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*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., <sup>1</sup>	§	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.	§	
	§	

**AGREED MOTION TO CONTINUE TRIAL AND PRE-TRIAL DEADLINES**

<sup>1</sup> 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.



Plaintiffs UBS Securities LLC and UBS AG London Branch (together, “UBS”), with the agreement of Defendant Highland Capital Management, L.P. (the “Debtor,” and together with UBS, the “Parties”), submit this *Agreed Motion to Continue Trial and Pre-Trial Deadlines* (the “Motion”) to continue the trial currently scheduled for the week of October 18, 2021, among other deadlines, and respectfully state as follows:

### **FACTUAL BACKGROUND**

#### **I. UBS Files This Adversary Case Against The Debtor.**

1. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”). On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s bankruptcy case (the “Bankruptcy Case”) to this Court.

2. In February 2021, the Debtor informed UBS that its post-bankruptcy management had discovered that it had, acting through its former management and employees, “transferred assets pursuant to a so-called Purchase Agreement, purportedly to satisfy a \$25,000,000 premium on a \$100,000,000 legal-liability insurance policy issued by Sentinel” to several funds managed by the Debtor. (Answer ¶¶ 4-5 [Adv. Dkt. No. 84].)

3. On March 31, 2021, UBS commenced the above-captioned adversary proceeding (the “Adversary Case”) against the Debtor by filing its Complaint [Adv. Dkt. No. 3]. Through this Adversary Case, UBS seeks to restrict the Debtor “from making or allowing funds under its management or control . . . to make any payments or further transfers to Sentinel . . . pending a decision of a court of competent jurisdiction as to whether the Transferred Assets were fraudulently transferred” out of UBS’s reach. (Compl. ¶ 6.)

4. On April 1, 2021, the Court issued the *Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order* [Adv. Dkt. No. 9] (the “Alternative Scheduling Order”). On May 14, 2021, the Parties filed a *Stipulation and Proposed Scheduling Order* [Adv. Dkt. No. 69] to govern the scheduling of this Adversary Case in lieu of the Alternative Scheduling Order.

5. On June 29, 2021, the Parties filed an *Amended Stipulation and Proposed Scheduling Order* [Adv. Dkt. 95] seeking to extend the discovery deadlines “in light of ongoing fact discovery, including as contemplated by the Court’s June 24, 2021 ruling.” The Parties’ amended stipulation was so-ordered on August 9, 2021 [Adv. Dkt. 103].

6. On August 13, 2021, per agreement and as contemplated by the scheduling stipulations and Order, the Parties agreed in writing to extend the deadline to file a dispositive motion until September 17, 2021. Trial docket call and the trial week remained unaltered.

7. On September 15, 2021, the Parties again agreed in writing to extend the deadline to file a dispositive motion until such time as this Motion is resolved.

## **II. The Missing Discovery.**

8. In connection with the Adversary Case, UBS sought discovery from the Debtor, as well as third parties with access to information and documents not discoverable from the Debtor.

9. On May 15, 2021, Scott Ellington, Isaac Leventon, Matthew DiOrio, JP Sevilla, and Kathryn Lucas (the “Former Employee Group”) filed the *Motion of Former Employees to Quash Subpoenas and Brief in Support* [Adv. Dkt. No. 70], and on May 20, 2021, UBS filed *Plaintiffs’ Motion to Compel and Response to Motion of Former Employees to Quash Subpoenas* [Adv. Dkt. No. 74] (together, and including documents filed in support of and response to, the “Discovery Motions”). The Discovery Motions related to discovery sought in this Adversary Case.

10. On June 24, 2021, the Court held a hearing on the Discovery Motions and ordered the Former Employee Group to produce responsive documents within seven days and (except Ms. Lucas) sit for depositions within thirty days. As to Ms. Lucas, the Court ordered that her counsel “promptly inform counsel for UBS of the anticipated date on which Ms. Lucas’s maternity leave will terminate” and that Ms. Lucas would then “appear for deposition pursuant to the Deposition Subpoena by no later than 30 days after the termination of her maternity leave” [Adv. Dkt. No. 94]. To date—and despite repeated requests over the last three months—Ms. Lucas’s counsel have refused to inform UBS of the anticipated end of her maternity leave, much less agreed to a date for her deposition.

11. On June 29, 2021, UBS served a production subpoena upon Beecher Carlson Insurance Services, LLC (“Beecher Carlson”), Sentinel Reinsurance, Ltd.’s insurance manager, in connection with this Adversary Case. In response, and after multiple conferences between counsel, Beecher Carlson agreed to begin producing over 60,000 responsive documents in response to the subpoena on September 3, 2021.

12. On September 2, 2021, the day before Beecher Carlson’s expected production, Sentinel Reinsurance, Ltd. filed *Foreign Non-Party Sentinel Reinsurance, Ltd.’s Motion for Protective Order* [Adv. Dkt. No. 106] (the “Sentinel Motion”) seeking an order prohibiting Beecher Carlson from producing documents pursuant to the June 29, 2021 subpoena without Sentinel Reinsurance, Ltd.’s permission. On September 10, 2021, UBS opposed Sentinel’s motion [Adv. Dkt. Nos. 108, 109], however, because of that outstanding motion, Beecher has not produced any documents and has informed UBS that it will not produce any documents until the motion is resolved.

**ARGUMENT**

13. Pursuant to this Court’s guidelines,<sup>2</sup> “[t]rial docket call and trial settings are **only** reset by motion to continue or oral motion in court.” UBS thus respectfully requests an order continuing (i) the deadline to file dispositive motions, (ii) trial docket call and trial week and (iii) the related pre-trial filings (exhibit and witness lists, joint pretrial order, and proposed findings of fact and conclusions of law) in this Adversary Case, as listed below:

	<u>Event</u>	<u>Requested Continuance</u>
1	Dispositive Motions	December 15, 2021
2	Exhibit and Witness Lists	January 31, 2022
3	Joint Pretrial Order	February 7, 2022
4	Proposed Findings of Fact and Conclusions of Law	February 7, 2022
5	Trial Docket Call	February 14, 2022 at 1:30 pm CT
6	Trial Week Begins	February 22, 2022

14. Under the current scheduling order, trial is set for the week of October 18, 2021—in just over one month. Yet, by no choice of the Parties, third-party discovery remains ongoing. UBS is entitled to the outstanding discovery,<sup>3</sup> which provides good cause for the Court to continue the trial and pre-trial deadlines in this Adversary Case. *See* Bankruptcy Code § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].”).

15. Ms. Lucas was involved in executing the transfers from funds managed by the Debtor to Sentinel as well as in setting up financial accounts for Sentinel related to those transfers. (6/24/2021 Hr’g Tr. 36:10-12.) The Court already recognized the need for Ms. Lucas’ deposition

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<sup>2</sup> Judge-Specific Guidelines, available at <https://www.txnb.uscourts.gov/content/judge-stacey-g-c-jernigan#>.

<sup>3</sup> The Debtor likewise has an interest in this discovery because, as mentioned, it only recently uncovered the transfers to Sentinel made, and purported Insurance Policy entered into, by its pre-petition management and employees.

when it ordered such deposition take place within thirty days of Ms. Lucas' maternity leave ending. To date, counsel for Ms. Lucas has yet to provide the date when Ms. Lucas anticipates her maternity leave will end (or engage in a discussion regarding whether reasonable accommodations can be made for Ms. Lucas if she has no end date for her maternity leave, such as taking the deposition virtually), despite UBS's repeated requests.<sup>4</sup>

16. Discovery from Beecher Carlson is likewise necessary. Information was previously concealed from the post-petition Debtor by its former employees, making it impossible for UBS to discover all pertinent information from the Debtor itself. Instead, as Sentinel has acknowledged, Beecher Carlson or its Cayman subsidiary, Beecher Carlson (Cayman) Ltd., is the party that "possesses" documents regarding "Sentinel's business operations" as Sentinel's long-time insurance manager. (*See* Sentinel Mot. ¶ 12.) As such, Beecher Carlson is in possession of documents that UBS cannot obtain from any other party.

17. Resetting this matter for a trial date in February 2022 or after, as the Court is available, will allow time for the Court to rule on the Sentinel Motion and third-party discovery from Ms. Lucas and Beecher Carlson to conclude, ultimately resulting in a more efficient trial and possibly, disposition of the Adversary Case through dispositive motion.

### CONCLUSION

18. UBS respectfully requests the Court enter an order, substantially in the form of the Proposed Order attached as Exhibit A, continuing the (i) deadline to file a dispositive motion, (ii) trial docket call and trial week, and (iii) pre-trial filings in this Adversary Case.

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<sup>4</sup> Based on statements made by Ms. Lucas' counsel, UBS believes that Ms. Lucas has been on maternity leave for approximately five months. (*See id.* at 56:13-18.)

Dated: September 15, 2021

Respectfully submitted,

**LATHAM & WATKINS LLP**

By /s/ Sarah Tomkowiak

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

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that on September 15, 2021, counsel for UBS conferred with counsel to the Debtor regarding the relief requested in this Motion. Counsel for the Debtor indicated the Debtor agrees to the relief requested herein.

Dated: September 15, 2021

/s/ Sarah Tomkowiak

**CERTIFICATE OF SERVICE**

I, Martin Sosland, certify that this *Agreed Motion to Continue Trial and Pre-Trial Deadlines* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: September 15, 2021

/s/ Martin Sosland



**EXHIBIT A**

**Proposed Order**

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

In re	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>5</sup>	§	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.	§	

**ORDER GRANTING  
AGREED MOTION TO CONTINUE TRIAL AND PRE-TRIAL DEADLINES**

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<sup>5</sup> 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.

Upon consideration of the *Agreed Motion to Continue Trial and Pre-Trial Deadlines* (the “Motion to Continue”) filed by Plaintiffs UBS Securities LLC and UBS AG London Branch (together “UBS”) with the agreement of Defendant Highland Capital Management, L.P. (the “Debtor,” and together with UBS, the “Parties”); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and the Motion to Continue is proper in this District pursuant to 28 U.S.C. §§ 1408-1409; and due, adequate, and sufficient notice of the Motion to Continue having been given; and having determined that the legal and factual bases set forth in the Motion to Continue establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**:

1. The Motion to Continue is **GRANTED**.
2. The following dates and deadlines apply to the above-captioned adversary case:

	<u>Event</u>	<u>Deadline or Applicable Date</u>
1	Dispositive Motions	December 15, 2021
2	Exhibit and Witness Lists	January 31, 2022
3	Joint Pretrial Order	February 7, 2022
4	Proposed Findings of Fact and Conclusions of Law	February 7, 2022
5	Trial Docket Call	February 14, 2022 at 1:30 pm CT
6	Trial Week Begins	February 22, 2022

3. The above schedule shall only be modified in a writing signed by the Parties or upon the entry of an order of the Court entered upon notice to the Parties.
4. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of this Order.

### End of Order ###

Order prepared by:

**LATHAM & WATKINS LLP**

By /s/ Sarah Tomkowiak

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