

Latham Secures \$1B Ruling for UBS in Case Over Failed Deal With Hedge Fund Manager

BY TOM MCPARLAND

LATHAM & Watkins secured a \$1 billion judgment Wednesday on behalf of UBS Securities in a long-running contract dispute against bankrupt hedge fund manager Highland Capital Management, which dates back to the early days of the financial crisis.

In a 40-page decision made public late Wednesday afternoon, Manhattan Supreme Court Justice Marcy Friedman ordered two funds affiliated with Dallas-based Highland to pay \$520 million in damages and another \$520 million in statutory interest resulting from their refusal to cover UBS's losses under a failed agreement to securitize collateralized loan obligations and credit-default swaps in 2008.

UBS claimed in a February 2009 complaint that it was owed \$745 million under a series of agreements to purchase and "warehouse" securities for the Highland-controlled funds, with the expectation that it would

eventually be able to recoup its initial investment plus interest.

The deal, however, collapsed under the weight of the 2008 financial crisis, and UBS sued in Manhattan Supreme Court to recover its losses, after the Highland funds stopped posting collateral as UBS's exposure grew. The bank filed an updated lawsuit in June 2010, alleging that Highland had fraudulently

persuaded the bank to restructure the debt to avoid an \$86 million payment.

According to the amended complaint, UBS was owed more than \$686 million by the time Highland's affiliates defaulted on their obligations and UBS terminated the deal in December 2008.

Friedman's decision on Wednesday followed a two-week bench



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trial on the parties' contract claims in July 2018. The judge bifurcated the proceedings, and ordered UBS's remaining claims, including breach of the duty of good faith and fair dealing, fraud and fraudulent conveyance, to be put to be tried later in a second-phase jury trial.

UBS is seeking punitive damages on those claims, potentially exposing Highland to billions more in further liability if the case goes to trial.

In her ruling, Friedman said the terms of the agreements "unambiguously" entitled UBS to recover losses on its retained assets. She also rejected Highland's counterclaims and attempts to offset the damages.

Andrew Clubok, who led the Latham team representing UBS,

said his client was "pleased with the result of the trial and looks forward to final resolution of the matter."

A spokeswoman for Highland did not immediately provide comment on the ruling.

Highland filed for Chapter 11 bankruptcy protection in October amid legal disputes with its investors. Known as a pioneer in trading risky corporate loans, the firm and its founder, James Dondero, managed tens of billions of dollars in assets during its heyday in 2007 but sustained losses during the financial crisis and has been entangled in lawsuits ever since.

Media outlets reported earlier this month that Highland and a committee of unsecured creditors, including UBS, had agreed to a deal for Dondero to relinquish his role

as president, though he plans to stay on as an employee of the firm.

Latham's trial team was led by Clubok, who chairs Latham's global securities litigation and professional liability practice, and Elizabeth Deeley, a partner in the firm's San Francisco office. The team also included Washington, D.C.-based counsel Susan Engel, New York partner Kuan Huang and New York associate Alysha Naik, as well as Michael Onufer, a litigation partner with Kirkland & Ellis.

Highland and its funds are represented by Angela J. Somers, Jeffrey E. Gross and Yonah Jaffe of Reid Collins & Tsai.

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