

AGREED MOTION TO CONTINUE TRIAL AND PRE-TRIAL DEADLINES

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 February 22, 2022, among other deadlines, and respectfully state as follows:

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 Reinsurance, Ltd. (“Sentinel”) to several funds managed by the Debtor. (Answer ¶¶ 4-5 [Adv. Dkt. No. 84].)

3. On March 31, 2021, UBS commenced this 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. No. 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. No. 103].

6. On September 15, 2021, due to protracted unavailability of a third-party deponent and a pending motion for protective order that sought to prevent UBS from obtaining third-party discovery [see Adv. Dkt. No. 106], the Parties filed an *Agreed Motion to Continue Trial and Pre-Trial Deadlines* [Adv. Dkt. No. 114]. The Parties requested that the deadline for dispositive motions be extended to December 15, 2021; that the deadlines for various pretrial submissions be extended to January 31, 2022, and February 7, 2022; and that the trial docket call and trial week be set for February 14 and 22, 2022, respectively. The Court granted that motion on September 17, 2021 [Adv. Dkt. No. 115].

II. The Ongoing Third-Party Discovery.

7. 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.

8. On June 29, 2021, UBS served a production subpoena upon Beecher Carlson Insurance Services, LLC (“Beecher Carlson”), Sentinel’s insurance manager. 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.

9. On September 2, 2021, the day before Beecher Carlson’s expected production, Sentinel 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 to UBS without Sentinel’s permission. On September 10, 2021, UBS opposed Sentinel’s motion [Adv. Dkt. Nos. 108, 109], and on October 26, 2021, the Debtor filed a joinder in UBS’s opposition [Adv. Dkt. No. 139].

10. The Court heard argument on the Sentinel Motion on October 27, 2021, and denied it on the record [*see* Adv. Dkt. Nos. 145, 148]. Beecher Carlson has since produced approximately half of the universe of documents—totaling 29,592 of approximately 61,000 documents—to UBS on November 4, 15, 18, and 29, 2021. Beecher Carlson has indicated to UBS that it likely will not complete its production until the week of December 6, 2021 and may not complete its production of documents until December 13, 2021.

ARGUMENT

11. Pursuant to this Court’s guidelines, “[t]rial docket call and trial settings are **only** reset by motion to continue or oral motion in court.”² 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:

² Judge Stacey G. C. Jernigan, U.S. Bankr. Ct., N. Dist. of Tex., Judge-Specific Guidelines, <https://www.txnb.uscourts.gov/content/judge-stacey-g-c-jernigan#> (last visited Nov. 30, 2021).

<u>Event</u>	<u>Current Deadline</u>	<u>Proposed Deadline</u>
Dispositive Motion Deadline	December 15, 2021	March 10, 2022
Exhibit and Witness Lists	January 31, 2022	April 22, 2022
Joint Pretrial Order	February 7, 2022	April 29, 2022
Proposed Findings of Fact and Conclusions of Law	February 7, 2022	April 29, 2022
Trial Docket Call	February 14, 2022 at 1:30 pm CT	May 9, 2022 at 1:30 pm CT
Trial Week Begins	February 22, 2022	May 16, 2022

12. Under the current scheduling order, dispositive motions are due December 15, 2021—which is in little more than two weeks. Yet third-party discovery remains ongoing. UBS is entitled to the outstanding discovery,³ and requires additional time to review, analyze, and incorporate that discovery into its dispositive motion and potential trial in this proceeding. There is thus good cause to extend the current schedule to provide the Parties sufficient time to obtain, review, and analyze the discovery. *See* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].”).

13. Extending the schedule will permit the Parties to conclude obtaining third-party discovery and ultimately result in a more efficient trial (and possibly, disposition of the Adversary Case through a dispositive motion).

³ The Debtor likewise has an interest in this discovery because it only recently uncovered the transfers to Sentinel and the purported Insurance Policy, which were executed by its pre-petition management and employees.

CONCLUSION

14. UBS thus respectfully requests that 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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Dated: December 6, 2021

Respectfully submitted,

/s/ Sarah Tomkowiak

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*Counsel for UBS Securities LLC and UBS AG
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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on December 5, 2021, counsel for UBS conferred with counsel to the Debtor regarding the relief requested in this Motion. Counsel for the Debtor indicated that the Debtor agrees to the relief requested herein.

Dated: December 6, 2021

/s/ Sarah Tomkowiak
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: December 6, 2021

/s/ Martin Sosland
Martin Sosland

EXHIBIT A

Proposed Order

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. §§ 1408-09; 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</u>
Dispositive Motion Deadline	March 10, 2022
Exhibit and Witness Lists	April 22, 2022
Joint Pretrial Order	April 29, 2022
Proposed Findings of Fact and Conclusions of Law	April 29, 2022
Trial Docket Call	May 9, 2022 at 1:30 pm CT
Trial Week Begins	May 16, 2022

3. This 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:

/s/ Sarah Tomkowiak

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