

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD		)
LITIGATION		)
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MELANIE L. CYGANOWSKI, as Equity		)
Receiver for PLATINUM PARTNERS		)
CREDIT OPPORTUNITIES MASTER		)
FUND LP, PLATINUM PARTNERS		)
CREDIT OPPORTUNITIES FUND (TE)		)
LLC, PLATINUM PARTNERS CREDIT		)
OPPORTUNITIES FUND LLC,		)
PLATINUM PARTNERS CREDIT		)
OPPORTUNITIES FUND		)
INTERNATIONAL LTD., PLATINUM		)
PARTNERS CREDIT OPPORTUNITIES		)
FUND INTERNATIONAL (A) LTD., and		)
PLATINUM PARTNERS CREDIT		)
OPPORTUNITIES FUND (BL) LLC,		)
Plaintiffs,		)
v.		)
BEECHWOOD RE LTD., et al.,		)
Defendants.		)
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18-cv-6658 (JSR)

18-cv-12018 (JSR)

**MEMORANDUM OF LAW IN SUPPORT**  
**OF UNOPPOSED MOTION TO**  
**CONFIRM ARBITRATION AWARD**

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Defendants-Crossclaimants Bankers Consec Life Insurance Company and Washington National Insurance Company (collectively, “Movants”) move to confirm two arbitration awards granting Movants’ pre-hearing security in the arbitration captioned *Bankers Consec Life Insurance Company and Washington National Insurance Company v. Beechwood Re Limited et al.*, AAA Case No. 01-16-0004-02510 (the “Arbitration”). This motion is *unopposed* and Movants request that the Court enter the form of Order submitted herewith.

### **BACKGROUND**

On September 29, 2016, Movants commenced arbitration against Beechwood Re Ltd (“Beechwood Re”) alleging, among other things, that Beechwood Re breached certain Reinsurance Agreements by investing reinsurance trust assets in the Platinum funds and companies controlled by Platinum. Beechwood Re has denied the claims and asserted counterclaims against Movants, which Movants have denied.

On July 28, 2017, Movants made a motion before the duly constituted arbitration panel, consisting of three experienced arbitrators selected by the parties (the “Panel”), for an award of pre-hearing security. Pre-hearing security is a form of interim relief in arbitration where the arbitrators order one party to post security (usually money) to ensure that there will be funds to pay some or all of a final arbitration award. On October 23, 2017, the Panel entered an arbitral award requiring Beechwood Re to post \$5 million in interim security, in the form of a Letter of Credit (“LOC”). *See* Exh. 1. To date, the LOC has not been issued, though the \$5 million was in 2017 placed in a trust account of one of Beechwood Re’s law firms.

On July 25, 2017, Beechwood Re was placed in controllership by the Cayman Islands Monetary Authority (“CIMA”). Thereafter, on November 27, 2018, Beechwood Re was placed in liquidation following CIMA’s filing of a Winding Up Petition.

On December 19, 2018, Melanie Cyganowski sued Movants and Beechwood Re in this matter (the “PPCO” action). In addition, an action was commenced by Martin Trott against Beechwood Re (the “PPVA” action) and an action was commenced by Senior Health Insurance Company of Pennsylvania against Beechwood Re (the “SHIP” action). As a result, Movants and Beechwood Re agreed to stay the Arbitration pending the resolution of the consolidated action before this Court. On January 23, 2019, the Panel issued an Order Staying Proceeding (the “Order Staying Arbitration”). *See* Exh. 2.

In paragraph 2 of the Order Staying Arbitration, the Panel ordered, among other things, that Beechwood Re “shall immediately post the \$5 million Letter of Credit . . . as ordered by this Panel [on October 23, 2017].” *Id.*

In Paragraph 1 of the Order Staying Arbitration, the Panel ordered, among other things, “this arbitration shall be stayed until after the final disposition in the trial court of all claims against Claimants in the PPCO action and Respondents in the SHIP, PPVA and PPCO actions (the ‘Final Disposition’).”

In Paragraph 3 of the Order Staying Arbitration, the Panel ordered, “Claimant’s Motion for Interim Security [against the arbitration respondents other than Beechwood Re] and to Limit Beechwood’s Counterclaim is withdrawn without prejudice to Claimants’ rights to renew such motion after the Final Disposition.” *Id.*

Movants now seek to confirm under the Federal Arbitration Act (“FAA”) the Panel’s orders granting and affirming the award of \$5 million in pre-hearing security and withdrawal of CNO’s motion for additional interim security against arbitration respondents other than Beechwood Re without prejudice to renew after the Final Disposition. Beechwood Re does not oppose this motion or the form of Order submitted herewith.

## ARGUMENT

Under the FAA, “the confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). Parties confirm arbitral awards because “[a]rmed with a court order the winning party has a variety of remedies available to enforce the judgment.” *Id.*

In relevant part, Section 9 of the FAA states:

at any time within one year after the award is made any party to the arbitration may apply to the court ... for an order confirming the award, and thereupon the court *must* grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.

9 U.S.C. § 9 (emphasis added).

A district court may deny a motion to confirm an award only under extremely limited circumstances. “So long as there exists a ‘barely colorable justification’ for the arbitration award, it should be enforced.” *British Ins. Co. of Cayman v. Water Street Ins. Co., Ltd.*, 93 F. Supp. 2d 506, 515 (S.D.N.Y. 2000) (quoting *Landy Michaels Realty Corp. v. Local 32B-32J, Service Emps. Int’l Union*, 954 F.2d 794, 797 (2d Cir. 1992)); *see also id.* at 514 (“an award may only be vacated on extremely limited grounds”). In confirming an arbitral award, it is not the role of the court to second guess the decisions of the arbitrators. Indeed, “[i]t is well established that ‘[a]rbitration awards are subject to very limited review’ in federal court.” *Nat’l Union Fire Ins. Co. of Pittsburgh, P.A. v. Source One Staffing, LLC*, 2017 U.S. Dist. LEXIS 75056, at \*2 (S.D.N.Y. May 17, 2017) (quoting *Rich v. Spartis*, 516 F.3d 75, 81 (2d Cir. 2008)). Here, no review is necessary because Beechwood Re does not oppose confirmation.

The portions of the arbitral awards to be confirmed relate to an award of interim security.

“It is not the role of the courts to undermine the comprehensive grant of authority to arbitrators by prohibiting an arbitral security award that ensures a meaningful final award.” *Banco de Seguros del Estado v. Mutual Marine Office, Inc.*, 344 F.3d 255, 262 (2d Cir. 2003).

Accordingly, interim security awards, such as those issued by the Panel here, are confirmable under settled law. *See id.* at 258, 264 (affirming district courts’ confirmation of interim security awards); *Nat’l Union Fire Ins. Co. of Pittsburgh, P.A.*, 2017 U.S. Dist. LEXIS 75056, at \*3 (confirming interim security award); *On Time Staffing v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 784 F. Supp. 2d 450, 455 (S.D.N.Y. 2011) (Rakoff, J.) (denying motion to vacate interim security award); *British Ins. Co. of Cayman*, 93 F. Supp. 2d at 509, 516, 521 (confirming interim security award).<sup>1</sup>

Here, the Panel awarded interim security in 2017 after extensive briefing and argument (and then again in 2019), and further memorialized in the second award CNO’s agreement to withdraw its motion for additional security (against respondents other than Beechwood Re) until after the Final Disposition. Neither Beechwood Re nor CNO has contested the legitimacy or validity of the Panel’s orders and Beechwood Re does not oppose confirmation, though Beechwood Re has not yet posted the \$5 million LOC (the \$5 million in interim security has since late 2017, through today, been held in a trust account maintained by one of Beechwood Re’s counsel in the Arbitration). The Panel’s awards should be confirmed, in all respects.

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<sup>1</sup> In addition to seeking to confirm the two pre-hearing security awards, Movants seek, at the request of Defendants Feuer, Taylor and Beechwood Capital, to confirm the arbitral awards to the extent they memorialize Movants’ agreement before the Panel not to seek any interim security against them until the arbitration stay is lifted. Movants have included in the proposed form of order submitted herewith a provision confirming that part of the second award because those parties demanded it and there is no harm in confirming that portion of the second award, as Movants will of course abide by their agreement which is now an Order of the Panel.

Beechwood Re does not oppose this motion and its Cayman Islands court-appointed Liquidators have agreed to post the LOC once the Panel's awards are confirmed by this Court.

Additional notice of this motion is being provided to Beechwood Re's and the Liquidators' counsel in the Arbitration, Locke Lord, LLP, as well as to the Panel.

**CONCLUSION**

For all of the foregoing reasons, the Court should, pursuant to Section 9 of the FAA, confirm the Panel's awards and make them enforceable as a judgment of this Court. A proposed form of Order is submitted herewith.

Dated: New York, New York  
April 23, 2019

ALSTON & BIRD LLP

By:           /s/ Adam J. Kaiser          

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