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Highland Capital Management LP working to remove founder Dondero

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Highland Capital Management will soon face a motion to appoint a Chapter 11 trustee from the US trustee overseeing its case, in spite of the asset manager's efforts to reach a deal with its official committee of unsecured creditors (UCC) on "a comprehensive change in debtors' management".

During a status conference today in the US Bankruptcy Court for the Northern District of Texas, Highland counsel Jeffrey Pomerantz, of Pachulski Stang Ziehl & Jones, said he is working on term sheets with the UCC that would remove Highland founder James Dondero from decision-making for the debtors, put in place detailed protocols on operations, and install a new slate of independent directors. Highland has begun interviewing directors proposed by the UCC, a process it aims to conclude by the end of the week.

The UCC has previously argued that Highland needs "rigorous" oversight to resolve alleged self-dealing by Dondero, who is too burdened by conflicts of interest to remain in place.

If Highland is able to reach agreements with the UCC in the coming week, the debtor will submit motions by 27 December to hold a 9 January hearing that would approve their choice of chief restructuring officer and seek the payment of bonuses to non-insiders. If not, Highland would file an amended version of its motion to appoint a CRO by 30 December, with a hearing on the motion to be heard on 21 January.

UCC counsel Matthew Clemente, of Sidley Austin, told judge Stacey Jernigan today that he has spent a "tremendous amount of time on governance issues" since the last hearing in the case. "There are a lot of pieces that have to come together ... and we're hopeful we can get to a place and come to an agreement. If we can't, we would immediately pivot to a Chapter 11 Trustee-type proceeding."

But the US trustee in the case said in open court today that a motion to appoint a Chapter 11 trustee would be forthcoming, regardless of whether the UCC can hammer out an agreement with Highland. "The issues involved in this case are not subject – in the US trustee's opinion – to a grey area," counsel to the US trustee told the judge today.

Judge Jernigan – who inherited the case from judge Christopher Sontchi, when [it was transferred from Delaware](#) earlier this month – told the US trustee that her initial reaction is: "This is not that different from what I see in 90% of my cases, where they say we need to get new people in there to give creditors confidence."

"We have, at least on paper, a balance sheet of a very solvent debtor," Jernigan continued. "I know there are some disputed claims, so the math is going to potentially change, but gosh, this is a very solvent debtor, with no 800-pound gorilla secured lender that could change everything, and no bondholders fighting with each other. It would seem like if we have fresh, trustworthy – and I'm not saying there's a lack of trust – if we have strong independent people in there, they can forge together a plan for the court, can't they?"

Clemente agreed with Jernigan on the need for fixing governance and trust issues in the case, but cautioned her not to take the debtors' schedules at face value regarding solvency. "I'm hopeful it is, but can't say yet," he noted.

Highland filed for Chapter 11 protection in October shortly before a hearing in Delaware Chancery Court was scheduled to go forward concerning a \$175 million judgment against the fund, and just two weeks after co-founder Mark Okada announced his retirement.