briefed appeal on the merits of the 9019 order. It would be our hope that if there's a decision rendered quickly here, the non-prevailing party -- I'd like to see if we can get it merged with the appeal so that you don't have two different judges overseeing many of the same facts. I don't know if Judge Kinkeade, before whom this appeal is pending, is even aware of what's happening here. I don't remember.

But we very much want to finish this already. We very much want this to be heard jointly with the pending appeal if that becomes necessary. And therefore, we're prepared to go forward.

THE COURT: Mr. Edney, are you not prepared to do a closing?

MR. EDNEY: Your Honor, we are. And we can.

THE COURT: Okay.

MR. EDNEY: If --

THE COURT: How long of a closing does each side mean? Because we can take a short recess for you all to have a moment to gather yourselves for the closing. But I'm going to actually put you on a time on these ones, okay, because we need to get this done. I mean, we start to shut down everything at this building at 5:00 p.m. And so, how long on the closing do you believe we need, Mr. Edney?

MR. EDNEY: Your Honor, I can finish within an hour.

THE COURT: Okay.

MR. EDNEY: But I understand we're up against it. I mean, I can work with the Court's schedule. I am expecting to be --

THE COURT: We can go longer --

MR. EDNEY: -- somewhere else tomorrow.

THE COURT: We can go longer than 5, like we did the first day. What I'm getting at is how long do you believe you're going to need?

MR. EDNEY: One hour, Your Honor.

THE COURT: Okay. Mr. Morris?

MR. MORRIS: Your Honor, respectfully, I would like an hour, too. But I am prepared to do this in 45 minutes if we could take a break until 4:30. Each side has 45 minutes.

We're out of here at 6:00.

THE COURT: Okay. I'm going to give each side an hour but I'm going to only give you an hour. That's an hour for everything. So, any reply you have to their closing, you've got an hour. So, we'll take a recess. We'll be in recess until 4:30. We'll come back out at 4:30, and we'll commence closing arguments.

MR. MORRIS: Thank you very much, Your Honor.

THE CLERK: All rise.

(Recess at 4:08 p.m., recommencing at 4:31 p.m.)

THE CLERK: All rise.

THE COURT: You may be seated.

All right, Mr. Edney, if you would like to proceed.

MR. EDNEY: Thank you, Your Honor.

Your Honor, this case in our 60(b) motion is about the misconduct, and I'm sad to say theft, of Mark Patrick. We believe that is now plain, and it has become plain from the documentation and evidence from the Cayman Islands liquidation proceedings. From that new intervening evidence, it is clear that and how Mr. Patrick took both Hunter Mountain and $270 million in other assets from their charitable owners, long established in doing good in the community.

Your Honor, and this is one of the reasons we're here, he also took from Mr. Dondero his longstanding say in where those charitable funds would be used. And for a long

time, Your Honor, they were used for a great good. They were used to help veterans coming off through the war on terror, injured, need of help. They were used for the Bush Center in Dallas. They were used for Cristo Rey High School. But that ability to do good that Mr. Dondero gave his life work to has been taken away by Mr. Patrick.

This theft and misconduct, Your Honor, is not adjacent to this bankruptcy or to the 9019 settlement that was previously approved by Your Honor's predecessor. It has everything to do with it. The Hunter Mountain Investment Trust Agreement automatically disqualifies those who have so gravely breached fiduciary duties, and not just in that role, though they were breached there, but in any capacity.

Also, had the misconduct not been concealed, courts would have enjoined Patrick from acting as he did through the settlement. They would have enjoined him from alienating such a significant asset. And we'll see that in the injunctions and orders that follow the months after the evidence in the Cayman proceedings started coming to light.

And most importantly, Mr. Patrick moved Hunter Mountain on February 12, 2025, from one entity that he was dealing with to another. But most importantly, he moved it into the new Charitable DAF structure he created. The restructuring, the restructuring that we've been complaining about, the restructuring that we allege is misconduct, was the

destination for the Hunter Mountain asset, and it was the location of it. At the time, Mr. Patrick entered into the 9019 settlement.

And, Your Honor, when he took from the Charitable DAF assets, he took the Charitable DAF assets from the Dallas Foundation and others on March 27th, he took Hunter Mountain from the Dallas Foundation for a second time. On February 12th, when he sold it away from the structure it had previously been in and with Dallas Foundation at the top, that was the first time. The second time was when he redeemed the interest of both the Dallas Foundation and all the other three historic charitable organizations from the DAF assets -- $270 million in assets plus Hunter Mountain -- for $1.6 million. We don't think that was with justification.

Your Honor, prior to the 9019 settlement, there were indications that there had been some movement, that new entities had been created. But the full details of this restructuring were not clear until the Cayman Liquidators were able to step into the shoes of the DAF Entities and obtain the documents of exactly how and where it happened. They also saw, the liquidators did, that there was no justification for it.

That it was the product of a series of opinion shopping from accounting organizations to accomplish this move of $270 million for just $1.6 million. They saw that the traditional charitable organizations had been completely

divorced from both the Hunter Mountain asset and the traditional $270 million Charitable DAF asset. That wasn't apparent at all prior to the 9019 hearing. It was apparent when the Cayman Liquidators laid it out.

They saw the reason why this was happening. The reason why it was happening was to avoid scrutiny into a gigantic pay package that resulted in pay to Mr. Patrick of $10-1/2 million in 2024 alone, $18 million over a course of two years between him and his co-director. We saw from that new evidence that the new economic beneficiary of this structure was not a legitimate organization, but it was a charity that was started just months earlier and run from the basement of Mr. Patrick.

And we saw that that charity has given away in its existence less than $1 million, while nearly 20 times that much has been given out to the people who run this new structure. None of that was available. It took the liquidators to come in after the 9019 settlement and to find it, and they did.

So in our view, Your Honor, this Court has multiple tools to address this issue. The misconduct of Mr. Patrick made his lack of authority opaque coming into the 9019 hearing, and that is a classic application of Rule 60(b)(3). The mechanisms, the details, the lack of justification for the improper reorganization was only worn out through the Cayman Liquidation, and it is the epitome of newly-discovered evidence

triggering an appropriate vacatur under Rule 60(b)(2).

And, Your Honor, this Court has its own equitable powers to reverse what appears to have been the result of inequitable conduct. Bankruptcy courts are a court of equity, and Mr. Patrick coming to this Court did not come in the spirit of equity.

Your Honor, I was surprised by some things that happened during our three days here, but I was particularly struck that the Highland lawyers were the ones standing up and defending Mr. Patrick's conduct, that were eliciting testimony from him saying that what happened here wasn't so bad. I mean, I expected Highland's counsel to stand up and say, look, folks should have learned about this earlier, maybe they should have done this or done that, okay. But we got a lot of defense from the Highland folks about maybe this restructuring was appropriate.

I don't think that that's a terribly colorable argument, but I'm also disturbed that it's coming from an entity, from a group of individuals who have been appointed by the bankruptcy court to properly administer the bankruptcy process, to step in the shoes of equity and run this entity while it's under bankruptcy. And it raises questions that we should consider going forward.

So I have a slide deck to guide this discussion, Your Honor, and I want to begin it now with Slide 4 of that. With

Your Honor's permission, we'll file this as a memorialization of some of the things that I've said as a demonstrative. And we can address that at the end.

MR. EDNEY: All right, so we're at Slide 4, and I just want to -- it took me some time to figure out how exactly this reorganization was accomplished, and I understand that Your Honor has had a fraction of the time I have had to figure it out. And I wanted to walk the Court through our view of it.

Slide 4 --

THE COURT: Ms. Young, you're still -- you're unmuted.

MS. YOUNG: Is it now?

THE COURT: Okay, thank you.

Go ahead, Mr. Edney.

MR. EDNEY: I mean, the stuff I say is not particularly good the first time, but the echo is even worse.

So on Slide 4, we have the DAF structure as it was. And through Mr. Dondero's management of the assets, and he did for a long time, this charitable corpus grew from a $35 million donation to $270 million in assets and had accomplished, even with that, distributions of more than $55 million to charity. At the top were the economic beneficiaries, the charitable organizations, the Dallas Foundation, the Greater Kansas City Foundation, the Santa Barbara Foundation, the Community Foundation of North Texas. In the case of the Dallas

Foundation, it had been an entity that was around for more than 100 years.

If we go to Slide 5, we see that the plan to reorganize these entities begins early. And this is Exhibit 7, the Shield Group Work Plan from November 2023. It lays out essentially the questions that led to what happened, an effort to dilute the existing charities and to potentially bring in new ones. This was a work plan that would not have been available to anybody but for the liquidators being able to step into the shoes of the entities in the Cayman Islands.

It continued, as we see in Slide 6, with the creation of a new general partner. And Slide 7 is Exhibit 169. In Exhibit 169, we have the beginning of the implementation of the plan in February 2024. I think this is an important document. Again, this was one only that the Cayman Liquidators were able to obtain standing in the shoes of the Cayman entities.

But this was not a process that Mr. Patrick wanted to be transparent to the outside world, easy to figure out by just sorting through a couple of corporate documents down at the Secretary of State's office. He was looking, when he was creating these new entities, for ones that were hard to find or track or trace, for generic names, something that wouldn't set off a flag.

And I want the Court to keep this email in mind when we hear from Opposing Counsel and when he argues that maybe

this should have been snuffed out earlier. The trail of breadcrumbs here, Your Honor, was intentionally small. And what we saw from the Caymans reveals that. Exhibit 169 is important.

And it resulted in the creation of a new general partner. And we see this at Slide 8. The entity that was hard to track or trace, the entity with the generic name, was CDH GP Ltd. And it was inserted into the existing structure, subbed out for the previous one, which was very easy to find. It was the Charitable DAF general partner. This was not.

Moving on to Slide 9, we have the next step. It was the creation of the DFW Charitable Foundation. This would eventually be the substitute for the $270 million-plus in assets held by the traditional charities. And it's not a traditional charity by any stretch. It doesn't have a track record. It was invented in 2024. It was run out of Mr. Patrick's house. It has almost no known activities. And we heard evidence in this case that it has given away less than a million dollars, well, many multiples of that, to the people that now run the DAF complex.

The next step was at Slide 10. Patrick formed an alphabet soup entity. This is the one that we've all been stumbling over during the course of this case, CDMCFAD, LLC. And he inserted it into the DAF structure. He then added his home-operated charity, as we see in Slide 11, as a member of

multiple of these organizations, including the Charitable DAF Holdco Limited. This is where the traditional charities held their interest. They had all of it. Now they had less than half of it. They were diluted. All the while, Mr. Patrick didn't inform the charities of any of this.

He then engages in the process of exiting Charitable DAF Holdco entirely from the process. He assigns their interest. He assigns their interest in the main corpus of the assets to this new entity, CDMCFAD, LLC. And then he takes actions to redeem those interests for $1.6 million. This is an interest in more than $270 million in assets.

Your Honor, this was not an obvious conclusion, to say the least. He knew he needed some support for it. And what we learned from the liquidators is that that support was not particularly easy to find. He had to go opinion shopping. And if you ask the former Assistant U.S. Attorneys, if you ask the FBI who investigates fraud, this is a common occurrence. You need to find somebody who provides you with the right answer.

So we saw in Exhibit 191, and this was put on by Ms. MacInnis, that he went looking to the PricewaterhouseCoopers accounting firm. And then in Exhibit 197, he went looking to FTI Consulting. Both said that they couldn't support what he's trying to do. He then came back to the vendor that had been working for the DAF structure in the

past, and that was ValueScope.

The ValueScope documentation, not available before the Cayman Islands liquidators came into place. And they, in March 25, 2025, came up with a theory, a theory that these four organizations that had been carrying on their books, as we saw earlier today, $270 million worth of assets, what they really had was something worth $1,637,000 and some change. And as a result of that, he redeemed their interest for that amount.

Of course, as we saw in Exhibit 11, and this is at Slide 15, that was ValueScope's opinion all along. Just a few months earlier, in September 2024, they carried this interest at nearly $270 million. That's what was being taken away.

So by the time it was all over with, we were left with Slide 16. Charitable DAF Holdco, which had been redeemed out of this Alphabet Soup entity, CDM and its Alphabet Brothers, had nothing but $1.61 million in cash. And CDMCFAD, LLC now had the exclusive interest in the Charitable DAF Fund. We see that at Slide 17. And its sole economic beneficiary were not the ones that Mr. Dondero selected, were not the ones that allowed them to have a say where the charitable assets went, but they were instead the DFW Charitable Foundation solely, solely run out of Mr. Patrick's house and not one particularly inclined towards giving away assets to charity, now less than a million dollars.

All of this, Your Honor, all of this was without

notifying the charities that were affected, the four traditional ones who had been counting on this $270 million availability at some point, who had been counting on Mr. Dondero working with them to select the most noble causes without ever notifying them. They had been given notice of the prior value scope valuations back in 2024, but not this one on March 25th, 2025. They were given no notice of the creation of this new general partner. And that was intentional because it was created in a way that was hard to track or trace.

The dilution of their interest with the DFW Charitable creation, they were not notified of that. They were not notified of CDMCFAD having that interest transferred to them. They were not notified of the redemption of their interest for $1.6 million and $270 million in assets.

And we asked Mr. Patrick about this, and he said his lawyers told him not to do it. But he conceded on cross-examination that he chose not to tell them. And that was a process that continued through the 9019 hearing.

Your Honor, his deposition transcript was in the record. Mr. Patrick was the architect of this restructuring, and when he was asked questions to where Hunter Mountain had been moved, whether it had been moved into this emerging new DAF structure, he couldn't remember. That deposition happened three days before the hearing, and nobody made finding this out easy. It took the Cayman Liquidators coming in to figure this

out.

If we go to the next slide. Again, all of this had a purpose, and we talked a bit earlier about the compensation. And I found the compensation to be eye-popping. I think Nick Saban would find the compensation to be eye-popping. Division I college football coach would find the compensation to be eye-popping. But we know that it's not the way this has generally been compensated.

The compensation for running the DAF in the past had been measured in the tens of thousands. Compensation for running the DAF upon striking out on this reconstruction on this reorganization was measured in the eight figures. And again, that was nearly 20 times what the new charitable entity gave away.

Again, I said this is about Hunter Mountain, right? We have to lay the foundation for this to get to what happened for Hunter Mountain, and that takes us to Slide 20.

All right. So as we see in Slide 20, Hunter Mountain was civilly organized to fund charitable work. Mr. Dondero and his partner, Mr. Okada, transferred their ownership in Highland Capital Management to Hunter Mountain for a charitable purpose. They wanted to have that Dallas Foundation that they trusted, that they were working with, to do good in the community at the top. They knew, and they had some confidence, this was only back in 2015, that Highland Capital Management would do well.

And Mr. Dondero wanted a legacy that would out-survive him, that would do well in the community. And that's the structure that he created.

Now, we see that in the slide that's referenced there. This is Exhibit 242 at Slide 12. There's been a lot of discussion today, well, geez, does the Dallas Foundation really own it? There's no question that the structure is complicated, Your Honor, but the undisputed facts are that this was for the benefit of the Dallas Foundation. They put this insurance company in the middle of it, and there are complicated reasons for that.

But at the end of the day, if Hunter Mountain did well, if Highland Capital Management did well, that equity stake, Mr. Dondero could have kept it, but he made sure that the Dallas Foundation would be the one that would benefit from it. Well, that's not the way it went after Mr. Patrick's restructuring activities. And if we can go to the next slide.

Now, Mr. Patrick used his position at Rand Advisors to have Atlas IDF sell -- I'm sorry, to have Rand PE Fund I, LP sell its position in Hunter Mountain on February 12th for a million dollars, and we see that documentation at Dugaboy Exhibit 15, which is reflected on Slide 22. He, in those documents, he affirmed that he received all the consents that he needed to pull off the sale, but it ended up being, as we see on Slide 24, to an entity that he also said he controlled,

from one entity he controlled to another entity that he controlled.

And I think you're going to hear in terms of authority, well, that's great, because by the time he sold it off, he was sending it to another entity he controlled, and he had authority to settle this case there, and he had the authority to settle this case before, and we should not worry about it any further. But he did it, Your Honor, as a registered investment advisor. That's the evidence that came out under cross-examination of Mr. Patrick.

And, you know, that's not a role where you just get to make any decision that you want. What the law says there, and this is in Title 15, is that you cannot transfer an interest in any asset to a commonly controlled entity unless you notify all the investors and you get their consent. This isn't optional. You can't work around it in the fund documents. It's a part of the securities laws, and that didn't happen here.

Mr. Patrick, if we can go back, please, to Slide 20. Mr. Patrick didn't seek the consent of anybody, much less the investors in the Rand PE Fund, when he made this sale. He just didn't. And that's not appropriate. If you want to trade an asset to a commonly controlled entity, the securities laws say you need to be completely above board, cards up with consents and fully informed information to the advisors.

Let's go to Slide 26. The argument that, well, I told myself, right? That's already been dealt with. That's been dealt with in the SEC decision, the Paradigm case that is cited in these papers. At the end of the day, we see at Slide 27 that this consent was needed. It was needed at the Dolomiti level, which is an entity associated with Dugaboy. It wasn't obtained. It was needed from Crown Global. You heard on cross-examination that he didn't obtain that either, other than telling them that he was going to liquidate the entity.

Let's go on to Slide 28. So I think a lot of what we heard during this presentation is, you know, Mr. Edney, you keep talking about the DAF. What does that have to do with Hunter Mountain? Mr. Patrick made the DAF very relevant to Hunter Mountain because before he settled this case in May of 2025, he sold Hunter Mountain and the Highland Capital interest into his new DAF structure, the one he created, the one that we believe he fraudulently and improperly created.

And you can see that in Slide 28. Where this ends up is at that company's CLO Holdco. And underneath that today is the Hunter Mountain Investment Trust. This is the same DAF structure that he moved the charities out of. And keep in mind, Your Honor, this transfer happened on February 12th, this purported sale for a million dollars. On February 12th, it was beginning to change, but the Dallas Foundation, the Kansas City Foundation, the Santa Barbara Foundation, they still had a

stake. They still had a stake in this DAF structure. That ended on March 27th.

So again, he took Hunter Mountain from the Dallas Foundation twice and ultimately left it with the charity run from his home that gives away less than a million dollars to charitable causes. Your Honor, in this way, bringing Hunter Mountain and the DAF structure connects Mr. Patrick's misconduct with respect to the DAF to the 9019 settlement. By the time he arrived at the Court in May of 2025, he was coming to the Court with a series of unclean hands.

So, then we have Mr. Patrick's justifications for what happened here. And we heard this term, "discretionary charitable beneficiaries." I can swap them out at any time. That's not a term that we see in the foundational documents of the DAF. That we saw in Exhibit 5. It was supposed to be run for the benefit of the indirect charitable owners.

And you saw testimony from Mr. Patrick. You saw testimony from others that the indirect charitable owners were those four entities. This restructuring was not to their benefit. He says that Mr. Dondero's involvement with those charities was creating a risk to their tax-exempt status. Taking a quarter billion dollars away from those charities is an awfully severe way to deal with some incremental tax consequences.

And in Slide 34, it ignores, that argument ignores

the long course of activity for Mr. Dondero and Ms. Bannon in determining the ultimate destination for charitable gifts. Up until 2025, they decided where this went. They consulted with the traditional charities, but they worked together to find a meritorious home for these assets. And that was never a problem. Mr. Patrick never said anything about it, but now he uses it as a justification to work this out.

We heard about the cocktail napkin. The cocktail napkin Mr. Patrick says that he doesn't have, that Mr. Dondero says never happened, that isn't accompanied by any detail. And then the question is, let's just say Mr. Patrick had some grievances and thought things should change. What should he have done? Should he have taken it to the charities and said, look, things have got to change here or else we're going to have to do something pretty drastic? If he thought what was going on was inconsistent with his view of the world, should he have resigned and handed it over to Wilmington Trust or somebody to take the mantle from there?

He had all of those options, but instead what he did was to restructure it away from those charities and to pay himself many multiples of what he was giving away. That is not appropriate. That is not justifiable.

You also heard a series of evidence that Mr. Patrick owns the general partner and he can do what he wants. But the foundational documents, and you can see this in Exhibit 6,

separates the management shares to the general partner from the economic interests of the company.

So we come back to the question of why does this misconduct matter here in this bankruptcy? And one of the reasons it matters is because of the Hunter Mountain Investment Trust Agreement. That investment trust agreement has sensible, automatic provisions to remove an administrator who is engaged in misconduct or breaches of fiduciary duties. It's like Monopoly. It's do not pass go, do not collect $200. You start breaching your fiduciary duties, you're out. And it's not just with respect to the Hunter Mountain Investment Trust capacity. It's in any capacity.

This makes complete sense. The old phrase is, "To whom much is given, from whom much is expected." And the foundational documents of the Hunter Mountain Investment Trust said, if you're going to have this kind of authority over these assets, you have to keep your nose clean. Not just with regard to these assets, but with regard to anywhere else.

So, Your Honor, the misconduct that happened to the DAF, even if it weren't related to Hunter Mountain, it would be disqualifying with respect to his authority over Hunter Mountain. And we respectfully submit that the evidence that came out of the Cayman Islands proceedings showed that those disqualifying actions, those transgressions happened before Mr. Patrick came to the Court in May of 2025 to go through

this. And those terms are laid out at Slide 42, the Honis trigger event, the effect of transgressing one of those being the removal of the administrator.

So, we see these terms at Slides 42 and 43. And we heard some explanations from Mr. Patrick. He says, well, that clause doesn't apply to a successor administrator. And he says, my name's not John Honis, so it doesn't apply to me. I think that's going to be hard to square with Paragraph 17 of Exhibit 1. This is the Hunter Mountain trust agreement that makes clear that all the terms that applied to the original one would bind a successor.

We also heard from Mr. Patrick that it doesn't really matter because there would be this unvirtuous cycle where he would use his position at Beacon Mountain to reappoint himself if he were removed for misconduct. I mean that can't possibly be the case. That's not equity, and that's not what this document was designed to accomplish.

It is a real question about once he has committed breaches of fiduciary duty anywhere, whether he could walk into court in May of 2025 and say that he properly represented the Hunter Mountain Investment Trust. Your Honor, not only that, but we saw the evidence. We saw Exhibit 116. We saw the efforts to make this restructuring harder to find that gave him time without all of it being found out.

And we respectfully submit that had the details of

his restructuring been known earlier, had they been done in a transparent way, had they not been covered up after, the owners of Hunter Mountain and the owners of the DAF that was over Hunter Mountain by the time it got to the Court would have had the ability to go into various courts of jurisdiction and find a way to stop it. This is not speculation because we know that that is what happened in the Texas Business Court, and you can see that at Slide 49.

The Texas Business Court put a ground stop on major transactions as represented by the settlement agreement. Had that arrangement been put in place just a month or two earlier, this settlement agreement would not have gone off the ground. And at Slides 49, 50, and 51, we excerpt the portions of that arrangement that make it very clear that it would cover this settlement. It affects the relevant entities.

The same thing happened in the Cayman Islands. The Cayman Islands placed a stop on numerous entities that by the time this injunction had been put in place, by the time Mr. Patrick had come to the Court, they were the entities effectively making the decision about whether there should be a disposition of any serious assets. And you can see at Slides 53 and 54 that that injunction would have stopped at two.

So we have it on two grounds at least, right? His conduct is disqualifying of the Hunter Mountain Investment Trust Agreement. His conduct, had it not been concealed, had

it not been obfuscated, would have led to more rapid injunctions that would have stopped this, and he would have had to seek permission from a steward of this, a court supervising these entities, to enter into the settlement agreement.

And, Your Honor, again, I do want the Court to focus on Mr. Patrick's testimony about his decision not to inform people of each of these successive steps, which were monumental for charities. That was a decision to keep this quiet. His decision to structure the entities in the nondescript way that he did was a decision to keep it quiet. And we now know through the Cayman Islands proceedings that that was not an accident or not unintentional.

Your Honor, turning to Slide 60, you know, this matters here, right? Somebody seeking approval in the 9019 settlement has to come to the Court in good faith. It cannot, it has to be the product of arm's-length bargaining, and it cannot be the product of fraud and collusion. And that's not just between the parties of the settlement. We have to know that somebody is coming to the Court, dealing in good faith, on behalf of the entities to whom they're responsible.

And for that reason, Mr. Seery on the stand told you that he was eager to find out the authority of Mr. Patrick to act on behalf of these entities. We think his examination did not go far enough. We think it had a consequence for the settlement, and I will say this. That's laid out in Slide 62

and 63. I need to give you a sense, Your Honor, of what we're looking for here.

I think Your Honor was right earlier in ruling on an evidentiary objection. I think Your Honor is always right, but in particular, something sunk in with me. This is not about rethinking the terms of the settlement, and I don't think it is. I think our argument here is that we, that Mr. Dondero as donor, that the charities as beneficiaries, that those are trying to do good, and that includes Mr. Dondero. I mean, he has an interest in making sure that his life's work doesn't go to waste or to an improper destination.

We are looking for assurance that somebody that was acting in a manner consistent with his fiduciary duties to the charities, in a manner consistent with his fiduciary duties to the charitable mission, was making the decision to enter into the settlement. And perhaps when that person arrives, you know, Mr. Morris and the Highland team will reach a settlement with them, and perhaps it will have some of the terms that are in this settlement, and perhaps it will have different ones.

But I think the key is the person that was supposed to show up in court in May of 2025 was somebody acting with fidelity to the economic beneficiaries, and the person who did was acting for his own interests and had already breached those duties in a way that removed him from this responsibility. And, Your Honor, it wasn't manifest or easy to find.

If you just look at the 9019 proceedings, and you see this at Paragraph 63, the signatories to the settlement were that same stack of entities. And you can see that at Slide 65, that same stack of entities that used to own Hunter Mountain, but after February 12th, didn't anymore. It was in the DAF, and we didn't see those DAF Entities. That would have been quite the red flag indeed.

It might have been curious when I was questioning Mr. Seery about what he said at that 9019 hearing. He said he wanted to assure himself of Mr. Patrick's authority, and one of the things he did was to review the organizational documents of the entities that owned Hunter Mountain. And I went through all those, and they were the Rand Entities, the Atlas Entities, Beacon Mountain, Crown Global.

Your Honor, you see on -- and I would encourage the Court to look at that list. It's Exhibits 70 through 104 of what has now become Exhibit 300. This is the amended exhibit list of Highland Capital Management. Those entities are the ones in the historical structure. I mean, even Mr. Seery didn't go out and see what had changed. Maybe he didn't know it. We certainly didn't know the full aspects of it.

But intentional or not, that was an indication that this was all kind of business as usual, that there hadn't been this dramatic reorganization, that if you wanted to look at who was in the ownership stack, look at Exhibits 70 through 104.

That was on the record in the 9019 hearing. But that stack of entities was irrelevant by the time we got to that point.

And Mr. Seery said, what has everybody worked up about? This is a structure that had been in place for a long time. As it turns out, it really hadn't. This was the new DAF 2.0, the new structure that was for Mr. Patrick's benefit that he had stood up.

Your Honor, I am going to reserve a bit of time for rebuttal. But I have a sense of what's coming, and I want to say something about it. There is a timeline here. And there were indications that Hunter Mountain had been sold to an undisclosed buyer. There were dribs and drabs of new corporate entities being stood up.

But the full details of this restructuring was really only laid out for the first time in the Joint Liquidators' statement of claim. That was on July 15, 2025. We think that's outside the relevant window. But even if it weren't, that goes for the Texas Business Court, too. As far as we were concerned at Dugaboy, those were just allegations. Those were just allegations. And they weren't evidence. They never are. And I think that's what we would have heard if we came running to Court with that.

What we did do when those allegations came out on July 15 is that we did come to the Court. And we asked the Court to stay these proceedings, to stay the approval order so,

if evidence came out from that process, it could be considered. The Court declined that.

And turning to Slide 71, I think this is the natural outgrowth of that process. I mean, those documents were just allegations. And perhaps there was no evidence behind them. But as the summer wore on, the documentation underneath that became bare. It was revealed to the public in some form. And then the internal documents, the ones that showed the deception and the lack of justification, the opinion shopping, and the compensation motive, those came out in successive affidavits of Ms. MacInnis filed in the Cayman Courts.

You heard from her that they were confidential and not able to be accessed for most mere mortals, even when they came out. But as they were filed, it was in the fall and the winter of 2025. The full picture, the evidentiary pictures that the Cayman Liquidators were able to pull together was only privy to us by December of 2025. And we acted promptly thereafter.

So Judge Jernigan denied the stay. And at Slide 71, she denied the stay, we're at the bottom of the box. And if evidence of Mr. Patrick's misconduct backing up those allegations that were in the statement of claim were revealed, we think the Rule 60(b) motion is the natural outgrowth of that. If the allegations in the statement of claim were just a giant dud, you know, there wouldn't be any filing, right? We

wouldn't have the evidence.

Rule 60 calls for evidence. It doesn't call for suspicion. It doesn't call for allegations. It calls for things that we can prove. And today, with the benefit of the joint liquidator asset -- the joint liquidator documentation, it is something that we can prove.

Your Honor, with that, I'm going to reserve the remainder of my time to rebut Opposing Counsel. But I appreciate it --

THE COURT: Before you sit down, I have a couple questions for you.

MR. EDNEY: Of course, Your Honor.

THE COURT: My first question is, if the Court grants the motion and reconsiders or vacates the order, how does that change the restructuring of the DAF Entities? What effect does that have on the restructuring of the DAF Entities?

MR. EDNEY: It does not.

THE COURT: Okay. So my understanding of what happens if the Court vacates the order approving the settlement is that potentially the settlement is not approved. HMIT remains a party that holds litigation potentially against multiple Highland Entities or I'll call them players. They no longer have a claim that's fixed and in a class, as I understand it, to get paid. And we're basically back at that. But am I incorrect on that?

MR. EDNEY: No, I think you're absolutely correct, Your Honor.

THE COURT: Okay. So then here's my final question to you, and it will be to Mr. Morris, as well. But is this Court required to consider whether the settlement is good on behalf of the party that's not the Debtor? In other words, does this Court have to consider whether or not HMIT is a good settlement, or does it only have to consider whether or not the Debtor made a settlement that's in the best interest of the estate?

MR. EDNEY: Your Honor, it has to do the former to an extent. So by the former, I mean it does need to consider whether the settlement was in the best interest of the other settling party within a range, right? It has to do that because if Mr. Patrick was acting inequitably, he was coming to this Court not in good faith to engage in the settlement, but for his own interest, and this court of equity should not participate in that.

And now that the evidence has been laid bare of that, should vacate it. Beyond that, his conduct disqualifies him as having authority, right? This is conduct that occurred --

THE COURT: I understand the argument there that if the Court determines that or looks at the evidence and believes that the Honis provisions applied to Mr. Patrick and there's some sort of automatic trigger of him having authority, that's

one thing.

I'm asking the question of if this ends up being a bad settlement for HMIT, does the Court have to consider that in your analysis?

MR. EDNEY: Yeah, I think it does, Your Honor. I mean, look, I don't -- if I were coming here to Your Honor and saying, you know, this little part of the settlement over here, that's not great, that should come out differently, no, not at that level of granularity.

But when you have a person who's not acting at all in the interests of the entities that brought him here, the donor and the charities, when he's acting for his own interest in giving away their assets to the Debtor estate, so that's what the settlement does. We think it gave away too much, or at least we think that nobody was deciding what's in the best interest of the charities in terms of giving away too much. That's not something we can go recover from Mr. Patrick later, right?

And this is a court of equity. We need to make sure that, if by the time he got here, he was not acting in the best interest of the beneficiaries of the corporations that were before the Court, we need to unwind that so that somebody can make a decision in the best interest of those beneficiaries. And that's not something that can just be recovered by us taking it up with Mr. Patrick later, because he doesn't have

that money anymore.

What he has is the money he's been compensated. That's not particularly the issue here. He gave that money away to the Debtor estate, and this Court is administering the Debtor estate in an equitable manner. The right outcome is to bring that back and have an individual who's exercising his fiduciary duties make a decision with Highland if there's a potential settlement to be had or pursue rights otherwise.

THE COURT: Okay, but let me make sure I get your answer, because I think you've gone back on what I previously questioned you, which is if the settlement is -- if the settlement order approving settlement is vacated, that doesn't change, it doesn't affect the restructuring, it doesn't affect -- it doesn't somehow bring back the compensation issue that you've raised.

This Court is never going to decide whether or not what Mr. Patrick did as part of the restructuring was appropriate or not. Do you agree with that?

The ultimate decision of whether or not the restructuring was proper and whether or not those $270 million worth of assets should be put back into, and I'm going to get the entity wrong, but I believe it's Charitable DAF Holdco, Ltd., as opposed to the current DAF structure. This Court is never going to rule on that, because that's not Mr. Patrick, the DAF, Hunter Mountain, Beacon Mountain, all those entities,

none of those are in bankruptcy except for Highland.

MR. EDNEY: That's correct.

THE COURT: Okay.

MR. EDNEY: Your Honor is never going to unscramble the egg in terms of the restructuring. You're not going to bring those assets back to Charitable DAF Holdco. You're not going to get Mr. Patrick's compensation back. So I use those as issues that we would take up with Mr. Patrick directly.

What we can't take up with Mr. Patrick directly is the assets that he gave away to the Debtor estate that is administered by this Court. Those assets are here, and we think he gave them away improperly and without authority, and that the right result is to bring them back to the status quo ex ante before the settlement was undertaken and make sure that somebody who's properly exercising his fiduciary duties with respect to those assets is making the decision.

THE COURT: And those assets, just to be clear, are primarily litigation rights of HMIT against Highland Entities or Highland Debtor as well as potentially other related entities.

MR. EDNEY: Yes, and the rights to the timing and distribution of cash that is in the Debtor estate.

THE COURT: Okay, but that was fixed by the settlement in favor of HMIT, right?

MR. EDNEY: Well, that's right, Your Honor, but a key

part of the settlement was to bring a portion of that forward. And we think that somebody that really cared about the charitable beneficiaries would have pushed for more.

Instead, Mr. Patrick gave a lot of that leverage away in order to gain his rights to the Kirchner litigation. And the reason he wanted those was to brush Mr. Dondero off the plate, brush him off the plate from asking the hard questions about what happened in this course of misconduct and the gains that he had gotten from it. He wanted a weapon in that fight. I understand why he wants it, but I don't think it's something that should have been facilitated, given what we know now about the condition in which he came to the Court.

THE COURT: Okay. Those are the questions I have. Thank you.

MR. MORRIS: Thank you, Your Honor.

THE COURT: And I have, even though I've asked you a question and taken up time, I'm still going to give you the 11 minutes that I show that was still existing from your time.

MR. EDNEY: Well, I was aiming for 15, so I'm glad I was somewhat close, Your Honor. Thank you.

MR. MORRIS: My vote was 8, so I guess you're the (indiscernible).

THE COURT: As Mr. Edney said, I am never wrong until, of course, an Appellate Court tells me I am.

MR. MORRIS: We finally come to one thing we can

agree upon.

THE COURT: Give me one moment, Mr. Morris. I just --

MR. MORRIS: Yeah, I'd like to take a moment, too, myself.

(Pause)

MR. MORRIS: While we're waiting, I'm hoping that our slide deck for the closing, which we filed this afternoon at Docket Number 4665, can be put on the screen. And we've got hard copies in case anybody's interested. It will be up on the screen.

THE COURT: Okay, Mr. Morris, you're welcome to proceed.

MR. MORRIS: Okay. Thank you, Your Honor.

I actually want to begin by thanking the Court and your staff for your patience, for your diligence in hearing us over a much longer period of time than was expected and permitting us to stay after hours on two of the three days here. I'm very grateful for that.

The two things that are clear to me after hearing Counsel's closing argument is that this is a two-party dispute that can and should be litigated in the Cayman Islands and/or the Texas Business Court because it has absolutely nothing to do with Highland. The second thing that I take away is that everything that's been argued today, the examinations that we

heard over the course of three days, could have been done last year, really could have been done last year, and it wasn't for reasons I'll discuss.

I want to just do a couple of quick bullet points before I get to my prepared remarks. I regret to say I did not appreciate the shot at me and my colleagues about how we are somehow not acting appropriately in defending this case and the suggestion that people will be looking at what we did here in the future. I don't think that's appropriate, and I don't appreciate it.

There's a mention of Dolomiti and somehow some consent was required of Dolomiti. I think Your Honor has heard at least three times and seen the evidence multiple times. Dolomiti had a micro-percentage interest in the limited partner. It was withdrawn before anything happened. Nobody needed Dolomiti's consent to do anything.

They put up a slide about the signatories and suggested Mark Patrick was doing something improper about putting all of those signatories into the settlement agreement. It's the exact opposite, Your Honor. You heard Mr. Seery testify today unambiguously that that was his idea because he has a whole lot of experience in the Highland case and with Highland-related litigation, and he did everything he could to protect himself, to protect the estate, and to protect the legitimate stakeholders.

There was a slide there at the end that said Judge Jernigan may have reasoned that a 60(b) motion would be appropriate. I wish the Court would take the time to read Judge Jernigan's order denying the stay. You don't have to speculate as to what she was thinking because she said it. She denied the stay because she found what was happening in the Cayman Islands, regardless of what Mark Patrick did, to be irrelevant to Highland, the settlement agreement, and HMIT.

I do want to highlight several things that I did not hear anything about. There was nothing about the standard under Rule 60, not a word. There was no mention of the discovery that Dugaboy took and could have taken during the 9019 proceeding. There was no mention at all about the nine different agreements that Mr. Dondero and entities he controlled entered into with Mark Patrick throughout 2025 when all was known to them. And there was, of course, no mention about recusal, and at this point, Your Honor, I hope the Court will find that Dugaboy has completely abandoned that argument.

Now to get to my prepared remarks, if we can go to the first substantive slide, I do want to talk about the law because the law matters. This may be a court of equity, but not at the expense of the law. And too many people come in and rely on some equity because they're hoping that some sense of fairness will overrule the law. That's not the way it works. This is a court of law.

Under Rule 60(b)(2), Dugaboy must come forward with newly-discovered evidence. There's multiple pieces here. It's not just newly-discovered evidence. It's newly-discovered evidence that with reasonable diligence couldn't have been discovered in time to move for a new trial. We have a debate over whether the appropriate date is July 14th or July 28th. We think the plain text of the language of the bankruptcy rule makes it clear that Rule 28 applies, but we believe we win either way. Dugaboy cannot show that there's any newly-discovered evidence that with reasonable diligence couldn't have been discovered that wasn't either cumulative or that would have otherwise produced a different result here.

The law is stated in Paragraphs 58 and 68 of our brief in opposition to the motion to vacate. And it's clear that evidence that didn't exist at the time of the judgment must be ignored for purposes of Rule 60(b)(2). Under 60(b)(3), and this is really important because I think Dugaboy completely misconstrues what 60(b)(3) is all about.

Under Rule 60(b)(3), Dugaboy must prove by clear and convincing evidence, think about that standard, clear and convincing evidence that an adverse party, meaning Highland, engaged in misconduct and prevented the moving party, prevented Dugaboy from fully and fairly presenting its case. It's not about whether Mark Patrick committed fraud. And this is why it's so critical and so stunning that they have completely

ignored the issue of discovery.

I have a case here called In the Matter of Hope 7 Monroe Street Limited Partnership. It was issued by the United States Court of Appeals in the District of Columbia. The citation is 743 F.3d 867. And there the court makes the exact same distinction that I'm trying probably less articulately to make.

It says, "Courts have distinguished between fraud or misstatements that are committed during the course of a commercial transaction, such as a false statement about the quality of goods being sold, and fraud or misstatements perpetrated in the course of litigation such as perjury of a witness or the introduction of a false document into evidence."

What Rule 60(b)(3) is about is the process that led to the entry of the order that's being challenged. It is not about what Mark Patrick did and what transfers he made and whether he breached his fiduciary duty. That is irrelevant under Rule 60(b)(3).

Let's go to the next slide. I have got a litany of undisputed facts, Your Honor. They are cited to very specific evidence in the record. I believe they are undisputed, and these facts mandate denial of the motion. I'm going to go through them quickly.

And let's begin with the fact that Dugaboy has now designated Mr. Dondero as its agent for all purposes relating

to the relevant litigation and Dugaboy's motion to vacate. The relevant litigation is defined in the stipulation to include everything that's been under discussion here. The Cayman proceeding, the 9019 proceeding, the motion for a stay, the Texas Business proceeding, the motion to vacate, and under really basic principles of principle and agency law.

The knowledge acquired by an agent in the course of his duties is imputed to the principle. So everything that was done by, for, and on behalf of Dugaboy in connection with the relevant litigation, or by or on behalf of Mr. Dondero, regardless of what hat he happened to wear, is imputed to Dugaboy because they have stipulated that he is their agent.

We also filed on the docket, Your Honor, if you recall, in Dugaboy's reply brief we saw for the first time the evidence that they contended was newly-discovered. The second document that we filed on the docket, and I'm not going to go through it today because it is really, it is a piece of work, as they say.

We took the charts that are in Dugaboy's reply brief and we replied to it. And you'll see when you read it and you check the citations to the evidence that we have cited in that document that many of the allegations are false. I again appreciate the fact that Mr. Edney is new to this case. Some of the things that they say they learned for the first time in the JOLs' writ were actually filed in the docket by supporting

organizations four years ago, ironically enough.

There's other evidence that they just missed. And we've lived it, so it's easier for us to have recall here. I understand that it's harder when you've just been on the case for a few weeks, but there is so much evidence that they claim is new that is not new at all.

THE COURT: Mr. Morris, real quick. I'm just looking at your slide here. And I believe point two there is what you're referring to and there's no docket name listed.

MR. MORRIS: That's right. So that is also -- I appreciate that -- that was filed, that is at Docket 4665, and I believe that it's been marked as Exhibit 99. So all we did in that docket is take their chart and add a column to the right, and it's our rebuttal to their rebuttal.

There's no dispute, I'm at the third bullet point now on Slide 3, that Mr. Patrick had authority to act on behalf of HMIT at the time of the 9019 hearing.

THE COURT: Mr. Morris, I apologize for interrupting you again. But the last thing I'm showing on the docket is 4664, but hold on, maybe I'm getting old. Give me one second.

MR. MORRIS: Yeah, maybe refresh.

(Pause)

THE COURT: Okay. I had to refresh.

MR. MORRIS: Okay, so it's there?

THE COURT: Yes, it's there, 4665.

MR. MORRIS: Okay. So that, I guess, Exhibit 99 that was lodged on that amended exhibit is what should be filled in in that blank.

THE COURT: Okay.

MR. MORRIS: So Mr. Patrick had authority to act on behalf of HMIT at the time of the 9019 hearing. Your Honor only need look at Paragraph 7 of the HMIT Trust. No evidence was presented showing that anyone anywhere has ever sought Mr. Patrick's removal as the control person of the HMIT Entities, let alone that he was removed. Mr. Patrick remains the control person of the HMIT Entities today, and nobody has ever tried to remove him, notwithstanding all we hear today.

As reflected in Highland's Exhibits 45 to 72 and 55 to 62, these are all of the documents that were filed in the Cayman Islands in the Texas Business Court. It includes Mr. Patrick's very lengthy declaration that was lodged in the Cayman Islands on June 4th. It includes the Dallas Foundation's objection to the Highland settlement.

There is an enormous amount of information in there that shows that Mr. Patrick's allegedly, right -- that Dugaboy knew or should have known by July 14th, take their date, that Mr. Patrick's allegedly wrongful conduct concerning the sale of Beacon Mountain, the restructuring of the DAF Entities, and the compensation and expense issues complained of as far back as April 2025. And that's a reference to the winding-up petition

and Mr. Dondero's first declaration.

But you have to read all of those documents. And I think when you read those documents, you can only come away with, what are we doing here? Like, you learned that he got paid a few dollars more, or you learned -- as I sit here today, I can't even identify what it is they think that they didn't know.

Dugaboy availed itself, and this is a really important point, no dispute that Dugaboy availed itself of all of the rights in discovery under Bankruptcy Rule 9014. They served document requests. They served interrogatories. They took four agreed-upon depositions, including Mr. Raver and Mr. Patrick. Highland produced over 4,000 documents. As you heard Mr. Seery testify today, it included all of the settlement communications, all of the backup, all of the information we received from the HMIT Entities.

The Dallas Foundation pressed its objection that Mr. Patrick lacked authority and then withdrew it. And I just -- I don't know what we're doing here. All we hear about is the charities, the charities, the charities, the charities, and yet the charities aren't here. And it's not as if they're done litigating. They're still litigating in the Cayman Islands. They're still waiting for the JOLs to get their recognition a year later. I'm not quite sure what's taking so long, but I've never heard of that before.

But they still have two lawsuits, right? And the Dallas Foundation, they actually entered into -- not only withdrew their objection with prejudice, but entered into an agreement with Mr. Patrick. Nobody's here except Mr. Dondero. That's a real tell.

If we can go to the next slide. More undisputed facts from my perspective. And this is -- this just destroys, absolutely destroys any Rule 60(b)(2) argument. Neither Dugaboy nor the Dallas Foundation served any document requests on Hunter Mountain. So you have counsel standing here saying, oh gee, they hid it. We couldn't find it. It was so hard. You'll never find something if you don't look for it. We can all agree on that.

If you don't serve a document request that says, what happened? If you don't say, how come you sold Beacon Mountain for a million dollars? Because they knew that's what happened way back in April. They didn't ask. They didn't ask. If you don't ask, why is anybody going to tell you? That's, that's the point of discovery. And when you fail to exercise your rights in discovery, it's not as if they didn't know they had rights to discovery. They did. Both parties knew they had rights to discovery because they took discovery.

For reasons I don't know, for reasons that have not been explained, both Dugaboy and the Dallas Foundation never asked HMIT for a single piece of paper. No evidence was

presented demonstrating that Dugaboy or any other party objected to any aspect of the discovery that was provided, including Mr. Patrick's responses to questions during deposition.

There is zero evidence because it never happened. Right? So we hear today, oh, gee, Mr. Patrick was evasive. Nobody said that at the time. This is exactly what Rule 60 is not intended to do. A do-over. If you didn't like what was happening in discovery when you were actively participating, you should have said something. You didn't.

Again, not to beat a horse, but the only parties to formally object to the proposed settlement on the ground that Mr. Patrick lacked authority, the Dallas Foundation and Crown Global withdrew their objection with prejudice. And this is really -- this is important. It's such an important document for the Court to consider is the Texas Business Court petition by the supporting organizations. That document is important because it actually goes through in extensive detail all of the transactions that they complained about.

It's a document that was filed less than a week after the 9019 proceeding, and it is a document that was indisputably filed a couple of weeks before, even under their view, the shortened period for seeking a new trial.

Dugaboy relies heavily on the writ that was filed on July 15th, and that's why they argue so strenuously for this

July 14th date. But the facts laid out in that document were either previously known, and that's where we rely on that demonstrative exhibit I just referred to, or were cumulative facts known, or it provides details that we're never going to persuade the Court to change its view.

For reasons I'll talk about more in a moment, the evidence adduced in Dugaboy's case-in-chief actually validated this Court's prior finding that the Cayman Islands proceeding is irrelevant to the Highland bankruptcy case in consideration of the settlement agreement under 9019. In 2025, and this is, you know, again, one of those things that they have completely ignored. How do you ignore the fact that in 2025, Mr. Dondero and entities he controlled entered into nine different agreements with Mr. Patrick and either DAF Entities or HMIT entities? Those agreements were -- you can see them. You'll see one that has Mr. Dondero and Mr. Patrick's signature right next to each other. I think there was one as late as just December of last year -- December of last year -- between Atlas and Dugaboy of all entities in which Dugaboy agreed to pay millions of dollars to Atlas. Okay?

We're here saying that Mark Patrick had no authority and yet Dugaboy, the Movant here, just six months ago, is entering into -- long after the writ was filed, right? Long after they had all that evidence. Long after the recognition petition was filed, they're still entering agreements with

Mr. Patrick and paying him millions of dollars. How do you reconcile that? You can't.

Next slide, please. I just want to talk briefly about Ms. MacInnis and Ms. Bannon. mean them no ill will, but I don't think that they added much at all to the body of evidence in the case. I do think that there's good reason for the Court to question Ms. MacInnis' credibility.

I don't know why, but she voluntarily traveled to Texas on her firm's expense, despite being more than $3 million in arrears, not including a $1.2 million judgment in Mr. Patrick's favor that remains unpaid, to testify on behalf of an entity, Dugaboy, that has absolutely no connection to Holdco, the only entity Ms. MacInnis said she oversees, in a matter that seeks to set aside a settlement agreement that Ms. MacInnis has not even determined a year later is good or bad for her entity. Like, what? Why would anybody do that unless they're trying to curry favor with Mr. Dondero?

Ms. Bannon, I think there's reason to question her credibility. Her primary responsibilities at NexPoint concern communications and charitable giving, but all she testified to today, or most of what she testified on the stand, had to do with corporate charts and corporate organization and restructurings and how the transfer of this entity impacted the other entity. That's not what she does for a living.

She was not responsible for investigating the

allegations lodged against Mr. Patrick. Despite being an officer of the Dondero Foundation, she didn't even keep those entities informed about the allegations presented in this motion to vacate. Really? How do you do that as an officer? You didn't even tell them what was happening here.

While she claimed to learn certain facts, I don't know if Your Honor recalls, very short for us examination the first time she took the stand, I pointed out several times how, while she may have learned facts late in the chronology, her supporting organizations learned of them long before her and before the date for seeking a new trial.

For reasons I'll talk a bit more about in a moment, Dugaboy's last second Hail Mary that Mr. Patrick somehow magically or automatically lost his authority to act on behalf of HMIT the moment he allegedly breached his fiduciary duty in matters unrelated to HMIT is rejected as a matter of fact and on the grounds that they've waived that argument. I mean, I don't know that there's ever been a stronger case of waiver.

They had the HMIT Trust Agreement forever. Mr. Dondero alleges in his April declaration that Mr. Patrick began breaching his fiduciary duties as early as June 2023. And yet, as Mr. Seery testified today, Mr. Dondero was perfectly happy joining forces with Mr. Patrick in 2003 and 2024 when Mr. Patrick was prosecuting cases against Highland, but he didn't like it so much when Mr. Patrick decided not to

stand by his side any longer.

The fact is that this argument has been there forever. Had they chosen to make it? They did not. They did not make it at all in connection with the 9019 hearing. They didn't even make it in their motion to vacate. I heard about it for the very first time the Friday before the Monday trial during the deposition of Mr. Dondero. I'd never heard it before.

So not only did they not ever make this argument before, but again, I'll go back to the nine separate agreements that Mr. Dondero or entities acting -- entities that he owned or controlled, including Dugaboy, entered into with Mr. Patrick acting on behalf of HMIT and DAF Entities. You can't reconcile -- I don't know how you come to court today and say he magically lost his powers in 2023 when you've never made the argument before and you enter into agreement after agreement and pay him millions of dollars. I don't know how you do that in good faith.

Next slide. This is just a summary, and I've clipped a bit, right, because I want to -- because I feel like this is so strong. In my opening, I think I used July 28th. Now I've gone back to July 14th. These are the documents, I think, that I cited to earlier that contain all of the information that Dugaboy needed to pursue an objection to the 9019 or to file a motion for a new trial to the extent that they learned things

in the July 1st petition last year.

If we go to the next slide. This is really important. Again, the suggestion that somehow Judge Jernigan thought, oh, gee, maybe I'll just let those guys do a Rule 60 motion. It's just completely contradicted by the words of her order denying the stay. She found that regardless or whatever Mr. Patrick's misdeeds may or may not have been, it wasn't important to her. She said the Cayman Islands proceeding was irrelevant.

And all that's happened over the course of the three days of this hearing is that her determination has been completely validated. How so? Neither HMIT Highland nor the settlement agreement are mentioned in any substantive way in the JOLs' writ, in the JOLs' Chapter 15 recognition petition, in the Cayman Islands Court decision, or I would add in the July 1st Texas Business Court decision that was filed by the supporting organizations.

You have four documents making all kinds of allegations against Mr. Patrick, not one of which mentions in any substantive way Highland or the HMIT settlement. On cross-examination, Ms. MacInnis, I think, candidly admitted that she didn't mention HMIT or Highland or the settlement agreement at any point during her direct testimony. And she actually added, if you look at the citation, "I didn't mention it because I wasn't asked." Dugaboy did not even ask the JOL, who came up

here on her own nickel, one single question about Highland or the settlement agreement.

Ms. MacInnis candidly admitted she didn't even bother to attend the June 25th 9019 hearing, which was available by Zoom, I guess Webex, I'm sorry. She has made no effort a year later, no effort, to obtain the record in that case. And the JOLs' irrelevant? Why? I don't understand it. A year after the motion is filed in response to Your Honor's question, she was forced to admit that she hadn't formed any view as to whether or not the settlement was good or bad for Holdco.

There's no evidence of any kind, and I think Counsel kind of blurred a bunch of lines in his closing argument, because he suggested at one point that they had to wait for the JOLs and the writ in order to find out about the sale of Beacon Mountain. There's nothing in the writ about the sale of Beacon Mountain.

In fact, there's no evidence at all that Ms. MacInnis or the other JOL has done any investigation of any kind into the Beacon Mountain sale. A sale that, ironically, she's here challenging -- she's here supporting Dugaboy in its effort to overturn a settlement agreement that she hasn't determined if it's good or bad and that, ironically, is only even on her radar because of the sale of Beacon Mountain.

If Mr. Patrick didn't sell Beacon Mountain, Hunter Mountain never winds up on the Holdco side of the ledger. So

she actually benefited, she and the JOLs and Holdco. I hope this point is not lost. Holdco benefited from the sale of Beacon Mountain. Holdco benefited from the sale of Beacon Mountain, and yet Ms. MacInnis comes up on her own dime to try to undo a settlement that she doesn't even know is good or bad for her client.

I think Your Honor put your finger right on the pulse of where we are here. You asked the question, if I set aside the settlement agreement, will it have any impact on the restructurings? And I appreciate Counsel's answer. It was blunt no. And I think that is just so insightful. It's an insightful question among a blizzard of information because it does cut to the heart of the matter.

And I would answer that question in the inverse. Regardless of what happens in the Cayman Islands, it's not going to impact the HMIT settlement. And that's why, ultimately, the Cayman Islands proceeding is completely irrelevant, even if they win. So what? They'll get a breach of fiduciary duty claim against Mark Patrick. That has nothing to do with the HMIT settlement.

If we can go to the next slide. Again, I just want to emphasize, I say no evidence was discovered after July 14th that could not have been discovered with reasonable diligence. And I'm going to be honest with the Court and say that's just a bit of an overstatement. And the reason why it's a bit of an

overstatement is because I do understand that the JOLs were able to obtain privileged communications that Dugaboy would not have been able to obtain.

And I think I always want to maintain my credibility with the Court. And so I do think there's that small island over there. But I don't think that island matters a whit when it comes to whether or not the Court would have overturned its decision. It's not a deciding factor in light of the overwhelming evidence that they either knew about or could have obtained with reasonable diligence.

I am going to, I just want to, I guess, focus on that last point there because it's something that Mr. Seery testified about today. And I want to make sure that the Court is clear that discovery in bankruptcy cases does happen quickly. Often happens quickly. Not always, but it often happens quickly. And people act in good faith for the most part.

And one of the things that was important in the 9019 case is that there were no limits placed on the scope of discovery. Nobody said you can't ask about this. You can't ask about that. That's off limits. I heard there was a suggestion that somehow somebody during a deposition suggested that or said that. I don't recall. But I know that if you look at the designations of Mr. Raver and Mr. Patrick and the various -- you're going to see a whole host of information that

Dugaboy now contends it didn't know until after the date for a motion for a new trial. That's another source of information that just can't be ignored here.

And let's remember, they could have asked anything they wanted, right? They could have asked about the compensation. They could have asked about the -- it's not as if they didn't know Beacon Mountain was sold for a million dollars, right? That's right in Mr. Dondero's April affidavit. Why didn't they ask? Well, they actually knew by that point, but they could have learned if they really thought they didn't know who was the buyer. How did you get to a million dollars? I don't know why they didn't ask any of these questions, but they didn't.

We can go to the next chart. This is just a little bit more on this idea that Mr. Patrick has somehow magically lost his powers. Again, no dispute. Mr. Dondero alleges that Mr. Patrick lost his -- breached his fiduciary duty back in 2023. Dugaboy failed to make this argument until just the Friday before last during a deposition. It wasn't made in the 9019 proceeding, even though they had the HMIT Trust Agreement, and it's not even mentioned in Dugaboy's motion to vacate.

And again, the waiver argument, I think, is strong. Whatever the Court might think of that argument, and I don't think if you looked at the plain text of the agreement that the Court would conclude what they say, and that is somehow -- I

mean, I don't think that's the proper reading of it, but I don't think the Court needs to get there, because when a party fails to raise that issue in the proceeding that is the subject of the Rule 60 motion, I think by itself it can't be new evidence, it can't be evidence of fraud, it's called a waiver. And when you compound that with nine separate agreements validating Mr. Patrick's authority, I don't see how you come here today and say he lacked it.

The next slide. Context is everything. Mr. Dondero's goal, clearly, and it's why he's the only one here fighting, is to regain control of the HMIT Entities so he can restart litigation. I mean, you heard him testify. Take him at his word today, Your Honor. If nothing else, take him at his word today when he testified that somehow $700 million vanished, and he's going to undo all the transactions. This is what he's trying to do here, okay? That's what he's trying to do here.

This isn't about charities. This is about vindication, not vindication. It's about -- yeah, going on the offense and just continuing with this litigation assault that so many people have been the victim of for so many decades. It's happened to so many people.

And that's why this is so important to Highland. We're not here to defend or to denigrate Mr. Patrick. We're here to defend our settlement agreement, because this

settlement agreement was, as Mr. Seery testified, very much in the best interests of Highland and its stakeholders, its legitimate stakeholders. It is the path towards finally concluding this case, and that's why we're here fighting. It's not because, right, Mr. Patrick and Mr. Dondero can go to the Cayman Islands. They can go to Texas Business Court.

But in response to your question, so we don't have to ask it later, I'm not aware of any law that says this Court can or should even consider whether or not the settlement was in the best interest of the non-Debtor party. The fact of the matter is I think it was an outstanding settlement for HMIT. They got a couple of assets they otherwise had no right to, including the Dugaboy note and the Kirschner litigation.

But this is a point that has been made so many times over the year. I'm getting paid today, Your Honor, and I'm getting paid today with money that if there had been this -- right? I'm getting paid with money that would be going to Class 10 if we reached a settlement. But, I mean, we reached a settlement with them, so we agreed to give HMIT a little bit of money, but we're husbanding our resources because we know, right, we just know, just take Mr. Dondero at his word today, there's going to be more litigation tomorrow.

And that's really a shame because it didn't have to be this way. You know, you litigate, you litigate hard. Sometimes you win, sometimes you lose, but there has to be an

end to it. There just isn't in this case. And that's why this settlement is so vitally important to Highland and its stakeholders and why, at the end of the day, I want to follow up on that question again.

You asked, oh, does the Court have to consider whether or not the settlement is in the best interest of the non-Debtor? The answer is categorically no, but I need to also point out that there is not a scintilla of evidence in the record on this case that the settlement is not in HMIT's best interest. None of the litigation has been described, the merits of the litigation, right?

Actually, the only evidence we have in the record is Mr. Seery's testimony, which is beyond dispute, that Judge Jernigan heard the evidence in one of these cases and wouldn't let the case go through the gate, under the gatekeeper. The gatekeeper has since been invalidated. But it gives you a sense that she didn't even think it stated a cause of action. Okay? These are the claims that they're fighting for because that's what they do. That's what they do.

Rule 60 is not an opportunity for a do-over, but that's exactly what they're doing here. Dugaboy doesn't contend that the settlement agreement was not in Highland's best interest or that the settlement agreement wasn't the product of arm's-length negotiations. They don't contend that it wasn't a free exchange of information.

Instead, they're relying on evidence developed by the JOLs in a foreign proceeding that Judge Jernigan found has nothing to do with this case. Indeed, and I pointed this out in my opening, Dugaboy didn't even bother calling a Highland witness in its case-in-chief. They didn't put Mr. Dondero on their witness list. They didn't put Mr. Seery on the witness list. I don't know.

Dugaboy and its agent, Mr. Dondero, knew all they needed to know by July to object to Patrick's authority, yet failed to do so. Again, this dispute should be resolved elsewhere.

I want to finish with some legal conclusions because I think the Court has to only not make factual findings, but conclusions of law. I think the Court should conclude as a matter of law that as of June 25th, 2025, the date of the 9019 hearing, Mark Patrick was authorized to enter into the settlement agreement on behalf of the HMIT Entities as the sole control person of each entity.

And again, you can just find that in Paragraph 7 of Exhibit 1. Highland Exhibit 1, it's the HMIT Trust Agreement. And if the Court should find as a matter of law that Dugaboy failed to prove by clear and convincing evidence that it learned of facts for the first time after July 14th, 2025 that were not cumulative of facts known to it prior to that time.

Even if Dugaboy had identified such evidence, which

we don't believe it did, we believe that Dugaboy failed as a matter of law to prove that any such evidence could not have been obtained with reasonable diligence with the one exception I described earlier, particularly since Dugaboy had all rights of discovery under Bankruptcy Rule 9016, but failed to seek anything pertaining to Mr. Patrick's authority to enter into the settlement agreement.

Even if Dugaboy had identified evidence for the first time after July 14th, and even if it could meet its burden of proving that the evidence could not have been identified with reasonable diligence, and there you have the privileged communications, it failed to meet its burden of proving that such evidence would have changed the outcome of the 9019 proceeding.

Dugaboy failed to prove by clear and convincing evidence that the Highland entity is the only opposing party for purposes of Rule 60(b)(3), since they were the only movants in the 9019 motion, engaged in fraud, misrepresentation, or misconduct in connection with the 9019 proceeding.

While we believe that only Highland is relevant to that analysis, if the Court concludes that the HMIT Entities are also relevant to the analysis, because even though they were not a movant, they were still an opposing party, we think Dugaboy has still failed to meet, by clear and convincing evidence, its burden of establishing that the HMIT Entities

engaged in fraud, misrepresentation, or misconduct in connection with the 9019 proceeding.

I want to address briefly 60(b)(6), the interests of justice. We've heard nothing about it, but I feel pretty strongly that I don't want to leave that stone unturned here. We think that Dugaboy failed to meet its burden under that prong. Again, I think the argument of recusal has been abandoned, but there was zero evidence adduced showing the Court's bias or prejudice with any aspect of the 9019 proceeding. The Fifth Circuit previously rejected three times Dugaboy's recusal motion.

Highland's stakeholders, and this is where the interests of justice come in, Highland's stakeholders, like all litigants, justifiably expect finality in Court rulings, and an end to frivolous litigation. Dugaboy's motives in pursuing this motion are highly questionable, given that following the withdrawal of Dugaboy's indirect interest through Dolomiti and Rand, Dugaboy has no direct or indirect interest in the HMIT or DAF Entities. Dugaboy has no connection to HMIT or Rand -- I mean HMIT or the DAF. No connection. Indisputable fact.

Mr. Dondero is clearly -- right, he's Dugaboy's agent, he's Dugaboy's lifetime beneficiary -- is clearly the driving force behind all of the litigation, all of what we defined as the relevant litigation, through his funding, his services, Dugaboy's agent, the supporting organizations'

principal, officer, funder, president, through the submission of multiple affidavits. This is all driven by one man.

At the heart of all of this is apparently a very bitter and personal dispute between Mr. Dondero and Mr. Patrick that does not concern the Highland Entities, the Highland bankruptcy case, or the settlement agreement. And I'll just emphasize one more time, this idea that Mr. Patrick automatically or magically lost his powers at some point in the past is a last second Hail Mary that has been waived and that lacks merit.

I think there is no basis under Rule 60(b)(2), (3), or (6) to vacate this order. I think Dugaboy should be sent packing. And to the extent the supporting organizations and Mr. Patrick want to continue to do battle, they should just do that elsewhere.

Unless the Court has any questions, I'm done.

THE COURT: Mr. Morris, you've addressed this issue of the argument that the HMIT Trust Agreement provides, or as argued by Dondero, provides an automatic removal of the administrator in the event of one of these triggering events. Your response to that is, is that they've waived the argument.

Here's my question to you, though. If the Court finds that the document does stand for that proposition, then does waiver of the argument even matter? That's a legal effect by the document. In other words, if the document provides that

the removal happens upon one of these triggering events, why does them not raising that create a situation where the removal event didn't happen?

MR. MORRIS: Let's be clear what's happening here, Your Honor, because Hunter Mountain doesn't exist in a vacuum. It has owners, none of whom are Dugaboy. That's number one.

Number two, if you read the trust agreement carefully on this point, you will find that Highland is actually the party who's supposed to make the determination as to whether or not Mr. Patrick breaches his fiduciary duty, not the Court. This is not the Court's job. If you look at the agreement itself, Highland is supposed to do that. Highland's never been asked to do that. Highland -- nobody's ever raised the issue. This is a nonstarter as far as we're concerned because Highland and Highland alone.

And it makes sense that it's drafted this way because at the time Mr. Dondero was in control of Highland, and he wanted to control the process. And he decided he would be the one who determined whether or not the control person breached their fiduciary duty. But you know what? He lost control of Highland, and the agreement was never amended, and the agreement says exactly what it's always said, and that is if there's going to be a determination, that determination should be made by Highland.

And so Your Honor can review it, but I think at the

end of the day, I don't see how under a Rule 60 motion, because this is a Rule 60 motion, so you're coming forth with new evidence, or you're coming forth with allegations of fraud in the process. How can you defraud somebody in the process when they're not making arguments that are right in front of their face, that they're making now, that they didn't even make when they made this motion under Rule 60?

THE COURT: Okay. You've already addressed the other question I had, so.

MR. MORRIS: Thank you.

THE COURT: I think that's all.

MR. MORRIS: Thank you very much, Your Honor.

THE COURT: All right. Before, Mr. Edney, you get up, let me just make sure. Ms. Ziegler-Young, do you have anything on behalf of the U.S. Trustee's Office? And if you can give me just a brief idea of how long it might take.

MS. YOUNG: Under two minutes.

THE COURT: Okay. That will work.

MS. YOUNG: Thank you, Your Honor. And thank you for giving me the opportunity to speak with the Court and the parties here today.

The parties have developed a fulsome record of documentary evidence and testimony, and we thank the Court for its time, and we look forward to its ruling. If the Court is not inclined and ready to rule today, we suggest that the

parties and the U.S. Trustee be afforded a short opportunity to review the evidence presented and submit any post-trial briefs if those parties are so inclined. And I have no additional comments, Your Honor.

THE COURT: Hold on one second. What would you be submitting your post-trial briefs about?

MS. YOUNG: The conclusion of the evidence and any additional arguments that would need to be made.

THE COURT: Okay. All right, thank you.

MS. YOUNG: Thank you. All right.

Mr. Edney, part of the Court family has a graduation tonight, okay, so I'm going to excuse Ms. Balcom (phonetic) so she can attend her son's graduation before you get started.

COUNSEL: Congratulations. Congratulations.

MS. BALCOM: He's only four.

THE COURT: These are the best graduations (indiscernible).

Congratulations.

MR. EDNEY: All right. Well, if I weren't on the clock, Your Honor, the air conditioning would cut me short, so I'll get to it.

THE COURT: All right.

MR. EDNEY: First of all, very briefly on one topic, we do not abandon the recusal argument. That's fully briefed in our papers, along with excerpts of the relevant books. That

case is not about actual bias. It's about out-of-court statements relating to Mr. Dondero, we believe, that create an appearance of partiality.

We do think that the Fifth Circuit advanced the ball on this in saying there was a strong argument that the previous judge should have recused, and it is appropriate if we have to get to this point, right, if the strong evidence on misconduct by Mr. Patrick doesn't afford for vacatur that we did not have a judge that lacked the appearance of impartiality to decide it. So we do maintain that argument, Your Honor.

THE COURT: Okay. Let me ask you this real quick question. What evidence do I have of anything regarding the recusal issue? I have your motion. I have what you submit as part of your motion, but that's not evidence.

MR. EDNEY: Your Honor, we lodged the books with the Court in connection with our motion. They're a published document. We think the record is clear that Mr. Dondero is the person that or is close enough to the person that the comments therein and the character of Kate Graham creates an appearance of partiality. So --

THE COURT: Okay. Let me see if I can rephrase the question. Of the exhibits that were admitted by Dugaboy, which exhibits are the books?

MR. EDNEY: We did not admit the exhibits in this evidentiary hearing, Your Honor.

THE COURT: All right, thank you.

MR. EDNEY: They are with the Court, and they're a publication of a matter of public record.

THE COURT: Okay. Thank you.

MR. EDNEY: And I think we did actually send the actual books back to chambers, yeah.

THE COURT: Yes, I have in chambers two books. Yes.

MR. EDNEY: Thank, Your Honor.

THE COURT: So go ahead.

MR. EDNEY: All right. Mr. Dondero was here today to defend his charitable legacy. The Dugaboy Investment Trust was part of seeding both the Hunter Mountain stack, the historical Hunter Mountain stack that led up to a charity, and the Charitable DAF. And what Mr. Dondero is doing here today is portrayed as selfish, but actually is quite selfless.

What Mr. Dondero wants to accomplish is to make sure that when a settlement is entered into, a steward of those charitable interests, both from the donor standpoint and the charity standpoint, is making that decision to enter into a settlement with what has become Highland.

Mr. Morris said that Mr. Patrick's authority to enter into a settlement agreement on behalf of the Hunter Mountain Entities is not disputed. It very much is, for the reasons that we have stated. The argument with respect to the Hunter Mountain Investment Trust agreement and its automatic

displacement of its administrator, that is fully briefed in our reply, and it's a reply to a response.

We laid out this evidence of fraud that was coming in this evidentiary hearing in our opening motion. Mr. Morris came back and said, what does this have to do with the bankruptcy? We shouldn't care about it. And we explained how it does. And the mechanics of that are laid out in our reply brief, and they've been laid out in the evidence adduced here.

With respect to the Cayman proceedings and why we're talking about them and the DAF and why we're talking about those, if we could just pull up Exhibit 242 for a moment, please. Slide 19, please.

This is the result of the sale, Your Honor. And again, Hunter Mountain-Highland Capital Management, the equity interest, was sold into the new DAF structure. This is the DAF 2.0. This is the improperly restructured entity. And Mr. Patrick says nobody is taking action to remove -- well, Mr. Patrick didn't say it -- Highland says that nobody is taking action to remove Mr. Patrick from his authority over Highland Capital Management, over the equity stake, over Hunter Mountain.

That is happening in the Cayman proceedings. Why? Because the folks that control that today, all the way up, these are these Cayman entities. These are the ones that are under the injunction today in the Cayman Islands. And they are

part and parcel of the misconduct with regard to the DAF. So why do we keep talking about the DAF? Why do we keep talking about the Cayman proceedings? Because on February 12th, 2025, before the 9019 settlement proceedings, Mr. Patrick made Hunter Mountain, made Highland Capital Management a part of the DAF story. That's why we're talking about it.

There was a discussion about Dolomiti and whether they should have consented to the sale outward. And Mr. Morris pointed out, well, they were exited from Rand before that sale happened. That was bang, bang. Day one, there was this attempted exit. Day two, the sale happened. And the effort of it was to try to come up with some shell of an argument to avoid informing the investors to reveal the restructuring that was going on.

The Texas Business Court and the Cayman statement of claim, the Texas Business Court complaint, those were very concerning. They had all sorts of details, but they were allegations. The evidence underlying them came out later in July and throughout the fall and winter.

Your Honor, we hear from Highland that this should have been caught earlier. And Highland is not the entity that engaged in the main misconduct here. It's Mr. Patrick. But today they're speaking on his behalf with respect to this motion. And the argument from those who have engaged in wrongdoing that you should have caught me earlier is not an

argument frequently successful in our court system, in our system of justice and equity.

And it shouldn't be successful here, in particular, because this misconduct was concealed. It was designed in a way, we now see that from the Cayman Islands, to be less traceable and detectable. Mr. Patrick had a duty to inform the charities and other stakeholders of this restructuring. He had a duty to inform them.

It was one of his key duties to inform them as to what was going on. And he chose time and time and time again not to do so. He said he chose not to do it. We believe he had a duty to do so. And when you have a duty to inform and you don't follow through with it, that's concealment. That's Rule 60(b)(3). It extended in to the 9019 proceedings.

And I would direct Your Honor to Mr. Patrick's deposition. You know, he had an opportunity to lay bare how Hunter Mountain was restructured into the DAF. He had an opportunity to do it. And when he was asked questions about that by counsel from the parties that were opposing the settlement, he said he didn't know. He said he didn't know. The architect of all this said he didn't know.

If there were breadcrumbs here, they were very, very, very, very tiny. And they were made tiny through what itself was misconduct, through concealment. And this is a 60(b)(3) issue. And it permeated its way into the settlement itself,

into the settlement proceedings.

Your Honor, again, they say what does it matter if Mr. Patrick concealed all this? What does it matter if he had this reconstruction? That's an issue with us. But that's not what was said in that hearing, right? If you go to Mr. Seery's testimony in that hearing, we cross-examined him on, he said that he took steps to confirm Hunter Mountain's authority to enter into this settlement agreement, Mr. Patrick's authority to enter into this settlement agreement on Hunter Mountain's behalf.

And he said to do that, he had to look at the organizing documents, the stack of ownership. That's those Exhibits 70 through 104. That's the old structure. I mean, even that was meant -- even that had the effect of throwing those onlooking off the scent.

And this is a situation where there was an asteroid strike after the hearing in question. What the liquidators found out, the detail, the mechanics, the lack of justification, the opinion-shopping, the motivation with the compensation, all of which was previously unknown. That is the epitome of newly-discovered evidence, and it should foment a vacatur here.

Finally, Your Honor, it didn't make me happy to raise a concern about Highland defending Mr. Patrick's conduct. I expected to come into this hearing from Mr. Patrick's counsel,

Hunter Mountain's, minimizing this restructuring. Instead, I heard from Highland's counsel. And if we were just two commercial entities out there in the world fighting with each other, if we were Exxon versus Chevron in some case, well, maybe that's what we should expect.

But the folks at Highland right now who are running it, they don't own Highland. They didn't own it. They've been authorized by this Court to run it during bankruptcy. And that comes with a higher standard. It comes with a higher standard, and that includes not getting bound up with the type of misconduct that we've seen here.

So it gave no pleasure to point that out, but we were entitled to two faithful stewards. We were entitled to a faithful steward of the Hunter Mountain interest, somebody that wasn't engaged in breaches of fiduciary duty. But we're also entitled to a faithful steward that has interests beyond itself in running the Highland estate. And having a lawyer come up here and direct Mr. Patrick in a series of questions trying to minimize what he did, I think, is a canary in a coal mine that we should remember as we go forward in this case.

Your Honor, I am very grateful for the amount of time that you have given us to present what has happened here. I'd be happy to answer the Court's further questions, but I don't want to leave without thanking it for listening to us over these past few days. Thank you, Your Honor.

THE COURT: Thank you. All right. The Court's going to go ahead and take this matter under advisement. The Court recognizes that there is some urgency or is urgency in the ruling on the motion, so the Court does anticipate doing so in a relatively quickly manner. I anticipate it be written. To the extent it's not, the Court will contact the parties to identify a date in which all parties will be available in order to issue an oral ruling.

Let me just state for the record, the Court is not going to authorize any post-trial briefing. I believe the parties have argued the evidence today, and the Court is not in need of any post-trial briefing on the matter before the Court.

So with that, the Court will be adjourned. I do want to let you all know, we do have what we refer to as a CSO downstairs. Those are the gentlemen that had you all kind of walk through the security. They are downstairs. You all are all welcome to go and check to see if they have a cart.

I understand that maybe one or more of you needed a cart to help bring in everything that you have. They may still have that cart available, but they are there so that the doors can be opened and you don't have to go out the stairwell that leads directly to the outside of the building. So you may take the elevators down, and there may be a cart available to help you move your boxes and other things that you'll be taking back.

So I don't know that for sure, but you can check with the CSO outside or downstairs.

MR. MORRIS: Your Honor, on that very specific topic, is your courtroom going to be open at all tomorrow? Would it be possible for us to leave our boxes and retrieve them tomorrow?

THE COURT: We certainly can.

MR. MORRIS: Yeah, I think that would be our preference.

THE COURT: That's fine. Yeah.

MR. MORRIS: What time do you anticipate the courtroom be opened?

THE COURT: We're usually here by 8:30. We can get it opened at 8:30 probably.

MR. MORRIS: Is that (indiscernible)?

Yeah, we would greatly appreciate that.

THE COURT: Mr. Noble has to take the job back to the house. That's fine. I would (indiscernible) you all have the same possible arrangement. But yes, we can open up the courtroom. The courtroom will be locked this evening once we know everybody is out. It's not taking any further, but we'll lock the courtroom and we can open it back up in the morning. We don't have court tomorrow, but we can certainly open it back up tomorrow.

MR. MORRIS: Thank you very much.

MR. PHILLIPS: Thank you very much, Your Honor.

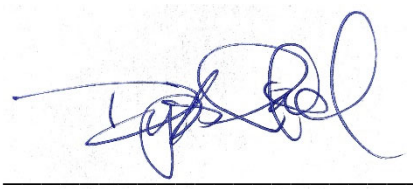
THE COURT: All right. With that, we will be adjourned. Thank you all.

(The proceedings were adjourned at 6:33 p.m.)

* * * * *

CERTIFICATE

I, DIPTI PATEL, court approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and transcribed to the best of my ability.



_____

DIPTI PATEL, AAERT CET-997

Expires: December 6, 2026

Liberty Transcripts Date: May 26, 2026