

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
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Plaintiff,	:
	:
-v-	:
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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.	:
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No. 16-cv-6848 (DLI)(VMS)

REPLY 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 Reply Declaration in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCOMF*”), 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. (collectively, the “*Receivership Entities*”), in further support of the motion (the “*Motion*”) for an order approving the Stipulation and [Proposed] Order Regarding Settlement Between the Receiver and Heartland Bank (the “*Settlement Stipulation*”).

2. None of the parties to this action oppose the Motion. (See Docket Nos. 246-52.) Rather, the only opposition to the Motion has been received from three non-parties, Bankers

Conseco Life Insurance Company (“**BCLIC**”), Washington National Insurance Company (“**WNIC**”), and Senior Health Insurance Company of Pennsylvania (“**SHIP**,” and collectively, the “**Objectors**” or “**Noteholders**”), who claim to hold certain secured notes issued by PPCOMF (the “**Notes**”). (See Docket No. 253.) My response to the Objectors’ opposition follows:

3. The Objectors do not dispute any of the critical grounds for approving the Motion: (i) the law recognizes and enforces the property rights of parties having perfected security interests, such as Heartland Bank (“**Heartland**”), even in a SEC receivership; (ii) Heartland possesses a perfected, first priority lien on all of PPCOMF’s assets in order to secure debt that currently exceeds \$7 million (the “**Loan**”); (iii) absent the proposed settlement, when the Loan comes due one week from today, on August 31, 2017, the Receiver either would have to pay off the Loan in full, including the full principal balance and default interest, *or* Heartland would be entitled to seek to foreclose upon any and all of PPCOMF’s assets in order to recover the outstanding balance due under the Loan, all while the Receivership estate incurs fees and expenses attempting to oppose Heartland and Heartland continues to accrue default interest and expenses; and (iv) the proposed settlement, if approved, would enable the Receiver to save the Receivership estate over \$1.2 million by virtue of Heartland’s waiver of 15% of the principal balance and all default interest, while, at the same time, preserving any claims the Receivership estate may have in the event that further investigation reveals that the Loan, or payments thereunder, were fraudulent.

4. Instead, the Objectors’ opposition largely boils down to their underlying concern that if the Receivership estate pays off the Loan (even on the discounted basis that I have negotiated), there may not be sufficient funds available to me to later pay their Notes, which purportedly also are secured by a lien on PPCOMF’s assets. (See, e.g., Docket No. 253, Letter

from Marc A. Horowitz, Esq., dated August 22, 2017 (“*SHIP Ltr.*”), at pp. 1-2.) The Noteholders’ attempt to draw an equivalency between the Loan and their Notes, and thereby use their Notes as grounds for objecting to the discounted pay off of the Loan, is unavailing, for at least the following reasons:

(a) *First*, regardless of the enforceability of any lien securing the Notes, our investigation to date reveals that any lien on PPCOMF’s assets associated with the Notes is junior to the lien granted to Heartland, and, thus, there is no equivalency. Under any circumstance, Heartland is entitled to be paid first, before other creditors and before investors, and the Noteholders do not assert otherwise. Thus, regardless of the existence of the Notes, Heartland is entitled to be paid, and the proposed settlement would result in a substantial discount of Heartlands’ payoff, thereby saving the estate over \$1.2 million from which all other creditors and investors may benefit, including the Noteholders;

(b) *Second*, under the terms of the instruments governing the Notes referenced by the Objectors, it is the Noteholders’ Agent, BAM Administrative Services, LLC (“*BAM*”), not the Noteholders, to which PPCOMF purported to grant a security interest in all of its assets (for the ratable benefit of all noteholders). Consequently, BAM purportedly has the exclusive right to exercise the security interests securing the Notes, and BAM has *not* objected to the Motion; and

(c) *Third*, the notes purchase in which BCLIC, WNIC and SHIP participated is one of a number of transactions between and amongst Receivership Entities, on the one hand, and Beechwood Re Ltd. and its affiliates, including BAM (collectively, “*Beechwood*”), on the other, that I understand may be suspect and require scrutiny. Until I have investigated and have an understanding of the *bona fides*, if any, of the Beechwood transactions, including the issuance of

the Notes, I have no intention of paying Receivership funds to any party on account of such transactions.

5. For all of these reasons, the Noteholders' concerns about when and to what extent they will be paid on their Notes are irrelevant to the Motion, and, respectfully, provide no basis for rejecting the Settlement Stipulation, which would save the Receivership estate over \$1.2 million (in addition to avoiding the expenditure of legal fees litigating with Heartland).

6. Not only does the Objectors' underlying concern of when and to what extent their Notes will be paid not provide a basis for denying the Motion, but the specific grounds for opposing the Motion articulated in their counsels' letters also are unavailing. The Objectors assert, for example, that Heartland should not be paid on a "one-off basis," "outside of . . . a formal process" and in the absence of a "holistic approach or strategy . . . employed by the Receiver with respect to repayment of the Borrower's indebtedness," and that "there do not appear to be any urgent circumstances that dictate the approval of the Motion." (Docket No. 253, Letter from Peter B. Siroka, Esq. dated August 22, 2017 ("*CBLIC/WNIC Ltr.*"), at p.2.) This argument misses the mark. This is not a bankruptcy case where a confirmed plan of liquidation or formal process typically is required in order to pay a creditor. In fact, even in a bankruptcy case, a formal plan is not required in order to pay off an undisputedly perfected, senior secured creditor. Nothing in the Amended Order Appointing Receiver or the [Proposed] Second Amended Order Appointing Receiver prevents me from paying Heartland now. Furthermore, there *is* an urgency. Heartland indicated that if the Settlement Stipulation were not promptly submitted and approved, it would not provide any discount to the Receivership estate, and would seek to foreclose, or assign its rights to another lender that would seek to foreclose, on PPCOMF's assets in order to pay the full amount of the outstanding debt, which only will

continue to grow and thereby diminish the amount of Receivership funds available to pay other creditors and investors.

7. The Objectors also assert that they do not have sufficient information 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” and whether the Settlement Stipulation truly is a “good deal.” (BCLIC/WNIC Ltr., at p. 3.) This objection also is off-based. As mentioned above, I have concluded, based on my professionals’ investigation, that Heartland has a perfected, first-priority lien that comes ahead of all other creditors and investors. I did not need, and do not need, to conduct a “thorough review of all secured and other claims” to reach that conclusion, which the Noteholders do not dispute. Additionally, I believe that my original Declaration established the basis for exercising my business judgment for entering into, and seeking approval of, the Settlement Stipulation, and the Objectors do not dispute any of the grounds for approving the Settlement Stipulation that I have cited. Respectfully, the Objectors are not entitled to discovery in order to second guess the business judgment of the Receiver.

8. For all of these reasons, and those set forth in my moving papers, I respectfully submit that the Settlement Stipulation is in the best interests of the Receivership estate and that the Court should approve the Settlement Stipulation at its earliest opportunity.

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

Executed this 24th day of August, 2017, at New York, NY.

Melanie L. Cyganowski
Melanie L. Cyganowski