

**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 (BMC)

**NOTICE OF MOTION OF MELANIE L. CYGANOWSKI, AS RECEIVER, FOR  
ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND PAYMENT OF  
LEITE, TOSTO E BARROS ADVOGADOS ASSOCIADOS**

**PLEASE TAKE NOTICE** that, upon the accompanying declaration and memorandum in support of motion by Melanie L. Cyganowski, as Receiver duly appointed by the Court (the “*Receiver*”) for 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 Receiver moves before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York, located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an Order Authorizing the Receiver to Retain and Pay Leite, Tosto E Barros Advogados Associados (the “*Motion*”).

**PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be (i) made in writing; (ii) if by a party, electronically filed with the District Court; (iii) if by a non-party, electronically mailed to the Receiver, at her e-mail address, [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com), so as to be actually received no later than January 19, 2018.

**PLEASE TAKE FURTHER NOTICE** that, in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion, without further hearing or notice.

Dated: January 5, 2018

OTTERBOURG P.C.

By: /s/Adam C. Silverstein  
Adam C. Silverstein  
A Member of the Firm  
230 Park Avenue  
New York, New York 10169  
Tel.: (212) 661-9100  
Fax: (212) 682-6104  
[asilverstein@otterbourg.com](mailto:asilverstein@otterbourg.com)

*Attorneys for Melanie L. Cyganowski, as Receiver*

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

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
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JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

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

**DECLARATION OF MELANIE L. CYGANOWSKI,  
IN SUPPORT OF RETENTION AND PAYMENT OF  
LEITE, TOSTO E BARROS ADVOGADOS ASSOCIADOS**

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 (“*PPCO*”), 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., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*”) and in support of my motion

(the “*Motion*”) for entry of an order authorizing the retention and payment of Leite, Tosto E Barros Advogados Associados (“*Leite*”).

2. On June 28, 2017, prior to my appointment, Bart M. Schwartz, Esq. (the “*Prior Receiver*”) filed a Letter Application for an Order Authorizing the Retention and Payment of Limited Scope Legal Professionals [Dkt. No. 183] (the “*Application*”), which included Leite. On November 15, 2017, I filed a declaration [Dkt. No. 281] (“*Limited Scope Professionals Declaration*”) in support of the Application recommending, in part, the retention and payment of the law firms previously employed by the Prior Receiver that I determined either (a) continued to be necessary to support the efforts to preserve and liquidate the assets of the Platinum estates or (b) were no longer necessary, but had previously provided services and should be paid for such services.

3. In my Limited Scope Professionals Declaration, I stated that the retention and payment of Leite was sought by the Prior Receiver to continue its representation of West Ventures, LLC (“*West Ventures*”), a wholly-owned subsidiary of PPCO in connection with Brazilian law, including, but not limited to, matters involving mining. West Ventures has an interest in a gold tailings mine in Brazil, which is commonly referred to as the Abdala project. Leite serves as litigation counsel in the jurisdiction where litigation involving PPCO’s mining interests are located.

4. According to the Application, the firm incurred post-receivership legal fees of \$3,896.78 through May 31, 2017, as well as expenses of \$2,021.30 for that same period. The Application sought authorization to pay the firm up to \$5,000 for the six months following May 31, 2017 as well as an unlimited 4% success fee. (Dkt. No. 183-16).

5. Because of the potential size of the success fee claimed by Leite, I was not yet prepared in my Limited Scope Professionals Declaration to recommend the retention and

payment of Leite. Rather, I stated that I was still communicating with the Leite firm regarding its application and the firm's fees and would supplement my Declaration as appropriate. An order approving the Application was entered by this Court on December 26, 2017. [Dkt. No. 294] Given my lack of a recommendation as to Leite in my Limited Scope Professionals Declaration, the Order was silent as to the retention of Leite.

6. Following the submission of my Limited Scope Professionals Declaration, at my direction, my counsel continued discussions with Leite to understand the nature and genesis of the proposed success fee. I also directed my counsel to inquire of other law firms who are either based in Brazil or are familiar with typical law firm fee structures in Brazil. Based on these discussions, my counsel and I learned that is not uncommon for retentions of this nature to include a success fee in addition to an hourly fee.

7. I have concluded that: (a) I continue to require the services of local Brazilian counsel to assist me with preserving and maximizing the value of Platinum's interest in the gold tailings project in Brazil; (b) Leite has been working on the engagement since 2014; (c) Leite is fully familiar with the legal issues associated with the gold tailings project and is best suited to continue the engagement because of its institutional knowledge; (d) Leite is still actively rendering services at my request; and (e) it would be inefficient to attempt to switch law firms at this time, even if I could find a new law firm willing to take on the engagement. In addition, any new law firm would likely require some form of success fee and Leite could continue to claim a trailing interest in the proceeds of any sale, which could potentially complicate the sale.

8. Accordingly, I determined to continue the retention of Leite, but sought a reduction of the success fee. My counsel engaged in discussions with Leite and, as a result of these negotiations, I have reached an agreement with Leite which I believe is in the best interests

of the receivership estates and reduces the success fee to an appropriate sum certain. The agreement, which is annexed hereto as **Exhibit A**, is summarized as follows:

- a. The current success fee provision will be deleted in its entirety;
- b. Following entry of an order approving the Application, Leite will be paid its outstanding hourly fees of \$12,156.26.
- c. Following entry of an order approving the Application, Leite will be paid an additional US\$125,000 (the “**Initial Lump Sum Payment**”);
- d. Thereafter, Leite will continue to be entitled to be paid, subject to the Receiver’s review of written invoices, up to an additional \$25,000 in hourly fees, without further order of this Court and hourly fees above \$25,000 subject to approval by this Court; and
- e. Leite shall be paid an additional US\$125,000 (the “**Final Lump Sum Payment**”) from the proceeds of a Court-approved sale of the Receivership’s interests in West Venture’s interests and rights (whether directly held, or through its Brazilian subsidiary, Sul Real XXXII Participacoes LTDA (“**Sul Real**”)), in the gold tailings dam located on the “Abdala” mine site owned by Reginaldo Luiz Ferreira De Almeida, located near Highway BR-070 in the municipality of Nossa Senhora do Livramento, State of Mato Grasso, Brazil, as evidenced by an Usufruct titled in Sul Real’s name, as well as the right to build, install and operate reprocessing operations on certain land located approximately 12 miles from the Abdala site.

9. While I cannot say with any certainty at this time what the ultimate sale price will be for the Abdala gold tailings mine, I believe that the payment of the Initial Lump Sum Payment and the Final Lump Sum Payment in lieu of the 4% success fee included in Leite’s original retention is a significant reduction in the overall amount that ultimately will be paid to Leite. It is my judgment that the retention of Leite and payment to the firm in accordance with the revised fee structure will (a) provide for the continued protection of West Venture’s legal interests in the Abdala project; and (b) will provide certainty and avoid any trailing claims to proceeds in connection with West Venture’s sale of its interests in Abdala.

10. For the reasons set forth herein, I respectfully request that the proposed order annexed hereto as **Exhibit B**, be entered in the form contained therein.

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

Executed this 3rd day of January, 2018, at New York, New York.

/s/ Melanie L. Cyganowski  
Melanie L. Cyganowski

# **EXHIBIT A**



**MELANIE L. CYGANOWSKI**  
Solely in her capacity as Receiver of certain  
Platinum Partners funds as more particularly set out in the Orders of the  
United States District Court for the Eastern District of New York  
(Civil Case No. 16-0148)

December 26, 2017

**VIA ELECTRONIC MAIL ONLY**

Leite Tosto e Barros Advogados  
Attn: Charles Isidoro Gruenberg, Esq.  
[charlesig@tostoadv.com](mailto:charlesig@tostoadv.com)  
Rue Dr. Renato Paes de Barros 1017, 5 andar  
Cap 04530 001  
Sao Paulo/SP Brazil

**Re: Supplement to Letter Dated October 29, 2014**

Dear Charles:

I write in my capacity as receiver (the "Receiver") for certain funds commonly referred to as Platinum Partners<sup>1</sup>, and in particular, with respect to a certain letter agreement dated October 29, 2014 (the "Original Letter Agreement") between Leite Tosto e Barros Advogados (the "Firm") and West Ventures, LLC ("West"), which is a wholly-owned subsidiary of one of the Receivership Entities, Platinum Partners Credit Opportunities Master Fund, L.P. ("PPCO MF").

By this supplement to the Original Letter Agreement (the "Supplement"), the Firm and the Receiver, on behalf of West and PPCO MF, agree as follows:

1. Paragraph 3(b) of the Original Letter Agreement is deleted in its entirety and replaced with the following:
  - a. Within five (5) business days of the complete execution of this Supplement, the Receiver shall file a declaration (the "Supplemental Declaration") with the United States District Court for the Eastern District of New York (the "Court"), in the case entitled, Securities and Exchange Commission v. Platinum Management (NY) LLC et al., Case No. 16-cv-6848(BMC)(VMS) (the "Case"); requesting that the Court approve the pending application to retain the Firm and pay the hourly charges it has incurred to date



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<sup>1</sup> The "Receivership Entities" are Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP ("PPCO"), 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.

US\$12,126.56, and will incur in the future, up to an additional US\$25,000, without having to make an additional application to the Court. The declaration will also request authority for the Receiver to make additional applications to the Court for payment of additional hourly fees to the Firm (the "Hourly Fee Application");

- b. In addition to the Hourly Fee Application, the Supplemental Declaration shall also seek authority from the Court for the Receiver to pay the Firm an additional US\$125,000 following the Court's approval of the Supplemental Declaration (the "Initial Lump Sum Payment"); and
  - c. In addition to the Hourly Fee Application and the Initial Lump Sum Payment, the Supplemental Declaration shall seek authority from the Court for the Receiver to pay the Firm a further US\$125,000 (the "Final Lump Sum Payment") from the proceeds of a Court-approved sale of the Receivership's interests in West's interests and rights (whether directly held, or through its Brazilian subsidiary, Sul Real XXXII Participacoes LTDA ("Sul Real")), in the gold tailings dam located on the "Abdala" mine site owned by Reginaldo Luiz Ferreira De Almeida, located near Highway BR-070 in the municipality of Nossa Senhora do Livramento, State of Mato Grasso, Brazil, as evidenced by an Usufruct titled in Sul Real's name, as well as the right to build, install and operate reprocessing operations on certain land located approximately 12 miles from the Abdala site ("West's Abdala Interests").
2. Upon the Firm's receipt of the Hourly Fee Application, the Initial Lump Sum Payment, and Final Lump Sum Payment, the Firm shall forever disclaim, release and waive any and all interests in West's Abdala Interests under both U.S. and Brazilian law, and shall complete any additional reasonable documentation requested by the Receiver to demonstrate the same, whether such documents be required for filing in the United States or Brazil.

Sincerely,

By:   
Name: Melanie L. Cyganowski  
Title: Receiver  
Company: West Ventures, LLC 



**ACCEPTED AND AGREED:**

Date: December *14* 2017

LEITE TOSTO E BARROS, ADVOGADOS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



Dr. Eduardo Maffia Queiroz Nobre  
OAB/SP 184.958



Paulo Guilherme de Mendonça Lopes  
OAB/SP 98.709

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

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

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

**[PROPOSED] ORDER  
AUTHORIZING THE  
RECEIVER’S APPLICATION  
TO RETAIN AND PAY  
LEITE, TOSTO E BARROS  
ADVOGADOS ASSOCIADOS**

Defendants. :  
-----X

Upon the Motion (the “*Motion*”) of Melanie L. Cyganowski, 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., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd for entry of an order authorizing the retention and payment of Leite, Tosto E Barros Advogados Associados (“*Leite*”), and upon the Memorandum and Declaration of Melanie L. Cyganowski In Support of the Motion (the “*Cyg. Declaration*”);

**NOW, THEREFORE**, after due deliberation and sufficient cause appearing therefor, it is hereby:

**ORDERED** that the Receiver is hereby authorized to retain and pay Leite in accordance with the following terms, all as more fully set forth in the agreement entered into between the Receiver and Leite, which is attached as Exhibit A to the Cyganowski Dec.:

1. Upon entry of this order, the Receiver may retain and pay Leite the hourly charges it has incurred to date, US\$12,126.56, and will incur in the future, up to an additional US\$25,000, without having to make an additional application to this Court (the “*Hourly Fees*”);
2. Upon entry of this order, the Receiver may pay Leite an additional US\$125,000 (the “*Initial Lump Sum Payment*”);
3. In addition, the Receiver may pay Leite a further US\$125,000 (the “*Final Lump Sum Payment*”) from the proceeds of a Court-approved sale of the Receivership’s interests in West’s interests and rights (whether directly held, or through its Brazilian subsidiary, Sul Real XXXII Participacoes LTDA (“*Sul Real*”), in the gold tailings dam located on the “Abdala” mine site owned by Reginaldo Luiz Ferreira De Almeida, located near Highway BR-070 in the municipality of Nossa Senhora do Livramento, State of Mato Grosso, Brazil, as evidenced by an Usufruct titled in Sul Real’s name, as well as the right to build, install and operate reprocessing operations on certain land located approximately 12 miles from the Abdala site (“*West’s Abdala Interests*”).
4. Upon Leite’s receipt of the Hourly Fees, the Initial Lump Sum Payment, and Final Lump Sum Payment, Leite shall forever disclaim, release and waive any and all interests in West’s Abdala Interests under both U.S. and Brazilian law, and shall complete any additional reasonable documentation requested by the Receiver to

demonstrate the same, whether such documents be required for filing in the United States or Brazil.

**ORDERED** that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: Brooklyn, New York  
January \_\_, 2018

**SO ORDERED:**

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THE HON. BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

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

-----X	
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 (BMC)

**MEMORANDUM IN SUPPORT OF MOTION OF  
MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY  
OF AN ORDER AUTHORIZING THE RETENTION AND PAYMENT OF  
LEITE, TOSTO E BARROS ADVOGADOS ASSOCIADOS**

Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), 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., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*” or “*Platinum*”), through her counsel, Otterbourg P.C., respectfully submits this memorandum in support of her motion (the “*Motion*”) for entry of an order authorizing the retention and payment of Leite, Tosto E Barros Advogados Associados (“*Leite*”). In support of the Motion, the Receiver states as follows:



## PRELIMINARY STATEMENT

By this Motion, the Receiver respectfully requests authority to engage the services of, and to pay, Leite to assist her in connection with an asset of the Receivership Entities that is located in Brazil and that requires the assistance of Brazilian counsel to maintain and maximize the value of the asset.

For the reasons set forth herein, as well as in the Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order Approving Proposed Procedures for the Retention and Payment of Leite (the “*Cyganowski Dec.*”), the Motion should be granted.

## PROCEDURAL HISTORY

### A. Case Filing and Appointment of Receivers

On December 19, 2016, in the above-captioned matter, the United States District Court for the Eastern District of New York (the “*Court*”) entered the Order Appointing Receiver, which was amended on January 30, 2017. [Docket Nos. 6 and 59]. On July 6, 2017, the Court accepted the resignation of the original receiver, Bart M. Schwartz, Esq., (the “*Prior Receiver*”) and appointed Melanie L. Cyganowski as Receiver effective immediately (*i.e.*, July 6, 2017). [Docket No. 216].

On October 16, 2017, this Court entered the Second Amended Order Appointing Receiver, Dkt. No. 276 (together with the prior Orders Appointing Receiver, the “*Receivership Order*”). Among other powers, the Receivership Order granted the Receiver:

- a. “all the powers, authorities, rights and privileges heretofore possessed by the officers, directors, managers, managing members, and general and limited partners of the Receivership Entities under applicable state and federal law, by the governing charters, by-laws, articles and/or agreements in addition to all powers and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of 28 U.S.C. 754, 959 and 1692, and Fed.R.Civ.P. 66.” Receivership Order Section I(3).
- b. “To engage and employ persons in the Receiver’s discretion to assist the Receiver in carrying out the Receiver’s duties and responsibilities hereunder, including, but not

limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval.” Receivership Order Section I(6)(F).

**B. Prior Retention of Limited Scope Professionals**

On June 28, 2017, the Prior Receiver filed a Letter Application for an Order Authorizing the Retention and Payment of Limited Scope Legal Professionals, Dkt. No. 183, (the “*Application*”). The Application sought an Order authorizing the retention and payment of 19 law firms to assist the Receivership Entities with legal matters throughout the United States and abroad. One of these law firms was the Leite law firm.

Following her appointment, the Receiver and her team undertook to review the Application, communicated with certain of the professionals proposed to be retained, and determined which portions of the Application to adopt and which portions to modify. The Receiver’s positions in that regard were set forth in the Limited Scope Professionals Declaration, filed on November 15, 2017, Dkt. No. 281 (the “*Limited Scope Professionals Declaration*”).

In the Limited Scope Professionals Declaration, the Receiver stated that the retention and payment of Leite was sought by the Prior Receiver to continue its representation of West Ventures, LLC (“*West Ventures*”), a wholly-owned subsidiary of PPCO in connection with Brazilian law, including, but not limited to, matters involving mining. West Ventures has an interest in a gold tailings mine in Brazil, which is commonly referred to as the Abdala project. The firm serves as litigation counsel in the jurisdiction where litigation involving PPCO’s mining interests are located. Limited Scope Professionals Declaration, ¶19(i).

According to the Application, the firm incurred post-receivership legal fees of \$3,896.78 through May 31, 2017, as well as expenses of \$2,021.30 for that same period. The Application

sought authorization to pay the firm up to \$5,000 for the six months following May 31, 2017 as well as an unlimited 4% success fee. [Dkt. No. 183-16].

Because of the potential size of the success fee claimed by Leite, the Receiver was not yet prepared in her Limited Scope Professionals Declaration to recommend the retention and payment of Leite. Cyganowski Dec., ¶5. Rather, the Receiver stated that she was still communicating with the Leite firm regarding its application and the firm's fees and would supplement her Declaration as appropriate. Limited Scope Professionals Declaration, ¶19(ii). An order approving the Application was entered by this Court on December 26, 2017, Dkt. No. 294 (the "*Limited Scope Professionals Order*"). Given the Receiver's lack of a recommendation as to Leite in the Limited Scope Professionals Declaration, the Limited Scope Professionals Order was silent as to the retention of Leite. Cyganowski Dec., ¶5.

Following the submission of the Receiver's Limited Scope Professionals Declaration, the Receiver with the assistance of her counsel continued discussions with Leite to understand the nature and genesis of the proposed success fee. The Receiver also learned from other law firms that are either based in Brazil or are familiar with typical law firm fee structures in Brazil, that it is not uncommon for retentions of this nature to include a success fee in addition to an hourly fee. Cyganowski Dec., ¶6.

The Receiver determined that she required the services of the Leite firm, but sought a reduction of the success fee. As a result of these negotiations, the Receiver reached an agreement with Leite. The agreement, which is annexed to the Cyganowski Declaration as **Exhibit A**, is summarized as follows:

- a. The current success fee provision will be deleted in its entirety;
- b. Following entry of an order approving the Application, Leite will be paid its outstanding hourly fees of \$12,156.26.

- c. Following entry of an order approving the Application, Leite will be paid an additional US\$125,000 (the “*Initial Lump Sum Payment*”);
- d. Thereafter, Leite will continue to be entitled to be paid, subject to the Receiver’s review of written invoices, up to an additional \$25,000 in hourly fees, without further order of this Court and hourly fees above \$25,000 subject to approval by this Court; and
- e. Leite shall be paid an additional US\$125,000 (the “*Final Lump Sum Payment*”) from the proceeds of a Court-approved sale of the Receivership’s interests in West Venture’s interests and rights (whether directly held, or through its Brazilian subsidiary, Sul Real XXXII Participacoes LTDA (“*Sul Real*”)), in the gold tailings dam located on the “Abdala” mine site owned by Reginaldo Luiz Ferreira De Almeida, located near Highway BR-070 in the municipality of Nossa Senhora do Livramento, State of Mato Grasso, Brazil, as evidenced by an Usufruct titled in Sul Real’s name, as well as the right to build, install and operate reprocessing operations on certain land located approximately 12 miles from the Abdala site.

The Receiver will retain her right to (i) dispute any invoice submitted by Leite; and (ii) terminate the services of Leite if, and when, appropriate.

### ARGUMENT

Pursuant to Sections I(3) and (I)(6)(F) of the Receivership Order, the Receiver seeks authority to retain and pay Leite in accordance with the revised fee arrangement. These sections of the Receiver Order grant the Receiver certain powers, including the power to engage and employ persons in the Receiver’s discretion to assist the Receiver in carrying out the Receiver’s duties and responsibilities under the Receiver Order. The Receiver has determined that it is necessary to retain the Leite law firm to assist her in protecting the interests of Platinum in and to the Abdala gold tailings project located in Brazil.

Specifically, the Receiver, in her judgment and discretion, determined that: (a) she continues to require the services of local Brazilian counsel to assist her with preserving and maximizing the value of Platinum’s interest in the gold tailings project in Brazil; (b) Leite has been working on the engagement since 2014 and is best suited to continue the engagement

because of its institutional knowledge; (c) Leite is fully familiar with the legal issues associated with the gold tailings project; (d) Leite is still actively rendering services on behalf of Platinum; and (e) it would be inefficient to attempt to switch law firms at this time, even if it were feasible that a new local law firm would be willing to take over the engagement from Leite. In addition, the Receiver determined in her judgment that any new law firm would likely require some form of success fee and Leite may continue to claim a trailing interest in the proceeds of any sale, which could potentially complicate the sale. Cyganowski Dec., ¶7.

As a result of the negotiations with Leite, the Receiver negotiated a fee structure that is more advantageous to Platinum than what was originally contemplated in the Application.<sup>1</sup> The original 4% fee, which had no cap, could have resulted in a very large sum to be paid to Leite in addition to its hourly fee rate. The reduced fee structure, which contemplates the payment of a fixed lump sum, half of which will be paid from the proceeds of a Court approved sale of Abdala, is in all likelihood considerably less than the 4% success fee, and provides certainty of the exact amount that is owed to Leite. Cyganowski Dec., ¶9. This certainty is important to maximizing the value to Platinum in any sale of the Abdala investment.

The retention of Leite and payment to the firm in accordance with the revised fee structure will (a) provide for the continued protection of West Venture's legal interests in the Abdala project; (b) provide certainty; and (c) avoid any trailing claims to proceeds in connection with West Venture's sale of its interests in Abdala. Cyganowski Dec., ¶9.

### **CONCLUSION**

For the reasons set forth herein, the Receiver respectfully requests entry of an order, in substantially the form annexed as **Exhibit B** to the Cyganowski Dec., allowing the Receiver to

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<sup>1</sup> There were no objections filed by any party in interest to the Application, including the original fee structure of Leite.

retain and pay Leite and that she be granted such other and further relief as the Court deems appropriate.

Dated: New York, New York  
January 3, 2018

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein  
Adam C. Silverstein  
A Member of the Firm  
230 Park Avenue  
New York, New York 10169  
Tel.: (212) 661-9100  
Fax: (212) 682-6104  
asilverstein@otterbourg.com

*Attorneys for Melanie L. Cyganowski, as Receiver*