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

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In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
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**DEBTOR'S MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING FILING UNDER SEAL CERTAIN OF THE EXHIBITS TO THE  
DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE DEBTOR'S MOTION  
FOR ENTRY OF AN ORDER APPROVING SETTLEMENTS WITH (A) THE  
REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND (CLAIM NO. 72),  
AND (B) THE HIGHLAND CRUSADER FUNDS (CLAIM NO. 81),  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), respectfully submits this motion (the “Motion”) for entry of an order authorizing the Debtor to file under seal certain of the exhibits attached to the *Declaration of John A. Morris* [Docket No. 1090] (the “Morris Declaration”), filed in support of the Debtor’s *Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1089] (the “9019 Motion”). In support of the Motion, the Debtor respectfully states the following:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and other bases for the relief requested herein are 11 U.S.C. §§ 105(a) and 107(b), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9077-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

**II. FACTUAL BACKGROUND**

3. On October 16, 2019, the Debtor commenced this Bankruptcy Case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court for the District of Delaware (the “Delaware Court”).

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

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].<sup>2</sup>

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

7. As set forth more fully in the 9019 Motion, on April 3, 2020, the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee") filed a general unsecured claim in the amount of \$190,824,557.00, plus "post-petition interest, attorneys' fees, costs and other expenses that [allegedly] continue[d] to accrue" (the "Redeemer Committee Claim"). *See* Morris Declaration Exhibit 5 (Proof of Claim No. 72, Rider at 1-2).

8. As set forth more fully in the 9019 Motion and the Morris Declaration, on April 6, 2020, the Crusader Funds<sup>3</sup> filed a general unsecured claim in the amount of \$23,483,446.00, plus "post-petition interest, attorneys' fees, costs and other expenses that [allegedly] continue[d] to accrue" (the "Crusader Funds Claim"). *See* Morris Declaration Exhibit 6 (Proof of Claim No. 81, Rider at 1-2).

9. Following an extended series of negotiations between the Debtor, the Redeemer Committee, and the Crusader Funds, the parties agreed to a settlement resolving the various disputes between the parties, including the Redeemer Committee Claim and the Crusader Funds Claim. The parties memorialized the settlement in that certain settlement agreement (the "Stipulation") attached as Exhibit 1 to the Morris Declaration.

10. On September 23, 2020, the Debtor filed the 9019 Motion seeking Court approval of the Stipulation. In support of the Stipulation, the Debtor filed the Morris Declaration.

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<sup>2</sup> All docket numbers refer to the docket maintained by this Court.

<sup>3</sup> The Crusader Funds are comprised collectively of (i) Highland Crusader Offshore Partners, L.P., (ii) Highland Crusader Fund, L.P., (iii) Highland Crusader Fund, Ltd., and (iv) Highland Crusader Fund II, Ltd.

11. Attached to the Morris Declaration are numerous exhibits discussed more fully in the 9019 Motion. Exhibits 2 through 4 of the Morris Declaration (collectively, the “Arbitration Award”) are certain awards rendered by the Panel<sup>4</sup> in the Arbitration. These exhibits were identified as confidential by the parties in the Arbitration and are as follows:

- Exhibit 2 is a true and correct copy of a *Partial Final Award*, dated March 6, 2019, and rendered in the Arbitration.
- Exhibit 3 is a true and correct copy of a *Disposition of Application of Modification of Award*, dated March 14, 2019, and rendered in the Arbitration.
- Exhibit 4 is a true and correct copy of a *Final Award*, dated as of April 29, 2019, and rendered in the Arbitration.

12. Because the Arbitration Award (a) was identified as confidential by the parties to the Arbitration, and (b) otherwise contains, among other things, non-public commercial information, the Debtor seeks permission to file the Arbitration Award under seal pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9077-1.

13. The Debtor also seeks to file under seal Exhibit B to the Stipulation (“Exhibit B” and together with the Arbitration Award, the “Confidential Exhibits”). Exhibit B contains highly confidential information concerning the sales and marketing process for the Cornerstone shares that the parties intend to engage in if the settlement is approved, the disclosure of which would likely adversely impact the value of the parties’ interests in Cornerstone.

### **III. RELIEF REQUESTED**

14. By this Motion, the Debtor requests entry of an order authorizing the Debtor to file under seal the Confidential Exhibits.<sup>5</sup>

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<sup>4</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to them in the 9019 Motion.

<sup>5</sup> The Committee previously filed a motion seeking authority to file two of the three Confidential Exhibits under seal (the “Committee’s Sealing Motion”). See Docket No. 127. The Office of the United States Trustee (the “UST”) opposed the Committee’s Sealing Motion. See Docket No. 272. Because the underlying motion that prompted the

#### IV. ARGUMENT AND AUTHORITIES

15. The Bankruptcy Code, Bankruptcy Rules, and Local Rules authorize the Court to limit the disclosure of confidential information. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall ... (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b)(1). Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

16. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under 11 U.S.C. § 107(b), providing that:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

FED. R. BANKR. P. 9018. Furthermore, Local Rule 9077-1(a) provides, in relevant part, that "[a] party may file under seal any document that a statute or rule requires or permits to be so filed." LOCAL BANKR. R. N.D. TEX. 9077-1(a).

17. As set forth above, the Arbitration Award was previously identified by the parties as being confidential and that otherwise contains, among other things, non-public commercial information.

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Committee's Sealing Motion was subsequently resolved, the Court denied the Committee's Sealing Motion as moot and ordered "all parties in interest in possession of the [Confidential] Exhibits [to] treat them in accordance with the Agreed Protective Order signed and entered on January 21, 2020 at Docket No. 382, as if the Committee's [Sealing Motion] had never been made." Docket No. 409 at 2 (the "Prior Sealing Order"). Neither the UST nor any other party-in-interest appealed the Prior Sealing Order and, to the best of the Debtor's knowledge, all parties in possession of the Confidential Exhibits have treated them in accordance with the Protective Order.

18. Exhibit B contains information concerning the sales and marketing process of Cornerstone that, if publicly disclosed, would likely adversely impact the value of the parties' interests in Cornerstone.

**V. NOTICE**

19. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for the Redeemer Committee and the Crusader Funds; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; (f) counsel to UBS; and (g) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**VI. PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court (i) grant the relief requested in this Motion, (ii) enter an order authorizing the filing of the Confidential Exhibits under seal, and (iii) grant the Debtor such further and additional relief as the Court deems just and proper.

*[Remainder of Page Intentionally Blank]*

Dated: September 23, 2020.

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