

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
Plaintiff,	:
-v-	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
Defendants.	:
-----X	

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

DECLARATION OF MELANIE L. CYGANOWSKI

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this Declaration in my capacity as the duly appointed Receiver (the “*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 (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, and Platinum Partners Liquid Opportunity Fund (USA) L.P. (the “*Receivership Entities*”), in connection with the motion (the “*Motion*”) for an order approving the Stipulation and [Proposed] Order Regarding Settlement Between the Receiver and Heartland Bank, attached hereto as Exhibit 1 (the “*Settlement Stipulation*”).

2. Attached hereto under Exhibit 1 are oppositions to the Motion that were timely delivered to my or my counsel’s e-mail address from purported parties in interest other than

parties named in the caption, namely, (i) Bankers Consec Life Insurance Company and Washington National Insurance Company and (ii) Senior Health Insurance Company of Pennsylvania.

I declare under penalty of perjury that the foregoing is true and correct.

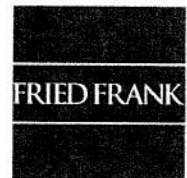
Executed this 23rd day of August, 2017, at New York, NY.

Melanie L. Cyganowski
Melanie L. Cyganowski

EXHIBIT 1

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August 22, 2017

Otterbourg P.C.
230 Park Avenue
New York, NY 10169
Attn: Adam C. Silverstein, Esq.

Re: *Securities and Exchange Commission v. Platinum Management (NY) LLC, et al.*,
Case No. 16-cv-6848 (EDNY)

Dear Adam,

This law firm represents Bankers Conesco Life Insurance Company ("BCLIC") and Washington National Insurance Company ("WNIC"). Reference is made to the pleadings regarding that certain Stipulation and [Proposed] Order Regarding Settlement Between the Receiver and Heartland Bank (the "Motion") filed in the above-referenced action. Pursuant to the Notice of Motion, filed at docket 242 on August 15, 2017, any opposition to the Motion must be made in writing, and for non-parties, electronically mailed to you as counsel for the Receiver so as to be received no later than August 22, 2017.¹

As you are aware, BCLIC and WNIC are beneficiaries as lenders under certain secured Notes with Platinum Partners Credit Opportunities Master Fund LP.² The Notes have been

¹ We note that the "protocol" for non-parties to address the Court with respect to matters such as the Motion has not yet been proposed by the Receiver or approved by the Court, and we take no position by this letter with respect to the same. However, we request that the Receiver timely share this opposition/objection with the Court as appropriate.

² Reference is further made to (i) the Note Purchase Agreement, dated as of March 21, 2016 (as the same has been and may further be amended, restated, supplemented or modified from time to time, the "Purchase Agreement"), by and among Platinum Partners Credit Opportunities Master Fund LP, a Delaware limited partnership ("Borrower"), each of the purchasers named in the Purchase Agreement or which thereafter becomes a party thereto (the "Investors") and BAM Administrative Services, LLC, as agent for Investors ("Agent"); (ii) the Notes (as defined in the Purchase Agreement) issued pursuant to the Purchase Agreement (as the same have been and may further be amended, restated, supplemented or modified from time to time, the "Notes"); (iii) the Amended and Restated Master Security Agreement, dated as of March

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accelerated pursuant to the Acceleration Letter, and the Notes have not yet been repaid by Borrower.³

BCLIC and WNIC appreciate that the Receiver has begun to focus on the repayment of Borrower's secured indebtedness, including the indebtedness that is the subject of the present Motion. However, BCLIC and WNIC lack sufficient information to evaluate the merits of the proposed settlement and are not privy to any holistic approach or strategy being employed by the Receiver with respect to repayment of Borrower's indebtedness. As a result, BCLIC and WNIC are constrained at this time to object to the relief sought by the Motion. BCLIC and WNIC's preliminary objections concern both lack of process and lack of information.

- **Lack of Process.** As set forth in the Receiver's Initial Status Report to the Court, filed at docket 237 on August 10, 2017 (the "Status Report"), the Receiver will not be filing the Prior Receiver's Wind Down Plan with the Court. While understandable given the short tenure of the new Receiver, an alternative plan detailing the Receiver's proposal regarding same has also yet to be filed, and a claims process (whether formal or informal) has yet to be commenced.

BCLIC and WNIC are concerned that the claims that are the subject of the Motion are being dealt with outside of such a formal process and on a one-off basis, and the Motion does not appear to provide any rationale or basis for same. Further, there do not appear to be any urgent circumstances that dictate the approval of the Motion at this time. Accordingly, we believe that the Motion should not be approved until the Court and interested parties – including BCLIC and WNIC – have had the opportunity to understand more about the Receiver's approach with respect to these topics. At a minimum, the Motion should not be approved on merely seven (7) days' and insufficiently-detailed notice to the Court and the various interested parties.

- **Lack of Information.** The Status Report states that "[a]s a general matter ... the Receiver has not found support for the values reflected on Platinum's books or for certain early indications of value in the Receivership." The Status Report also states that "[a]t this time, until a more thorough review is completed, the Receiver is only making

21, 2016, between the Borrower and the Agent (as the same has been and may further be amended, restated, supplemented or modified from time to time, the "Security Agreement"); (iv) the Subsidiary Guaranty, dated as of March 21, 2016 (as the same has been and may further be amended, restated, supplemented or modified from time to time, the "Guaranty") by the Guarantors (as defined in the Guaranty) in favor of the Creditor Parties (as defined in the Guaranty); (v) the other Related Agreements (as defined in the Purchase Agreement); (vi) the Post-Closing Letter, dated as of March 21, 2016 by and between the Borrower, the Investors and the Agent (as the same has been and may further be amended, restated, supplemented or modified from time to time, the "Post-Closing Letter"); (vii) the Reservation of Rights Letter, dated as of October 21, 2016 (as the same has been and may further be amended, restated, supplemented or modified from time to time, the "ROR Letter"); and (viii) the Notice of Acceleration, dated as of November 18, 2016 (the "Acceleration Letter"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the documents listed in (i) through (viii) above (collectively, the "Documents"), as applicable.

³ BCLIC and WNIC reserve all of their rights, remedies, and claims with respect to same.

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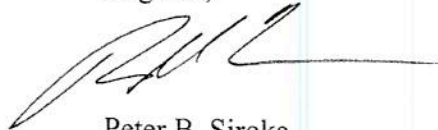
payments that are necessary to maintain or preserve the value of an asset (*e.g.*, lease payment, premium payment on a life insurance policy, etc.).” Less than one week after the filing of the Status Report, the present Motion was filed, seeking to make a distribution of over \$6 million in Receivership assets.

Given the concerns raised by the Receiver in the Status Report, it is reasonable for the Court and interested parties to be provided with further information in order to determine whether the settlement contemplated by the Motion is in the best interests of the Receivership. To our knowledge, neither the Court nor other interested parties, including BCLIC and WNIC, have been provided with a current, detailed accounting of the Receivership’s assets, nor has a copy of the 13-Week Forecast (as described in the Status Report) been filed with the Court or provided to such parties. In addition, as a claims process has not yet been commenced, we are unable to determine whether the Receiver is in a position to have conducted a thorough review of all secured and other claims that may be asserted against the Receivership.

While a discounted payoff amount on the notes that are the subject of the Motion may possibly inure to the benefit of the Receivership’s other creditors, a 15% discount for prompt payment may or may not be a “good deal” for the Receivership depending upon the current valuation of the Receivership’s cash and non-cash assets, the status and outlook with respect to realizing value from non-cash assets, and the totality of the claims that may be asserted against the Receivership estate. Such information, which has not yet been provided to the Court, necessarily has a material impact on whether or not the Court should approve the Motion.

To the extent that you have any questions with respect to BCLIC and WNIC’s position on the instant Motion or would like to discuss, please do let us know, as we would be pleased to meet with you to consensually discuss and attempt to resolve the foregoing issues and concerns. On a related note, while not directly concerning the instant Motion, to the extent that the Receiver is now focusing on reconciling claims and making distributions, BCLIC and WNIC look forward to receiving more information from the Receiver regarding the distributions that they are entitled to from the Receivership estate, as well as the distributions themselves. In the absence of any formal process that has been established, representatives of BCLIC and WNIC would be pleased to discuss same with the Receiver and the Receiver’s professional team at their convenience.

Regards,



Peter B. Siroka

Counsel for BCLIC and WNIC



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August 22, 2017

Via E-mail

(platinumreceiver@otterbourg.com; mcyganowski@otterbourg.com)
Hon. Melanie L. Cyganowski
Court Appointed Receiver
for Platinum Partners Credit Opportunities Fund, L.P. et al.
Otterbourg P.C.
230 Park Avenue
New York, New York 10169

Re: *Securities and Exchange Commission v. Platinum Management (NY) LLC et al.*

Dear Ms. Cyganowski:

We are counsel to Senior Health Insurance Company of Pennsylvania ("**SHIP**"). SHIP is an investor in both secured debt and equity issued by Platinum Partners Credit Opportunities Fund, L.P., ("**PPCO**"), as well as a secured creditor in respect of other assets that are being managed by PPCO.

We are writing to express our preliminary objection to the settlement proposed pursuant to the Stipulation and [Proposed] Order Regarding Settlement between Receiver and Heartland Bank ("**Heartland**") filed on August 15, 2017 in the matter captioned above (the "**Proposed Settlement**").

The Receiver's Initial Status Report to the Court dated August 10, 2017 (the "**Report**"), in which the Receiver described its limited activities to date, and noted that "until a more thorough review is completed, the Receiver is only making payments that are necessary to maintain or preserve the value of an asset (e.g., lease payment, premium payment on a life insurance policy, etc.)." Report, p. 8. Nonetheless, according to the recitals in the Proposed Settlement, PPCO made an interest payment to Heartland on August 11, 2017 in an amount equal to all outstanding interest then due and payable under the relevant loan documents and now proposes a settlement with Heartland that, in essence, requires PPCO to pay Heartland 85% of the purportedly \$6,750,000 outstanding principal amount.

We are concerned that, among other things, (i) PPCO is paying certain secured creditors ahead of others; (ii) the Proposed Settlement is being conducted hastily, without sufficient information regarding the value of the assets in the Receivership, and in contravention to the Receiver's statement in the Report; (iii) the Proposed Settlement could prejudice the rights and



August 22, 2017
Page 2

remedies of SHIP and other creditors and parties in interest to assets in the Receivership, and could advantage one creditor over other similarly situated creditors; (iv) SHIP lacks sufficient information regarding the value of the assets in the Receivership in order to assess the fairness of the Proposed Settlement; (v) the Receivership may lack available funds to pay the amount that would be payable under the Proposed Settlement without compromising other obligations; and (vi) the Receiver caused PPCO to pay Heartland all outstanding interest then due and payable when PPCO has not made any interest (or principal) payments under the defaulted secured loans made by SHIP and other Purchasers under the Note Purchase Agreement dated as of March 21, 2016 among PPCO, the Purchasers party thereto, and BAM Administrative Services, as Agent.

In light of the above, we request that the Receiver defer the Proposed Settlement, and any further payments to Heartland, at least until after such time that SHIP has been provided sufficient information to evaluate the merits of the Proposed Settlement and express an informed viewpoint to the Receiver. Nothing contained herein shall be construed and a waiver, limitation or modification of any of SHIP's rights and remedies, all of which are fully and expressly reserved.

Very truly yours,

DLA PIPER LLP (US)

A handwritten signature in blue ink, appearing to read 'Marc A. Horwitz', written over a light blue circular stamp.

Marc A. Horwitz

MAH/mm