

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION	:	18-cv-6658 (JSR)
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MELANIE L. CYGANOWSKI, as Equity Receiver for PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, <i>et al.</i> ,	:	18-cv-12018 (JSR)
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BEECHWOOD RE LTD., <i>et al.</i> ,	:	
	:	
Defendants.	:	
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	:	
WASHINGTON NATIONAL INSURANCE COMPANY and BANKERS CONSECO LIFE INSURANCE COMPANY,	:	
	:	
Third-Party Plaintiffs,	:	
	:	
v.	:	
	:	
MARK NORDLICHT, <i>et al.</i> ,	:	
	:	
Third-Party Defendants.	:	
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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION BY THIRD-PARTY DEFENDANTS BEECHWOOD TRUST NOS. 7-14
TO DISMISS THIRD-PARTY COMPLAINT**

Third-party defendants Beechwood Trust Nos. 7-14 (the “Movant Trusts”) respectfully move to dismiss the Third-Party Complaint (ECF No. 75)¹ (the “TPC”) of third-party plaintiffs Washington National Insurance Company (“WNIC”) and Bankers Conseco Life

¹ ECF citations refer to the *Cyganowski* docket, 18-cv-12018 (JSR).

Insurance Company (“BCLIC,” and, together with WNIC, “Conseco”) pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

Conseco fails to allege any actionable conduct on the part of the Movant Trusts. It alleges in the most general terms that the Movant Trusts were used by third-party defendant David Bodner as an “asset protection vehicle” and that Bodner and others “owned and controlled Beechwood Re, Holdings and BAM, among other Beechwood entities” through the Movant Trusts. (TPC ¶ 518). But there is not a single fact alleged in the TPC to support these conclusory assertions.

The TPC also relies on impermissible group pleading by defining “Beechwood” to include the Movant Trusts and dozens of other entities (TPC ¶ 470 n.3) and by lumping the Movant Trusts together with dozens of other defendants throughout the Claims for Relief section (TPC ¶ 786 n.43). There is no securities-related statement attributed to the Movant Trusts that could even conceivably justify application of the group pleading doctrine. *See In re Alstom SA*, 406 F. Supp. 2d 433, 450 (S.D.N.Y. 2005). For this reason, this Court dismissed the Movant Trusts from the *Trott* case. *In re Platinum-Beechwood Litig.*, Nos. 18-cv-6658 (JSR), 18-cv-10936 (JSR), 2019 U.S. Dist. LEXIS 62745, at *46-47, *49 (S.D.N.Y. April 11, 2019).

For these reasons and for the reasons set forth in the Memorandum of Law filed by Bodner, the TPC fails to state a claim against the Movant Trusts for which relief can be granted.

Dated: May 15, 2019
New York, New York

Respectfully submitted,

CURTIS, MALLET-PREVOST,
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