

LATHAM & WATKINS LLP
Andrew Clubok (*pro hac vice*)
Sarah Tomkowiak (*pro hac vice*)
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia 20004
Telephone: (202) 637-2200

BUTLER SNOW LLP
Martin Sosland (TX Bar No. 18855645)
Candice Carson (TX Bar No. 24074006)
2911 Turtle Creek Blvd., Suite 1400
Dallas, Texas 75219
Telephone: (469) 680-5502

Jeffrey E. Bjork (*pro hac vice*)
Kimberly A. Posin (*pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234

Kathryn George (*pro hac vice*)
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Telephone: (312) 876-7700

*Counsel for UBS Securities LLC and UBS
AG London Branch*

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

In re	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
-----	§	
UBS SECURITIES LLC AND UBS AG	§	Adversary Proceeding
LONDON BRANCH,	§	
	§	No. 21-03020
Plaintiffs,	§	
	§	
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	

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



UBS'S WITNESS AND EXHIBIT LIST FOR JUNE 24, 2021 HEARING

UBS Securities LLC and UBS AG London Branch (together, "UBS"), by and through their undersigned counsel, submit the following witness and exhibit list for the hearing set for 2:30 pm Central Time on June 24, 2021 in connection with (i) *Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* [Adv. Dkt. No. 74]; and (ii) *Motion of Former Employees to Quash Subpoenas and Brief in Support* [Adv. Dkt. No. 70].

A. WITNESSES THAT UBS MAY CALL TO TESTIFY:

1. Any witness designated or called by any other party; and
2. Any witness necessary for impeachment or rebuttal.

B. DOCUMENTS UBS MAY USE AS EXHIBITS:

Ex. No.	Exhibit	Offered	Admitted
1	<i>Motion of Former Employees to Quash Subpoenas and Brief in Support</i> [Adv. Dkt. No. 70]		
2	<i>Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas</i> [Adv. Dkt. No. 74]		
3	<i>Appendix of Exhibits in Support of Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas, and all exhibits attached thereto</i> [Adv. Dkt. No. 75]		
4	<i>Memorandum of Law in Support of Plaintiffs' Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas, and all exhibits attached thereto</i> [Adv. Dkt. No. 76]		
5	<i>Former Employees' Response to UBS Motion to Compel</i> [Adv. Dkt. No. 86]		
6	<i>Brief in Support of Former Employees' Response to UBS Motion to Compel and Reply in Support of the Former Employees' Motion to Quash</i> [Adv. Dkt. No. 87]		

Ex. No.	Exhibit	Offered	Admitted
7	Hearing Transcript from April 28, 2021		
8	Transcript of the Deposition of James Dondero from May 10, 2021 (Excerpt)		
9	Transcript of the Deposition of James Dondero from May 12, 2021 (Excerpt)		
10	All exhibits identified by or offered by any other party at the hearing		
11	All exhibits necessary for impeachment and/or rebuttal purposes		
12	Any pleadings, reports, or other documents entered or filed in the chapter 11 case or related adversary proceedings, including any exhibits thereto		

UBS reserves the right to amend or supplement this witness and exhibit list prior to the hearing.

DATED this 21st day of June 2021.

LATHAM & WATKINS LLP

By /s/ Sarah Tomkowiak

Andrew Clubok (*pro hac vice*)
Sarah Tomkowiak (*pro hac vice*)
555 Eleventh Street, NW, Suite 1000
Washington, District of Columbia
Telephone: (202) 637-2200
Email: andrew.clubok@lw.com
sarah.tomkowiak@lw.com

Jeffrey E. Bjork (*pro hac vice*)
Kimberly A. Posin (*pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Telephone: (213) 485-1234
Email: jeff.bjork@lw.com
kim.posin@lw.com

Kathryn George (*pro hac vice*)
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Telephone: (312) 876-7700
Email: Kathryn.george@lw.com

BUTLER SNOW LLP

Martin Sosland (TX Bar No. 18855645)
Candice M. Carson (TX Bar No. 24074006)
2911 Turtle Creek Blvd., Suite 1400
Dallas, Texas 75219
Telephone: (469) 680-5502
E-mail: martin.sosland@butlersnow.com
candice.carson@butlersnow.com

*Counsel for UBS Securities LLC and UBS
AG, London Branch*

CERTIFICATE OF SERVICE

I, Martin Sosland, certify that *UBS's Witness and Exhibit List For June 24, 2021 Hearing* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: June 21, 2021.

/s/ Martin Sosland

EXHIBIT 7

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In Re:	)	Case No. 19-34054-sgj-11
	)	Chapter 11
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	Wednesday, April 28, 2021
	)	1:30 p.m. Docket
Debtor.)	
<hr/>		
UBS SECURITIES, LLC, et.	)	Adversary Proceeding 21-3020-sgj
al.,)	
	)	- MOTION FOR PROTECTIVE ORDER
Plaintiffs,	)	[23]
	)	- MOTION TO MODIFY ORDER
v.	)	GRANTING LEAVE TO FILE UNDER
	)	SEAL [24]
HIGHLAND CAPITAL	)	- MOTION FOR ORDER AUTHORIZING
MANAGEMENT, LP,	)	ALTERNATIVE SERVICE OF
	)	SUBPOENA [28]
Defendant.)	
<hr/>		

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For Plaintiff UBS	Andrew Clubok
Securities, LLC:	LATHAM & WATKINS, LLP
	555 Eleventh Street, NW,
	Suite 1000
	Washington, DC 20004
	(202) 637-2200
For Plaintiff UBS	Kathryn K. George
Securities, LLC:	LATHAM & WATKINS, LLP
	330 North Wabash Avenue,
	Suite 2800
	Chicago, IL 60611
	(312) 876-6567

1 APPEARANCES, cont'd.:

2 For James Dondero,
3 Movant:

Clay M. Taylor
John Y. Bonds, III
Will Howell
BONDS ELLIS EPPICH SCHAFFER
JONES, LLP
420 Throckmorton Street,
Suite 1000
Fort Worth, TX 76102
(817) 405-6900

7 For the Debtor:

John A. Morris
Gregory V. Demo
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

10 For the Official Committee
11 of Unsecured Creditors:

Matthew A. Clemente
SIDLEY AUSTIN, LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7539

14 For the U.S. Trustee:

Lisa L. Lambert
OFFICE OF THE UNITED STATES
TRUSTEE
1100 Commerce Street, Room 976
Dallas, TX 75242
(214) 767-8967

17 Recorded by:

Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

20 Transcribed by:

Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

23

24

25

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

1 DALLAS, TEXAS - APRIL 28, 2021 - 1:34 P.M.

2 THE COURT: We have a setting in Highland. Actually,
3 UBS versus Highland, Adversary 21-3020. Let's get appearances
4 first. I'll start with the Plaintiff, UBS. Do we have Mr.
5 Clubok and your team appearing today?

6 MR. CLUBOK: Good afternoon, Your Honor. Andrew
7 Clubok from Latham & Watkins on behalf of UBS. And I'm joined
8 with -- I'm joined by Kathryn George, also with Latham &
9 Watkins, will be arguing today's motions.

10 MS. GEORGE: Good morning, Your Honor.

11 THE COURT: Okay. I heard Ms. George, and did you
12 say someone else?

13 MR. CLUBOK: Just Kathryn George.

14 THE COURT: Oh, Kathryn George? All right. Thank
15 you.

16 All right. For the Defendant, Highland, do we have an
17 appearance today?

18 MR. MORRIS: Yes, Your Honor, it's -- good afternoon.
19 It's John Morris from Pachulski Stang Ziehl & Jones. With me
20 is my colleague Gregory Demo. And we're here today on behalf
21 of the Debtor, although I'm not sure that these motions are
22 directed towards us *per se*.

23 THE COURT: Okay. Thank you.

24 All right. Now, the Movant on a couple of these motions,
25 Mr. Dondero. Mr. Taylor, are you appearing for Mr. Dondero

1 today?

2 MR. TAYLOR: Yes, Your Honor. Clay Taylor, Will
3 Howell, and John Bonds appearing on behalf of Mr. Dondero.
4 And I'll be handling the arguments today.

5 THE COURT: All right. Thank you. I know we'll
6 likely have some observers out there. I'll ask, does the
7 Committee -- do you want to appear today? I know you've made
8 a notice of appearance in the adversary.

9 MR. CLEMENTE: Good afternoon, Your Honor. Matt
10 Clemente; Sidley Austin; on behalf of the Committee.

11 THE COURT: All right. Thank you. I'll just ask:
12 Anyone else have a dying urge to make an appearance? Again, I
13 know we have lots of observers.

14 MS. LAMBERT: Lisa Lambert with the United States
15 Trustee.

16 THE COURT: All right. Thank you, Ms. Lambert.
17 Anyone else?

18 All right. Well, as far as who goes first here, we have
19 two motions of Mr. Dondero, a motion for protective order and
20 a motion to modify the Court's sealing order in this
21 adversary. Those were filed before the UBS request to
22 authorize alternative service methods for a subpoena on Mr.
23 Dondero. So I'll let Mr. Taylor go first, since your motions
24 are first in time. You may proceed.

25 MR. TAYLOR: Thank you, Your Honor. Just as

1 housekeeping matters, we had actually had a conference with
2 UBS last night and what we had talked about is actually me
3 going first because we thought that might be how Your Honor
4 ruled, and she did before we even got there.

5 But what we have also decided, in an attempt to streamline
6 this process and be as efficient as possible, is what we would
7 propose -- we think -- I believe UBS obviously can speak for
8 themselves -- believe these motions are all interrelated. And
9 we think it makes the most sense to argue all three of these
10 together, and then allow UBS time to argue their case and then
11 do rebuttals, as necessary.

12 We've also agreed that this -- other than the documentary
13 evidence before the Court -- both parties filed a witness and
14 exhibit list out of an abundance of caution, but we would like
15 the Court to admit into evidence each of the parties' exhibits
16 that they have filed with their witness and exhibit list, but
17 there's no need for any live testimony. We believe the Court
18 can decide on the papers, the arguments, and the documentary
19 evidence before it.

20 So we would move for admission of both our exhibits and
21 theirs as a preliminary matter, Your Honor.

22 THE COURT: All right. Mr. Clubok, you confirm this
23 is your agreement? (Pause.) You must be on mute.

24 MR. CLUBOK: Your Honor, yes, that is the agreement,
25 although I was on mute because Ms. George is going to handle

1 the rest of the hearing.

2 THE COURT: Oh, okay.

3 MR. CLUBOK: So I'll let her --

4 THE COURT: Ms. George, sorry about that. All right.

5 So I got confirmation that is the agreement. So, for the
6 record, all of the exhibits -- let's see, UBS's look like
7 they're at Docket Entry No. 30 and 37, and Mr. Dondero's look
8 like they appear at Docket 34 -- all of those are admitted
9 into evidence.

10 (UBS Securities, LLC's exhibits at Docket Entries 30 and
11 37 are received into evidence. James Dondero's exhibits at
12 Docket Entry 34 are received into evidence.)

13 THE COURT: All right. Mr. Taylor?

14 MR. TAYLOR: Thank you, Your Honor. May it please
15 the Court. For the record, Clay Taylor appearing on behalf of
16 James Dondero.

17 As Your Honor is aware, we're here on three different
18 motions. The first is Mr. Dondero's motion for a protective
19 order. The second is a motion for a modification of the order
20 sealing this adversary proceeding. And the third is the
21 Debtor's motion for -- authorizing alternative service.

22 We believe, at the outset, Your Honor, that you should
23 grant the first two motions, for the protective order and
24 modify the sealing order, and that the motion for alternative
25 service, based upon the arguments and the rulings likely to be

1 made by this Court on the first two motions, should be denied
2 as moot.

3 I'll attempt to take these motions up in order. They are,
4 of course, interrelated, but I'll try to address each of them
5 separately.

6 The first is the motion for protective order. This motion
7 deals with some fundamental due process rights. I hate to
8 repeat the timeline and what is already stated in our papers,
9 but I do believe the timeline is important, so I'm going to go
10 over a couple of dates with Your Honor.

11 On March 29th, there was a motion to file this complaint
12 under seal. The same day, the Debtor filed essentially what
13 is a "me, too" motion. It is clear, upon review of subsequent
14 events, that the "Plaintiff" and the "Defendant" are acting in
15 concert.

16 On March 31st, the Court granted the motion to file the
17 action under seal. That was just two days after they had
18 filed the motion. We're not sure, Your Honor, but I believe
19 that was probably done without a hearing or notice because
20 both parties agreed.

21 The very next day, on April 1st, the complaint was filed.

22 Meantime, in the meantime and in the background, UBS, on
23 March 30th, sent to Mr. Dondero via me a litigation hold
24 letter. The Debtor, the very next day, sent a very similar
25 letter, a litigation hold letter, to Mr. Dondero through me.

1 It appears, although we are not sure because we have not
2 seen it, that these litigation hold letters may relate to this
3 suit.

4 On April 1st, the very -- the very same day that this suit
5 was filed, subpoenas were issued to my client. And they were
6 sent to me and they asked me to accept service. They asked me
7 to accept service for these subpoenas on a suit that I've
8 never seen. They asked for documents from my client to be
9 produced eight days later. And they asked for him to sit on
10 April 16th for his deposition on a suit on which he still to
11 this day has not seen.

12 I'm going to obviously go ahead and argue the motion, Your
13 Honor, but to be frank, just the recitation of those above
14 facts, to me, at least, make this abundantly clear how
15 unreasonable the subpoenas both were back in the past and
16 still are today.

17 What are the rules regarding discovery? Well, generally
18 speaking, Your Honor, in an adversary proceeding, discovery
19 can't be issued before a Rule 26(f) conference is held. Of
20 course, when we filed this motion, we were completely unaware
21 of whether a Rule 26(f) conference had been held, because, of
22 course, we weren't a party. But you can bring a motion to
23 bring discovery and issue discovery early, prior to the Rule
24 26(f) conference being held, but a motion must be filed with
25 the Court to authorize such issuance.

1 Here, upon my examination of the docket, I am unaware of
2 any such motion having been filed. Again, we're not a party
3 to this suit, I don't get all the ECF notices, but I am
4 unaware of any such motion having been filed, nor granted.

5 Even if such a motion is filed, the earliest that any
6 party could issue and serve discovery is 21 days after the
7 suit had been initiated and service perfected. Of course, 21
8 days is -- is a pretty special date, and there's a reason why
9 they picked 21 days. Well, that's when responsive pleadings
10 are due. You can't have parties have to respond to discovery
11 before the parties have even appeared in the case.

12 THE COURT: I know you're going to get to this, but
13 Mr. Dondero is not a party.

14 MR. TAYLOR: That is one hundred percent correct,
15 Your Honor. He's not a party. However, the rules for
16 discovery as to nonparties is exactly the same. And there is
17 no -- there is no provision for short-circuiting discovery
18 rules in an adversary proceeding as to a nonparty.

19 Now, I think what the other side will argue is, well, this
20 is a contested matter under Rule 9014, and therefore we can
21 issue discovery. And quite frankly, Your Honor -- and they'll
22 cite to another adversary proceeding filed underneath this
23 lead bankruptcy case where a motion for protective order was
24 indeed filed by Mr. Dondero. It was regarding the injunction
25 proceeding. It was filed on December 28th. The Debtor in

1 that case filed a response that same day. And the next day, I
2 believe without notice and a hearing, the Court denied that
3 motion for protective order in part, granted it in part.
4 There was no rationale given in the order, which was largely
5 constructed, I believe, from an email that this Court had
6 directed to the parties. But that is not a finding that 9014
7 should -- and therefore not applying Rule 26(f) is binding
8 authority on this Court or any other.

9 And Your Honor, to the extent that they make that
10 argument, we can find no case law in support. In fact, we
11 find it to the contrary, that when an adversary proceeding is
12 initiated, the due process rights that are implicated are
13 important and should not be abrogated. A contested matter is
14 a -- much looser rules of construction in how discovery can be
15 -- I'm sorry, did you say something, Your Honor?

16 THE COURT: Well, I was about to. I apologize for
17 interrupting, but I think --

18 MR. TAYLOR: No, go ahead.

19 THE COURT: I think all the lawyers hopefully know I
20 tend to err on the side of being pragmatic. And here is what
21 I'm about to ask you in that spirit. It feels like we're
22 going through a lot of brain damage to kind of argue about
23 whether an early 34 request applies to a nonparty and whether
24 Rule 34 applies in a contested matter, is this a contested
25 matter, or should it be considered an adversary? You know, we

1 could argue for a long time about that, and you all have, in
2 the pleadings, argued quite a bit.

3 But I'm looking at the docket, and the summons and
4 complaint it shows were served on the party, Highland, let's
5 see, this was filed April 5th, and it shows service occurred
6 on April 1st. So, assuming Rule -- the early Rule 34
7 provision of Rule 26 applies here, we're now at more than 21
8 days after summons. Now, I know you say -- okay. If this
9 rules applies like you say, April 22nd, I guess, would have
10 been the very first day that the subpoenas could have been
11 served on Mr. Dondero.

12 MR. TAYLOR: Correct. Had a Rule --

13 THE COURT: We're at April 28th now. I mean, why are
14 we arguing about this, is what I'm asking, from a pragmatic
15 standpoint.

16 MR. TAYLOR: Well, Your Honor brings up an
17 interesting point. First of all, let me state that to the
18 extent early discovery had been requested, then, yes, it would
19 be April 22nd. But no such motion was brought, first of all.

20 Second of all, and this is -- this is what to me is a
21 little bit mind-boggling, Your Honor. It is -- we think it
22 appears to be clear that the ultimate target of this
23 litigation is other than the Defendant. The Defendant and the
24 Plaintiff have a motion before this Court in the main
25 bankruptcy case to settle all the claims amongst themselves.

1 And so the Defendant is not truly a target defendant here.
2 What is being done is a true assault on fundamental due
3 process rights of third parties. There's not a plaintiff-
4 versus-defendant that are adversarial to each other. Instead,
5 they are acting in concert to try to get some sort of material
6 from my client to prove their ultimate case against him. And
7 what -- are they going to try to implead him in this case, if
8 we don't intervene as a matter of right? I don't know. Are
9 they going to try to use some sort of finding made in this
10 Court, in this friendly litigation, to then go use that
11 finding in a subsequent proceeding? Again, I don't know. But
12 the fact that we are apparently some sort of a target of this
13 litigation, and being asked to sit for depositions and produce
14 documents for it, but they won't show us the complaint, to me
15 is just -- it truly blows my mind that --

16 THE COURT: So, what we're really, really focusing on
17 today is the sealing motion, right? I mean, I guess that's
18 what I felt like coming in. This is all getting to whether
19 this thing should be unsealed. Because we're more than 21
20 days --

21 MR. TAYLOR: Correct.

22 THE COURT: -- out. You know, it seems like --

23 MR. TAYLOR: I totally agree that --

24 THE COURT: -- your motion is kind of now not moot,
25 but, you know, it has less of a punch to it now that we're

1 farther out.

2 And the alternative service motion of UBS seems like it's
3 going to be a no-brainer if they really convince me that Mr.
4 Dondero -- you know, service was attempted on him 31 times and
5 he somehow was always unavailable. What we're really going to
6 fight about today is the sealing aspect of this adversary; --

7 MR. TAYLOR: Well, --

8 THE COURT: -- yes or no?

9 MR. TAYLOR: I one hundred percent agree, but the
10 sealing then flows to the motion for protective order. To ask
11 my client to produce documents when he hasn't seen the very
12 complaint about which he seems to be the target, and whether
13 he then gets a chance or should be -- move to intervene as a
14 matter of right or as a matter of discretion, before he has a
15 chance to review that, make an informed decision about that,
16 in my mind, and we believe the case law supports, that a third
17 party's rights should not be prejudiced and he shouldn't have
18 to produce discovery that could potentially be used against
19 him, sit for depositions that could potentially be used
20 against him. The timing is just still off until we see what
21 we're talking about and have a true, legitimate chance, which,
22 generally speaking, would be 21 days after it is served, and
23 in my mind that equates to after it is unsealed. At that
24 point, maybe then discovery is appropriate. But it's just not
25 at this point.

1 They've attempted to use a secret court filing. That is
2 just anathema to everything that our public system of justice
3 stands for, is to have secret proceedings. Proceedings are
4 supposed to be true and open. If there's highly secret and
5 confidential information, generally, they are filed and --
6 under seal and redacted, just those sensitive confidential
7 information.

8 And apparently whatever is sensitive and confidential has
9 something to do with my client and transactions that he may
10 have done and they say that were wrongful. Well, if he
11 already has knowledge about them, what's the sensitive
12 confidential information that we're discussing? Again, I
13 don't know because I haven't seen the complaint.

14 So, I agree with Your Honor. The motion to seal does kind
15 of -- it's the driver here. But then that feeds into the
16 relief that we think that this Court should afford itself,
17 should afford us, after the unsealing.

18 As far as the alternative service, I was not authorized to
19 accept service. And why would I, for a suit that we don't
20 know anything about? And, you know, they tried to serve him.
21 Yeah, he was unavailable. But they shouldn't have been trying
22 to serve him anyway with this discovery about this secret star
23 chamber-like suit.

24 And so I hate to be so forthright about it, but it just
25 truly shocks the conscience a little bit, that that is what is

1 trying to be done here.

2 THE COURT: You know, I will say I tend to agree with
3 most of what you're saying. I am a judge who likes
4 transparency. I don't like to seal things. But let me play
5 devil's advocate. You all have a pretty good clue what the
6 lawsuit is about. I mean, you can tell from the publicly-
7 available docket that it's seeking injunctive relief. And if
8 I understood --

9 MR. TAYLOR: We don't know against whom, though, Your
10 Honor.

11 THE COURT: And if I understood what I read
12 correctly, preservation notices were sent that looked pretty
13 detailed as far as what was going on here.

14 So, you know, I think this kind of cuts both ways. It
15 cuts into your argument. It's probably going to cut into Mr.
16 -- or I keep wanting to say Mr. Clubok. I'm sorry.

17 MR. CLUBOK: Ms. George, Your Honor.

18 THE COURT: Ms. George. It probably cuts into her
19 argument, too.

20 I mean, it feels like the cat's out of the bag here. I
21 cannot believe that you and your client really have no clue
22 what this is about. And given that, I'm really not sure why
23 we need to seal it. But just if you can respond to that. Is
24 it a little disingenuous to say you have no idea what this
25 lawsuit is about? Your client has no idea?

1 MR. TAYLOR: So, again, timing is important here,
2 Your Honor. When we were served with the subpoenas, that was
3 April 1st. The motion to settle with UBS, which made these
4 allegations that \$300 million had been denuded from the estate
5 and sent somewhere else, that hadn't been filed. We really
6 have no idea. There's some sort of injunctive relief that has
7 been sought and may be granted in this case. I'm not really
8 sure.

9 THE COURT: It's -- the order is --

10 MR. TAYLOR: I don't know who the injunction is
11 against.

12 THE COURT: The order is right there on the docket,
13 right? Isn't the order -- the order is not under seal, is it?

14 MR. TAYLOR: Your Honor, the TRO is not, Your Honor.

15 THE COURT: Uh-huh.

16 MR. TAYLOR: The injunction that they're asking for,
17 I mean, I'm not sure why they have to enjoin a friendly
18 defendant. They can't enjoin anybody else who's not a party.
19 So, again, I'm not exactly sure why the injunctive relief was
20 necessary or sought. And I think it was probably just to get
21 expedited discovery going to then try to issue it to my
22 client.

23 But, so we have some idea what it's about. But, again,
24 what does this Court look for, and when we go to trial, what's
25 the active pleading? Well, it's the Plaintiffs' complaint

1 right up until the joint pretrial order, which lays everything
2 back out. I mean, that's the guts of what lawyers have to
3 rely upon, so we've got to be able to see it.

4 Sure, do I have a decent idea now, after the UBS
5 settlement motion has been filed and the litigation hold
6 letters came up? Were we able to kind of piece it together?
7 Sure. But should we have to try to piece together what's in a
8 lawsuit that alleges, apparently, \$300 million worth of
9 damages or somewhere thereabouts? We shouldn't have to be
10 guessing.

11 These are serious allegations. They should be taken
12 seriously. We should be able to see what that -- that lawsuit
13 is about if we're going to be asked to produce discovery about
14 it.

15 So, yes, I get your -- but at the same time, when these
16 subpoenas were first issued and we started kind of drafting up
17 -- as we started piecing stuff together, we filed our motion
18 for protective order the day after the UBS settlement motion
19 was filed. And so we had already kind of prepared that, and
20 we were still trying to evaluate that UBS settlement motion,
21 exactly what they were saying.

22 So, but again, why should -- why are we searching around
23 in the dark for something? It's not something we should have
24 to do. That's why there are due process requirements.

25 Did that answer Your Honor's question?

1 THE COURT: Well, it does. And what about this? I
2 seem to recall, in UBS's pleading, response to this, they said
3 they did offer to show your client the lawsuit, but they
4 wanted your client to agree not to share it beyond, you know,
5 himself and you, and his lawyers. And that was a no go. Tell
6 me about that.

7 MR. TAYLOR: Sure. First of all, I was surprised to
8 see those communications come about. Those clearly were
9 settlement communications. But be what it may, I'm happy to
10 address them.

11 I think if Your Honor turns back in the prior emails, when
12 we first made the suggestion that we were thinking about
13 opposing and moving for a protective order, I said, but let me
14 see the suit. And Mr. Pomerantz or Mr. -- and Mr. Morris's
15 firm said, no, but really what you -- who you need to ask is
16 the Plaintiff, UBS. And so I went to Mr. Clubok, I said, can
17 we see them? And the answer was no.

18 It was only after we filed the motion for protective order
19 that they came back and said, you know what, we'll let you see
20 them, but you can only share it with Mr. Dondero and his
21 counsel, which, okay, that -- that's a step in the right
22 direction. But I don't know what this lawsuit says, but I --
23 we have a decent idea. My guess is it implicates rights of
24 third parties. It also might implicate rights of affiliate
25 entities. Mr. Dondero may or may not -- we're still

1 investigating the factual background and the way the legal
2 framework exists -- he may owe fiduciary duties to those third
3 parties.

4 And for him to have an essential gag order because he
5 can't share it with any other affiliate or third parties to
6 which he has fiduciary duties that, hey, these allegations are
7 being made, this may implicate your rights, you need to
8 evaluate and take appropriate action on that entity's behalf,
9 that, quite frankly, handcuffs him to a degree which is, we
10 believe, impermissible, Your Honor.

11 THE COURT: You don't think a court order shields him
12 from accusations of breach of fiduciary duty?

13 MR. TAYLOR: No, Your Honor, I don't. I think he has
14 to protect very hard those fiduciary duties, and he must, if
15 appropriate, ask Your Honor and point out that this puts him
16 in an untenable position.

17 And to the extent that that court order is issued, we --
18 we obviously would have to get there later if that's where --
19 the way it were to come about. But I think he would have to
20 consider appealing that, because that really does put him in
21 an untenable position. I'm not trying to be overly
22 argumentative or saying that, you know, we must have our way
23 or we will appeal, but I truly do believe that that could put
24 him in such a position that he would have no choice but to at
25 least pursue that. Otherwise, open himself up to liability to

1 third parties.

2 THE COURT: Okay.

3 MR. TAYLOR: So, Your Honor, I think, with your
4 questions -- I mean, I've got eight more pages of notes here.
5 But I think our back-and-forth between you and I have pretty
6 much established what our positions are. Unless Your Honor
7 has any more questions for me at this point, I'm happy to
8 yield the floor.

9 THE COURT: All right. Thank you, Mr. Taylor.

10 All right. Ms. George, I'll hear from you.

11 MS. GEORGE: Thank you, Your Honor. Can you hear me
12 all right?

13 THE COURT: I can. Uh-huh.

14 MS. GEORGE: Great. Thank you, Your Honor.

15 You, in your back-and-forth with Mr. Taylor, you covered
16 many of the points I was going to raise. I don't want to take
17 the Court's time in repeating those.

18 I will just briefly cover the fact that we did offer Mr.
19 Taylor to share the complaint with Mr. Dondero, as long as he
20 kept it confidential and not share it with anyone else. That
21 offer was not accepted. So we really think that belies the
22 assertion in his papers that the reason he needs to see the
23 sealed pleadings is to determine if his interests are
24 implicated.

25 The TRO order, which, as Your Honor correctly pointed out,

1 is public, states that the Debtor is enjoined from making
2 payments or transfers that were a part of the fraudulent
3 transfers to Sentinal, an entity that Mr. Dondero has a
4 majority ownership in. We would submit that that is more than
5 enough information to determine if his interests are
6 "implicated" and if he needs to move to intervene. We take no
7 stance on whether intervention is correct, but we think that's
8 more than enough.

9 And the fact that we offered to show him the allegations,
10 as long as he kept it confidential, and that wouldn't work for
11 him, really goes to our fears that Mr. Dondero is looking to
12 find this complaint to further conspire with other parties and
13 possibly hurt UBS further and move these assets further or
14 dissipate them that are the subject of these fraudulent
15 transfers.

16 Your Honor, Mr. Dondero's motion seeks to not only unseal
17 the complaint but also the TRO motion and the exhibits
18 underlying that motion. And as Your Honor is aware, those
19 exhibits include documents that Mr. Dondero is not copied on,
20 communications with former Debtor employees that Mr. Dondero
21 is not copied on. And we have real concern with him gaining
22 access to those and causing further issues pursuant to this
23 fraud.

24 I'm happy, Your Honor, to go over the various procedural
25 arguments. We don't think that the Federal Rules have

1 anything to do with due process rights of third parties. And
2 Your Honor correctly pointed out that these are -- all of the
3 rules go to parties, and Mr. Dondero is not a party. And we
4 agree that, had -- if he did see the complaint, the seal --
5 the sealing order from this Court would protect any supposed
6 fiduciary duty that he claims, although that seems pretty
7 unavailing.

8 We have met all of the applicable rules here. And as Your
9 Honor pointed out, even if Rule 26(b)(2) did apply, which we
10 don't believe it does here, it's been more than 21 days. His
11 arguments are moot. He's evaded service now for almost a
12 month. There's -- and there's really no argument that an
13 expedited timeline at this point isn't appropriate. His
14 counsel, at the very least, has had these subpoenas for a full
15 month.

16 So, asking that he produce documents within seven days and
17 sit for a deposition within seven days we feel is more than
18 adequate. And it's in line with the discovery that Your Honor
19 allowed in the adversary proceeding between the Debtor and Mr.
20 Dondero, which sought documents in five days over the
21 Christmas holiday. And Mr. Dondero filed a very substantially
22 similar motion there, and the Court denied it. And we believe
23 that that should be done here as well.

24 We -- I'm happy to cover any questions that you would
25 like, Your Honor, but we believe that the motion for

1 alternative service should be granted and that both of Mr.
2 Dondero's motions should be denied.

3 THE COURT: All right. A couple of follow-ups. I
4 think I used the expression, it seems like the cat is out of
5 the bag to me because of the litigation hold letters and the
6 TRO that is public information and just the title of the
7 lawsuit.

8 So, I ask you, really, what is the big deal at this point?
9 I mean, I feel like Mr. Dondero has to understand what this
10 lawsuit is about, from what little bit has trickled out there,
11 so what's the big deal? It sounds like to me you're just
12 worried about the exhibits, the attachments to -- I can't
13 remember if it was to the complaint or the motion for TRO and
14 preliminary injunction. Is that -- am I hearing that
15 correctly, it's really these documents more than anything else
16 you feel are sensitive?

17 MS. GEORGE: Well, we feel it's all sensitive, Your
18 Honor. That's why we were willing to share the complaint on a
19 strictly confidential basis with Mr. Dondero. We feel very
20 strongly that he should not have full access to the complaint
21 without any confidentiality restrictions upon it, because our
22 -- one of our major concerns is him seeing the complaint,
23 seeing other individuals described therein, seeing the
24 documents with the conversations that he's not copied on, and
25 then going to those individuals and working to further, you

1 know, relieve assets and further hurt UBS's chances at
2 recovering the billion-dollar judgment that's owed against
3 these, you know, these Highland funds.

4 THE COURT: Okay. All right. So, again, just to
5 make sure I'm hearing you loud and clear, if there was an
6 order here where the Court required the unsealing of the --
7 or, you know, I don't know how we want to phrase it -- allowed
8 Mr. Dondero to see everything, the pleading and the exhibits,
9 as long as it restricted him from sharing it or discussing it
10 with anyone other than his counsel, you all are willing to
11 live with that? Am I hearing that correctly?

12 MS. GEORGE: I think -- very close. We would be
13 willing to share the complaint with him, as long as he agreed
14 not to share it, discuss it, or use it to develop strategy
15 with any -- anyone else other than his attorneys. We would
16 feel uncomfortable sharing the exhibits, --

17 THE COURT: Okay.

18 MS. GEORGE: -- as those are the documents that he is
19 not on.

20 THE COURT: Okay. I misheard you on the exhibits.
21 All right. Well, and I guess we don't need to say anything
22 about the alternative service. Again, I've got your
23 affidavit, your declarations of many, many process servers
24 that I've seen here, and I think you've kind of said all you
25 need to say on that one from your pleading.

1 All right. Well, before I return back to you, Mr. Taylor,
2 Mr. Morris, you're a party in this, obviously, your client is.
3 Do you have anything you want to say about these disputes?

4 MR. MORRIS: Your Honor, John Morris; Pachulski Stang
5 Ziehl & Jones. Just very briefly.

6 As I understand the motion and I understand the argument
7 today, the only thing we're talking about is a complaint and
8 the exhibits attached to the complaint. We're not talking
9 about the Debtor's response or the exhibits attached to the
10 response. And if that's the case, Your Honor, we take no
11 position on how the Court should rule on the treatment of the
12 complaint and the exhibits annexed thereto, nor do we take a
13 position on service or the deposition. We haven't joined in
14 that.

15 THE COURT: Okay. I'm going to go back to Ms.
16 George. Were there exhibits attached to the complaint, or
17 just to the motion for a TRO and preliminary injunction? And
18 the Debtor's --

19 MS. GEORGE: Just the motion, Your Honor. So, yeah,
20 the complaint is a standalone document.

21 THE COURT: Okay. Okay. Okay, thank you.

22 MS. GEORGE: The exhibits were attached to the
23 motion. Yes.

24 THE COURT: Okay. Okay.

25 MR. MORRIS: Okay. So, Your Honor, just to clarify,

1 then, that's fine, and the Debtor's position stands, as long
2 as we're not talking about the Debtor's response and the
3 exhibits attached to the Debtor's response. I don't think
4 that's part of the motion. I don't think any request has been
5 made of us in that regard.

6 THE COURT: All right. Mr. Taylor, I'll give you the
7 last word, but I'll tell you where I'm leaning so you know
8 exactly what perhaps you need to address. I'm leaning
9 towards, I guess we would say, granting your motion for
10 protective order in part, and that would work like this. That
11 UBS would provide to you and Mr. Dondero the complaint, just
12 the complaint, and the Court would order that the complaint
13 not be shared beyond Mr. Dondero and his lawyers at Bonds
14 Ellis absent further order of the Court.

15 I always like to say the obvious, that I have discretion
16 to change that if ever someone urges and convinces me to
17 change that, but that would be the ruling on that. And I
18 would be inclined to rule that alternative service of the
19 subpoena, by service on you and electronic service to Mr.
20 Dondero, is appropriate, and say at this point that the
21 document production would occur seven days after you see the
22 complaint, and the deposition maybe a couple of days after
23 that.

24 So, what -- knowing where I'm leaning, what say you, Mr.
25 Taylor?

1 MR. TAYLOR: Your Honor, first of all, I'd like to
2 point out that we offered to view the complaint and related
3 items under the auspices of the protective order that is in
4 place in the main bankruptcy case. We believe that is the
5 appropriate standard by which it should be done, instead of
6 just Bonds Ellis and his attorney. The protective order in
7 place does allow him to discuss what he sees with affiliates
8 and their -- and their agents. I'm sorry, their attorneys. I
9 said agents. I apologize. And we believe that that is the
10 appropriate thing.

11 I think what becomes really apparent here, Your Honor, is
12 this is not only a strategic move to get free discovery from
13 who the ultimate target is by two different parties, we need
14 to be able to see the complaint to -- the complaint and the
15 response. So, despite what Mr. Morris said, that that's not
16 what we're asking for, it is. If I inartfully pled it, I
17 apologize. But we need to see the full thing.

18 These are two parties acting in concert to ultimately
19 drive the litigation goal that appears to be aimed against my
20 client. These are not true plaintiff and defendant here. The
21 fact that they enjoined themselves is -- is kind of laughable.
22 It just is. And they have an agreement in total that they --
23 to settle everything, but yet they asked for an injunction of
24 one party against the other. It's -- that's just silly.

25 And Your Honor, they're trying to also wall Mr. Dondero

1 off. I love our attorneys here at Bonds Ellis and I think we
2 do a great job, but let's look at the manpower that they
3 wanted to stack this up against. They want Pachulski Stang
4 and Latham & Watkins v. little Bonds Ellis. And you know
5 what, they can swamp us. And you know what, they're doing a
6 damn good job of trying to do it.

7 And, but they're trying to wall Mr. Dondero off from being
8 able to get the resources he needs to be able to defend
9 himself and any affiliated entities. And they're trying to
10 wall it off and they're -- it's a clever -- you -- sometimes
11 you've just to call out a spade a spade, and that's what's
12 happening here, in addition to the free discovery and ultimate
13 litigation. They're trying to wall Mr. Dondero off. And it's
14 not appropriate, Your Honor, and we need your help to prevent
15 -- prevent that from happening. They're trying to stack the
16 deck.

17 And as far as seven days after, with all due respect, I've
18 -- I've got trial that is continuing and has been for the past
19 month in Judge Hale's court, and we've got three -- two, maybe
20 three more days left of trial in that. I've got a couple
21 other matters down in Judge Isgur's court that are equally
22 large and actually, as far as terms of dollars, much larger
23 even than this case. And there's only so much bandwidth I
24 have to be able to deal with this, Your Honor.

25 Also, our lead -- as Your Honor is aware, our lead person

1 on this case is not here anymore, and I'm not leaning on that
2 as an excuse, but there is some ramp-up that we are
3 experiencing, trying to overcome that. And so it's just --
4 it's too fast.

5 Normally, after you got served with a complaint, you would
6 at least have 21 days before they could even serve you with
7 discovery, and then you should have 30 days to be able to
8 answer it. That's the standard response date that is laid out
9 in the Rules. So, in my opinion, it should be 51 days after
10 we get to view the response.

11 And I see Mr. Seery is laughing, but, you know, it's --
12 those are what the Rules are. And if they wanted to bring
13 litigation against Mr. Dondero, then bring it. Don't hide
14 behind this third -- this two friendly-party litigation.

15 And I'm sorry my voice is getting raised, but it just --
16 it raises my ire a little bit. I know other parties are
17 probably -- equally have as much ire against my client. And
18 so I will try to refrain from doing that in the future.
19 That's all, Your Honor.

20 MR. MORRIS: Your Honor, may I be heard? It's John
21 Morris with Pachulski.

22 THE COURT: Do you have something to clarify, or
23 what?

24 MR. MORRIS: I do, actually. You know,
25 notwithstanding my respect for Mr. Taylor, I do take offense

1 to the use of the words "laughable" and "silly." The fact of
2 the matter is the Debtor is a defendant in a lawsuit. We have
3 not joined in seeking discovery against Mr. Dondero. Indeed,
4 we are the recipient of very voluminous discovery demands
5 pursuant to the subpoena that was served on the Debtor itself.
6 We've taken no position as to whether or not the complaint
7 should be disclosed. We've taken no position as to whether or
8 not alternative service should be granted. The notion that
9 this is a friendly -- a so-called friendly litigation, Mr.
10 Taylor is simply mistaken.

11 And I would ask, Your Honor, can we make sure that Mr.
12 Dondero is on this call, pursuant to the court order? I don't
13 see his video here.

14 THE COURT: All right. What about that, Mr. Taylor?

15 MR. TAYLOR: So, one, I did send him a link, and I
16 don't know if he is attending or not.

17 Two, I don't believe -- and this is where this gets -- it
18 points out the problems we have with not following the
19 procedural rules. From what I understand of the order
20 requiring him to be present for all bankruptcy proceedings,
21 and this is -- this is an adversary proceeding, to which he is
22 not a party, because he has not been sued, and that order
23 simply doesn't require him to be here.

24 Now, he may be here or not, because it was important to
25 him, but I don't know what his schedule was, so I didn't

1 confirm for sure whether he was going to be on. And so I'd
2 quite simply say I sent him a link but I didn't instruct him
3 that he absolutely had to be here because I did not believe,
4 under the Court's order, that he had to be. And certainly, as
5 a nonparty, I don't think he is. And that's all I can tell
6 the Court on that issue.

7 THE COURT: All right. Well, let me ask. Mr.
8 Dondero, if you're out there, please speak up so we know.

9 (Pause.)

10 THE COURT: Just so you know, I have a screen here in
11 my courtroom they call the Polycom. I can't see every single
12 -- I can just see that there are 49, 50, 51, 52, 53 -- 55 or
13 56 participants. But I can only see people who have recently
14 spoken or are speaking. I can't see every person who's
15 involved.

16 Mike, do you happen to see if --

17 THE CLERK: I don't see him on there.

18 THE COURT: Yes. We don't see Mr. Dondero. All
19 right. So, gosh.

20 MS. GEORGE: Your Honor, may I respond briefly?

21 THE COURT: Okay. Go ahead. Go ahead.

22 MS. GEORGE: Thank you, Your Honor. You know, Mr.
23 Taylor made some -- some outrageous accusations there. This
24 is not a collusive suit by any stretch of the imagination. We
25 are seeking a temporary restraining order against the Debtor.

1 They are on the other side. And the rules that Mr. Taylor
2 continues to cite are with regard to parties. They do not
3 apply in injunctive -- in emergency injunctive relief on third
4 parties.

5 I -- you know, Mr. Taylor mentioned he's very busy. I'm
6 sure everyone on this call is very busy. I know for a fact
7 that Your Honor is incredibly busy. I receive the docket
8 updates every day. And so I think he's making a lot of
9 excuses, and he has had -- and the short timeline is, you
10 know, of his own making. They have been evading service for
11 30 days now. There is no question that they have had more
12 than enough time to prepare for a deposition, to collect the
13 documents responsive to the subpoenas. So any short timeline
14 that's going to be an issue for him is because of his client
15 avoiding service.

16 THE COURT: Okay.

17 MS. GEORGE: Thank you, Your Honor.

18 THE COURT: Thank you.

19 Well, let me say several things here. I don't have
20 memorized the exact way I worded my instruction many weeks ago
21 regarding Mr. Dondero attending all of these court hearings.
22 I can't remember. I know what I intended to do, and I'm
23 surprised if I didn't get it worded in an order this way.
24 What I intended to do was at least say this: At any hearing
25 where he takes a position, where he files a pleading or wants

1 to take a position, he needs to be here. That's what I
2 thought I said. And I didn't mean just in the underlying
3 bankruptcy case or in certain adversaries. I meant if he
4 wants the Court to devote time to him and his positions, I
5 don't want it to be just the lawyers. I want him to be here,
6 available. Available to the Court, available to any party who
7 might want to examine him with regard to the positions he
8 takes. And I want him to see what's happening.

9 I had many motivations, but of course a strong motivation
10 for ordering that was when, at a hearing shortly after the
11 TRO, the December 10th TRO, he, in deposition testimony and
12 then at the preliminary injunction hearing testimony, he gave
13 the impression that he hadn't ever read the TRO. Or hadn't
14 visited about -- hadn't attended the hearing on the TRO,
15 hadn't read it, didn't really -- you know, acted like he
16 wasn't completely aware of its details. So I wanted to make
17 sure that never happened again. If there was an order somehow
18 affecting him, I wanted to be sure he was here when it all
19 happened. But I also think, again, if he's taking positions,
20 he needs to be here and be a part of it all. Okay? So, --

21 MR. MORRIS: Your Honor, if I may, because I can just
22 read you the order right now.

23 THE COURT: Oh, good.

24 MR. MORRIS: Because it's clear as day, just as Your
25 Honor recalled it.

1 It's at Docket No. 59 in the adversary proceeding
2 concerning the injunctive relief. The preliminary injunction
3 was entered on January 12, 2021. And Paragraph 6 provides,
4 "James Dondero is ordered to attend all future hearings in
5 this Bankruptcy Court by WebEx or whatever other video
6 platform is utilized by the Court unless otherwise ordered by
7 the Court."

8 THE COURT: Okay.

9 MR. MORRIS: There's no exceptions. It's --

10 THE COURT: All right.

11 MR. MORRIS: And I would -- yeah. I'll just leave it
12 at that.

13 THE COURT: It's even a little broader than I
14 remembered. It didn't narrow in on if he's taking a position.
15 So that, you know, he's violated a court order today. But,
16 anyway, I'm sure you will communicate to him that he needs to
17 participate in the future. Okay? And I guess I'm going to
18 have to play teacher and call roll and make sure he's out
19 there right at the beginning of every hearing.

20 MR. TAYLOR: Your Honor, I'll make sure of that. And
21 to the extent, if that was my fault, of course, I wasn't
22 involved with this case when -- when Your Honor made those
23 rulings.

24 THE COURT: Okay.

25 MR. TAYLOR: As you know, I only recently came into

1 this case, just merely it was supposed to be just for purposes
2 of confirmation.

3 THE COURT: Okay.

4 MR. TAYLOR: And the circumstances have --

5 THE COURT: Well, if --

6 MR. TAYLOR: -- developed.

7 THE COURT: If it sets your mind at ease, I'm not
8 going to an issue a show cause order this afternoon to hold
9 him in contempt of court for not being on today's WebEx. I've
10 already got enough contempt motions in front of me in this
11 case, and I don't want to add to it with this. Okay?

12 But let me get to the matters before me. You know, I --
13 the word "silly" was used at some point by someone, and, you
14 know, I always cringe a little. I was tempted to come out
15 here and say, this is silly. You know, he's dodging service.
16 And by the way, the cat's out of the bag. Surely he knows
17 what this lawsuit is about. I was tempted to use that word
18 myself. But I wanted to make sure Mr. Dondero knows and
19 everyone knows, I mean, this is serious stuff. I read the
20 complaint, obviously. I've read the motion for the TRO and
21 attachments. It's serious stuff. And you know, have no doubt
22 about that.

23 But it is a complaint of UBS against Highland. Mr.
24 Dondero is not a defendant. None of the various entities that
25 we've talked about in so many hearings, in so many contexts,

1 under the Highland umbrella, none of them are defendants in
2 this lawsuit. There may be other lawsuits that mushroom and
3 involve some of them regarding some of what is alleged in the
4 complaint. But at this point, it's UBS against Debtor.

5 And yes, I understand describing it as friendly litigation
6 when, right at the beginning, Highland agrees to a TRO. But
7 gosh, isn't this case full of irony, among other things? You
8 know, I don't know that I've ever seen two parties fight each
9 other as hard as Highland and UBS as we've seen in this case.
10 And they went to mediation. No go. Didn't settle. We had a
11 long estimation hearing. We've had appeals. You know, it's
12 -- I find it a little of a stretch to think of this as
13 friendly litigation. It's cooperation at this point, is what
14 I would call it, and we'll see what happens. But, again, I
15 just stress for the record that Mr. Dondero is not a party,
16 nor is any other entity in the Highland umbrella, other than
17 the Debtor Highland itself.

18 Now, having said that, I do not take sealing lightly at
19 all. I'm trying to think -- well, it's not very often that
20 I've been asked to seal an adversary proceeding. It happens,
21 but I don't take it lightly, because I am, like I think any
22 judge, sensitive to transparency, to Bankruptcy Code Section
23 107, and allowing all parties in interest in a bankruptcy case
24 to know what's going on. But there are times when there is
25 sensitive commercial information, potentially scandalous,

1 defamatory matter. You know the examples in 107 and the case
2 law. There are situations where at least temporary sealing is
3 warranted. And I decided, after spending a half a day at my
4 desk looking through this one, that it was appropriate, at
5 least for now.

6 And I don't even think, the way UBS worded it -- well, I
7 know they worded it in an open way, where, you know, for now.
8 I'm thinking you said until a hearing on the preliminary
9 injunction, maybe. Am I right, Mr. Clubok or Ms. George?

10 MS. GEORGE: That's correct, Your Honor.

11 THE COURT: Yes.

12 MS. GEORGE: Your Honor, that's correct. It's just
13 sealing until the preliminary injunction hearing.

14 THE COURT: Yes. So, you know, that's a big deal,
15 right? That's a big factor, that we're talking about a finite
16 period of time. And, again, I spent a half a day at my desk
17 looking at this, and was convinced there are valid concerns in
18 keeping this sealed for a finite period of time.

19 So, what I'm going to do is grant in part Mr. Dondero's
20 motion, and I'm going to do it the way I suggested earlier.
21 He shall be allowed to see the complaint. Okay? He can see
22 the complaint. And at this point, it can only be shared with
23 him and Bonds Ellis. Okay? So that's the ruling for now.
24 Okay? We're talking about a finite period of time. So I'm
25 not persuaded that his fiduciary duties make this intolerable

1 or he needs more lawyers than Bonds Ellis. I mean, this is
2 the ruling for now. I think it strikes a fair balance.

3 So he gets to see the complaint and Bonds Ellis gets to
4 see the complaint, but protective order is in place so that
5 they are restricted from sharing or discussing the contents
6 with anyone else.

7 So, my further ruling is that the alternative service of
8 the subpoenas on Mr. Dondero is approved. Again, mailing to
9 Mr. -- regular mail to Mr. Dondero is fine, and email to Mr.
10 Taylor is fine.

11 And I can't remember, I mean, it's not an onerous list of
12 documents sought, right? I've got to pull this up again. It
13 was how many categories of documents?

14 MR. TAYLOR: Sorry, I'm turning there right now, Your
15 Honor.

16 (Pause.)

17 THE COURT: It didn't occur to me that more than
18 seven days was needed.

19 MS. GEORGE: It's twelve categories of documents,
20 Your Honor.

21 THE COURT: Okay. Show me again the docket number
22 or tell me the docket number that it appears at.

23 MS. GEORGE: Certainly. It's Docket 23.

24 THE COURT: Okay. There it is.

25 MS. GEORGE: And it's Page -- yeah, Page 27 of that

1 PDF.

2 THE COURT: Okay. Page 27.

3 MS. GEORGE: And as Your Honor will see, they're
4 fairly limited categories of documents.

5 THE COURT: Okay. Well, I just wanted to double-
6 check. Okay. (Pause.) Okay. Seven days from, again, the
7 time the complaint is received. I assume you're going to send
8 the complaint today. I don't know, maybe you want to have the
9 order in place before you do that, so maybe tomorrow. So
10 let's just get a date certain. Okay? So, the documents shall
11 be produced -- what is seven days from tomorrow? What is
12 that?

13 MR. TAYLOR: May 6th, Your Honor.

14 THE COURT: May 6th. And so can we say a deposition
15 the following Monday? I'm going to be the secretary/scheduler
16 here just while you're all on the line, so we don't waste a
17 bunch of time offline. That'll be 10th, May 10th. Everybody
18 good with May 10th for -- of course, Mr. Dondero is not here,
19 so we don't -- does anyone know why May 10th doesn't work?

20 MS. GEORGE: May 10th works for UBS, Your Honor.

21 THE COURT: Okay. May 10th unless you all otherwise
22 agree. If you all mutually agree to something different,
23 fine. But if you can't, May 10th at 9:30 in the morning. How
24 does that sound?

25 All right. Well, --

1 MR. TAYLOR: Your Honor, I --

2 THE COURT: Uh-huh?

3 MR. TAYLOR: Your Honor, I would note for you, I
4 believe that you have docket call on the injunction suit
5 against Highland Capital v. Dondero on May 10th.

6 THE COURT: Okay.

7 MR. MORRIS: That is true.

8 THE COURT: Okay. Just the trial docket call?

9 MR. MORRIS: Correct.

10 THE COURT: Okay.

11 MR. MORRIS: I actually think the scheduling order
12 may say the week of, but I'm not certain, Your Honor.

13 MR. TAYLOR: I don't know. I'm just showing it on my
14 docket calendar as 1:30.

15 THE COURT: Okay.

16 MR. TAYLOR: I'm not --

17 MR. MORRIS: It may --

18 THE COURT: So that's probably the regular -- that
19 should be our regular trial docket call, which is just a time
20 where we all show up and say, are you all trial-ready? Okay.
21 If so, we're going to set it, you know, the following week of
22 May 17th. So it seems like you can do both, right? You can
23 take a break from the deposition, if you're still going at
24 1:30, and dial into the WebEx and we'll see if you all are
25 going to be trial-ready. Because it wouldn't be a trial.

1 It's just our trial docket call to hear if everyone is trial-
2 ready. All right? So, I think we can do that.

3 MS. GEORGE: We will absolutely take a break, Your
4 Honor, if that's scheduled for that day.

5 THE COURT: Okay. All right. Ms. George, can I
6 depend on you to upload forms of order that reflect the
7 Court's ruling?

8 MS. GEORGE: Yes. We'd be more than happy to. Thank
9 you, Your Honor.

10 THE COURT: All right. Thank you. We stand
11 adjourned.

12 THE CLERK: All rise.

13 (Proceedings concluded at 2:39 p.m.)

14 --oOo--

15

16

17

18

19

CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 **/s/ Kathy Rehling**

04/29/2021

23

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

24

25

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS	3
WITNESSES	
-none-	
EXHIBITS	
UBS Securities' Exhibits, Docket Entries 30 and 37	Received 6
James Dondero's Exhibits, Docket Entry 34	Received 6
RULINGS	37
Motion for Protective Order filed by James Dondero (23)	
James Dondero's Motion to Modify Order Granting Leave to File Under Seal (24)	
Plaintiffs' Motion for an Order Authorizing Alternative Service of Subpoena (28)	
END OF PROCEEDINGS	41
INDEX	42

EXHIBIT 8

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE NORTHERN DISTRICT OF TEXAS

3 DALLAS DIVISION

-----X

4 In re : Chapter 11

5 HIGHLAND CAPITAL MANAGEMENT, L.P., Case No:

6 Debtor : 19-34054-SGJ11

7 -----:

8 UBS SECURITIES LLC and UBS AG : Adversary No.

9 LONDON BRANCH, : 21-03020-sgi

10 Plaintiffs, :

11 vs. :

12 HIGHLAND CAPITAL MANAGEMENT, L.P.:

13 Defendant. :

14 -----X

15 HIGHLY CONFIDENTIAL

16 DEPOSITION OF JAMES DONDERO

17 APPEARING REMOTELY FROM DALLAS, TEXAS

18 MONDAY, MAY 10, 2021

19 11:00 A.M. EST

20
21
22 Job No.: 371141

23 Pages 1 - 267

24 Reported by: Adrienne Mignano, RPR

25 Appearing remotely

1 Q Who paid for the policy? 11:37:08
2 A I believe the beneficiary paid for the 11:37:12
3 policy. 11:37:19
4 Q Which beneficiary? 11:37:20
5 A I don't know. I don't know, whichever 11:37:23
6 was the beneficiary of the policy I believe paid 11:37:24
7 for it. 11:37:30
8 Q And your testimony is that the 11:37:30
9 beneficiary is some part of the HFP complex, as 11:37:33
10 you call it? 11:37:37
11 A Yes. 11:37:39
12 Q And did the -- okay. And did you have 11:37:41
13 any -- 11:37:52
14 MR. CLUBOK: Strike that. 11:37:53
15 Q When did you first hear about this 11:37:54
16 policy? 11:37:55
17 A I mean, at or about when it was put 11:38:02
18 together. I mean, you know -- yeah, at or about 11:38:05
19 shortly before when it was put together. 11:38:08
20 Q Well, was it -- so shortly before it 11:38:11
21 was put together you were told about it? 11:38:13
22 A Yes. 11:38:15
23 Q By whom? 11:38:16
24 A I'm sorry, was there a question there? 11:38:22
25 Q I'm sorry, I said, "By whom?" You said 11:38:24

1 A Yes. I mean, whether it was him 11:40:04
2 directly or him working with reinsurance brokers 11:40:06
3 or him working with third parties, I don't know. 11:40:09
4 But he was the one that brought it to me or -- and 11:40:11
5 proposed the policy. 11:40:16
6 Q And what did Scott tell you about why 11:40:21
7 he was proposing the policy? 11:40:25
8 MR. TAYLOR: Objection. Form. Calls 11:40:28
9 for hearsay. 11:40:29
10 A I have answered this already, but, 11:40:34
11 again, that there was a business purpose that I'd 11:40:37
12 said already in terms of it was an illiquid pool 11:40:41
13 of assets that was cash deficient, cash deprived 11:40:46
14 that needed on a longer term basis liquidity and 11:40:52
15 an ability to fund legal fees and orchestrate 11:40:57
16 legal activities. Whether it was defensive or 11:41:00
17 offensive, I don't know. But it needed 11:41:07
18 functionality and it needed liquidity. 11:41:12
19 Q Did Scott tell you any other purpose 11:41:17
20 for why he was proposing the policy other than 11:41:19
21 what you've just described? 11:41:22
22 MR. TAYLOR: Objection. Form. 11:41:24
23 A That's the purpose as I understood it 11:41:25
24 and remember it. 11:41:27
25 Q What do you mean by "orchestrate legal 11:41:29

HIGHLY CONFIDENTIAL
Transcript of James Dondero
Conducted on May 10, 2021

71

1 I'm just saying as far as business or policies 12:29:26
2 that Sentinel issued or was part of, there were -- 12:29:30
3 there were multiple types. 12:29:35
4 Q Right. But to be clear, Sentinel Re is 12:29:40
5 affiliated with you, Jim Dondero, correct? 12:29:45
6 A If you define affiliate as similar 12:29:50
7 ownership, then yes, yeah. 12:29:54
8 Q Okay. And Sentinel Re did issue 12:29:59
9 policies to other entities that have overlapping 12:30:05
10 ownership with you, correct? 12:30:08
11 A Correct. 12:30:12
12 Q And what were those entities that 12:30:13
13 Sentinel Re issued policies to that you were in 12:30:16
14 some way connected to? 12:30:20
15 A Like I said, I believe they did some 12:30:21
16 D&O insurance splitting on some of the private 12:30:23
17 equity companies in the portfolio. 12:30:28
18 Q Like what? 12:30:31
19 A I don't remember, and I don't know 12:30:34
20 which ones they did, but I remember that was a 12:30:35
21 business line or a business purpose for a few 12:30:39
22 years. 12:30:42
23 Q Is there any entity that you can name 12:30:42
24 here today that Sentinel Reinsurance issued a 12:30:46
25 policy to that you have some beneficial interest 12:30:50

HIGHLY CONFIDENTIAL
Transcript of James Dondero
Conducted on May 10, 2021

72

1	in?	12:30:52
2	A You'll have to ask Scott. Scott	12:30:54
3	Ellington is the right person to ask.	12:30:57
4	Q How about you? As you sit here today,	12:30:59
5	are you aware of even a single entity that you can	12:30:59
6	think of -- are you claiming that you don't know a	12:31:01
7	single entity that Sentinel Re issued a policy to	12:31:04
8	that you have a beneficial ownership in?	12:31:11
9	A No, I don't remember. I don't remember	12:31:12
10	specifically.	12:31:13
11	Q Do you know what proportion of Sentinel	12:31:14
12	Re's business was issuing policies to entities	12:31:16
13	that had some sort of connection to you?	12:31:21
14	A I do not.	12:31:23
15	Q Okay. Well, look, it's 11:30. I will	12:31:24
16	say, we weren't told about this break. We also	12:31:28
17	obviously weren't told we were going to start a	12:31:32
18	half hour late. So we're going to -- it's going	12:31:34
19	to end up becoming a long day at a minimum. When	12:31:36
20	is the meeting?	12:31:40
21	MR. CLUBOK: Let's go off the record.	12:31:40
22	THE VIDEOGRAPHER: Off record. 12:31.	12:31:43
23	(A recess was taken.)	12:31:46
24	THE VIDEOGRAPHER: On record. 1:11.	01:11:25
25		01:11:26

HIGHLY CONFIDENTIAL
Transcript of James Dondero
Conducted on May 10, 2021

73

1 BY MR. CLUBOK: 01:11:26

2 Q Okay, Mr. Dondero, Mr. Ellington -- 01:11:27

3 we've talked a little bit about what Mr. Ellington 01:11:30

4 told you about the insurance policy that was 01:11:35

5 ultimately issued by Sentinel Reinsurance that is 01:11:37

6 the subject of today's discussion. Do you 01:11:40

7 remember that discussion before our break? 01:11:43

8 A Yes. 01:11:45

9 Q Okay. At the time you signed -- first 01:11:45

10 of all, did you know that the -- 01:11:50

11 MR. CLUBOK: Strike that. 01:11:51

12 Q Did you know the policy limit of that 01:11:52

13 policy that you signed off on? 01:11:57

14 MR. CLUBOK: Strike that. Let me say 01:11:58

15 that more clearly. 01:12:00

16 Q With respect to the Sentinel 01:12:01

17 Reinsurance policy that Mr. Ellington spoke to you 01:12:02

18 about in 2017 and that you approved, did you know 01:12:07

19 the policy limits when you approved it? 01:12:10

20 A Just in a most general sense that it 01:12:19

21 was approximately 100 million. I don't know if 01:12:22

22 there were different amounts set for different 01:12:24

23 items or occurrences. I just remember the policy 01:12:27

24 being around 100 million bucks. 01:12:30

25 Q And when did you -- how did you learn 01:12:33

HIGHLY CONFIDENTIAL
Transcript of James Dondero
Conducted on May 10, 2021

74

1 that the policy was \$100 million? 01:12:39

2 A I just remember the policy was -- there 01:12:41

3 is really only -- it took lots of twists and 01:12:45

4 turns, I believe, to get it through compliance and 01:12:50

5 get it through the reinsurer. I just remember 01:12:55

6 there was a lot of back-and-forth, but I remember 01:12:59

7 generally the policy was targeted to be around 01:13:07

8 100 million. 01:13:10

9 Q How did you learn that the policy was 01:13:11

10 \$100 million? Did you learn it by reading it -- 01:13:13

11 reading the policy? Did you learn it because 01:13:17

12 Mr. Ellington told you? Did you learn because 01:13:20

13 compliance said something to you? How did you 01:13:22

14 learn that the policy was \$100 million? 01:13:25

15 A From Scott Ellington. You know, he 01:13:27

16 handled the interactions with compliance and the 01:13:30

17 reinsurer. I don't believe I ever saw the policy, 01:13:32

18 nor was I involved in any of the conversations 01:13:35

19 with the reinsurer or the -- or Highland 01:13:41

20 compliance, that I remember. 01:13:46

21 Q But you approved the policy, correct? 01:13:48

22 A I approved the -- yes. 01:13:50

23 Q And prior to approving the policy, did 01:13:56

24 you read it? 01:14:00

25 A No. I'm not -- I don't think it would 01:14:03

HIGHLY CONFIDENTIAL
Transcript of James Dondero
Conducted on May 10, 2021

81

1 80 million bucks. That's what I do know at that 01:22:10
2 time. I do remember that. 01:22:14
3 How they were accounted for or how much 01:22:15
4 of it was premium, how much of it was other 01:22:17
5 consideration or whatever, I don't know what 01:22:22
6 the -- I don't know what the split or the 01:22:24
7 breakdown was. 01:22:27
8 Q Okay. We'll come back to that answer, 01:22:28
9 but, first, I want to start with the question I 01:22:34
10 asked you, which is, what was the premium on the 01:22:37
11 \$100 million insurance policy that you approved? 01:22:39
12 A I don't know. 01:22:43
13 Q So you started to say in your answer, 01:22:47
14 "I've heard," and then you caught yourself. What 01:22:48
15 had you heard in connection with this question I 01:22:52
16 asked? 01:22:55
17 A I was remembering back, and, again, 01:22:57
18 this took lots of twists and turns, and I don't 01:23:00
19 even have a basis for saying "I heard." There 01:23:02
20 was -- there was -- I don't even have a basis 01:23:05
21 for -- it was a matter of trying to bridge the 01:23:16
22 illiquid assets to some liquidity and have some of 01:23:19
23 it be called a premium and some of it be called 01:23:25
24 something else. But I don't even know what -- I 01:23:28
25 don't even know what else or if it was all called 01:23:29

1 premium. The policy took twists and turns through 01:23:32
2 the regulators and compliance. I don't know what 01:23:35
3 the final structure of the policy was other than 01:23:38
4 it was ultimately about \$100 million of coverage. 01:23:41
5 Q And these twists and turns that you say 01:23:46
6 it took, is the entirety of your information about 01:23:50
7 that from Scott Ellington? 01:23:53
8 A Yes. And -- but I wasn't involved in 01:23:55
9 the twists and turns. At the time this wasn't 01:23:57
10 that big of a deal. It was something that was 01:24:01
11 just trying to help transition a dead entity. 01:24:03
12 Q Sorry, but you said there were twists 01:24:07
13 and turns. How did you know that there were 01:24:10
14 twists and turns? 01:24:12
15 A I just know there were. I mean, 01:24:13
16 because what they were trying to do, they had to 01:24:15
17 get it through both the regulators and Highland's 01:24:18
18 compliance department, so I -- there's always 01:24:22
19 give-and-take on their independent views of what's 01:24:25
20 the risk, what's the business purpose, what's a 01:24:32
21 fair structure, et cetera, et cetera. So that's 01:24:35
22 what I mean by "twists and turns." 01:24:38
23 Q Yeah, but you say you just know there 01:24:40
24 were twists and turns. You mean you were just 01:24:42
25 imagining it or guessing or because there always 01:24:45

HIGHLY CONFIDENTIAL
Transcript of James Dondero
Conducted on May 10, 2021

134

1 Q Okay. It's entirely Scott Ellington 04:43:48
2 who's responsible for managing Sentinel 04:43:50
3 Reinsurance and monitoring it? 04:43:56
4 A Yes. 04:43:58
5 Q And he's always had that role since its 04:43:58
6 founding? 04:44:01
7 A Yes. 04:44:02
8 Q And is there any one else at all you 04:44:02
9 know that's involved in Sentinel Reinsurance, 04:44:04
10 Limited, other than Scott Ellington? 04:44:06
11 A Not that I'm aware of. If there is, he 04:44:11
12 would know. 04:44:14
13 Q Did Scott Ellington ever report 04:44:14
14 anything about the financials of Sentinel 04:44:17
15 Reinsurance to you in any way? 04:44:19
16 A I mean, sometimes he would verbally 04:44:24
17 talk about it, but -- you know, like the 04:44:27
18 transaction we were discussing earlier. But other 04:44:30
19 than that, there wasn't a formal reporting process 04:44:34
20 or -- or I wasn't in the loop on documentation 04:44:38
21 such as this. 04:44:44
22 Q Did you ever in your life see a 04:44:45
23 document that referred to Sentinel Reinsurance, 04:44:47
24 Limited? 04:44:48
25 A I don't believe so. 04:44:54

EXHIBIT 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

DALLAS DIVISION

-----X
In re : Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Case No:
Debtor : 19-34054-SGJ11
-----:
UBS SECURITIES LLC and UBS AG : Adversary No.
LONDON BRANCH, : 21-03020-sgi
Plaintiffs, :
vs. :
HIGHLAND CAPITAL MANAGEMENT, L.P.:
Defendant. :

-----X

HIGHLY CONFIDENTIAL
CONTINUED DEPOSITION OF JAMES DONDERO
VOLUME II
APPEARING REMOTELY FROM DALLAS, TEXAS
WEDNESDAY, MAY 12, 2021
9:30 A.M. EST

Job No.: 372911
Pages 268 - 344
Reported by: Adrienne Mignano, RPR
Appearing remotely

1 Fair to say that prior to signing off
2 on the transfer of all these assets reflected on
3 Schedule A in satisfaction of the premium for the
4 legal liability insurance policy we have been
5 discussing, you made no effort to assess the
6 actual fair market value of the total assets,
7 correct?

8 A Yes. I -- that's correct. I relied on
9 Scott Ellington, you know. And I think what this
10 deposition has shown is, you know, I had a
11 different general understanding, but the
12 transaction morphed over time.

13 Q You, by the way, are the -- you are an
14 owner of Gov Re, correct?

15 MR. TAYLOR: Objection. Form.

16 Q Sorry. You are an owner of Governance
17 Re, Limited, correct?

18 A I believe so.

19 Q And so where it says there is this
20 \$2.157 million promissory note from Governance Re,
21 Limited, that is an affiliated entity to you,
22 correct?

23 A I believe so.

24 Q How much ownership do you have in
25 Governance Re, Limited?

1 affiliated entity, correct?

2 A I don't know. I mean, Scott Ellington
3 is your person to talk to regarding the structure
4 of -- the structure, the business opportunities,
5 the alternative and similar business
6 opportunities. I am -- my involvement was not
7 direct or frequent.

8 Q My question is more specific about what
9 your actual knowledge is, okay? So listen to my
10 question, please. I'll try to say it more
11 clearly.

12 The only other insurance policies, as
13 you sit here today, that you can think of that
14 Sentinel Re ever considered issuing in connection
15 with legal liability related to transactions that
16 were being considered by SAS, which is another
17 affiliated entity of yours, correct?

18 A The Canadian examples are the only
19 things I can think of at this moment.

20 Q And those Canadian examples were SAS
21 transactions, which are transactions of another
22 affiliated entity of yours, correct?

23 A I don't know if SAS is an affiliated
24 entity. I believe the relationship or the
25 sourcing of the Canadian opportunity came through