

EXHIBIT C



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July 9, 2025

VIA ECF

The Honorable Lisa G. Beckerman
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: *Picard v. Banque Internationale à Luxembourg S.A., et al.*, Adv. Pro. No. 12-01698 (LGB)

Dear Judge Beckerman,

We are counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the chapter 7 Estate of Bernard L. Madoff. We write pursuant to Local Rule 7037-1(b) and Your Honor’s Chambers Rules to request a discovery conference and permission to file a motion to compel in the above-referenced action against defendants Banque Internationale à Luxembourg S.A. (“BIL”) and Banque Internationale à Luxembourg (Suisse) S.A. (“BIL Suisse” and together with BIL, the “BIL Defendants”), from which the Trustee seeks to recover nearly \$55 million in subsequent transfers of BLMIS customer property made by Fairfield Sentry Limited and Fairfield Sigma Limited (together, “Fairfield”). The fact discovery deadline is September 29, 2025.

In addition to admittedly spoliating critical ESI, the BIL Defendants have been stonewalling the Trustee on discovery for over a year and a half. It is evident from the history of the parties’ interactions that the Trustee must come to the Court to compel the BIL Defendants to comply with their discovery obligations without further delay.

The Trustee served the BIL Defendants with Requests for Production of Documents on November 9, 2023. The BIL Defendants responded to those requests on December 11, 2023, and in the parties’ first meet and confer on January 25, 2024, the BIL Defendants admitted that they allowed all of their Fairfield-related ESI to be destroyed. BIL’s corporate representative Herman Dewitte had previously so testified at his Rule 30(b)(6) deposition in the Fairfield liquidators’ chapter 15 cases, and based thereon this Court concluded that BIL had intentionally spoliated all of its Fairfield-related ESI. *See* Order Granting Mot. for Sanctions, *Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.*, Adv. Pro. No. 10-03635 (CGM) (Bankr. S.D.N.Y.), ECF No. 1098 (Mar. 17, 2023). Nevertheless, from this testimony and from representations made to the Trustee in the January 25, 2024 and other meet and confers, it is clear

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the BIL Defendants did preserve (i) various emails and documents related to investments BIL made in other BLMIS feeder funds (as referred to by BIL, the “task force files”), (ii) certain transactional documents related to their Fairfield investments, and (iii) certain hard copy documents related to BIL’s Fairfield investments that employees subjectively chose to print out at the time. Despite this relative dearth of information, the BIL Defendants have failed to produce much of what does exist and have ignored repeated attempts by the Trustee to follow up on promised productions and other issues discussed at meet and confers. BIL has also refused to disclose the makeup of the task force files (i.e., how many documents there are, what types of documents are included, the date range of the documents, if the files are electronically searchable), and failed to justify its position that only some of those documents are relevant, even though all of the documents were intentionally selected for preservation in response to the BLMIS liquidation.

At the parties’ initial meet and confers in January and March 2024, the BIL Defendants promised to promptly begin rolling productions of a limited set of documents. But it was not until August 2024, after ignoring numerous follow-up communications from the Trustee, that they finally made a production, totaling just 47 documents. They did not address any open discovery issues or indicate when and what else they would produce. In October 2024, the Trustee sent the BIL Defendants a letter comprehensively addressing their outstanding discovery obligations, and in their December response, the BIL Defendants finally agreed to produce certain categories of documents, as defined and described by them. In a February 2025 meet and confer, the BIL Defendants agreed to produce or look into producing a number of additional documents, saying they would aim to complete rolling productions by the end of March. Despite these promises, they produced some BIL annual reports and again stopped engaging in the discovery process, electing not to respond to repeated emails, phone calls, and voicemails over the next several months.

The BIL Defendants finally replied to a June 6 email detailing the numerous Trustee communications that had gone unanswered, and the parties met and conferred on June 10. The BIL Defendants claimed the production delays were due to a need for extensive, time-consuming redactions of client-identifying information that were purportedly ongoing. When we questioned this rationale, given that only a few of the twenty-plus categories of documents at issue plausibly contain such information, the BIL Defendants could only identify two that might. They would also not commit to a date certain by which they would produce all documents they had agreed to produce months ago, only vaguely promising some level of production by the week of June 23. On July 2, 2025, BIL produced 42 documents, consisting solely of duplicate copies of the chapter 15 deposition transcript, exhibits, and motion papers in unredacted form.

Given that the BIL Defendants have already acknowledged not having any ESI related to Fairfield, their non-responsiveness and failure to produce the limited amount of responsive documents they *do* have is particularly inexcusable. In light of the BIL Defendants’ ongoing refusal to commit to producing their manageable universe of responsive documents by a date certain, the Trustee requests permission to file a motion to compel. In anticipation of a future spoliation motion, we also for efficiency’s sake wish to seek an order from the Court (absent a stipulation with the BIL Defendants) to treat the Dewitte deposition as if taken in this action.

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Respectfully submitted,

/s/ Antonio J. Casas

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Partner

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