

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
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HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03010-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P. and NEXPOINT	§	
ADVISORS, L.P.,	§	
	§	
Defendants.	§	

JOINT MOTION TO CONTINUE TRIAL AND EXTEND SCHEDULING ORDER

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COME NOW Highland Capital Management, L.P. (“Highland”), Highland Capital Management Fund Advisors, L.P. (“HCMFA”), and NexPoint Advisors, L.P. (“NexPoint”, with HCMFA, the “Advisors”, and the Advisors, with Highland, each a “Party” and collectively the “Parties”), representing all parties to this Adversary Proceeding, and jointly file this *Joint Motion to Continue Trial and Extend Scheduling Order* (the “Motion”), respectfully stating as follows:

1. This Adversary Proceeding will try two general claims: (i) the Advisors’ administrative claim for approximately \$14 million; and (ii) Highland’s claim against the Advisors for approximately \$3 million under the Parties’ various shared services agreements.

2. On December 17, 2021, the Court entered its *Order Approving Stipulation Regarding Second Amended Scheduling Order* [Docket no. 46]. By the same, the Court approved



the Parties' stipulation extending the discovery cut-off and setting this Adversary Proceeding for trial on February 8 and 9, 2022.

3. At that time, the Parties in good faith believed that they would be able to complete discovery and prepare for trial in February. They worked diligently towards that end, agreeing to, scheduling, and subpoenaing a series of depositions to occur in a certain sequence that they also agreed to. These depositions included: the deposition of Mr. D.C. Sauter, the Advisors' in-house counsel; the Advisors, through their corporate representative; and Mr. Frank Waterhouse, the former CFO of Highland and an officer of each of the Advisors.

4. In early January 2022, Mr. Sauter was diagnosed with COVID-19 and spent the better part of a week bedridden. This prevented his own deposition as scheduled and, equally as importantly, prevented the scheduled corporate deposition of the Advisors (through Mr. Dustin Norris), as Mr. Sauter was unable to help Mr. Norris and outside counsel to prepare. Then, on January 11, 2022, the Parties were informed by Mr. Waterhouse's counsel that he too had been diagnosed with COVID-19, making his scheduled deposition on January 13, 2022 impossible. Not only were all of these depositions indefinitely postponed, but the whole series of sequential depositions that the Parties agreed to became impossible to effectuate. Mr. Sauter and Mr. Waterhouse have now recovered, and the Parties are working to reschedule these and all other depositions.

5. During the same period, Highland has been negotiating with the Retail Board (the board of managers or trustees which controls various of the funds advised by the Advisors) to obtain written discovery and a deposition from the board pursuant to a January 4, 2022 subpoena issued by Highland. These negotiations were not straight-forward and took time, and an agreement was finally reached on or about January 21, 2022. The review of potentially voluminous documents for responsiveness and privilege will take some time.

6. Accordingly, for the foregoing reasons, the Parties will not complete discovery and be prepared for trial as scheduled to commence on February 8, 2022. The Parties therefore request that the Court continue trial (to April 12 and 13, 2022) and extend the discovery cut-off to enable them to complete discovery.

7. The Parties have been diligent in advancing this Adversary Proceeding for trial and completing discovery. The delays necessitating this Motion are not the fault of any Party—or anyone’s fault. The Parties did not anticipate, when they proposed their last scheduling order on December 15, 2021, that critical witnesses would thereafter contract COVID-19. The Parties do not seek a continuance or extension for purposes of delay or tactical advantage, but solely that justice may be done.

WHEREFORE, PREMISES CONSIDERED, the Parties respectfully request that the Court enter an order, substantially in the form attached hereto and uploaded herewith: (i) continuing the trial in this Adversary Proceeding to April 12 and 13, 2022; and (ii) extending their non-expert discovery deadlines.

RESPECTFULLY SUBMITTED this the 31st day of January, 2022.

MUNSCH HARDT KOPF & HARR, P.C.

By: /s/ Davor Rukavina

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-- AND --

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 31st day of January, 2022, true and correct copies of this document, with the proposed order attached hereto, were electronically served by the Court's ECF system on all parties entitled to notice thereof.

By: /s/ Davor Rukavina
Davor Rukavina, Esq.

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ADVISORS, L.P.,	§	
	§	
Defendants.	§	

AGREED AMENDED SCHEDULING ORDER

CAME ON FOR CONSIDERATION the *Joint Motion to Continue Trial and Extend Scheduling Order* (the “Motion”), filed jointly by Highland Capital Management, L.P., Highland Capital Management Fund Advisors, L.P., and NexPoint Advisors, L.P. (each a “Party” and collectively the “Parties”). Having considered the Motion, finding that the relief requested is lawful and appropriate, and finding that there is no further need for notice of the Motion or of any hearing on the Motion, it is hereby:

ORDERED that the Motion is GRANTED; it is further

ORDERED that the trial of this Adversary Proceeding is RESET to commence on April 12, 2022 at 9:30 a.m. and continuing on April 13, 2022; it is further

ORDERED that:

- (i) depositions will be completed by March 15, 2022;
- (ii) except with respect to impeachment and rebuttal exhibits and witnesses, each Party shall file, and serve on each other Party, a list of its trial witnesses and exhibits, and shall exchange exhibits, on or before March 22, 2022;
- (iii) objections to exhibits shall be filed on or before March 29, 2022, or shall be deemed waived;
- (iv) a joint pretrial order, in compliance with the Court's Local Rules, shall be filed on or before April 5, 2022;
- (v) any Party wishing to file a trial brief shall file one on or before April 5, 2022;

it is further

ORDERED that this Order supersedes any prior scheduling order and that, any deadline having expired in any such prior order not extended by this Order shall remain expired; it is further

ORDERED that the Court retains jurisdiction over all disputes concerning the interpretation and enforcement of this Order.

END OF ORDER

AGREED:

<p>MUNSCH HARDT KOPF & HARR, P.C.</p> <p>By: <u>/s/ Davor Rukavina</u> Davor Rukavina, Esq. State Bar No. 24030781 Julian P. Vasek, Esq. State Bar No. 24070790 500 N. Akard St., Ste. 3800 Dallas, TX 75201 Tel: 214-855-7500 Fax: 214-855-7584</p> <p>ATTORNEYS FOR THE ADVISORS</p>	<p>PACHULSKI STANG ZIEHL & JONES LLP</p> <p>Jeffrey N. Pomerantz (CA Bar No. 143717) John A. Morris (NY Bar No. 266326) Gregory V. Demo (NY Bar No. 5371992) Hayley R. Winograd (NY Bar No. 5612569) 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Facsimile: (310) 201-0760 Email: jpomerantz@pszjlaw.com jmorris@pszjlaw.com gdemo@pszjlaw.com hwinograd@pszjlaw.com</p> <p>-and-</p> <p>HAYWARD PLLC</p> <p><u>/s/ Zachery Z. Annable (w /permission)</u> Melissa S. Hayward (Texas Bar No. 24044908) Zachery Z. Annable (Texas Bar No. 24053075) 10501 N. Central Expy, Ste. 106 Dallas, Texas 75231 Telephone: (972) 755-7100 Facsimile: (972) 755-7110 Email: MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com</p> <p>Counsel for Highland Capital Management, L.P.</p>
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