

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

JAMES DONDERO, HIGHLAND  
CAPITAL MANAGEMENT FUND  
ADVISORS, L.P., NEXPOINT  
ADVISORS, L.P., THE DUGABOY  
INVESTMENT TRUST, THE GET  
GOOD TRUST, and NEXPOINT REAL  
ESTATE PARTNERS, LLC, F/K/A HCRE  
PARTNERS, LLC, A DELAWARE  
LIMITED LIABILITY COMPANY'S  
UNOPPOSED MOTION FOR LEAVE TO  
FILE REPLY IN SUPPORT OF THEIR  
AMENDED RENEWED MOTION TO  
RECUSE PURSUANT TO 28 U.S.C. §  
455 UNDER SEAL

**MOVANTS' UNOPPOSED MOTION FOR LEAVE TO FILE REPLY IN  
SUPPORT OF AMENDED RENEWED MOTION TO RECUSE  
PURSUANT TO 28 U.S.C. § 455 UNDER SEAL**

Movants James Dondero ("Dondero"), Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware Limited Liability Company (collectively, "Movants") file this *Unopposed Motion for Leave to File Reply in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 Under Seal* (the "Motion for Leave"). In support, Movants show the following:

**I. BACKGROUND**

On October 17, 2022, Movants filed their *Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455* (the "Renewed Motion to Recuse") [Dkt. 3570].

On October 31, 2022, Highland Capital Management, L.P. ("HCMLP" or "Debtor") filed



its *Objection to Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 and Brief in Support* (“Objection”) [Dkt. 3595]. In the Objection, HCMLP took issue with certain actions taken by HCMLP while Dondero served as President and director of Strand Advisors, Inc. (the general partner of HCMLP), including where HCMLP chose to file its bankruptcy and HCMLP’s decision to not appeal the bankruptcy case’s transfer to this Court.

On November 14, 2022, Movants filed their *Reply in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455* (the “Reply”) [Dkt 3623]. In the Reply, Movants were forced to address the positions raised by HCMLP in its Objection, including HCMLP’s allegations regarding Dondero’s actions at HCMLP. Following the Reply, counsel for HCMLP complained that arguments in Movants’ Reply (and certain evidence presented in support) constituted an “unauthorized waiver of [HCMLP’s] attorney-client communications.”

Movants do not agree. Nonetheless, Movants request the Court grant Movants leave to file the Reply and its Appendix under seal, so that HCMLP can preserve its objection and the Parties can avoid unnecessary motion practice.

## **II. MOTION FOR LEAVE TO FILE UNDER SEAL**

The Bankruptcy Code, Bankruptcy Rules, and Local Rules authorize the Court to limit the disclosure of confidential information.

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).

Pursuant to Rule 9018 of the Bankruptcy Rules, a party may move to limit the disclosure of information to protect “(1) trade secret[s] or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter. . . or (3) to protect governmental matters that are made confidential by statute or regulation.” FED. R.

BANKR. P. 9018; *see also* 11 U.S.C. § 107(b)(1). 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).

Courts have held that “a lawyer’s work product is one type of ‘confidential research’ that falls within the plain language of the statute’s [i.e. § 107(b)’s] protection.” *See, e.g., In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr.W.D.Tex.1997). The court in *In re 50-Off Stores, Inc.* held that Section 107(b) permits the court to make the necessary inquiries without exacting, as a price, a waiver of the very privileges that help to preserve the value of the estate asset (*i.e.*, the lawsuit in question). *Id.* at 656.

As stated above, HCMLP contends that the Reply and Appendix contains confidential information protected by the attorney-client privilege. To allow the Court to determine whether HCMLP waived the privilege, Movants request entry of an order, substantially in the form of the Proposed Order attached, authorizing Movants to file unredacted copies of the Reply and Exhibit X under seal.

### **III. CONCLUSION**

Movants respectfully request that the Court grant the relief requested in this Motion and:

- (1) Enter an order in substantially the form of the Proposed Order filed as an attachment to this Motion;
- (2) Authorize the filing of the unredacted Reply and Exhibit X under seal; and
- (3) Grant Movants all other relief, at law or equity, to which they shown themselves justly entitled.

Dated: November 18, 2022

Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

/s/ Michael J. Lang

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*Attorney for Movants*

**CERTIFICATE OF CONFERENCE**

On November 15, 2022, counsel for HCMLP, raised his argument that the Reply contained attorney-client communications. On November 16, 2022, the undersigned conferred with counsel for HCMLP and agreed to file this Motion. Counsel for HCMLP does not oppose this Motion or the relief requested.

/s/ Michael J. Lang

Michael J. Lang

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on November 18, 2022, a true and correct copy of the above and foregoing document was served on all parties and counsel set to receive notice by the Court's ECF system.

/s/ Michael J. Lang

Michael J. Lang

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ORDER GRANTING MOVANTS'  
UNOPPOSED MOTION FOR LEAVE TO  
FILE REPLY IN SUPPORT OF  
AMENDED RENEWED MOTION TO  
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**ORDER GRANTING MOVANTS' UNOPPOSED MOTION FOR LEAVE TO FILE  
REPLY IN SUPPORT OF AMENDED RENEWED MOTION TO  
RECUSE PURSUANT TO 28 U.S.C. § 455 UNDER SEAL**

After considering Movants James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware Limited Liability Company's (collectively, "Movants") *Unopposed Motion for Leave to File Reply in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C. § 455 Under Seal* (the "Motion for Leave"), the Court is of the opinion that good cause exists to GRANT the Motion for Leave.

IT IS THEREFORE, ORDERED that the Motion for Leave is GRANTED and Movants are authorized to file the full, unredacted *Reply in Support of Amended Renewed Motion to Recuse*

*Pursuant to 28 U.S.C. § 455 (the “Reply”) and the full, unredacted Appendix to the Reply under seal.*

### End of Order ###

Order Submitted by:

/s/ Michael J. Lang

Michael J. Lang

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