

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

-v-

No. 16-cv-6848 (DLI)(VMS)

PLATINUM MANAGEMENT (NY) L.L.C.;  
PLATINUM CREDIT MANAGEMENT, L.P.;  
MARK NORDLICHT;  
DAVID LEVY;  
DANIEL SMALL;  
URI LANDESMAN;  
JOSEPH MANN;  
JOSEPH SANFILIPPO; and  
JEFFREY SHULSE,

Defendants.

**DECLARATION OF RECEIVER  
BART M. SCHWARTZ IN  
SUPPORT OF JOINT MOTION  
OF SECURITIES AND  
EXCHANGE COMMISSION  
AND RECEIVER FOR  
MODIFICATION OF THE  
PLATINUM TRO AND  
RECEIVER ORDER AND FOR  
EMERGENCY RELIEF**

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I, Bart M. Schwartz, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the bar of this Court, and am the court-appointed Receiver for defendant Platinum Credit Management, L.P. and certain related entities (collectively, the “Receivership Entities”). I was appointed on consent of defendants Platinum Management (NY) LLC, Platinum Credit Management, L.P., and Mark Nordlicht (collectively, the “Platinum TRO Defendants”) by an order of this Court (Matsumoto, J.) on December 19, 2016 (the “Receiver Order”), following an Order to Show Cause (the “Platinum TRO”) filed in this matter by the Securities and Exchange Commission (the “Commission”). See Docket Nos. 5 & 6. The Platinum TRO Defendants are the only defendants who are subject to the Platinum TRO.

2. I make this affirmation in support of a joint application with the Commission to modify the Receiver Order and the Platinum TRO and for emergency injunctive relief permitting

me to expend funds belonging to the Receivership Entities notwithstanding a temporary restraining order issued in connection with an adversary proceeding in Texas. As set forth below, modification of the Receiver Order and the Platinum TRO is necessary to allow me to make expenditures that are urgently needed to protect assets belonging to the Receivership Entities (“Receivership Property”) and to carry out my mandate to maximize recovery of the Receivership Property for the benefit of *all* creditors and *all* investors. I have been advised by the Commission staff that the Platinum TRO Defendants consent to the relief jointly requested by the Commission and me. Unless this relief is granted, I cannot fulfill my duties to this Court, and assets of the Receivership Estate will be reduced in value or lost entirely.

### **Background**

3. On December 19, 2016, the U.S. Attorney for the Eastern District of New York unsealed an eight-count indictment against seven individuals who were formally affiliated with Platinum Partners (“Platinum”), a purported \$1.7 billion hedge fund family based in New York that includes the corporate defendants named in this action (the “Indictment”). The Indictment alleges that the defendants defrauded Platinum investors through, among other things, the overvaluation of assets, the concealment of severe cash flow problems, and the preferential payment of redemptions. The Indictment also charges four of the defendants with defrauding the independent bondholders of Black Elk Energy Offshore Operations, LLC (“Black Elk”), a portfolio company owned by Platinum, through a fraudulent offering document and diverting more than \$95 million in proceeds to Platinum by falsely representing in the offering document that Platinum controlled approximately \$18 million of the bonds when, in fact, Platinum controlled more than \$98 million of the bonds.

4. On December 19, 2016, the Commission filed a complaint against the same seven individuals, Platinum Management (NY) LLC and Platinum Credit Management, L.P. based on

conduct similar to that alleged in the Indictment, including the alleged fraud on the Black Elk bondholders. A copy of the Commission's Complaint is attached hereto as *Exhibit A*. Also on December 19, 2016, the Commission moved by order to show cause for a temporary restraining order and the appointment of a receiver. On December 19, 2016, Judge Matsumoto entered the Platinum TRO and Receiver Order pursuant to which I was appointed Receiver of Platinum Credit Management, L.P.; Platinum Partners Credit Opportunities Master Fund LP; Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund LLC; Platinum Partners Credit Opportunity Fund (BI.) LLC; Platinum Liquid Opportunity Management (NY) LLC; and Platinum Partners Liquid Opportunity Fund (USA) L.P., defined in the Receiver Order as the "Receivership Entities."<sup>1</sup> A copy of the Receiver Order is attached hereto as *Exhibit B*.

#### **The Purpose of the Receiver Order**

5. The purpose of the Receiver Order is to permit me to marshal and preserve all the assets of the Receivership Entities. Ex. B, p. 1. To that end, the Receiver Order empowers me to (among other things) take custody, control and possession of all Receivership Property (Ex. B, p. 3 at ¶ 6(B)), manage, control, operate and maintain the Receivership Entities (Ex. B, p. 4 at ¶ 6(C)), use Receivership Property for the benefit of the Receivership Estate, including payments and disbursements and incurring expenses as may be necessary (Ex. B, p. 4 at ¶ 6(D)), engage and employ persons needed to assist me in carrying out my responsibilities (Ex. B, p. 4 at ¶ 6(F)), take such action necessary to preserve the Receivership Property (Ex. B, p. 4 at ¶ 6(G)), including bringing lawsuits (Ex. B, p. 4 at ¶ 6(J)), and investigate transactions by and among

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<sup>1</sup> I have been advised by Commission staff that the corporate Receivership Entities that were not named specifically in the Complaint are owned and controlled by Mark Nordlicht and the other named corporate defendants and were included as Receivership Entities on their consent at the December 19 hearing on the Commission's emergency motion.

Receivership Entities and others (Ex. B, p. 4 at ¶ 6(I)), including hiring forensic experts (Ex. B, p. 4 at ¶ 6(F)). The Receiver Order permits me to transfer, compromise or otherwise dispose of any Receivership Property (other than real estate) on terms I deem most beneficial to the Receivership Estate with due regard to the true value of the Property. Ex. B, p. 12 at ¶ 28. I am also authorized to take all actions to manage, maintain and wind down the business operations of the Receivership Entities, including making legally required payments to creditors, employees and agents of the Receivership Estate. Ex. B, p. 12 at ¶ 31. I am authorized to retain persons to assist me (“Retained Personnel”), subject to the approval of this Court. Ex. B, p. 12 at ¶¶ 48-50.

6. The Receiver Order forbids any person who has possession, custody or control of assets belonging to the Receivership Entities from transferring those assets. Ex. B, pp. 6-7, at ¶10. It further provides that no such person shall exercise any form of set-off or lien or form of self-help whatsoever, or refuse to transfer Receivership Property to the Receiver. *Id.*

7. The Receiver Order contains an injunction against interference with me. Specifically, the Receiver Order enjoins any person with notice of the Receiver Order from: (a) interfering with my efforts to take control of Receivership Property; (b) hindering, obstructing, or otherwise interfering with my performance of my duties; (c) dissipating or otherwise diminishing the value of Receivership Property; or (d) otherwise interfering with my efforts. Ex. B, pp. 9-11 at ¶ 23.

**The Receiver Order’s Stay of Civil Litigation (“Ancillary Proceedings”)**

8. The Receiver Order contains a stay of civil litigation, called “Ancillary Proceedings.” *See* Ex. B, pp. 11-12, at ¶¶ 25-27. With the exception of the matters carved out from the stay, the stay enjoins all civil proceedings of any nature involving the Receivership Property or the Receivership Entities (among other things) *including bankruptcy proceedings.* Ex. B, p. 11 at ¶ 25. The Receiver Order provides that “The parties to any and all Ancillary

Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding....” (Ex. B, p. 11 at ¶ 26), and “All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.” Ex. B, pp. 11-12 at ¶ 27.

9. The typewritten portion of the Receiver Order carves out the instant case. Ex. B, p. 11 at ¶ 25. It also carves out proceedings relating to Platinum Partners Value Arbitrage Fund L.P. and Platinum Partners Value Arbitrage Fund International Ltd. (collectively with related entities, “PPVA”), which are in liquidation under the supervision of the Grand Court of the Cayman Islands. A handwritten addendum to ¶ 25 adds “all pending bankruptcy cases in which the Receivership Entities are involved.” *Id.*<sup>2</sup> It is my understanding that that addendum, which contradicts the definition of an “Ancillary Proceeding,” was added at the suggestion of Jeffrey Brown of Dechert LLP, who was acting as counsel for the Platinum TRO Defendants. I understand from my counsel and Commission staff that Mr. Brown was generally aware that certain entities might have interests that they needed to protect in bankruptcy cases and therefore requested the handwritten addendum in the belief that it would advance the interests of the Receivership Entities. *See generally* ¶ 33 *infra*. In fact, as I describe below, the addendum is impairing my ability to preserve and increase the value of the Receivership Estate, and I therefore make this joint application with the Commission to eliminate the handwritten addendum from the Receiver Order and the Platinum TRO and for related relief. I have been advised by Commission staff that the Platinum TRO Defendants consent to the emergency relief requested by the Receiver and the Commission.

### **The Black Elk Bankruptcy Case**

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<sup>2</sup> A similar handwritten addendum in the Platinum TRO excludes “pending bankruptcy cases in which the Receivership Entities are involved” from the stay. Platinum TRO, p. 10, at Section IX.

10. Black Elk is the debtor in a bankruptcy case filed in the Southern District of Texas captioned *In re Black Elk Energy Offshore Operations, LLC*, Case No. 15-34287 (the “Black Elk Bankruptcy”). On October 26, 2016, Richard Schmidt, the Litigation Trustee in the Black Elk Bankruptcy (the “Bankruptcy Litigation Trustee”), commenced an adversary proceeding against four Platinum entities (the “Fraudulent Transfer Action”) prior to my appointment as Receiver on December 19.<sup>3</sup> The four defendants include two PPVA entities, and two of the entities for which I am now the Receiver – Platinum Partners Credit Opportunities Master Fund LP (together with related entities, “PPCO”) and Platinum Partners Liquid Opportunities Master Fund LP (together with related entities, “PPLO”). PPCO is a master fund, and has a number of kinds of different assets in its portfolio of investments, including operating entities, investments in ongoing litigations via litigation funding arrangements, and a portfolio of life insurance policies, to name but a few.

11. At the same time the Fraudulent Transfer Action was filed, the Bankruptcy Litigation Trustee made an Emergency Application for Preliminary Injunctive Relief, including an Emergency Motion for a Temporary Restraining Order and Request for Hearing in connection with the Fraudulent Transfer Action, a copy of which is attached as *Exhibit C*.<sup>4</sup> The Application sought to prevent the dissipation of the defendants’ assets pending the determination of the merits of the Fraudulent Transfer Action. The Bankruptcy Litigation Trustee’s application emphasized that the individuals who allegedly defrauded Black Elk still controlled the defendant entities. *See, e.g.*, Ex. C at ¶¶ 114, 119, 121.

12. On October 26, 2016, the bankruptcy court issued a Temporary Restraining Order

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<sup>3</sup> The Fraudulent Transfer Action adversary proceeding is captioned *Richard Schmidt, Litigation Trustee v. Platinum Partners Value Arbitrage Fund LP, Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Liquid Opportunities Master Fund LP, and PPVA Black Elk (Equity) LLC*, Adv. No. 15-34287 (MI) (Bankr. S.D.Tex.).

<sup>4</sup> *Exhibit C* is the publicly-filed version of the Bankruptcy Litigation Trustee’s application. The redactions in that Exhibit were made by the Bankruptcy Litigation Trustee.

(together with and as extended by Agreed Order, entered December 14, 2016, the “Bankruptcy Court TRO”), a copy of which is attached as *Exhibit D*. The Bankruptcy Court TRO bars PPCO from transferring, spending, or otherwise reducing in any manner its funds on deposit at any institution or location in the world if, after giving effect to such transfer, the total unencumbered funds held by PPCO is less than \$24,600,584.31 (the damages claimed against PPCO in the Fraudulent Transfer Action). The Bankruptcy Court TRO bars PPLO from transferring, spending, or otherwise reducing in any manner its funds on deposit at any institution or location in the world if, after giving effect to such transfer, the total unencumbered funds held by PPLO is less than \$ 5,000,000.00 (the damages claimed against PPLO in the Fraudulent Transfer Action). Because PPCO and PPLO do not have liquid assets that come close to \$29,600,584.31, the effect of the Bankruptcy Court TRO is to prevent these Receivership Entities from spending any money at all. And because PPCO is the entity which holds, directly or indirectly, most of the Receivership Property, the Bankruptcy Court TRO is preventing me from fulfilling my court-ordered duties as Receiver.

13. It is my understanding that after the Bankruptcy Court TRO was issued, PPCO and PPLO agreed to submit all expenditures to the Bankruptcy Litigation Trustee for approval pending determination of the preliminary injunction. The hearing on the preliminary injunction has been adjourned several times, and is currently scheduled to be heard on January 26, 2016.

**The Bankruptcy Litigation Trustee’s Refusal to Approve Expenditures since My Appointment as Receiver**

14. On December 20, 2016, the Bankruptcy Litigation Trustee was given notice of my appointment by Chris Lindstrom, counsel for PPCO and PPLO in the Fraudulent Transfer Action. *See Exhibit E*. Nevertheless, the Bankruptcy Litigation Trustee maintains that I must seek his permission in order to make expenditures using PPCO or PPLO funds that are necessary to preserve the value of the Receivership Entities.



15. Black Elk is not a judgment creditor, and does not have a secured claim against PPCO or PPLO. It has an unadjudicated claim against PPCO and PPLO. It is my understanding, based on my review of correspondence with the Bankruptcy Litigation Trustee, and a conversation I had with Craig Smyser, counsel for the Bankruptcy Litigation Trustee, on the afternoon of January 4, that the Bankruptcy Litigation Trustee will no longer approve *any* expenditures (other than expenditures needed to preserve life insurance assets that the Bankruptcy Litigation Trustee wants as part of a security package) unless I agree to provide security for Black Elk's claim. In other words, the Bankruptcy Litigation Trustee is attempting to use the Bankruptcy Court TRO to turn what would otherwise be an unsecured claim against Receivership Entities into a secured claim to obtain a priority in distribution of the Receivership Property to the detriment of other similarly situated defrauded creditors and investors. As the alleged Black Elk fraud appears to have been just one part of the overall scheme alleged by the Commission to hide the liquidity crisis facing Platinum from all of its creditors and investors, allowing the Bankruptcy Litigation Trustee to obtain this priority would adversely affect the Receivership Entities' other creditors and investors and give Black Elk creditors an unfair advantage. *See* Ex. A, pp. 22-31 at ¶¶ 69-102.

16. Given the ambiguity created by ¶ 25 of the Receiver Order and Section IX of the Platinum TRO, I firmly believe that the Receiver Order and Platinum TRO must be modified if I am to function as the Receiver. As matters now stand, I cannot make *any* expenditure of Receivership funds (with the possible exception of payments on life insurance policies) without running the risk that the Bankruptcy Litigation Trustee will claim that I have violated the Bankruptcy Court TRO. As a result, I cannot spend funds *belonging to the Receivership Entities* that are needed to avoid defaults under agreements made by the Receivership Entities, enter into time-sensitive transactions that I believe to be in the best interest of the Receivership Entities and



that will ultimately maximize the ability of the Receivership Entities to pay all of their creditors, including Black Elk, or pay the Receivership Entities' counsel in ongoing matters. In short, the Receivership has been brought to a virtual standstill by the Bankruptcy Litigation Trustee, who represents but one unsecured creditor among many.

17. Specifically, on December 15, shortly before my appointment, Mr. Smyser, acting on behalf of the Bankruptcy Litigation Trustee, outlined "a proposal of security to substitute for the cash retention obligations of \$29,600,584.31 the Court imposed on PPCO/PPLO in its Temporary Restraining Order". See *Exhibit F*. The proposed settlement involved using \$3 million in cash and the proceeds of a portfolio of life insurance policies indirectly owned by PPCO to create a \$29,600,584.31 escrow fund to secure the Bankruptcy Litigation Trustee's litigation claim. As discussed above, the Bankruptcy Litigation Trustee currently has an unsecured contingent claim against PPCO and PPLO. The December 15 proposal would have turned that claim into a secured claim and thus allowed Black Elk to obtain a preferred position over other PPCO and PPLO creditors and PPCO and PPLO investors if it prevails in the Fraudulent Transfer Action.

18. As of December 15, the Bankruptcy Litigation Trustee had approved some but not all of the expenditures requested by PPCO and PPLO's counsel. On December 21, 2016, after my appointment as Receiver, Mr. Lindstrom reminded Mr. Smyser that there were time-sensitive expenditures requested by PPCO and PPLO, which I had approved, that had not been approved by the Bankruptcy Litigation Trustee. See *Exhibit G*, 8:00 a.m. email and 1:58 p.m. email.<sup>5</sup> Mr. Smyser responded by saying that the Bankruptcy Litigation Trustee had approved some of the expenditures, but had questions about others. See *Exhibit G*, 4:40 p.m. email.

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<sup>5</sup> Commercially sensitive information in Exhibits G, H and I has been redacted to protect the Receivership Estate. If the Court requests, I will provide unredacted copies to the Court for in camera review or will file unredacted copies under seal.

19. On December 22, 2016, Trey Rogers provided information requested by the Bankruptcy Litigation Trustee with respect to a proposed expenditure relating to a patent litigation funding arrangement. Mr. Smyser responded in an email that was sent to me and others that:

At this point, the Trustee's problem is larger than payments on investments in [the patent litigation] or on the [litigation] settlement. PPCO/PPLO makes these and other requests to spend money against the backdrop that so far PPCO/PPLO has not set aside *one penny* in escrow – has not even offered to set aside any money from any of its multi-million dollar liquidity events – to satisfy the Bankruptcy's Court's TRO or the Black Elk creditors.

*See Exhibit H.*

20. On December 28, Mr. Lindstrom provided Mr. Smyser with information with respect to a transaction that the Bankruptcy Litigation Trustee had approved subject to the provision of documents. Mr. Smyser responded: "At this point, the Trustee does not feel comfortable acting on and will not act on this or other requests without first conferring with the Receiver(s) regarding the path and their role going forward." *See Exhibit G*, December 29, 2016 2:33 p.m. email.

21. While I do not believe I need the Bankruptcy Litigation Trustee's approval to use Receivership Property to benefit the Receivership Estate, given the uncertainty created by the handwritten addendum, on December 30, I asked the Bankruptcy Litigation Trustee to approve payment of a \$23,568.88 premium needed to preserve value of a life insurance policy due January 4 and a quarterly interest payment due on a secured bank loan due January 2. *See Exhibit I*. The Bankruptcy Litigation Trustee had approved similar payments in the past. On January 4, after much prodding by Mr. Lindstrom, the Bankruptcy Litigation Trustee approved payment of the life insurance premium.

22. On January 4, I spoke to Mr. Smyser and other counsel for the Bankruptcy

Litigation Trustee. Mr. Lindstrom, lawyers from my proposed law firm, Cooley LLP, and others from my firm, Guidepost Solutions LLC, were also on the line. Mr. Smyser told me that the Bankruptcy Litigation Trustee wanted to obtain security for the litigation claim asserted in the Fraudulent Transfer Action, and that going forward the Bankruptcy Litigation Trustee would not be approving *any* payments other than payments of premiums for life insurance policies (part of the security package proposed by Mr. Smyser in his December 15 email). Thus, unless I agree to provide security for the Bankruptcy Litigation Trustee's claim, or obtain clarification of my authority from this Court, the Receivership is at a stalemate.

**I Cannot Function as Receiver Unless the Fraudulent Transfer Action Is Stayed and I Am Permitted by this Court to Use Receivership Property to Benefit the Receivership Estate**

23. I cannot function as the Receiver if I cannot use the Receivership Entities' assets to make expenditures on their behalf. Under the current situation, I cannot pay for basic expenses such as rent or utilities; I cannot consummate transactions that are needed to protect the Receivership Entities; and I cannot use Receivership Property to pay for counsel without taking the risk that the Bankruptcy Litigation Trustee will claim that I have violated the Bankruptcy Court TRO.

24. The payments that the Bankruptcy Litigation Trustee has refused to approve include the following urgently necessary payments, each of which I have determined is in the best interest of the Receivership Estate. The Bankruptcy Litigation Trustee's counsel has offered no reason to me for refusing to approve these payments other than the Bankruptcy Litigation Trustee's desire to obtain security for his unsecured claim:

- **Bank Loan** – a \$118,806 quarterly interest payment due to a bank that made a \$7 million loan to PPCO secured by all of PPCO's assets. This loan is currently in default and PPCO is incurring interest at the default rate of 10 7/8 %. PPCO is currently in discussions with the bank to enter into a forbearance agreement whereby

(among other things) interest would return to the 5 7/8 % contract rate. I believe that PPCO's ability to enter into the forbearance agreement, which I believe to be in PPCO's best interests, will be at risk if PPCO does not make this interest payment immediately.

- **Litigation Settlement** – \$215,000 to settle a litigation brought against PPCO, a PPCO subsidiary and others on terms that I believe are extremely advantageous. The settlement will be paid by a third party using funds advanced by a Receivership Entity to the third party that the Receivership Entity is already contractually required to advance to that third party. Thus, the settlement will be at no real cost to the Receivership Estate. Moreover, a Receivership Entity has a significant equity interest in the third party so a further investment in that entity will ultimately redound to the benefit of the Receivership Estate. I am concerned that the opportunity to settle the litigation on these terms, which I regard as extremely favorable for the Receivership Entities, will be lost unless I can consummate the settlement immediately.
- **Patent Litigation Funding** – a \$600,000 payment to a law firm to part-pay fees necessary to maintain the value of a litigation funding investment made by Hamilton Capital LLC (“Hamilton”), which is 99% owned by PPCO. Hamilton is contractually obligated to fund the legal fees of the plaintiff in a potentially lucrative patent litigation. Hamilton's ability to share in the upside of the litigation will be imperiled if it defaults on its obligation to pay fees. Litigation financing arrangements are a significant category of portfolio investments of PPCO and maintaining contractual commitments in these situations is essential to preserve Receivership Property. I believe Hamilton is in imminent danger of being declared in default and that it is imperative to make this payment to preserve the value of Hamilton's interest in the

patent litigation. Based on the information that has been given to me by Hamilton, I believe the return on this investment could be significant. I note that since my appointment, the Receivership Estate has benefitted from Hamilton investments. Indeed, most of the cash the Receivership Estate currently has comes from Hamilton investments.

- **Retainer for Bankruptcy Counsel** – One of the Receivership Entities has an investment in an entity which is in bankruptcy. That Entity retained a law firm to represent it in the bankruptcy case. However, the firm requires a \$75,000 retainer. Because the Receiver has not been able to pay that retainer, I am without legal representation in an ongoing bankruptcy proceeding concerning an entity in which a Receivership Entity made a significant investment.
- **Retainer to Pay Counsel for Lien Appeal** – One of the Receivership Entities has an interest in equipment worth approximately \$1.3 million. It needs to pay counsel \$55,000 in past due legal fees so that counsel will file appeal papers needed to remove a lien on that equipment. The appeal papers are due January 20. Because the Receiver has not been able to pay counsel, counsel has not yet commenced work on the appeal papers.
- **Payments to Counsel in Litigation Matters** – One of the Receivership Entities indirectly owns an entity which is currently in litigation. Former counsel's file would be very helpful relating to that litigation. However, former counsel will not release its files unless its bill is paid. The Receiver needs to make a retainer payment to new counsel to represent it in ongoing litigation, including bankruptcy litigation which is not currently stayed by the Receiver Order. The Bankruptcy Litigation Trustee has not approved the request to pay \$40,000 to former counsel, or \$60,000 to new

counsel.

25. I have determined that there are additional payments that I urgently need to make to protect the Receivership Estate in the next two weeks:

- **Basic Operating Expenses** – I need to pay the Receivership Entities' bills in for its basic operating expenses, including portfolio management. The items include rent, utilities, telephones, travel, IT, and the like. The basic operating expenses for the Receivership Entities were approximately \$70,000 in December, and I expect that they will be approximately \$93,000 in January (the \$23,000 increase is due to rent which the Receivership Entities did not pay in December). The Commission asked me to set up a website for investors. I have selected a vendor, but cannot pay it. I am being confronted with the need to make all sorts of unexpected expenditures on a daily basis. For example, on December 30, the firm that provides payroll services to the Receivership Entities unexpectedly terminated its contract. I am negotiating with a new payroll firm, but will need to pay a deposit which I expect will be in the neighborhood of \$150,000. All told, I need to pay approximately \$250,000 for these and other similar operational expenses in order to keep the Receivership Entities operational.
- **Life Insurance Premiums** – As discussed above, a Receivership Entity has an interest in a portfolio of life insurance policies. If the premiums on those policies are not timely paid, the value of those assets will be lost. I will need to pay \$345,203 in such premiums between January 14 and January 19.
- **D&O Policy** – I need to pay \$881,250 to an insurance carrier by January 19 for the premium for tail coverage on Platinum's D&O policy. Such coverage is necessary for me to persuade Platinum's current staff to remain with the company.

- **Barge Litigation** – I need to pay a law firm \$260,000 in connection with a litigation funding arrangement similar to the patent litigation investment described in ¶ 24 above. Hamilton entered into a litigation funding arrangement with respect to a claim by a municipality relating to damages to a barge during Hurricane Katrina. Hamilton is contractually obligated to fund the law firm’s fees, and Hamilton’s ability to share in the upside of the litigation funding arrangement will be imperiled if it defaults on the litigation funding arrangement.
- **Oil and Gas Investment** – A Receivership Entity has an interest in an oil and gas company. The company has been ordered by state regulators not to produce oil or conduct any substantial operations until work is done to remedy environmental issues. The regulator’s deadline to complete this work is imminent. An extension to the end of the month to complete this work has been requested but not yet granted. I need to pay approximately \$40,000 to do this work. If I do not make these payments the operation will shut down entirely, which will render the Receivership Entity incapable of either continuing to operate the property or selling it, resulting in the loss of the economic value of the investment.
- **Houlihan Lokey Retainer** – I intend to seek the approval of the Court to retain Houlihan Lokey, an investment advisory firm. Should the Court approve such a request, the firm will require a \$200,000 retainer. The firm will be engaged to assist me in developing an independent assessment of portfolio value for reporting purposes and to guide my decisions regarding disposition of assets. This is work that I believe must be done without delay.

26. There are a number of potentially significant business transactions on the horizon which may be critical to maximizing the value of the Receivership Estate. The Receivership



Entities hold a variety of investments. Some of the investments are equity interests in companies; some are debt instruments in companies. In some cases, the Receivership Entities are the sole or majority owners of companies with active businesses. Some of these businesses will likely require significant capital investments in order to maintain or increase their value for the benefit of the Receivership Estate.

27. The payments described in ¶¶ 24-25 and summarized in a budget attached hereto as *Exhibit J* are time-sensitive and I believe they are urgently required to preserve the value of the Receivership Estate. The Receivership Estate currently has almost \$13 million in cash. The payments I am seeking permission to make total approximately \$3.15 million. My counsel has reviewed these requests with the Commission, and the Commission supports my application to make the payments described herein. As discussed above, I expect that I will need to make other payments in the near future in order to preserve the value of the Receivership Estate, and may need to make further applications to this Court.

28. I am prepared to provide more detail about these or any of the other expenditures described herein to the Court *in camera* or under seal. I have been the Receiver for a very short time and in seeking to make the expenditures described herein and describing them to the Court I am relying, in part, on information provided by Platinum employees whose representations I have no reason to doubt. I and my team are continually conducting diligence and if circumstances change or if I learn of new facts indicating that any of these payments do not need to be made immediately, I will not make them.

29. Managing the affairs of the Receivership Entities is a complicated endeavor that requires me to make many decisions, often on a short time line. I cannot function if I need to negotiate every financial decision I need to make with the Bankruptcy Litigation Trustee, who represents but one of many creditors and claimants that the Receivership Entities have, or obtain

permission from the Black Elk bankruptcy court. Indeed, the uncertainty surrounding whether the Bankruptcy Litigation Trustee has approved a transaction and the need to obtain approvals (often requiring multiple discussions and submission of documents) has been a serious distraction for the Receivership Entities' staff, which has been significantly reduced in size as a result of my efforts.

**The Bankruptcy Court TRO Is Not Needed Given the Appointment of a Receiver**

30. I believe that the Receivership Entities have significant assets but they are not liquid. The Bankruptcy Court TRO's freeze on the Receivership Entities' liquid assets prevents me from maximizing the value of the Receivership Entities' illiquid assets. In the long run, maximizing the Receivership Estate will redound to the benefit of all creditors and investors, including Black Elk. However, given nature of the assets belonging to the Receivership Entities, expenditures are necessary to maintain and ultimately increase the value of those assets.

31. While there was reason to be concerned about the dissipation of assets when the Receivership Entities were run by the individuals who have been indicted, since my appointment as Receiver, I terminated the employment of the individuals who had been indicted. My appointment insures that there will be no dissipation of assets or use of assets for improper purposes—the concern underlying the Bankruptcy Litigation Trustee's application for injunctive relief. My appointment also insures that the Receivership Property will be marshalled for the benefit of *all* creditors and *all* investors. By contrast, the Bankruptcy Litigation Trustee is only concerned about one group of creditors—those with claims against Black Elk.

**All Ancillary Litigation Should Be Stayed Subject to the Terms of the Receiver Order**

32. But for the handwritten addenda to ¶ 25 of the Receiver Order and Section IX of the Platinum TRO, all civil litigation involving the Receivership Entities or Receivership Property would be stayed. This makes sense, as the need to participate in litigation and provide

discovery puts a burden on me as the Receiver. The Bankruptcy Litigation Trustee is pressing forward with discovery in the Fraudulent Transfer Action, including seeking document production from the Receivership Entities. In addition, the preliminary injunction hearing on the Bankruptcy Court TRO is scheduled for January 26. I understand that unless the Fraudulent Transfer Action is stayed, I will have to be deposed during the week of January 16 in order to testify in opposition to the motion at the January 26 hearing. I need time to investigate the claims in the Fraudulent Transfer Action and determine what position to take in litigation. For example, I need time to consider whether I should accept the Bankruptcy Litigation Trustee's invitation to enter into settlement discussions. Modifying the Receiver Order to delete the handwritten addendum will give me time to consider how best to proceed in the Fraudulent Transfer Action and any other litigation in bankruptcy court.

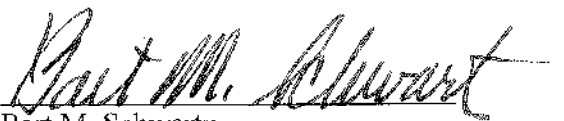
33. My proposed counsel in this matter (Alan Levine and Celia Goldwag Barenholtz of Cooley LLP) spoke to Mr. Brown, counsel for the Platinum TRO Defendants, on January 3. As a result of their conversation with him, it is my understanding that the handwritten addendum was added at his suggestion in the belief that it would be in the best interests of the Receivership Entities not to have bankruptcy proceedings stayed. Mr. Brown did not mean to restrict my power to carry out my mandate in accordance with the terms of the Receiver Order, and told my counsel that the Platinum TRO Defendants would consent to an application to omit the handwritten bankruptcy addendum from the Receiver Order.

34. I expect to be making applications to the Court, with the consent of the Platinum TRO Defendants, to expand the number of Receivership Entities, to lift the stay of litigation in certain matters where Receivership Entities are the plaintiffs, and for other relief. Given the urgency of the requested relief, however, I am joining with the Commission in asking this Court to immediately delete the handwritten portions of ¶ 25 of the Receiver Order and Section IX of

the Platinum TRO, and permit me to expend Receivership funds as described in ¶¶ 24-25.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 9, 2017  
New York, New York

  
Bart M. Schwartz