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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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16-cv-06848-DLI-VMS

NOTICE OF MOTION
TO ADMIT COUNSEL
PRO HAC VICE
CRAIG SMYSEF


-----X

TO: Opposing Counsel
Andrew M. Calamari
200 Vesey Str, Ste. 400 NY, NY

PLEASE TAKE NOTICE that upon the annexed affidavit of movant in support of this motion and the Certificate(s) of Good Standing annexed thereto, we will move this Court pursuant to Rule 1.3(c) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York for an Order allowing the admission of movant, a member of the firm of Smyser Kaplan & Veselka, LLP and a member in good standing of the Bar of the State of Texas, as attorney pro hac vice to argue or try this case in whole or in part as counsel for ~~Plaintiff/Defendant~~ 3rd Party Richard Schmidt, Litigation Trustee.

There are no pending disciplinary proceedings against me in any State or Federal court. (If there are any disciplinary proceedings, describe them.)

Respectfully submitted,



Dated: January 10, 2017

Signature of Movant
Firm Name Smyser Kaplan & Veselka, LLP
Address 700 Louisiana Street, Suite 2300
Houston, TX 77002
Email csmyser@skv.com
Phone 713 221-2330

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE §
COMMISSION, §
Plaintiff, §

vs. §

§ CIVIL ACTION NO. 16-cv-6848

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. §

AFFIDAVIT OF CRAIG SMYSER
IN SUPPORT OF NOTICE OF MOTION
TO ADMIT COUNSEL PRO HAC VICE

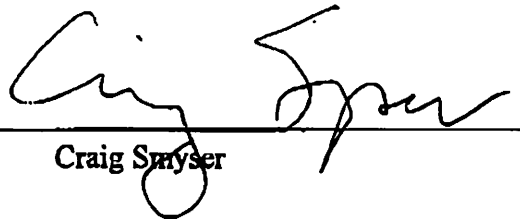
Craig Smyser, being duly sworn, hereby deposes and says as follows:

1. I am a partner with the law firm of Smyser Kaplan & Veselka, LLP. ("SKV").
2. I submit this affidavit in support of my motion for admission to practice *pro hac vice* in the above captioned matter.
3. I am a member in good standing of the Bar of the State of Texas. Because this motion is being submitted on an emergency basis, I have not yet secured a current Certificate of Good Standing from the State Bar of Texas but will provide such certificate to the Court as soon as I can procure it.
4. I have not been convicted of a felony.
5. I have not been censured, suspended, disbarred or denied admission or readmission by any court.
6. Another attorney at SKV, Tyler Doyle, is a member in good standing of the Bar of the State of New York and of the United States District Court for the Southern District of New York. As of this affidavit's execution, Mr. Doyle is in trial in another matter. However, he has initiated the process for securing admission to practice in the Eastern District of New York pursuant to the expedited process specified in the Local Rules of the United States District

Courts for the Southern and Eastern Districts of New York, effective December 19, 2016. I anticipate this process will be completed in the next few days.

7. Wherefore your affiant respectfully submits that he be permitted to appear and advocate *pro hac vice* in this one case for Non-Party Richard Schmidt, Trustee of the Black Elk Litigation Trust.

Dated: January 10, 2017



Craig Smyser

SMYSER KAPLAN & VESELKA, L.L.P.

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January 10, 2017

Chief Judge Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: SEC v. Platinum Management (NY) LLC et al; Civil Case No. 16-cv-6848
(DLI)(VMS)

To the Honorable Court,

I write as counsel for the Black Elk Litigation Trustee Richard Schmidt in response to filings made yesterday, January 9, 2017, by the Securities and Exchange Commission and the Receiver in the above-referenced matter seeking a Show Cause and Temporary Restraining Order. Because the Trustee is in the process of securing permission for its counsel to file electronically in the Eastern District of New York,¹ counsel submits this letter in partial response to yesterday's filings.

At 4:36 p.m. Eastern Time yesterday, counsel for the Receiver emailed the Trustee a copy of the pleadings and exhibits, including a Memorandum of Law, in which the SEC and the Receiver argued for a Show Cause Order and Temporary Restraining Order to stay a long-standing Adversary Proceeding against the two Platinum entities that the Receiver now controls. In that proceeding, commenced in Bankruptcy Court in the Southern District of Texas, the Court found that documents demonstrated that Platinum entities now under receivership had "illegally siphoned off" funds from Black Elk Energy Offshore Operations, LLC ("Black Elk") to various Platinum entities and engaged in "a pattern of fraud and abuse."

Since the Bankruptcy Court granted its TRO on October 26, 2016 and beginning on November 3, 2016, the Trustee has worked with the Securities and Exchange Commission and the Department of Justice, agreeing with requests from both agencies to waive the Trustee's attorney-client privilege to aid the agencies in their own pursuit of Platinum and with requests to

¹ Tyler Doyle, a member of Smyser Kaplan & Veselka, is admitted to practice in the Southern District of New York and has initiated the process to seek expedited admission to practice in the Eastern District under the Court Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, effective December 19, 2016. However, Mr. Doyle was in trial yesterday and today, and completion of the process will likely take an additional few days.

Chief Judge Dora L. Irizarry

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provide the agencies with certain documents. Both agencies have taken action in either a Complaint or in indictments that reflect substantial agreement with, if not reliance on, the allegations in the Trustee's pre-existing Complaint. In fact, the SEC Complaint that led to the Receivership here devotes 10 pages to the Black Elk fraudulent transfer scheme, an action that is tantamount to estopping the SEC to deny the truth of the allegations in the Trustee's Complaint. The Trustee's Complaint included details regarding the years that have elapsed since oil service companies and other ordinary trade creditors were induced by these Platinum entities to continue working for Black Elk on the promise that they would be paid by the funds that Platinum instead siphoned off for themselves and related entities. The SEC relied on the allegations in the Trustee's Complaint in support of its own, as well as exhibits and deposition transcripts the Trustee voluntarily provided in support of its motion to appoint the Receiver. It is thus no small irony that the SEC and Receiver now insist that the Trustee, on whose efforts the SEC relied in seeking appointment of the Receiver in the first instance, is no somehow "interfering" with the Receiver's authority.

The purpose of this letter and this background is (1) to explain that the Trustee had no warning from either the SEC or the Receiver that this relief would be sought or that either had *any* complaint with the Trustee's actions in connection with the Trustee's review and approval of expenses (not even Platinum has ever sought relief from the Bankruptcy Court based on the Trustee's decision on expenses, despite an explicit invitation in the TRO to do so if Platinum disagreed with the decisions); (2) to explain that the Trustee's counsel is in the process of securing the ability to file a response to the Memorandum of Law and pleadings seeking the Show Cause Order and Temporary Restraining Order,² and (3) to request that the Court either summarily deny the request or at least defer ruling on the request until the parties fully brief the matter.

Even should the Court grant the Show Cause Order, the Trustee requests that the Court not enter the requested Temporary Restraining Order to stay the Trustee's pre-existing litigation in the Southern District of Texas bankruptcy court or to restrain the Trustee "from enforcing the Bankruptcy TRO in the Fraudulent Transfer Action", the effect of which Order would be to enjoin another federal court from enforcing (the Trustee does not enforce a court order) its own TRO, which has been in effect for more than three months without legal challenge and which has been extended by agreement four times.

The Trustee has numerous factual disputes with statements in the pleadings and declarations, including the lynchpin factual statement that the Trustee has interfered in any way with the Receiver's function or has stated that the Trustee "will no longer approve any expenditures" unless the Receiver agrees to provide security for Black Elk's fraudulent transfer claim. The Trustee has never stated in writing or verbally that he refuses to approve future expenses. Instead, I as counsel for the Trustee stated in a call with the Receiver that the Trustee would wait to approve or reject expenses until after receiving a response from the Receiver regarding the Trustee's security proposal, a proposal the Receiver acknowledged he had not read

² The Trustee represents a bankruptcy trust that has only extremely limited assets. It is therefore not practicable for the Trustee to retain separate local counsel in the Eastern District of New York, and doing so on such short notice would be impracticable in any event, given the necessity of clearing conflicts prior to an engagement.

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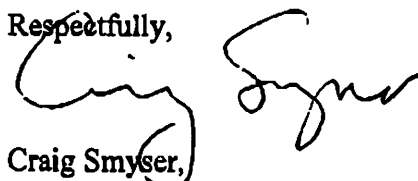
and to which he acknowledged that he owed the Trustee a response. This was in keeping with the provisions of orders extending the Bankruptcy TRO, which—at the insistence of Platinum (while the Receiver was serving as Platinum’s oversight advisor)—required the parties “to make a good faith effort to reach an agreement regarding the provision . . . of security acceptable to the Trustee in order to obviate the need for the Temporary Restraining Order” Doc. No. 1-79, at 2. Instead of responding to the Trustee’s proposal, notwithstanding a commitment to do so “within a few days,” the Receiver and the SEC filed this request for Emergency Relief.

Moreover, the SEC acknowledges in its Complaint before this Court that the money that is the subject of this dispute and the Bankruptcy TRO was stolen from Black Elk. Accordingly, it is property of the Black Elk bankruptcy estate and must be preserved for the benefit of Black Elk creditors. It is not, as the SEC and the Receiver argue, “receivership property” belonging to any Platinum entity that is under this Court’s exclusive jurisdiction. To the contrary, as property of the bankruptcy estate, it is property under the bankruptcy court’s exclusive jurisdiction.

Accordingly, the Trustee asks that the Court deny the Joint Motion for Modification of the Platinum TRO and Receiver Order – which the Court entered at the SEC’s request a little more than three weeks ago -- and for Emergency Relief. In the alternative, the Trustee requests that the Court deny the requested TRO and permit the Trustee to respond in due course to the requests for modification to the Receivership Order.

In the meantime, the Trustee emphasizes his willingness to continue to work with the Platinum Receivership entities and the Receiver to reach agreement on approval of Platinum’s requested expenses. And to the extent the Receiver is in any way dissatisfied with the cooperation the Trustee has at all time committed to provide, the Receiver’s interests are fully protected by the Bankruptcy TRO, which specified that the bankruptcy court “will consider motions to amend or vacate this order on an emergency basis”—an invitation of which Platinum and the Receiver have never availed themselves.

Respectfully,



Craig Smyser,
Counsel for Richard Schmidt,
Black Elk Litigation Trustee

cc: Andrew M. Calamari
Sanjay Wadhwa
Adam Grace
Kevin P. McGrath
Neal Jacobson
Danielle Sallah
Jess Velona
Attorneys for SEC

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DATE: January 10, 2017		
TO:	FAX #:	TELEPHONE #:
Judge Dora L. Irizarry Chambers	718 613-2156	
Courtroom Deputy Christy Carosella		718 613-2610
NUMBER OF PAGES (including this transmittal page): 8		
FROM: Craig Smyser	SENDER'S PHONE #: (713) 221-2330	
MATTER: SEC v. Platinum Management (NY) LLC et al; No. 16-6848		
MESSAGE: Pursuant to instructions to Mr. Smyser regarding filing of the attached, please find expedited Motion for Pro Hac Vice, Affidavit in Support and Letter Response to the Court. A courtesy hard copy is being sent to Chambers by overnight mail; counsel for the SEC and Receiver have been copied with these faxed papers.		

We are sending from a machine that is Group I, II, III compatible. Please check transmission after the last page. If this FAX transmission is illegible or you do not receive all pages, please call the sender at the number above.

If you wish to respond, use FAX #: (713) 221-2320.