

UBS Sec. LLC v Highland Capital Mgt., L.P., 70 A.D.3d 526 (2010)

893 N.Y.S.2d 869, 2010 N.Y. Slip Op. 01436

70 A.D.3d 526, 893 N.Y.S.2d 869
(Mem), 2010 N.Y. Slip Op. 01436

UBS Securities LLC et al., Respondents

v

Highland Capital Management,
L.P., Appellant, et al., Defendants.

Supreme Court, Appellate Division,
First Department, New York
February 18, 2010

CITE TITLE AS: UBS Sec. LLC
v Highland Capital Mgt., L.P.

HEADNOTE

[Indemnity](#)
[Contractual Indemnification](#)

Lackey Hershman, L.L.P., Dallas, Texas (Paul B. Lackey,
of the Texas Bar, admitted pro hac vice, of counsel), for
appellant.

Cadwalader, Wickersham & Taft LLP, New York (Gregory
A. Markel of counsel), for respondents.

Order, Supreme Court, New York County (Bernard J. Fried,
J.), entered October 8, 2009, which, insofar as appealed
from, denied defendant Highland Capital Management, L.P.'s
(Highland) motion to dismiss the complaint as against it,
unanimously reversed, on the law, with costs, and the motion
granted. The Clerk is directed to enter judgment in favor of
Highland dismissing the complaint.

Dismissal of plaintiffs' indemnification claim against
Highland is warranted, since the agreements between the
parties contain no promise on the part of Highland to
undertake liability with respect to the investment losses
suffered by plaintiffs, or to ensure or guarantee the
performance of defendant off-shore funds' obligations to
bear the risk of investment losses. Absent facts alleging
that Highland otherwise breached the engagement letter, the
indemnification provision contained in said letter was not
triggered (*see generally Hooper Assoc. v AGS Computers*,
74 NY2d 487, 491-492 [1989]). Concur—Friedman, J.P.,
Sweeny, Nardelli and Freedman, JJ. [**Prior Case History: 25
Misc 3d 1243(A), 2009 NY Slip Op 52565(U).**]

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