

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

IN RE PLATINUM-BEECHWOOD LITIGATION,	X	
	:	Civil Action No.
	:	1:18-cv-06658

MELANIE L. CYGANOWSKI, AS RECEIVER FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (TE) LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL LTD., PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL (A) LTD., and PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (BL) LLC,	X	
	:	Civil Action No.
	:	1:18-cv-12018
Plaintiff,	:	
v.	:	
BEECHWOOD RE LTD., et al.,	:	

**JOINT OPPOSITION TO BANKERS CONSECO LIFE INSURANCE COMPANY  
AND WASHINGTON NATIONAL INSURANCE COMPANY'S MOTION  
TO ENFORCE STATE SECURITY STATUTES**

**PRELIMINARY STATEMENT**

Melanie L. Cyganowski, as Receiver (the “Receiver”), by and for the above-captioned plaintiffs, and Martin Trott and Christopher Smith, as the Joint Official Liquidators and Foreign Representatives (the “JOLS”) of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation), through their undersigned counsel, respectfully submit this Joint Opposition to Bankers Consec Life Insurance Company (“BCLIC”) and Washington National Insurance Company’s (“WNIC”) Motion to Enforce State Security Statutes (the “Motion”) [Consolidated Dkt. No. 435]. For the reasons set forth below, the Receiver and the JOLs respectfully request that the Court deny BCLIC/WNIC’s Motion in its entirety.

**ARGUMENT**

**I. BCLIC/WNIC’S REQUEST FOR ADDITIONAL SECURITY  
PURSUANT TO NY INS. LAW § 1231 AND INDIANA CODE  
§ 27-4-4-4(A)(1) & 2 IS AN ISSUE FOR THE BANKRUPTCY COURT**

On May 15, 2019, Beechwood Re filed a petition for recognition of its foreign liquidation proceedings and for Chapter 15 relief.<sup>1</sup> Following Beechwood Re’s petition for bankruptcy relief, BCLIC/WNIC’s request that the Court order Beechwood Re to post \$250 million as security for BCLIC/WNIC, in addition to the \$5 million letter of credit that BCLIC/WNIC already hold as security from Beechwood Re, is nothing more than an improper attempt by BCLIC/WNIC to place themselves at the front of the line of potential judgment creditors of Beechwood Re. As such, this Motion raises issues for the Chapter 15 proceeding.

The equitable principle underlying the Bankruptcy Code is that the assets of insolvent debtors should be equitably distributed among their creditors. In contrast, New York Insurance

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<sup>1</sup> *In re Beechwood Re*, 19-11560-mg (Bankr. S.D.N.Y), Dkt. No. 3.

Law § 1213 is primarily a long-arm statute, rooted in the Uniform Unauthorized Insurers Act. *In re Laitasalo*, 193 B.R. 187, 193 (Bankr. S.D.N.Y. 1996). Section 1213 should not be used where there is a pending bankruptcy proceeding to allow one creditor to gain a preference over other similarly situated creditors. *Id.* The Bankruptcy Code provides a flexible standard for addressing foreign bankruptcies and liquidations which raise problems not contemplated by New York's Insurance Law. *See id.* For example, in *In re Laitasalo*, the Bankruptcy Court held that:

The principle underlying both New York law and the Uniform Insurers Liquidation Act is that the assets of insolvent insurers and reinsurers should be equitably distributed among their creditors. It is philosophically inconsistent with New York Insurance Law that [debtor] should be required to post security to defend itself against the Kaiser's claim. In essence, that security would transform [Kaiser's] unsecured claim into a secured claim to the detriment of the other U.S. creditors who are solvent or insolvent insurance companies, some of which are being liquidated by state insurance commissioners. Kaiser, however, may continue the prosecution of her claim in the New York Supreme Court, without requiring the Kansa Companies to post security. The equities in this case, as well as applicable law, require that I maintain jurisdiction over these proceedings.

Here, unlike in *In re Laitasalo*, BCLIC and WNIC already hold a \$5 million letter of credit as security from Beechwood Re. Because BCLIC/WNIC's request for additional security is unquestionably an attempt to place themselves at the front of the line of other potential judgment creditors of Beechwood Re, it is an issue for the Chapter 15 proceeding.

The Receiver and the JOLs do note however, that the issue of Beechwood Re's (and that of any of its affiliated entities) liability to the Receiver and the JOLs, and the amounts of such liability, as well as all issues relating thereto (including, but not limited to, discovery), should be reserved for the jurisdiction of this Court, and any stay imposed by the Bankruptcy Court should not limit this Court's ability to continue to adjudicate these claims.

**II. THE NEW YORK INSURANCE ACT IS INAPPLICABLE TO THE ISSUES IN THIS CONSOLIDATED LITIGATION**

Further, the New York Insurance Act provisions cited by BCLIC/WNIC requiring the posting of security by foreign insurers, is wholly inapplicable to the types of claims at issue in this consolidated litigation. The statute's stated purpose is:

to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries *under certain insurance contracts*. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies.

N.Y. Ins. L. § 1213(a) (emphasis added). *See Curiale v. Ardra Ins. Co.*, 88 N.Y.2d 268, 275, 644 N.Y.S.2d 663, 667 N.E.2d 313 (1996) (noting that section 1213(c)(1) ensures that “[a]lien insurers [will] maintain sufficient funds in the [s]tate to satisfy any potential judgment arising from the policies of insurance (including reinsurance treaties) they issue”); *Quanta Specialty Lines Ins. Co. v. Investors Capital Corp.*, 2008 WL 1910503, \*6 (S.D.N.Y. April 30, 2008) (holding that the § 1213(c) right to security is only afforded to New York insureds in connection with their insurance policies); *Levin v. Intercontinental Cas. Ins. Co.*, 95 N.Y.2d 523, 526–27 (2000). The claims at issue in this consolidated litigation are not insurance policy disputes envisioned by the New York Legislature when crafting N.Y. Ins. Law. § 1213(c)(1).

**CONCLUSION**

For the foregoing reasons, the Receiver and the JOLs respectfully request that the Court deny, in its entirety, BCLIC/WNIC's Motion to Enforce State Security Statutes. Alternatively, should the Court grant the Motion, it should do so with a proviso that any funds ordered to be held as security be held in an escrow or similar fund which may only be released upon further

order of this Court, following notice to all parties and an opportunity to be heard.

Dated: New York, New York  
June 26, 2019

Respectfully submitted,

**OTTERBOURG P.C.**

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