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COUNSEL FOR SENTINEL REINSURANCE, LTD.

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

IN RE: § **CHAPTER 11**
§
HIGHLAND CAPITAL MANAGEMENT, LP § **CASE NO: 18-33967-BJH-11**
§
DEBTOR. § **(Joint Administration)**

UBS SECURITIES LLC AND UBS LONDON §
BRANCH AG, Plaintiff, §
§
v. § **ADV. PROC. NO. 21-03020**
§
HIGHLAND CAPITAL MANAGEMENT, L.P., §
Defendant. §

**FOREIGN NON-PARTY SENTINEL REINSURANCE, LTD.’S MOTION FOR
PROTECTIVE ORDER**

Sentinel Reinsurance, Ltd. (“Sentinel”) hereby files this Motion for Protective Order (“Motion”) and in support hereof respectfully states as follows:

I. INTRODUCTION

1. Sentinel, a foreign non-party to this adversary proceeding, files this Motion to protect from production confidential and privileged documents and information held by its manager, Beecher Carlson (Cayman) LTD (the “Manager”), and the Manager’s U.S. parent entity, Beecher Carlson Insurance Services LLC (“Beecher U.S.”, together with the Manager,



“Beecher”), as well as to request additional time for Beecher U.S.’s compliance with a Subpoena issued by Plaintiff UBS seeking, among other things, documents held by Beecher in its capacity as Sentinel’s Manager.

2. Sentinel is reviewing the documents in Beecher’s possession and will be unable to complete review of same prior to the production date demanded by UBS of September 2, 2021 because Sentinel’s new independent directors, who were appointed in May and June, 2021, are undergoing a review of the documents and information in the possession of the Manager (copies of which documents were received by Sentinel’s new directors on August 9, 2021).

3. Once Sentinel has completed its review of the documents, it intends to allow Beecher to produce documents to UBS that UBS is legally entitled to obtain under the Subpoena. Sentinel intends to complete its review by the beginning of November, 2021, and requests that a protective order be entered allowing Beecher to forego production until Sentinel can complete its review.

4. Such a request in no way prejudices UBS and, under Fed. R. Civ. Pro. Rule 45, protects the Manager from the undue burden of having to review the documents—which contain Sentinel’s business information—and determine which documents are responsive, privileged or confidential.

II. BACKGROUND

5. Sentinel is a Class B captive insurance company incorporated in the Cayman Islands¹ and regulated by the Cayman Islands Monetary Authority.

¹ Sentinel has no operations within the United States or the state of Texas and reserves all of its rights to challenge jurisdiction. The filing of this Motion shall not be deemed an “appearance” for the purpose of waiving its right to challenge jurisdiction. To the extent applicable, the filing of this motion by Sentinel shall be construed and intended to be only a special appearance filed out of compulsion to keep its proprietary, privileged, and confidential information protected.

6. On August 1, 2017, Sentinel entered into a Legal Liability Insurance Policy (the “Insurance Policy”) to insure certain non-U.S. based entities associated with the Debtor in the above-captioned matter, namely:

- a. Highland CDO Opportunity Master Fund, L.P. (“Master Fund”),
- b. Highland CDO Holding Company, and
- c. Highland Special Opportunities Holding Company (“HSOHC”) collectively, the “Insured Parties”).

7. Sentinel, as the Insurer, and the Insured Parties entered into the Insurance Policy for coverage in relation to the lawsuit filed by UBS against the Debtor, certain of the Insured Parties and other defendants captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (the “UBS Action”), filed in the New York Supreme Court (“New York State Court”) on February 24, 2009.

8. On October 16, 2019, the Debtor filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code (the “Bankruptcy Case”) in this Court.

9. On February 10, 2020, UBS obtained a judgment against the Master Fund and HSOHC, among others, in the UBS Action for just over \$1 billion.

10. On March 31, 2021, UBS filed this adversary proceeding.²

11. On June 30, 2021, UBS served a *subpoena duces tecum* (the “Subpoena”) on Beecher U.S. seeking production of documents regarding Sentinel’s business.³ See Beecher Subpoena, attached hereto as Exhibit 1.

² The complaint in this adversary proceeding is filed under seal and Sentinel has not seen a copy of the complaint and is not aware of the allegations contained in same and how they relate to the documents requested in the Subpoena.

³ UBS also served a similar subpoena on Sentinel in this Court and the New York State Court in the New York State Court (the “Sentinel Subpoenas”), which it failed to serve under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Evidence Convention”). Sentinel hereby preserves and does

12. The Manager, Beecher Carlson (Cayman) LTD, is a Cayman subsidiary of Beecher U.S., and is Sentinel's manager and, in that role, possesses certain confidential documents and information regarding Sentinel's business operations, which the Manager provided to Beecher U.S. The Subpoena seeks, among other things, production of documents held by Beecher.

13. On May 28, 2021 and June 30, 2021, Sentinel appointed new independent directors, and the former board of directors, including any representatives from Highland, resigned and are no longer associated with Sentinel. The new board of directors is still in the process of familiarizing itself with Sentinel's business and operations. Further, in accordance with their fiduciary duties, the newly appointed directors are under an obligation to ensure that, in responding to the Subpoena, there is no inadvertent disclosure or waiver of privilege and that Sentinel complies with all relevant common law and statutory duties of confidence under the laws of the Cayman Islands.

14. As part of this process, the independent directors are currently undertaking a review of approximately 61,000 documents (totaling millions of pages) which were provided by Beecher to Sentinel's external document review platform provider on August 9, 2021, and which are the subject of the Subpoena.⁴

15. Sentinel and its Manager are parties to a Management and Administrative Services Agreement, governed by Cayman law, which contains a confidentiality provision (the "Confidentiality Provision") which prohibits Beecher from producing the confidential documents

not waive any of its rights to argue that the Sentinel Subpoenas were improperly served and does not waive its challenge to jurisdiction of this Court.

⁴ Sentinel was unable to review documents during the week of August 16, 2021 due to Tropical Storm Grace impacting the Cayman Islands, which has delayed the timeline for completion of the review.

and information if Sentinel seeks a protective order. The Confidentiality Provision provides, in relevant part:

To the extent consistent with performances of Beecher Carlson's duties under this Agreement, Beecher Carlson and Customer agree to hold in confidence Confidential Information (defined below). . . . "Confidential Information" means all information (and all documents or other tangible items which record information, whether on paper, in computer readable format or otherwise) relating to the disclosing party's business (including without limitations, business plans, manner or doing business, business results, or prospects), proposals, recommendations, marketing plans, reports, any of which (i) at the time in question is either protectable as a trade secret or is otherwise of a confidential nature (and is known or should reasonably be known by the receiving party as being of a confidential nature); and (ii) has been made known to or otherwise learned by receiving party as a result of the relationship under this Agreement. Confidential Information will not include any information, documents, or tangible items, which (i) are a matter of general public knowledge other than as a result of a disclosure by the receiving party, (ii) are now in possession of a receiving party as evidenced by receiving party's existing written records, or (iii) are hereafter received by receiving party on a non-confidential basis from another source who is not, to receiving party's knowledge, bound by confidentiality or fiduciary obligations to disclosing party or otherwise prohibited from transmitting the same to receiving party. **In the event Beecher Carlson become legally compelled to disclose any of the Confidential Information, they shall provide the other party with prompt notice so that such party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement.** In the event that such protective order or other remedy is not obtained, or that the other party waives compliance with the provisions of this Agreement, such party may disclose such information as is necessary or advisable to comply with the legal process.

(emphasis added)

16. On July 13, 2021, Beecher objected to the Subpoena, informing UBS that the documents it seeks are confidential pursuant to the Confidentiality Provision and that privileged information may also be included in the documents sought by UBS. *See* Beecher Objection Letter (the "Objection"), attached as Exhibit 2.

17. Despite Beecher's Objection and its statement to UBS that it would not produce any of Sentinel's confidential or privileged information, UBS has indicated to Beecher that it

intends to move forward with a motion to compel Beecher to produce documents pursuant to the Subpoena.

18. Because of this, Beecher has informed Sentinel that it intends to begin producing the documents to UBS on September 2, 2021, absent Sentinel seeking a protective order as set forth in the Confidentiality Provision.

19. Beecher has not confirmed to Sentinel that it will refrain from producing confidential or privileged information, nor is it clear that Beecher has the time to conduct a review for same, or has the requisite knowledge to be able to make these determinations on Sentinel's behalf.

20. In an effort to resolve this matter without court intervention, Sentinel has informed UBS on several occasions that, consistent with their fiduciary duties, its new board of directors has received the documents from Beecher, are in the process of reviewing same, need a reasonable period of time to complete the review, and then will provide the documents to Beecher to produce those documents that UBS is legally entitled to obtain in compliance with the Subpoena.

21. Sentinel has made clear to UBS, on numerous occasions, that once its review is complete, it will allow Beecher to produce the documents that UBS is legally entitled to obtain under the Subpoena. *See* correspondence with UBS's counsel, attached hereto as Exhibit 3. However, UBS has thus far refused to provide Sentinel additional time to review the documents and is requiring Beecher to immediately produce documents.

III. RELIEF REQUESTED

22. By this Motion, Sentinel seeks a protective order barring Beecher from producing any documents in response to the Subpoena until Sentinel has completed its review of the

documents and can provide Beecher with the responsive, non-privileged documents that UBS is legally entitled to receive pursuant to the Subpoena. Sentinel believes its review will be complete on or before November 1, 2021.

23. This production schedule is reasonable and will not prejudice UBS but will allow Sentinel's new independent directors to analyze the documents and discharge their fiduciary duties under the law of the Cayman Islands, ensuring that it is producing all relevant, non-confidential and non-privileged documents for which UBS is entitled under the law.

24. Counsel for Sentinel and Beecher met and conferred by phone on August 28, 2021 regarding the Subpoena to see if there was an amicable solution without Sentinel having to resort to filing this Motion. Beecher's counsel confirmed that it intended to produce documents on a rolling basis beginning on September 2, 2021 unless Sentinel filed a motion for a protective order. Sentinel also met and conferred with UBS's counsel on August 31, 2021; however, UBS has not consented to the relief sought herein.

IV. ARGUMENT & AUTHORITY

25. The court may issue a protective order for "good cause" shown. Fed. R. Civ. P. 26(c)(1), made applicable through Fed. R. Bankr. R. 7026.

26. The Subpoena seeks documents which, under the Confidentiality Provision in the Management Agreement, are Sentinel's confidential business information and protected from disclosure by Beecher.⁵ Accordingly, Sentinel has a "personal right and privilege or sufficient interest" in the subject matter of the Subpoena and, as such, is permitted to file this Motion. *Total Rx Care, LLC v. Great Northern Insurance Co.*, 318 F.R.D. 587, 594 (N.D. Tex. 2017) (holding

⁵ In addition to this Motion, Sentinel will also be filing a request for a protective order in the UBS Action in New York State Court where Beecher has been served with a subpoena *duces tecum*. Beecher was also served with an information subpoena in New York, but Sentinel has consented to Beecher providing a response to the information subpoena, subject to its rights and defenses.

that a party that does not have possession or control of the materials sought in a subpoena has standing to file a motion for protective order and subpoenaed third party alleged that documents were protected by attorney client privilege.)

27. Here, Sentinel is seeking relief from compliance with the Subpoena for a mere few weeks so that it can complete its review of the documents and information held by Beecher and determine which documents are responsive and also which are privileged and confidential and exempt from disclosure.

28. Even if Beecher believes it is able to determine, on its own, which documents are responsive and not-privileged, Sentinel is still entitled to assert its own privilege. *See Hoover v. Florida Hydro, Inc.*, 2008 WL 4467661, *6 (E.D. La. Oct. 1, 2008) (requiring that production of documents on a computer owned by a third party be limited to ensure privileged documents of defendant who had used the computer to communicate with his attorney were not produced); *see also Martin v. Crestline Hotels and Resorts, Inc.*, 2020 WL 3145694 (W.D. Tex. June 12, 2020) (quashing subpoena to third party insurance company which requested confidential medical records of non-parties, because such records are privileged and could not be disclosed).

29. Further, under Fed. R. Civ. P. 45(d)(1), applicable here through Fed. R. Bankr. P. 9016, UBS is required to “take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Requiring Beecher to respond to the Subpoena and make a determination regarding what documents relating to Sentinel’s business and operations are responsive and which are privileged or confidential imposes an undue burden on Beecher --in particular, where Sentinel has already indicated that it will review and make such decisions for Beecher prior to production.

30. Sentinel has proposed a simple and efficient solution: allow Sentinel to review the documents to determine which documents are responsive to the Subpoena, and which are privileged or confidential, and then provide those documents and a privilege log to Beecher for further production. A similar process was approved by the Court in *Bounds v. Capital Area Family Violence Intervention Center, Inc.*, 314 F.R.D. 214 (M.D. La 2016), where court entered a protective order allowing a non-party to produce documents to counsel for defendant to review of privilege, privacy, and confidentiality before producing them to plaintiff.

31. Sentinel has also agreed to complete this process on or before November 1, 2021, which is an extremely expedited timeline given the volume of production in question (61,000 documents) and that the independent directors were appointed in May and June of this year and are still analyzing the various issues raised by UBS in its extensive litigation with the Debtor and its affiliates.

32. In evaluating discovery disputes, a court must balance the interest of the party seeking discovery against the harm or prejudice to the other party. *CMedia, LLC v. LifeKey Healthcare, LLC*, 216 F.R.D. 387, 389 (N.D. Tex. 2003) (issuing protective order restricting disclosure of privileged documents to the attorneys and experts in involved).

33. Here, UBS has not articulated any reason why it requires the documents and information from Beecher immediately, or any prejudice that will result from allowing Sentinel to review the documents before permitting Beecher to produce them. The short delay in UBS obtaining the documents will not substantially prejudice its rights or ability to move forward with its collection efforts.

34. However, Sentinel will be significantly prejudiced if it cannot protect its interests and review documents containing its business information prior to production by Beecher.

Sentinel's request for a protective order to allow it the time to review the documents and prepare them for production is appropriate and this Court should grant the Motion.

V. REQUEST FOR RELIEF

35. Sentinel respectfully requests that the Court grant this Motion and enter a protective order staying any production of documents by Beecher until Sentinel has completed its review of documents and provided the responsive, non-privileged documents to Beecher (to occur not later than November 1, 2021) for which UBS is legally entitled to obtain. Sentinel further respectfully requests all equitable and just relief to which it is entitled.

DATED: September 1, 2021

Respectfully submitted by:

/s/ Thomas C. Scannell

Thomas C. Scannell (TX 24070559)

Katherine R. Catanese (*pro hac vice* pending)

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**COUNSEL FOR SENTINEL REINSURANCE,
LTD.**

CERTIFICATE OF CONFERENCE

I hereby certify that, on August 28, 2021, and August 31, 2021, after reviewing the Subpoena, Katherine R. Catanese, an attorney at Foley & Lardner LLP, conferred with both Beecher and UBS respectively. Beecher stated that it would produce documents unless Sentinel filed this Motion. No agreement could be reached with UBS at this time.

/s/ Thomas C. Scannell

Thomas C. Scannell

CERTIFICATE OF SERVICE

I hereby certify that, on September 1, 2021, a true and correct copy of the foregoing document was served electronically by the Court's CM/ECF PACER system on all parties registered to receive notice in these cases, including, without limitation, the following parties:

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/s/ Thomas C. Scannell
Thomas C. Scannell

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

IN RE: § **CHAPTER 11**
§
HIGHLAND CAPITAL MANAGEMENT, LP § **CASE NO: 18-33967-BJH-11**
§
DEBTOR. § **(Joint Administration)**

UBS SECURITIES LLC AND UBS LONDON §
BRANCH AG, Plaintiff, §
§
v. § **ADV. PROC. NO. 21-03020**
§
HIGHLAND CAPITAL MANAGEMENT, L.P., §
Defendant. §
§

**ORDER GRANTING FOREIGN NON-PARTY SENTINEL REINSURANCE, LTD.'S
MOTION FOR PROTECTIVE ORDER**

Came on to be considered the *Motion for Protective Order* (“Motion”)¹ filed by foreign non-party Sentinel Reinsurance, Ltd. (“Sentinel”) on September 1, 2021. The Court, having considered the Motion, reviewed the pleadings and the record before it, considered the history and background of the proceedings in this case, and being fully advised in the premises, finds that Sentinel has shown that good cause exists for the granting of the Motion and relief set forth herein. Accordingly, it is

ORDERED that the Motion is granted to the extent set forth herein. It is further

ORDERED that Beecher Carlson (Cayman) LTD and Beecher Carlson Insurance Services LLC (collectively, “Beecher”) shall not produce any documents responsive to that certain Subpoena attached as an exhibit to the Motion unless and until such time as Sentinel has completed its review of the documents responsive to the Subpoena and provided the applicable responsive, non-privileged documents to Beecher, in any event with such production to occur not later than November 1, 2021.

###End of Order###

Order submitted by:

/s/ Thomas C. Scannell
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COUNSEL FOR SENTINEL REINSURANCE, LTD.

¹ Unless otherwise specifically defined herein, any capitalized terms or phrases used herein bear the meanings assigned in the Motion.



Notice of Service of Process

Transmittal Number: 23417469
Date Processed: 06/29/2021

Primary Contact: Brittany Zalich
Brown & Brown, Inc.
220 S Ridgewood Ave
Ste 180
Daytona Beach, FL 32114-4300

Electronic copy provided to: Lauren Clark
Cheryl Gortmans
Maria Leal

Entity: Beecher Carlson Insurance Services, LLC
Entity ID Number 3968236

Entity Served: Beecher Carlson Insurance Services, LLC

Title of Action: UBS Securities LLC vs. Highland Capital Management, L.P.

Matter Name/ID: UBS Securities LLC vs. Highland Capital Management, L.P. (11358394)

Document(s) Type: Subpoena

Nature of Action: Information/Appearance Request

Court/Agency: U.S. Bankruptcy Court Northern District, TX

Case/Reference No: 19-34054-sgj11

Jurisdiction Served: Vermont

Date Served on CSC: 06/29/2021

Answer or Appearance Due: 07/29/2021

Originally Served On: CSC

How Served: Personal Service

Sender Information: Martin Sosland
469-680-5502

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

UNITED STATES BANKRUPTCY COURT

NORTHERN

District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor

Case No. 19-34054-sgj11

(Complete if issued in an adversary proceeding)

Chapter 11

UBS SECURITIES LLC AND UBS AG LONDON BRANCH,

Plaintiff

Adv. Proc. No. 21-03020-sgj

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Beecher Carlson Insurance Services, LLC

(Name of person to whom the subpoena is directed)

[X] Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See ATTACHMENT A

Table with 2 columns: PLACE and DATE AND TIME. PLACE: *Butler Snow LLP, 2911 Turtle Creek Blvd., Suite 1400, Dallas, Texas 75219. DATE AND TIME: July 29, 2021 at 9:00 am CT

*In lieu of delivery of hard-copy documents, you may email the documents to Robert.Allen@lv.com, Andrew.Clubok@lv.com, and Candice.Carson@butlersnow.com.

[] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: PLACE and DATE AND TIME. Both fields are empty.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: June 29, 2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Martin Sosland
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)

UBS Securities LLC and UBS AG London Branch, who issues or requests this subpoena, are:

Martin Sosland, Butler Snow LLP, 2911 Turtle Creek Blvd., Suite 1400, Dallas, Texas 75219, Telephone: (469) 680-5502, Email: martin.sosland@butlersnow.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

I. DEFINITIONS

The terms utilized herein shall have the meanings specified below. Each defined term shall have the meaning ascribed to it regardless of whether the term is capitalized. Any term referencing any business, legal, or governmental entity or association shall be deemed a reference to any and all of its predecessors, successors, affiliates, and subsidiaries, as well as any and all of its past or present officers, directors, partners, members, managers, employees, representatives, and agents.

Defined terms include the following:

1. “Communications” means the transmittal of information in all forms, including, without limitation, through meetings, in-person or telephone conversations, telegrams, facsimile or electronic mail transmissions, correspondence, letters, reports, memoranda, formal or informal statements, press releases, newspaper stories, records of conversations or messages, and similar modes. References to Communications with or by business entities shall be deemed to include all officers, directors, employees, personnel, agents, attorneys, accountants, consultants, independent contractors, or other representatives of such entities.
2. “You” or “Your” means Beecher Carlson, as well as any division or subsidiary thereof, and any of its attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on Your or such subsidiary’s behalf.
3. “Documents” means all documents and materials, whether written, graphic, or otherwise, including all originals, identical or non-identical copies, drafts, working papers, reproductions, or recordings of any kind, or other data compilations from which information can be obtained or translated into reasonably usable form. Documents shall be construed broadly to encompass, without limitation, Communications,

notations made regarding any Communications, books, records, ledgers, journals, notebooks, calendars, minutes, agendas, notices, presentations, credit memoranda, promissory notes, sales slips, checks or cancelled checks, agreements, contracts, licenses, opinions, projections, spreadsheets, summaries, sworn or unsworn statements, recordings, drawings, photographs, computer data, or similar items, regardless of the form maintained.

4. “HCM” means Highland Capital Management, L.P., as well as any subsidiary thereof, and any of their attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on HCM or such subsidiary’s behalf.
5. “Multi-Strat” means Highland Multi Strategy Credit Fund, L.P., formerly known as Highland Credit Opportunities CDO, L.P., as well as any subsidiary thereof, and any of their attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on Multi-Strat or such subsidiary’s behalf.
6. “CDO Fund” means Highland CDO Opportunity Master Fund, L.P., as well as any subsidiary thereof, and any of their attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on CDO Fund or such subsidiary’s behalf.
7. “SOHC” means Highland Special Opportunities Holding Company, as well as any subsidiary thereof, and any of their attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on SOHC or such subsidiary’s behalf.

8. “HFP” means Highland Financial Partners, L.P., as well as any subsidiary thereof, and any of their attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on HFP or such subsidiary’s behalf.
9. “Sentinel” means Sentinel Reinsurance, Ltd. and Sentinel Re Holdings, Ltd. as well as any subsidiary or affiliate thereof, and any of their attorneys, representatives, officers, directors, employees, consultants, advisors, affiliates, or anyone acting on Sentinel or such subsidiary or affiliate’s behalf.
10. “Insurance Policy” means that certain Legal Liability Insurance Policy dated as of August 1, 2017 between Sentinel Reinsurance, Ltd. as Insurer and Highland CDO Opportunity Master Fund, LP, Highland CDO Holding Company, and Highland Special Opportunities Holding Company as Insureds.
11. “Purchase Agreement” means that certain Purchase Agreement dated as of August 7, 2017 between Sentinel Reinsurance, Ltd. as Purchaser and each of Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company, and Highland Special Opportunities Holding Company as Sellers.
12. “Tax Memo” means that certain June 30, 2018 Memorandum entitled “Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets.”
13. “Legal Action” means the legal action identified in the Schedule to the Insurance Policy, *UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc.*, Case No. 650097/2009.

14. As used herein, the terms “concerning,” “regarding,” and “relating to” mean all information, facts, or documents that directly, indirectly, or in any other way support, concern, negate, bear upon, touch upon, incorporate, affect, include, pertain to, or are otherwise connected with the subject matter about which the request is made.

II. INSTRUCTIONS

1. The terms used herein are to be given their most expansive and inclusive interpretation unless otherwise expressly limited herein. This includes, without limitation, the following:
 - a. construing “and” and “or” in the disjunctive or conjunctive as necessary to make a request more inclusive;
 - b. construing the singular form of a word to include the plural and vice versa;
 - c. construing the term “among” to mean between or among;
 - d. construing the term “any” to mean any, all, each, and every;
 - e. construing the masculine, feminine, or neutral pronouns to include other genders; and
 - f. construing the present tense of a verb to include its past tense and vice versa.
2. In response to these requests, produce all Documents in Your actual or constructive possession, custody, or control, or in the actual or constructive possession, custody, or control of any of Your representatives, agents, employees, accountants, attorneys, or affiliates.
3. If any Documents were formerly in Your possession, custody, or control and have been lost, destroyed, or otherwise disposed of, then furnish a list that identifies all such Documents and state for each such Document: (a) the nature (*e.g.*, letter,

memorandum, etc.), size, and subject matter of the Documents; (b) the persons who prepared or authored the Documents, and, if applicable, the persons to whom the Documents were sent; (c) the date when the Documents were prepared or transmitted; and (d) the date when the Documents were lost, destroyed, or otherwise disposed of, the reasons for such destruction or disposition, and the persons requesting and performing the destruction or disposition.

4. For each Document withheld on the ground of any privilege or immunity, furnish a list that identifies each such Document and state for each such Document: (a) the nature (*e.g.*, letter, memorandum, etc.), size, and subject matter of the Documents; (b) the persons who prepared or authored the Documents, and, if applicable, the persons to whom the Documents were sent; (c) each person having a copy of the Documents and each person to whom a copy was sent or whom received a copy; (d) the date on which the Documents were prepared or transmitted; and (e) the nature of and basis for the privilege claimed.
5. If any portion of a Document is responsive to these requests, produce the entirety of the Document. Likewise, if only part of a responsive Document is protected by privilege or immunity, produce the Document with only the privileged matter redacted.
6. Produce all Documents as they are kept in the ordinary course of business, and when applicable, in the order they are found in a person's files. If Documents are kept in a file with a file label, produce a copy of that label together with the Documents, Communications, or other materials in the file.
7. Produce all financial data in native format to the extent available.

8. Unless otherwise specified herein, the period covered by these requests is January 1, 2016 to the present.

III. DOCUMENTS TO BE PRODUCED

1. Communications between Sentinel, and any of You, HCM, CDO Fund, HFP, SOHC, Multi-Strat, James Dondero (“Dondero”), Isaac Leventon (“Leventon”), Matthew DiOrio (“DiOrio”), Jean Paul Sevilla (“Sevilla”), Mary Kathryn Irving (“Irving”), or Scott Ellington (“Ellington”).
2. Documents or Communications concerning the Insurance Policy, including without limitation (i) any amendment thereto; (ii) board minutes or resolutions concerning the Insurance Policy; (iii) claims made on the Insurance Policy; (iv) Communications with the IRS concerning the Insurance Policy; and (v) any similar agreements.
3. Documents or Communications concerning the Purchase Agreement, including without limitation (i) any amendment thereto; (ii) transfer of assets pursuant to the Purchase Agreement; (iii) board minutes or resolutions concerning the Purchase Agreement; (iv) Communications with the IRS regarding any assets transferred pursuant to the Purchase Agreement; and (v) any similar agreements.
4. Documents or Communications concerning the Tax Memo, including without limitation (i) any amendment thereto; (ii) board minutes or resolutions concerning the Tax Memo; (iii) documents relied on in preparing the Tax Memo; and (iv) any similar memoranda.
5. Documents or Communications sufficient to identify any assets transferred from HCM, CDO Fund, HFP, or SOHC to Sentinel, including without limitation all assets

transferred pursuant to the Insurance Policy or Purchase Agreement, and information sufficient to identify the value of any such transferred assets.

6. Documents or Communications relating to any subsequent transfer or dissipation by Sentinel of any assets previously transferred from HCM, SOHC, HFP, or CDO Fund.
7. Documents or Communications sufficient to identify all accounts used to transfer or receive any assets transferred pursuant to the Insurance Policy or Purchase Agreement.
8. Documents or Communications concerning the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from January 1, 2017 to the present, including documentation supporting the \$105,647,679 value of those assets as listed in the Tax Memo.
9. Documents showing the organizational structure of Sentinel and its affiliates, including information identifying the relationship between Sentinel and any of Dondero, Leventon, DiOrio, Sevilla, Irving, or Ellington.
10. Documents or Communications sufficient to determine the identities of Sentinel's directors and officers between January 1, 2016 and the present.
11. Documents or Communications from any time period concerning the formation or acquisition of Sentinel.
12. Documents or Communications between Sentinel and any person concerning the Legal Action.



Brown & Brown, Inc.
300 N. Beach Street
Daytona Beach, FL 32114
Fax: (386) 239-7293

Direct Line: (386) 239-7200 • (800) 877-2769 Ext. 7200
Direct Fax: (386) 239-7293

ROBERT T. BOWLING
Litigation Counsel

July 13, 2021

VIA EMAIL (martin.sosland@butlersnow.com)

Martin Sosland, Esquire
Butler Snow, LLP
2911 Turtle Creek Blvd., Suite 1400
Dallas, TX 75219

Re: *UBS Securities, LLC v Highland Capital Management, LP*
Subpoena Duces Tecum

Dear Mr. Sosland:

I am in-house counsel for Brown & Brown, Inc., the parent company for Beecher Carlson Insurance Services, LLC (Beecher). We are in receipt of your subpoena via our process server, CSC, on June 30, 2021. Beecher is objecting to the documents requested in this subpoena as we have a contract which makes the documents in our possession for this matter confidential. There may also be privileged communications which would create an undue burden to search for and produce every document we have. However, if there are responsive documents which are not subject to these objections, we will produce them notwithstanding the objections.

Please contact me at rbowling@bbins.com if you have any further questions.

Sincerely,

/s/ Robert T. Bowling

Robert T. Bowling



PRIVATE AND CONFIDENTIAL

Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004-1304
United States of America

Your Ref

Our Ref SL/50001151/0001

Doc. 10963685.1

23 July 2021

Attn: Jason R. Burt

BY EMAIL

Dear Sirs

SENTINEL REINSURANCE, LTD ("SENTINEL")

We refer to your letter dated 21 July 2021 in which you request a response by 23 July 2021.

You continue to make serious allegations against our client. Whilst we do not accept that Sentinel has knowingly participated in any fraudulent activity, the directors of Sentinel have every intention of cooperating fully with their legal obligations and to the extent they are legally compelled to do so.

The current directors of Sentinel have only recently been appointed. Their respective appointments became effective between 28 May 2021 and 30 June 2021. They are each professional directors who are each independent of all service providers and shareholders of Sentinel. None of the new directors have ever been in contact with Mr Ellington or Mr Dondero and the allegation that Sentinel is assisting these individuals in hiding assets is categorically denied. The directors are working hard to secure Sentinel's assets and assess the various allegations being made and will preserve the status quo until the necessary due diligence has been concluded.

To that end and as stated in our previous letter to you on 15 July 2021, we have been in the process of seeking US legal advice in order to be able to engage with you fully. Unfortunately, we have not been able to find appropriate representation until earlier today and as such, we will not be in a position to provide a fulsome response in this letter. Given we have indicated that we intend to engage with you constructively, we find your letters and the imposition of aggressive and arbitrary deadlines wholly unnecessary. The fact that the new directors of Sentinel are taking time to conduct due diligence and ensure they are properly advised should make your client feel confident that they are taking their fiduciary obligations seriously. We do not wish to litigate by correspondence and hope to be in a position to provide a full response to your previous letters by 28 July 2021.



Yours faithfully

Collas Crill

COLLAS CRILL

Direct Tel: +1 345 914 9605

Email: Stephen.leontsinis@collascrill.com



FOLEY & LARDNER LLP

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WWW.FOLEY.COM

WRITER'S DIRECT LINE
212-338-3496
kcatanese@foley.com EMAIL

August 18, 2021

VIA EMAIL

Jason R. Burt
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 2004-1304
jason.burt@lw.com

Re: *UBS Securities LLC and UBS AG London Branch v. Highland Capital Management et al.* (Index No. 650097/2009)

Dear Mr. Burt,

We write as a follow-up to your letter dated August 10, 2021 (“UBS Letter”). We have reviewed the cases cited in the UBS Letter and stand by our position that the Third Party Discovery Documents¹ (including an information subpoena, the “Subpoena”) UBS attempted to serve on Sentinel, a ***non-party*** entity incorporated in the Cayman Islands, via service on its registered agent without consideration of the law in the Cayman Islands, are not enforceable outside of the United States. As previously indicated in the letter to you from Collas Crill on July 15, 2021 as a matter of Cayman Islands law, in order for service to be effective on Sentinel in the Cayman Islands, the Subpoena needs to be served via the proper channels and in accordance with the Hague Evidence Convention.

You continue to cite to CPLR 5224(a)(3) in support of the Subpoena; however, the manner of service of the Subpoena as proscribed by the CPLR is irrelevant as to whether New York judgment creditors have jurisdiction to enforce compliance with a subpoena seeking discovery and information from a foreign non-party. As New York Courts have held, with respect to enforcement of Article 52 discovery, “[s]o long as the Court has in personam jurisdiction over a defendant or judgment creditor[,] there is neither a statutory or a due process bar to the Service provided by 5524(a)(3) whether that service is in-state or out.” *Estate of Robert Marceca*, 2006 N.Y. Misc. LEXIS 5240, *8, 236 N.Y.L.J. 69 (citing *Banco Do Estado De Sao Paulo S.A. v. Mendes Junior Int’l. Co.*, 1997 N.Y. Misc. LEXIS 786 (Sup. Ct. 1997)) (emphasis added).

Here, as you acknowledge in your letter, Sentinel is ***not a party*** to UBS’s proceeding against the Highland entities (or any other proceeding), and is a foreign entity incorporated in the

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in my letter to you dated August 4, 2021.

BOSTON
BRUSSELS
CHICAGO
DETROIT

JACKSONVILLE
LOS ANGELES
MADISON
MIAMI

MILWAUKEE
NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY

TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.



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Cayman Islands. It does not have offices in New York, conduct business in New York, or hold property belonging to the Highland judgment debtors. The insured parties here are not U.S. entities and, therefore, the losses they suffered were also incurred outside of the U.S. Further, the information sought by the Subpoena is information originating in the Cayman Islands and disclosure of such information (once the Subpoena is properly served) will be governed by the laws of the Cayman Islands.

As such, the Subpoena propounded by UBS on Sentinel is not allowable, since Sentinel, a non-party entity incorporated in the Cayman Islands and a stranger to UBS' proceeding, is not subject to the New York Court's jurisdiction. *See Marceca*, 2006 N.Y. Misc. LEXIS 5240 at *11-12 (finding that since wife of a judgment debtor located outside of New York state "was not a party to the underlying proceeding, no jurisdiction having been obtained over her in that proceeding, and the principles of long-arm jurisdiction are inapplicable to disclosure under CPLR Article 52 ... service of the restraining notice on Mrs. Kingsford outside the state were improper.") (citing *Siemens & Halske, GmbH v. Gres* (37 A.D.2d 768 [*12] [1st Dept 1971]); *Israel Discount Bank Limited v. P.S. Products corp.* (65 Misc. 2d 1002 [Sup. Ct., NY County 1971])).

As stated in our previous letter, *Orlich* and its progeny apply, regardless of whether the discovery sought is through an information subpoena or otherwise, as the use of non-judicial taking of evidence in a foreign country is "an affront to their sovereignty" and "[s]uch an exercise would be particularly offensive where, as here, the entity being subjected to the court-ordered fact gathering . . . is not even a party to the litigation. . ." *Orlich v. Helm Bros., Inc.*, 160 A.D.2d 135, 143 (1st Dep't 1990) (emphasis added). *See also Matter of Estate of Agusta*, 171 A.D.2d 595, 596 (1st Dept. 1991) (reversing Surrogate's Court order that a non-party witness who was an Italian citizen living in Monaco appear in New York for a deposition, finding that the Hague Evidence Convention needed to be used, particularly when the discovery is sought from a non-party); *Ayyash v. Koleilat*, 38 Misc. 3d 916 (N. Y. Sup. 2012), *aff'd* 115 A.D. 3d 495 (1st Dep't, 2014) (holding that party seeking to enforce foreign judgment had to use Hague Evidence Convention to obtain bank account information from branches outside of New York, even though the banks had branches in New York); *Peters v. Peters*, 127 A.D.3d 656 (1st Dep't 2015) (Hague Evidence Convention was appropriate to obtain discovery from non-party UBS, particularly where disclosure could violate Swiss banking law); *Intercontinental Credit Corp., Div. of Pan Am. Trade Dev. Corp. v. Roth*, 154 Misc. 2d 639 (Sup. Ct. 1991) (Hague Evidence Convention procedure required after *Agusta* to obtain disclosure from Israeli bank as to accounts held outside of the United States, even if Israeli banking laws were not clearly implicated); *Bank of Tokyo-Mitsubishi, Ltd., New York Branch v. Kvaerner*, 175 Misc. 2d 408 (Sup. Ct. 1998) (discussing *Agusta* and *Roth*, and agreeing with the finding that the only method to compel a deposition of a foreign non-party is under the Hague Convention since the entity whose deposition was sought was not under the jurisdiction of the New York court. "The key to the holding in both of those cases is that the discovery was sought from a non-party, that was not affiliated in any legal sense with the parties before the court.").



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The cases cited in the UBS Letter supporting the proposition that service on Sentinel was proper are inapposite (and manner of service is irrelevant). These cases primarily discuss (i) service of an information subpoena *on the judgment debtor itself* or other party to the proceeding, and not on a third-party stranger to the action, or (ii) service of process on a would-be party to an action. Further, in certain cases, the parties at issue had either consented to jurisdiction in New York, had branches or other operations in New York, or other basis for jurisdiction to compel enforcement of the subpoenas. *See, e.g., Aquavella v. Equivision, Inc.*, 181 Misc.2d 322 (Sup. Ct. 1999) (subpoena served on judgment debtor); *Ghostbed, Inc. v. Casper Sleep, Inc.* 315 F.R.D. 689 (S.D. Fla. 2016) (service of process); *Harbor Footwear Group v. ASA Trading*, 1 Misc.3d 911(A) (Sup. Ct. 2004) (subpoena served on judgment debtor where same had agreed to arbitration in New York); *International Soc. for Krishna Consciousness, Inc. v. Lee*, 105 F.R.D. 435 (S.D.N.Y. 1984) (subpoena served on defendant Lufthansa; while a foreign-based company, Lufthansa conducted business within the United States and was found to be amenable to the jurisdiction of American courts for discovery purposes); *Wilson v. Lufthansa German Airlines*, 108 A.D.2d 393 (App. Div. 1985) (same); *U.S. Corrugated, Inc. v. Scott*, 2015 WL 6829381 (Sup. Ct. 2015) (subpoena served on judgment debtor); *Mutual Benefits Offshore Fund v. Zeltser*, 140 A.D.3d 444 (App. Div. 2016) (service of process); *UMG Recordings, Inc. v. Kobler*, 2015 WL 4764207 (Sup. Ct. 2015) (service of process); *Banco Do Estado De Sao Paulo S.A. v. Mendes Junior Int'l. Co.*, 1997 N.Y. Misc. LEXIS 786 (Sup. Ct. 1997) (subpoena served on judgment debtor).

Notwithstanding the above, as discussed on last week's call, Sentinel and its independent directors are preparing a response to UBS as to whether it will produce certain documents on a rolling basis. UBS had requested such a response by today; however, we have not yet received the list of key documents which UBS is requesting be produced first. We await receipt of that list from you, and will consider it and respond appropriately to it, in due course. As you may be aware, the Cayman Islands is currently closed for business as Tropical Storm Grace moves through the region, with many businesses having lost power. We will advise when things are back online.

Sentinel does not waive and hereby reserves any and all of its objections to the Third Party Discovery Documents, as well as the jurisdiction of the New York Supreme Court over Sentinel for any purpose whatsoever. In addition, Sentinel has not conceded coverage and reserves all rights to deny coverage with respect to any insurance policies issued to the Highland entities.



We welcome the opportunity to discuss these matters with you further.

Very Truly Yours,

/s/ Katherine R. Catanese

Katherine R. Catanese

cc: Stephen Leontsinis, Collas Crill
Thomas Cahill, Duane Morrie

From: Catanese, Katie
Sent: Friday, August 20, 2021 4:43 PM
To: Jason.Burt@lw.com; Nann, Alissa M.
Cc: Natascha.Steiner-Smith@collascrill.com; Stephen.Leontsinis@collascrill.com; TJCahill@duanemorris.com; Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com; Sean.McMahon@lw.com; Danielle.McCall@lw.com; Shannon.McLaughlin@lw.com
Subject: RE: Sentinel

Jason,

We are currently reviewing 61,000 documents--the number of pages is much greater--and have an appropriate number of reviewers reviewing the documents in our possession. We believe it will take 6-8 weeks to review the entire subset. We do not consent to provide you these documents on a rolling basis, and we do not consent to prioritize the list of documents you tardily sent to us yesterday. We will review the entire subset of documents and produce to Beecher the documents they are legally obligated to produce only after we have fully reviewed them.

The tenor of your email is threatening and unnecessarily hostile. As was indicated to you on our call last week, it is directly contrary to your statements that you want to work cooperatively and is offensive. As we have reiterated on numerous occasions, this is not an issue of whether to cooperate with UBS or side with Sentinel's owners. The independent directors have duties to Sentinel and must ensure that their legal fiduciary obligations to Sentinel are met. Requiring Sentinel to turn over documents to UBS on a rolling basis is not an efficient use of Sentinel's limited time or resources. Although we still maintain that there is a consensual resolution that can be reached here, Sentinel's directors are unwilling to compromise their fiduciary duties to appease your hostility and unrealistic timeline, especially given the severe deficiencies in service and the lack of jurisdiction the New York Supreme Court has over Sentinel, as further described in our last letter. The 6-8 weeks it will take for Sentinel to complete its review of documents will in no way prejudice your client.

Sentinel does not waive and hereby reserves any and all of its objections to the subpoenas that were improperly served on Sentinel, as well as the jurisdiction of the New York Supreme Court over Sentinel for any purpose whatsoever. In addition, Sentinel has not conceded coverage and reserves all rights to deny coverage with respect to any insurance policies issued to the Highland entities.

Please govern yourselves accordingly.

Katie

Katherine R. Catanese
Foley & Lardner, LLP
90 Park Avenue
New York, NY 10016
O: 212-338-3496
C: 517-449-7587

From: Jason.Burt@lw.com <Jason.Burt@lw.com>
Sent: Thursday, August 19, 2021 4:13 PM
To: Catanese, Katie <KCatanesef@foley.com>; Nann, Alissa M. <ANann@foley.com>
Cc: Natascha.Steiner-Smith@collascrill.com; Stephen.Leontsinis@collascrill.com; TJCahill@duanemorris.com; Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com; Sean.McMahon@lw.com; Danielle.McCall@lw.com;

Shannon.McLaughlin@lw.com

Subject: RE: Sentinel

**** EXTERNAL EMAIL MESSAGE ****

Katie,

Thank you for your note. As I made clear in my email yesterday, if we do not hear from Sentinel by tomorrow with a final answer on whether they will be producing documents on a rolling basis, we will unfortunately be forced to seek court intervention. The list we provided is purely a courtesy to help facilitate the first rolling document production; it has nothing to do with the question whether Sentinel will cooperate with the UBS. The directors have had months to make that decision, and we can delay no longer. If they agree to cooperate, we will of course work in good faith on a reasonable schedule of rolling production, starting with the categories of documents identified below. Further, your promise last Thursday to provide us at a bare minimum the volume and number of documents for review was in no way dependent on our provision the list below. We are disappointed that your letter yesterday did not include even this basic promised information. We sincerely hope that the answer tomorrow is that Sentinel will work with us in good faith, but we are prepared to move forward immediately if it is otherwise.

Best,
Jason

From: Catanese, Katie <KCatanese@foley.com>

Sent: Thursday, August 19, 2021 9:21 AM

To: Burt, Jason (DC) <Jason.Burt@lw.com>; Nann, Alissa M. <ANann@foley.com>

Cc: Natascha.Steiner-Smith@collascrill.com; Stephen.Leontsinis@collascrill.com; TJCahill@duanemorris.com; Clubok, Andrew (DC) <Andrew.Clubok@lw.com>; Tomkowiak, Sarah (DC) <Sarah.Tomkowiak@lw.com>; McMahon, Sean (NY) <Sean.McMahon@lw.com>; McCall, Danielle (DC) <Danielle.McCall@lw.com>; McLaughlin, Shannon (NY) <Shannon.McLaughlin@lw.com>

Subject: RE: Sentinel

Jason,

Thank you for this list. As I am sure you can understand, we need this list to consider the information you seek regarding the number of reviewers, amount of time for production, etc., and we were hoping to have this list last week after our call. As we clearly indicated on the call, upon receiving the list, we would assess the additional information you are seeking. At this point, the public reports indicate that the majority of Grand Cayman is without power or internet, and most businesses closed around 2pm on Tuesday to prepare for Tropical Storm Grace, which likely impacted the document review process. As soon as I am able to make contact with Cayman counsel and the independent directors regarding the below, we will be in touch.

Katie

Katherine R. Catanese
Foley & Lardner, LLP
90 Park Avenue
New York, NY 10016
O: 212-338-3496
C: 517-449-7587

From: Jason.Burt@lw.com <Jason.Burt@lw.com>

Sent: Wednesday, August 18, 2021 5:15 PM

To: Nann, Alissa M. <ANann@foley.com>

Cc: Catanese, Katie <KCatanese@foley.com>; Natascha.Steiner-Smith@collascrill.com;

Stephen.Leontsinis@collascrill.com; TJCahill@duanemorris.com; Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com; Sean.McMahon@lw.com; Danielle.McCall@lw.com; Shannon.McLaughlin@lw.com

Subject: RE: Sentinel

**** EXTERNAL EMAIL MESSAGE ****

Counsel:

We have received your letter of August 18, which does not address the central points the parties agreed to last Thursday. During that call, you specifically agreed to tell us no later than **today, August 18**, (1) the size and scope of review of documents Beecher has made available for Sentinel to review, and (2) whether Sentinel would cooperate with UBS in responding to the information subpoena by providing documents on a rolling basis or whether the parties are at an impasse. While we provide below the list of documents/categories of documents that should come first in a rolling production, UBS's provision of this list was never a condition of Sentinel providing answers to items (1) and (2) above. The decision whether Sentinel will cooperate has nothing to do with what documents UBS would like it to focus on first in a rolling production. Further, while we appreciate that "many businesses" have lost power in the Cayman Islands, you do not tell us whether this has specifically affected the directors or their ability to provide a response to items (1) and (2) today. We can thus only interpret your letter as further equivocation and refusal to cooperate.

Nonetheless, in a final showing of a good-faith effort to avoid needless litigation and in light of the tropical storm, we will allow the directors until this **Friday, August 20** to provide definitive answers to items (1) and (2) above. UBS will interpret any further equivocation or failure to provide definitive answers to items (1) and (2) as a refusal to cooperate and will proceed accordingly. The Sentinel directors have had time enough to decide whether to cooperate with UBS or side with Sentinel's owners in opposing UBS's efforts to obtain the lawful judgment owed it.

Best,
Jason

- Actuary engagement letters and reports (Jason Stubbs was an actuary involved, but there could be others)
- Audit engagement letters and reports
- Communications regarding Endorsements Nos. 1 and 2 to the Insurance Policy
- Reports, memos, or other valuations of the assets transferred from the judgment debtors and related entities in 2017 to satisfy the premium – at the time of transfer and subsequently
- The location and identity of the accounts that received or held the assets transferred by the judgment debtors and related entities in 2017 to satisfy the premium (both at the time the assets were received and any accounts to which these assets have subsequently been moved)
- Documents related to 2019 transfer of assets to Sebastian Clarke, including information about the bank accounts used to facilitate the transfer
- Emails to/from/cc/bcc Dondero and/or Ellington
- Minutes of board meetings starting April 2017
- Board resolutions (all board resolutions are sought, but focus is on those to the Insurance Policy, actuary reports, premium payment, and endorsements)
- Meetings with CIMA regarding the ATE policy
- Communications regarding "worthless" assets being taken off Sentinel's books / impacting Sentinel's audit outcomes, especially to/from CIMA

Please note that this is not an exhaustive list, and UBS reserves the right to supplement it and follow up on any items included in the list

From: Nann, Alissa M. <ANann@foley.com>

Sent: Wednesday, August 18, 2021 4:04 PM