UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	Master Docket No. 1:18-cv-06658-JSR
MARTIN TROTT and CHRISTOPHER SMITH, as Joint Official Liquidators and Foreign Representatives of PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation) and PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (in Official Liquidation), Plaintiffs, -v- PLATINUM MANAGEMENT (NY) LLC, et al., Defendants.	Case No. 1:18-cv-10936-JSR

DECLARATION OF DONALD H. CHASE IN SUPPORT OF THE HUBERFELD FAMILY FOUNDATION, INC.'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

I, Donald H. Chase, declare as follows:

1. I am a member of Morrison Cohen LLP, counsel for defendant Huberfeld Family Foundation, Inc. (the "Foundation") in the above-captioned consolidated action. Unless otherwise specified, I have personal knowledge of the facts set forth below.

2. I submit this declaration in support of the Foundation's motion, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), to dismiss the Second Amended Complaint in the action styled *Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) v. Platinum Management (NY) LLC, et al.*, Case No. 18-cv-10936 (JSR).

3. Attached hereto as Exhibit 1 is a true and correct copy of the Foundation's registration with the New York State Department of State, Division of Corporations, which shows that it was formed on August 14, 1998. The Foundation's registration is also accessible through New York State's electronic, searchable database:

https://appext20.dos.ny.gov/corp_public/corpsearch.entity_search_entry.

4. Attached hereto as Exhibit 2 are true and correct excerpts from the Foundation's publicly-available Returns of Private Foundation Forms 990-PF for the years 2012, 2013, 2014, 2015, and 2016, which reflect, among other things, the Foundation's annual disbursements for charitable purposes at Part I, line 25(d). It should be noted that Plaintiffs only attached the Foundation's 2014 Form 990-PF as Exhibit 3 to the Second Amended Complaint.

5. As shown in the attached excerpts from the Foundation's Form 990-PFs, during the relevant period alone, from 2012 through 2016, the Foundation donated over $11 million for charitable purposes. [See Part I, line 25(d) on each year's Form 990-PF.]

6. As the Foundation's 2014 Form 990-PF demonstrates, the Foundation also had a significant investment in PPVA, with a fair market value at the end of 2014 set forth as $13,291,940, and also had invested substantial sums in the Platinum Liquid Opportunity Fund Ltd., with a fair market value at the end of 2014 set forth as $1,486,108. [Second Amended Complaint, Exhibit 3 at p. 28, or Schedule B at p. 8.]

7. Attached hereto as Exhibit 3 is a true and correct copy of two separate business registrations, both named Hutton Ventures, LLC. One is registered in California with a principal place of business in California. The other is registered in Delaware.

8. Attached hereto as Exhibit 4 is a true and correct copy of proof of service on Hutton Ventures, LLC filed in the New York action addressed to the alleged student loan fraud scheme. As demonstrated, the Hutton Ventures, LLC at issue is the one based in California.

9. Attached hereto as Exhibit 5 is a true and correct copy of the original adversary complaint (public version) in the action styled, *Richard Schmidt, Litigation Trustee vs. The Huberfeld Family Foundation Inc. and Twosons Corporation*, Case No. 18-03386 (Bankr. S.D. Tex.) (the "Black Elk-Foundation Lawsuit"). The Black Elk-Foundation Lawsuit complaint is also publicly available through the Official Court Electronic Document Filing System for the U.S. Bankruptcy Court, Southern District of Texas.

10. In the Black Elk-Foundation Lawsuit, the Litigation Trustee of the Black Elk Litigation Trust (the "Black Elk Litigation Trustee") asserted claims against the Foundation for, *inter alia*, the [Foundation's] receipt of $1,026,676.83 . . . that was fraudulently transferred to them from Black Elk Energy Offshore Operations LLC." (*See* Exhibit 3 at p. 1, ¶ 1 ("The Trustee brings this adversary proceeding seeking to avoid and recover fraudulent transfers and preferential payments made by Black Elk . . . ."), ¶ 158 (alleging that the Foundation "was paid $1,026,676.83 . . . with funds from Platinum that had been transferred from Black Elk").) Among other relief, the Litigation Trustee sought the return of this transfer from the Foundation. (Exhibit 3 at ¶ 158.)

11. The $1,026,676.83 payment alleged in the Black Elk-Foundation Lawsuit is clearly one and the same as the transfer alleged by Plaintiffs in the Second Amended Complaint. (*Compare* Exhibit 3 at ¶ 158 *with* Second Amended Complaint ¶ 506.)

12. On or about January 31, 2019, the Foundation resolved its dispute with the Black Elk Litigation Trustee, including the Black Elk Litigation Trustee's claim concerning the

$1,026,676.83 payment to the Foundation. The Black Elk Litigation Trustee agreed to dismiss its claims against the Foundation with prejudice and broadly released the Foundation from any claims by Black Elk, including (but not limited to) claims related to the $1,026,676.83 payment. Attached hereto as Exhibit 6 is the formal order from the Bankruptcy Court, dated February 6, 2019, dismissing with prejudice all of the claims asserted against the Foundation in the Black Elk-Foundation Lawsuit (the "Order of Dismissal").

13. The Order of Dismissal is also publicly available through the Official Court Electronic Document Filing System for the U.S. Bankruptcy Court, Southern District of Texas.

14. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiff's Supplement to Motion for Entry of Default Judgment against, *inter alia*, PPVA (with exhibits), filed in the action styled *Richard Schmidt, Litigation Trustee v. Platinum Partners Value Arbitrage Fund LP, et al.*, Case No. 16-AP-3237 (Bankr. S.D. Tex.) (the "Motion For Default Judgment Against PPVA"). Exhibit 7 is also publicly available through the Official Court Electronic Document Filing System for the U.S. Bankruptcy Court, Southern District of Texas.

15. Exhibit A to the Motion For Default Judgment Against PPVA contains a "Settlement Agreement" by and among Richard Schmidt, Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust, on the one hand, and PPVA, on the other hand. *See* Exhibit 7 at 6. In relevant part, as part of the Settlement Agreement, Black Elk contended that "PPVA was the recipient of fraudulently transferred funds of Black Elk totaling US$15,332,672.97" (*see* Settlement Agreement, Recital ¶ 10), and PPVA agreed not to oppose Black Elk's Motion for Default Judgment Against PPVA for that amount (Settlement Agreement ¶¶ 1.1-1.2).

16. As set forth in the minute entry, filed under docket entry 120 on the docket for Case No. 16-AP-3237, the Court granted the Motion For Default Judgment Against PPVA on September 20, 2018.

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

Dated: April 22, 2019

Donald H. Chase

EXHIBIT 1

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through April 17, 2019.

Selected Entity Name: HUBERFELD FAMILY FOUNDATION, INC.

Selected Entity Status Information

Current Entity Name:	HUBERFELD FAMILY FOUNDATION, INC.
DOS ID #:	2289102
Initial DOS Filing Date:	AUGUST 14, 1998
County:	NEW YORK
Jurisdiction:	NEW YORK
Entity Type:	DOMESTIC NOT-FOR-PROFIT CORPORATION
Current Entity Status:	ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

HUBERFELD FAMILY FOUNDATION, INC.
152 WEST 57TH ST.
NEW YORK, NEW YORK, 10022

Registered Agent

IRA STECHEL, ESQ., OLSHAN GRUNDMAN FROME & ROSENZWEIG LLP
505 PARK AVENUE
NEW YORK, NEW YORK, 10022

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
AUG 14, 1998	Actual	HUBERFELD FAMILY FOUNDATION, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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EXHIBIT 2

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Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation

or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation

Note. The foundation may be able to use a copy of this return to satisfy state reporting requirements

OMB No 1545-0052

2012

Open to Public Inspection

For calendar year 2012, or tax year beginning 01-01-2012 , and ending 12-31-2012

Name of foundation
HUBERFELD FAMILY FOUNDATION INC

A Employer identification number
13-4042543

Number and street (or P O box number if mail is not delivered to street address)
152 WEST 57TH STREET

Room/suite

B Telephone number (see instructions)
(212) 571-0500

City or town, state, and ZIP code
NEW YORK, NY 10019

C If exemption application is pending, check here ▶ ☐

G Check all that apply ☐ Initial return ☐ Initial return of a former public charity ☐ Final return ☐ Amended return ☐ Address change ☐ Name change

D 1. Foreign organizations, check here ▶ ☐

2. Foreign organizations meeting the 85% test, check here and attach computation ▶ ☐

H Check type of organization ☑ Section 501(c)(3) exempt private foundation ☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

E If private foundation status was terminated under section 507(b)(1)(A), check here ▶ ☐

I Fair market value of all assets at end of year *(from Part II, col. (c), line 16)* ▶$ 39,623,466

J Accounting method ☑ Cash ☐ Accrual ☐ Other (specify) _
(Part I, column (d) must be on cash basis.)

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ▶ ☐

Part I **Analysis of Revenue and Expenses** *(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))*

			(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1	Contributions, gifts, grants, etc , received (attach schedule)	2,233,333			
	2	Check ▶ ☐ if the foundation is **not** required to attach Sch B				
	3	Interest on savings and temporary cash investments	96,242	96,242		
	4	Dividends and interest from securities	1,189,423	1,189,423		
	5a	Gross rents				
	b	Net rental income or (loss) _____				
	6a	Net gain or (loss) from sale of assets not on line 10	101,284			
	b	Gross sales price for all assets on line 6a 300,000				
	7	Capital gain net income (from Part IV, line 2)		101,284		
	8	Net short-term capital gain				
	9	Income modifications				
	10a	Gross sales less returns and allowances				
	b	Less Cost of goods sold				
	c	Gross profit or (loss) (attach schedule)				
	11	Other income (attach schedule)				
	12	**Total.** Add lines 1 through 11	3,620,282	1,386,949		
Operating and Administrative Expenses	13	Compensation of officers, directors, trustees, etc	0	0		0
	14	Other employee salaries and wages				
	15	Pension plans, employee benefits				
	16a	Legal fees (attach schedule)				
	b	Accounting fees (attach schedule)	24,593	0		0
	c	Other professional fees (attach schedule)				
	17	Interest				
	18	Taxes (attach schedule) (see instructions)	29,804	0		0
	19	Depreciation (attach schedule) and depletion				
	20	Occupancy				
	21	Travel, conferences, and meetings				
	22	Printing and publications				
	23	Other expenses (attach schedule)	96,742	0		0
	24	**Total operating and administrative expenses.** Add lines 13 through 23	151,139	0		0
	25	Contributions, gifts, grants paid	2,559,267			2,559,267
	26	**Total expenses and disbursements.** Add lines 24 and 25	2,710,406	0		2,559,267
	27	Subtract line 26 from line 12				
	a	**Excess of revenue over expenses and disbursements**	909,876			
	b	**Net investment income** (if negative, enter -0-)		1,386,949		
	c	**Adjusted net income** (if negative, enter -0-)				

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Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation

or Section 4947(a)(1) Trust Treated as Private Foundation

▶ **Do not enter Social Security numbers on this form as it may be made public. By law, the IRS cannot redact the information on the form.**

▶ **Information about Form 990-PF and its instructions is at** www.irs.gov/form990pf.

OMB No 1545-0052

2013

Open to Public Inspection

For calendar year 2013, or tax year beginning 01-01-2013 , and ending 12-31-2013

Name of foundation
HUBERFELD FAMILY FOUNDATION INC

A Employer identification number
13-4042543

Number and street (or P O box number if mail is not delivered to street address)
152 WEST 57TH STREET

Room/suite

B Telephone number (see instructions)
(212) 571-0500

City or town, state or province, country, and ZIP or foreign postal code
NEW YORK, NY 10019

C If exemption application is pending, check here ▶ ☐

G Check all that apply ☐ Initial return ☐ Initial return of a former public charity ☐ Final return ☐ Amended return ☐ Address change ☐ Name change

D 1. Foreign organizations, check here ▶ ☐

2. Foreign organizations meeting the 85% test, check here and attach computation ▶ ☐

H Check type of organization ☑ Section 501(c)(3) exempt private foundation ☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

E If private foundation status was terminated under section 507(b)(1)(A), check here ▶ ☐

I Fair market value of all assets at end of year *(from Part II, col. (c), line 16)* ▶$ 43,288,785

J Accounting method ☑ Cash ☐ Accrual ☐ Other (specify) _____
(Part I, column (d) must be on cash basis.)

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ▶ ☐

Part I **Analysis of Revenue and Expenses** *(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))*

		(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1 Contributions, gifts, grants, etc , received (attach schedule)	2,400,000			
	2 Check ▶ ☐ if the foundation is **not** required to attach Sch B				
	3 Interest on savings and temporary cash investments	56,643	56,643		
	4 Dividends and interest from securities	1,249,885	1,249,885		
	5a Gross rents				
	b Net rental income or (loss) _____				
	6a Net gain or (loss) from sale of assets not on line 10	339,785			
	b Gross sales price for all assets on line 6a 1,000,000				
	7 Capital gain net income (from Part IV, line 2)		339,785		
	8 Net short-term capital gain				
	9 Income modifications				
	10a Gross sales less returns and allowances				
	b Less Cost of goods sold				
	c Gross profit or (loss) (attach schedule)				
	11 Other income (attach schedule)				
	12 **Total.** Add lines 1 through 11	4,046,313	1,646,313		
Operating and Administrative Expenses	13 Compensation of officers, directors, trustees, etc	0	0		0
	14 Other employee salaries and wages				
	15 Pension plans, employee benefits				
	16a Legal fees (attach schedule)				
	b Accounting fees (attach schedule)	33,579	0		0
	c Other professional fees (attach schedule)				
	17 Interest				
	18 Taxes (attach schedule) (see instructions)	32,939	0		0
	19 Depreciation (attach schedule) and depletion				
	20 Occupancy				
	21 Travel, conferences, and meetings				
	22 Printing and publications				
	23 Other expenses (attach schedule)	1,648	0		0
	24 **Total operating and administrative expenses.** Add lines 13 through 23	68,166	0		0
	25 Contributions, gifts, grants paid	3,109,731			3,109,731
	26 **Total expenses and disbursements.** Add lines 24 and 25	3,177,897	0		3,109,731
	27 Subtract line 26 from line 12				
	a **Excess of revenue over expenses and disbursements**	868,416			
	b **Net investment income** (if negative, enter -0-)		1,646,313		
	c **Adjusted net income** (if negative, enter -0-)				

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Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation

or Section 4947(a)(1) Trust Treated as Private Foundation

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▶ **Information about Form 990-PF and its instructions is at** www.irs.gov/form990pf.

OMB No 1545-0052

2014

Open to Public Inspection

For calendar year 2014, or tax year beginning 01-01-2014 , and ending 12-31-2014

Name of foundation
HUBERFELD FAMILY FOUNDATION INC

A Employer identification number
13-4042543

Number and street (or P O box number if mail is not delivered to street address) | Room/suite
15 MANOR LANE

B Telephone number (see instructions)
(212) 571-0500

City or town, state or province, country, and ZIP or foreign postal code
LAWRENCE, NY 11559

C If exemption application is pending, check here ▶ ☐

G Check all that apply ☐ Initial return ☐ Initial return of a former public charity ☐ Final return ☐ Amended return ☐ Address change ☐ Name change

D 1. Foreign organizations, check here ▶ ☐
2. Foreign organizations meeting the 85% test, check here and attach computation ▶ ☐

H Check type of organization ☑ Section 501(c)(3) exempt private foundation ☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

E If private foundation status was terminated under section 507(b)(1)(A), check here ▶ ☐

I Fair market value of all assets at end of year *(from Part II, col. (c), line 16)* ▶$ 48,384,938

J Accounting method ☑ Cash ☐ Accrual ☐ Other (specify) _____ *(Part I, column (d) must be on cash basis.)*

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ▶ ☐

Part I **Analysis of Revenue and Expenses** *(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))*

		(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1 Contributions, gifts, grants, etc , received (attach schedule)	3,567,500			
	2 Check ▶ ☐ if the foundation is **not** required to attach Sch B				
	3 Interest on savings and temporary cash investments	62,349	62,349		
	4 Dividends and interest from securities	925,875	925,875		
	5a Gross rents				
	b Net rental income or (loss) _____				
	6a Net gain or (loss) from sale of assets not on line 10	744,005			
	b Gross sales price for all assets on line 6a 744,005				
	7 Capital gain net income (from Part IV, line 2)		744,005		
	8 Net short-term capital gain				
	9 Income modifications				
	10a Gross sales less returns and allowances				
	b Less Cost of goods sold				
	c Gross profit or (loss) (attach schedule)				
	11 Other income (attach schedule)	612,092	612,092		
	12 **Total.** Add lines 1 through 11	5,911,821	2,344,321		
Operating and Administrative Expenses	13 Compensation of officers, directors, trustees, etc	60,000	18,000		42,000
	14 Other employee salaries and wages				
	15 Pension plans, employee benefits				
	16a Legal fees (attach schedule)	2,366	0		0
	b Accounting fees (attach schedule)	32,403	16,202		0
	c Other professional fees (attach schedule)				
	17 Interest				
	18 Taxes (attach schedule) (see instructions)	51,849	1,709		3,987
	19 Depreciation (attach schedule) and depletion				
	20 Occupancy				
	21 Travel, conferences, and meetings				
	22 Printing and publications				
	23 Other expenses (attach schedule)	7,444	747		351
	24 **Total operating and administrative expenses.** Add lines 13 through 23	154,062	36,658		46,338
	25 Contributions, gifts, grants paid	1,475,876			1,475,876
	26 **Total expenses and disbursements.** Add lines 24 and 25	1,629,938	36,658		1,522,214
	27 Subtract line 26 from line 12				
	a **Excess of revenue over expenses and disbursements**	4,281,883			
	b **Net investment income** (if negative, enter -0-)		2,307,663		
	c **Adjusted net income** (if negative, enter -0-)				

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Form **990-PF**

Department of the Treasury
Internal Revenue Service

Return of Private Foundation

or Section 4947(a)(1) Trust Treated as Private Foundation

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▶ **Information about Form 990-PF and its instructions is at** www.irs.gov/form990pf.

OMB No 1545-0052

2015

Open to Public Inspection

For calendar year 2015, or tax year beginning 01-01-2015 , and ending 12-31-2015

Name of foundation
HUBERFELD FAMILY FOUNDATION INC

A Employer identification number
13-4042543

Number and street (or P O box number if mail is not delivered to street address)
15 MANOR LANE

Room/suite

B Telephone number (see instructions)
(212) 571-0500

City or town, state or province, country, and ZIP or foreign postal code
LAWRENCE, NY 11559

C If exemption application is pending, check here ▶ ☐

G Check all that apply ☐ Initial return ☐ Initial return of a former public charity ☐ Final return ☐ Amended return ☐ Address change ☐ Name change

D 1. Foreign organizations, check here ▶ ☐
2. Foreign organizations meeting the 85% test, check here and attach computation ▶ ☐

H Check type of organization ☑ Section 501(c)(3) exempt private foundation ☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

E If private foundation status was terminated under section 507(b)(1)(A), check here ▶ ☐

I Fair market value of all assets at end of year (from Part II, col. (c), line 16) ▶$ 47,782,037

J Accounting method ☑ Cash ☐ Accrual ☐ Other (specify) _____ (Part I, column (d) must be on cash basis.)

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ▶ ☐

Part I Analysis of Revenue and Expenses *(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))*

			(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1	Contributions, gifts, grants, etc , received (attach schedule)	1,925,025			
	2	Check ▶ ☐ if the foundation is **not** required to attach Sch B				
	3	Interest on savings and temporary cash investments	57,400	57,400		
	4	Dividends and interest from securities	1,239,636	1,239,636		
	5a	Gross rents				
	b	Net rental income or (loss) _____				
	6a	Net gain or (loss) from sale of assets not on line 10	-28,849			
	b	Gross sales price for all assets on line 6a 400,000				
	7	Capital gain net income (from Part IV, line 2)		0		
	8	Net short-term capital gain				
	9	Income modifications				
	10a	Gross sales less returns and allowances 95,000				
	b	Less Cost of goods sold				
	c	Gross profit or (loss) (attach schedule)	95,000			
	11	Other income (attach schedule)				
	12	**Total.** Add lines 1 through 11	3,288,212	1,297,036		
Operating and Administrative Expenses	13	Compensation of officers, directors, trustees, etc	120,000	36,000		84,000
	14	Other employee salaries and wages				
	15	Pension plans, employee benefits				
	16a	Legal fees (attach schedule)				
	b	Accounting fees (attach schedule)	65,320	21,773		21,773
	c	Other professional fees (attach schedule)				
	17	Interest				
	18	Taxes (attach schedule) (see instructions)	36,800	3,115		7,270
	19	Depreciation (attach schedule) and depletion				
	20	Occupancy				
	21	Travel, conferences, and meetings				
	22	Printing and publications				
	23	Other expenses (attach schedule)	4,237	2,337		701
	24	**Total operating and administrative expenses.** Add lines 13 through 23	226,357	63,225		113,744
	25	Contributions, gifts, grants paid	2,899,770			2,899,770
	26	**Total expenses and disbursements.** Add lines 24 and 25	3,126,127	63,225		3,013,514
	27	Subtract line 26 from line 12				
	a	**Excess of revenue over expenses and disbursements**	162,085			
	b	**Net investment income** (if negative, enter -0-)		1,233,811		
	c	**Adjusted net income** (if negative, enter -0-)				

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Form **990-PF**
Department of the Treasury
Internal Revenue Service

Return of Private Foundation

or Section 4947(a)(1) Trust Treated as Private Foundation

▶ **Do not enter social security numbers on this form as it may be made public.**
▶ **Information about Form 990-PF and its instructions is at www.irs.gov/form990pf.**

OMB No 1545-0052

2016

Open to Public Inspection

For calendar year 2016, or tax year beginning 01-01-2016 , and ending 12-31-2016

Name of foundation
HUBERFELD FAMILY FOUNDATION INC

A Employer identification number
13-4042543

Number and street (or P O box number if mail is not delivered to street address)
15 MANOR LANE

Room/suite

B Telephone number (see instructions)
(917) 364-2400

City or town, state or province, country, and ZIP or foreign postal code
LAWRENCE, NY 11559

C If exemption application is pending, check here ▶ ☐

G Check all that apply ☐ Initial return ☐ Initial return of a former public charity ☐ Final return ☐ Amended return ☐ Address change ☐ Name change

D 1. Foreign organizations, check here ▶ ☐
2. Foreign organizations meeting the 85% test, check here and attach computation ▶ ☐

H Check type of organization ☑ Section 501(c)(3) exempt private foundation ☐ Section 4947(a)(1) nonexempt charitable trust ☐ Other taxable private foundation

E If private foundation status was terminated under section 507(b)(1)(A), check here ▶ ☐

I Fair market value of all assets at end of year *(from Part II, col (c), line 16)* ▶$ 36,834,494

J Accounting method ☑ Cash ☐ Accrual ☐ Other (specify)
(Part I, column (d) must be on cash basis)

F If the foundation is in a 60-month termination under section 507(b)(1)(B), check here ▶ ☐

Part I **Analysis of Revenue and Expenses** *(The total of amounts in columns (b), (c), and (d) may not necessarily equal the amounts in column (a) (see instructions))*

			(a) Revenue and expenses per books	(b) Net investment income	(c) Adjusted net income	(d) Disbursements for charitable purposes (cash basis only)
Revenue	1	Contributions, gifts, grants, etc , received (attach schedule)				
	2	Check ▶ ☑ if the foundation is not required to attach Sch B				
	3	Interest on savings and temporary cash investments	84,758	84,758		
	4	Dividends and interest from securities	2,272,001	2,272,001		
	5a	Gross rents				
	b	Net rental income or (loss)				
	6a	Net gain or (loss) from sale of assets not on line 10	-248,649			
	b	Gross sales price for all assets on line 6a				
	7	Capital gain net income (from Part IV, line 2)		0		
	8	Net short-term capital gain				
	9	Income modifications				
	10a	Gross sales less returns and allowances 160,800				
	b	Less Cost of goods sold				
	c	Gross profit or (loss) (attach schedule)	160,800			
	11	Other income (attach schedule)	8,905	8,905		
	12	**Total.** Add lines 1 through 11	2,277,815	2,365,664		
Operating and Administrative Expenses	13	Compensation of officers, directors, trustees, etc	120,000	36,000		84,000
	14	Other employee salaries and wages				
	15	Pension plans, employee benefits				
	16a	Legal fees (attach schedule)				
	b	Accounting fees (attach schedule)	10,213	3,404		3,404
	c	Other professional fees (attach schedule)				
	17	Interest				
	18	Taxes (attach schedule) (see instructions)	134,087	3,162		7,379
	19	Depreciation (attach schedule) and depletion				
	20	Occupancy				
	21	Travel, conferences, and meetings				
	22	Printing and publications				
	23	Other expenses (attach schedule)	32,564	29,422		699
	24	**Total operating and administrative expenses.** Add lines 13 through 23	296,864	71,988		95,482
	25	Contributions, gifts, grants paid	1,069,361			1,069,361
	26	**Total expenses and disbursements.** Add lines 24 and 25	1,366,225	71,988		1,164,843
	27	Subtract line 26 from line 12				
	a	**Excess of revenue over expenses and disbursements**	911,590			
	b	**Net investment income** (if negative, enter -0-)		2,293,676		
	c	**Adjusted net income**(if negative, enter -0-)				

EXHIBIT 3

Alex Padilla
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Tuesday, April 16, 2019. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

201612710004 HUTTON VENTURES LLC

Registration Date:	05/02/2016
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	SOS SUSPENDED
Agent for Service of Process:	(AGENT RESIGNED 10/22/2018) *
Entity Address:	4 HUTTON CENTRE DR STE 220 SANGA ANA CA 92707
Entity Mailing Address:	4 HUTTON CENTRE DR STE 220 SANGA ANA CA 92707
LLC Management	Member Managed

Document Type	File Date	PDF
AMENDMENT	10/22/2018	
REGISTRATION	05/02/2016	

* Indicates the information is not contained in the California Secretary of State's database.

Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to **Name Availability**.
- If the image is not available online, for information on ordering a copy refer to **Information Requests**.
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Frequently Asked Questions**.

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Department of State: Division of Corporations

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Service of Process
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How to Form a New Business Entity
Certifications, Apostilles & Authentication of Documents

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	**5755641**	Incorporation Date / Formation Date:	**5/28/2015** (mm/dd/yyyy)
Entity Name:	**HUTTON VENTURES LLC**		
Entity Kind:	**Limited Liability Company**	Entity Type:	**General**
Residency:	**Domestic**	State:	**DELAWARE**

REGISTERED AGENT INFORMATION

Name:	**STELLAR CORPORATE SERVICES LLC**		
Address:	**3500 SOUTH DUPONT HIGHWAY**		
City:	**DOVER**	County:	**Kent**
State:	**DE**	Postal Code:	**19901**
Phone:			

Additional Information is available for a fee. You can retrieve Status for a fee of $10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of $20.00.

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EXHIBIT 4

STATE OF NEW YORK **(212) 416-8296** **BUREAU OF CONSUMER FRAUDS OF NEW YORK** **Melvin L. Goldberg, Assistant Attorney General** **28 Liberty Street** **New York, New York 1005** ATTORNEY FOR (*Name*): **Plaintiff**				
SUPERIOR COURT OF THE STATE OF NEW YORK **COUNTY OF NEW YORK**				
PLAINTIFF/PETITIONER : **THE PEOPLE OF THE STATE OF NEW YORK, etc.** DEFENDANT/RESPONDENT: **DEBT RESOLVE, INC.; et al.**				
PROOF OF SERVICE	HEARING DATE:	TIME:	DEPT/DIV:	Index No: **451873-2018**

1. At the time of service I was at least 18 years of age and not a party to this action, and **I served copies** of the (*specify document(s)*):
SUMMONS; COMPLAINT

2. a. Party served: **HUTTON VENTURES, LLC**

b. Person served: **Mark Arimura (Asian, Male, 55+, 130 lbs., Brown eyes, Black & Gray hair)**
Office Manager, Authorized person to accept service of process

c. Address: **4 Hutton Centre Drive, Suite 220**
Santa Ana, California 92707

3. I served the party in item
a. **by personally delivering the copies** (1) on (*date*): **10/03/2018**
(2) at (*time*) : **02:42 p.m.**

4. **Witness fees were not demanded and were not paid.**

5. Person serving (*name, address, and telephone No.*):

Sonny Nicolas
Ace Attorney Service, Inc.
310 West 3rd Street
Santa Ana, California 92701
(714) 543-4220

f. **Fee** for service: $

c. Registered California process server.
(1) Employee or independent contractor.
(2) Registration No.: **PSC-4080**
(3) County: **ORANGE**

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **October 16, 2018**

(Signature)

#1622059ES

EXHIBIT 5

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC	§	CASE NO. 15-34287 (MI)
	§	
	§	
DEBTOR.	§	CHAPTER 11
	§	
RICHARD SCHMIDT, LITIGATION TRUSTEE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	ADVERSARY NO. _____
THE HUBERFELD FAMILY FOUNDATION INC. AND TWOSONS CORPORATION,	§	
	§	
	§	
DEFENDANTS.	§	

ORIGINAL COMPLAINT

(PUBLIC VERSION)

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Richard Schmidt ("Trustee"), the Trustee of the Black Elk Litigation Trust ("Trust") files this Original Complaint against the Huberfeld Family Foundation Inc. ("Huberfeld Foundation") and Twosons Corporation ("Twosons") for the Huberfeld Foundation's receipt of $1,026,676.83 and Twosons' receipt of $15,400,152.42 that was fraudulently transferred to them from Black Elk Energy Offshore Operations LLC ("Black Elk"), and also for the participation of the Huberfeld Foundation, including its principal Murray Huberfeld ("Huberfeld"), and Twosons[1] in a conspiracy with and aiding and abetting of Platinum Partners in wrongly taking $97,959,854.79 from Black Elk.

Defendants Huberfeld Foundation and Twosons, along with other inside investors (*e.g.*, Mark Nordlicht's family, David Levy individually, and Daniel Small individually) of Platinum Partners Black Elk Opportunities Fund LLC ("PPBEO") and Platinum Partners Black Elk Opportunities Fund International LLC ("PPBEOI"), the entities are collectively referred to as "PPBE" and their investors as "PPBE Investors," improperly benefitted from a scheme to fraudulently redeem and distribute the proceeds from the repurchase of Black Elk's Series E preferred equity.

Platinum, its affiliates and the PPBE Investors including Huberfeld Foundation and Twosons put in place, were on notice of, and understood the scheme and planned recipients – upon completion of the scheme, (a) Platinum would avoid its $20 million obligation to New Mountain to repurchase New Mountain's Series E preferred equity (paid directly to New Mountain from Black Elk at Platinum's instruction) and also receive a significant portion of the

[1] The Trustee reserves his rights to bring claims against the principals of Twosons Corporation, once discovery definitively establishes their identities. Twosons Corporation appears to be a veil for and an alter ego of members of the Harari Family.

PPBE distributions, $23,679,368.34; (b) the PPBE Investors including Platinum insiders Huberfeld Foundation and Twosons would receive the remainder of the Black Elk proceeds – all of their principal, dividend and interest; and (c) Platinum would keep the Black Elk Notes for a potential priority position in Black Elk's anticipated bankruptcy.

I.
INTRODUCTORY DESCRIPTION OF THE CASE

1. The Trustee brings this adversary proceeding seeking to avoid and recover fraudulent transfers and preferential payments made by Black Elk at the direction of the owners and principal executives, including Mark Nordlicht, Murray Huberfeld, David Levy and Daniel Small, of Platinum Partners Value Arbitrage Fund LP ("PPVAF"), Platinum Partners Credit Opportunities Master Fund LP ("PPCO"), Platinum Partners Liquid Opportunity Master Fund LP ("PPLO"), PPVA Black Elk (Equity) LLC ("PPVA Equity"), and PPBE (referred to collectively as "Platinum") to the Huberfeld Foundation, Twosons and other PPBE Investors within one year before the date of the filing of Black Elk's involuntary bankruptcy petition.

2. In 2009, Platinum invested in Black Elk, becoming Black Elk's primary and controlling investor. Platinum's investment initially appeared very successful. In 2011, the Wall Street Journal reported that, aided in part by the ban on drilling in the Gulf of Mexico after the BP Macondo explosion and oil spill, Platinum's Black Elk investment strategy "was Platinum's most successful last year, having contributed a significant portion of its high-teens return."

3. On November 16, 2012, though, an explosion and fire occurred on an offshore Black Elk platform (the "West Delta explosion"), and three workers died. The combined negative impact of that explosion and deteriorating investment and market conditions caused Black Elk's business to suffer and decline.

4. In the Spring of 2013, in response to Black Elk's need for new capital and Platinum's need to protect its investment in Black Elk, Platinum, Nordlicht and Huberfeld created the PPBE funds, and then Nordlicht's family, the Huberfeld Foundation, Twosons and others invested in the newly created Black Elk Series E preferred equity, which was subordinate to Black Elk's debt.

5. By early 2014, Black Elk was effectively insolvent, unable to pay its debts in the ordinary course of business – it was regularly pushing creditors' payments off to more than a year past their due dates because it simply did not have sufficient cash to pay its current liabilities.

6. Also by early 2014, Platinum and its principals dominated and controlled Black Elk -- being its majority and by far largest investor, controlling its credit facility, controlling the majority of the Senior Secured Notes and also the Series E preferred equity, and appointing and controlling the Black Elk Board of Managers and Black Elk's chief financial officer. Platinum acted at Black Elk primarily through Mark Nordlicht, David Levy, and Daniel Small.

7. Platinum itself also was effectively insolvent in early 2014, unable to meet its debts and redemption obligations timely because of a severe lack of liquidity that had existed from at least 2012. Platinum was run primarily by Mark Nordlicht, Murray Huberfeld, David Levy and Daniel Small. By early 2014, Platinum faced the prospect of losing more than $100 million in the impending demise of Black Elk.

8. Platinum's principal scheme involved selling off Black Elk's prime assets to Renaissance Offshore, LLC (the "Renaissance Sale"), and diverting the proceeds from that sale to Platinum and for Platinum's benefit by redeeming preferred equity, instead of paying off the

Senior Secured Notes debt, which was entitled to first call on the proceeds from the asset sale, or paying the substantially overdue trade creditors.

9. By redeeming Black Elk's preferred equity, rather than paying Black Elk's debt such as the Notes or trade creditors, Platinum held onto its Black Elk Notes that would be entitled to a priority position in an anticipated bankruptcy. Platinum also was able to more directly benefit its inside investors, including Nordlicht's family, Huberfeld's family, and their close family, friends and business associates, rather than distributing the money to satisfy other more diffuse Platinum obligations to non-insiders.

10. Thus, as Black Elk negotiated the sale of its prime assets to Renaissance, Platinum implemented a scheme to fraudulently claim that a majority of unaffiliated and disinterested holders of Black Elk's 13.75% Senior Secured Notes voted to allow Platinum the ability to transfer the proceeds of the Renaissance Sale to Platinum and for Platinum's benefit by redeeming the Series E preferred equity ahead of the Notes. Platinum then used that money to satisfy Platinum's financial obligations to its insider investors, including the Huberfeld Foundation and Twosons.

11. The lynchpin in Platinum's fraudulent transfer scheme was to secure an amendment of the Black Elk indenture governing the Notes (the "Indenture") to permit use of the Renaissance Sale proceeds to redeem Series E preferred equity ahead of the Notes. Securing such an amendment required the consent of a majority of disinterested Noteholders.

12. As explained in the Offer to Purchase and Consent Solicitation Statement: "Pursuant to Section 316(a) of the Trust Indenture Act of 1939, Notes owned by the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded for purposes of determining the

majority." Because Platinum controlled Black Elk, this statement meant that the sum of all Notes held by Platinum, Platinum-affiliated entities and entities controlled by Platinum were to be subtracted from the $150 million Notes entitled to vote. Of the remainder, a majority had to consent.

13. It was obvious that few truly unaffiliated and disinterested Senior Secured Noteholders would consent to the proposed Indenture amendment, as it would effectively deprive the Noteholders of the senior security interest that the Indenture afforded them in Black Elk's assets. Platinum therefore had to manufacture a way to fix the vote and make it appear that apparently unaffiliated and disinterested Noteholders consented to an Indenture amendment that was against their financial interests. The most obvious way to secure that consent was to use a Trojan horse "friendly" consenter: secure the votes of a company or companies holding a substantial number of Notes that looked independent, but were in fact controlled by Platinum. That simple device was what Platinum used.

14. The "friendly" consenters were a group of entities affiliated with B Asset Manager LP, Beechwood Bermuda, Ltd. and Beechwood Bermuda International Ltd. (collectively "Beechwood"). Platinum, by Nordlicht and Huberfeld, created and controlled Beechwood by virtue of (i) substantial ownership positions, including Nordlicht, Huberfeld, and Levy (Huberfeld's nephew) in the Beechwood entities and (ii) having placed Platinum personnel in key decision-making positions in the Beechwood entities, including Nordlicht and Huberfeld as "advisors" and the installation of Platinum executive David Levy as the Chief Investment Officer ("CIO") of B Asset Manager, the investment arm of the Beechwood entities. Levy remained an employee of Platinum, taking direction from Nordlicht and Huberfeld, while at Beechwood, and continued to use his Platinum email address while directing Beechwood,

Platinum, and Black Elk affairs in 2014, including involving himself constantly in the process that led to the fraudulent transfer of the Renaissance Sale proceeds to and for the benefit of Platinum and also the PPBE Investors. After Levy was placed by Platinum at Beechwood, with Beechwood's participation and consent, Nordlicht and Levy directed the Beechwood entities in early 2014 to obtain approximately $37 million of the Black Elk Senior Secured Notes from Platinum.

15. Platinum, through Nordlicht and Levy, and with the participation and consent of Beechwood, caused the Beechwood entities to vote to consent their Notes in favor of the Platinum proposal. Shortly after engineering Beechwood's purchase of the Senior Secured Notes and voting those Notes in favor of the Platinum scheme, Levy left his CIO position at Beechwood, and returned full time to Platinum.

16. Based on a fraudulent vote count that included both Notes owned by Platinum affiliates and the Platinum-controlled Beechwood entities, Platinum caused Black Elk to adopt a Second Supplement to the Indenture, which ostensibly permitted use of the Renaissance Sale proceeds to redeem Black Elk Series E preferred equity ahead of the Senior Secured Notes. On the basis of this fraudulently secured supplement to the Indenture, Black Elk's Platinum-controlled Board of Managers including Daniel Small directed that almost $98 million—the vast majority of the remaining cash balance from the Renaissance Sale—be diverted to redemption of Series E preferred equity held by Platinum and then quickly transferred to PPBE and its inside investors including Huberfeld Foundation and Twosons, cementing Black Elk's path to the bankruptcy court.

17. The fraudulent transfer of $97,959,854.79 of Black Elk's assets, including about $16.4 million of that amount to Huberfeld Foundation and Twosons, occurred less than a year before Black Elk was placed into bankruptcy.

II.
JURISDICTION AND VENUE

18. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b), including subsections (2)(A), (B), (E), (F), (H) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are §§ 105, 502, 510, 544, 547, 548 and 550 of the Bankruptcy Code. In accordance with Local Rule 7008-1, the Trustee consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

III.
PARTIES

19. Plaintiff Trustee, Richard Schmidt, is the duly appointed Litigation Trustee in the above-captioned chapter 11 bankruptcy proceeding, *In re Black Elk Energy Offshore Operations, LLC*, Bankruptcy Case no. 15-34287 ("Bankruptcy Case"), and has standing and authority to bring this action. [Docket Nos. 1092 and 1204].

20. Defendant Huberfeld Family Foundation Inc. is a 501(c)(3) organization in New York and can be served through Murray Huberfeld at 15 Manor Lane, Lawrence, NY 11559, or at 250 W. 55th Street, 14th Floor, New York, New York 10019. The Huberfeld Foundation and Murray Huberfeld are alter egos.

21. Defendant Twosons is a Panamanian corporation, which has been authorized to conduct business in New York (DOS ID # 5065864). Twosons' purported physical address is

Mossfon Building, Second Floor, East 54th Street, P.O. Box 0832-0886 W.T.C., Panama, Republic of Panama. Twosons alleged registered agent in Panama is MF Legal Services, with offices in Mossfon Building, Second Floor, East 54th Street, P.O. Box 0832-0886 W.T.C., Panama, Republic of Panama: Faxes: 507-263-9218 and 507-263-7327; Telephone 507-205-5888 and 507-264-2322. Although Twosons is represented by counsel in New York, Twosons has refused to accept service. Twosons will be served through Patrick Belaich and Raphael Harari. Service will be in accordance with The Hague Convention and Bankruptcy Rules.

IV.
BACKGROUND

A. Procedural Background

22. On August 11, 2015 (the "Petition Date"), three petitioning creditors initiated the Bankruptcy Case by filing an involuntary bankruptcy petition against Black Elk under chapter 7 of title 11 of the United States Code in this Court.

23. On August 31, 2015, Black Elk filed its Consent to the Order for Relief and filed its Motion to Convert the Involuntary Chapter 7 Case to a Voluntary Chapter 11 Case. On September 1, 2015, the Court entered an Order for Relief and granted Black Elk's Motion to Convert.

24. Black Elk initially operated its business as a debtor-in-possession pursuant to sections 1107 and 1008 of the Bankruptcy Code.

25. On June 20, 2016, Black Elk filed its Third Amended Plan of Liquidation of Black Elk Energy Offshore Operations, LLC under Chapter 11 of the Bankruptcy Code (the "Plan") [Docket No. 1092].

26. On July 14, 2016, the Bankruptcy Court entered an Order Confirming the Plan. [Docket No. 1204].

27. Pursuant to the Plan, Richard Schmidt, Trustee herein, was appointed and approved to serve as the Litigation Trustee, with full authority to bring the above-captioned action.

28. On October 26, 2016, the Trustee brought a case against PPVAF, PPCO, PPLO, and PPVA Equity relating to the fraudulent transfers as Adversary No. 16-3237 in the United States Bankruptcy Court for the Southern District of Texas. A TRO was entered, some discovery was taken, and (once the Liquidators and SEC Receiver were appointed and became involved) that case is in the process of being resolved. The Trustee incorporates by reference the TRO filing and its exhibits.

29. On August 31, 2017, the Trustee brought a lawsuit against Platinum Partners Black Elk Opportunities Fund LLC ("PPBEO") and Platinum Partners Black Elk Opportunities Fund International LLC ("PPBEOI") relating to the fraudulent transfers from Black Elk, PPVAF, PPCO, PPLO and PPVA Equity – Adversary No. 17-3380 in the United States Bankruptcy Court for the Southern District of Texas. PPBEO and PPBEOI defaulted, and judgment was entered against them on June 29, 2018 in the amount of $32,802,572.16 (PPBEO) and $39,022,229.15 (PPBEOI), respectively.

30. In the course of conducting post-judgment discovery on PPBE, the Trustee has learned that within three days after the first of the Black Elk funds were transferred to the initial Platinum entities, PPBE received and began distributing the funds to their investors, including Huberfeld Foundation and Twosons.

B. Black Elk's History

31. Formed in November 2007 as a limited liability company, Black Elk was an oil and gas company headquartered in Houston with substantially all its producing assets located offshore in United States federal and Louisiana and Texas state waters in the Gulf of Mexico.

Black Elk acquired, exploited, and developed properties that other oil and gas companies desired to remove from their producing property portfolios.

32. From 2008 to 2011, Black Elk employed an acquisition strategy to expand its holdings and further develop its business.

33. To finance its operations, on November 23, 2010, Black Elk issued $150 million of debt to the Senior Secured Noteholders, and simultaneously entered into, among other documents, a Security Agreement (the "Security Agreement") in favor of The Bank of New York Mellon Trust Company, N.A. as Trustee and Collateral Agent for the 13.75% Senior Secured Notes (the "Indenture Trustee"). Pursuant to the Security Agreement, the Senior Secured Noteholders were granted a first priority lien on substantially all of Black Elk's assets.

34. By December 31, 2013, Black Elk had approximately 457,065 gross (223,852 net) acres under lease in the Gulf of Mexico, 935 gross (444 net) wells, and 58 production platforms.

35. For 2014, Black Elk stated it intended to increase its reserves and cash flow through several strategies. One strategy was to "continue to pursue strategic acquisitions." Specifically, Black Elk would seek to acquire properties that were "currently producing or have the potential to produce with additional attention and capital" to "extends the economic life of fields." The importance of this acquisition strategy could not be underestimated, as Black Elk told the SEC: "If we are unable to replace reserves through drilling or acquisitions, our level of production and cash flows will be adversely affected."

36. Production and drilling on platforms in the Gulf of Mexico depended on the service of many independent contractors willing to work under those conditions. In its 2013 10-K, Black Elk acknowledged its dependence on its contractors: "We are dependent on contractors and sub-contractors for our daily operational and service needs on individual fields

and platforms. If these parties fail to satisfy their obligations to us or if we are unable to maintain these relationships, our revenue, profitability and growth prospects could be adversely affected." Yet, despite this reliance on contractors, Black Elk said that "to increase liquidity, we stretched accounts payable." That meant Black Elk was not paying the contractors in a timely fashion for the work – "the daily operational and service needs" – that were the lifeblood of its operations. Thus, stretching accounts payable threatened its core business, a fact Black Elk acknowledged: "our inability to pay trade creditors in a timely manner could impair our ability to develop and operate our properties."

37. Black Elk was effectively insolvent, or at least in the zone of insolvency, by early 2014. By that time, some trade creditors were paid, if at all, more than a year past their due dates because Black Elk did not have sufficient cash to pay its liabilities.

C. Platinum's History

38. Platinum Partners is a group of Manhattan-based hedge funds that were founded in part by and run by Mark Nordlicht ("Nordlicht") and Murray Huberfeld ("Huberfeld"). Nordlicht is currently under criminal indictment for his actions with respect to Platinum, including the Black Elk scheme.[2] Huberfeld recently has pled guilty to a criminal count involving bribery related to Platinum and is awaiting sentencing.[3]

---

[2] Nordlicht was listed as a "key personnel" of PPBE's management company ("responsible for oversight of all trading, asset allocation and risk management of the Platinum-managed funds"). The Trustee served a post-default judgment subpoena on Nordlicht to learn the identities of the PPBE investors and additional facts regarding the redemptions. Nordlicht initially did not produce documents. Nordlicht recently has produced a few documents pursuant to a state court case order, but otherwise has continued to assert his Fifth Amendment rights.

[3] Huberfeld's criminal activity related to Platinum Partners in late 2013 through the end of 2014 was during the same time frame as the Black Elk fraudulent transfer scheme that benefitted the PPBE insiders.

39. PPVAF, the core Platinum hedge fund, was founded in 2003 by Nordlicht, with investors including Huberfeld. Nordlicht has been the Chief Investment Officer ("CIO") and the person primarily directing Platinum's day-to-day operations, as demonstrated by his signing, as "controlling person," a joint filing with the SEC on behalf of PPVAF and various other Platinum-affiliated entities. Huberfeld took the role of silent partner, working through Nordlicht and other Platinum executives.

40. A number of other Platinum executives have played key roles in the relevant Platinum companies, like Black Elk, in which Platinum has invested, and then dominated and controlled. In addition to Nordlicht and Huberfeld, Platinum's primary actors relevant to this case are: (i) David Levy ("Levy"), Huberfeld's nephew, an Investment Manager, Managing Director and Portfolio Manager at Platinum, whom Platinum (Nordlicht and Huberfeld) placed as CIO of the "friendly" Beechwood entities, and as an owner of the General Partner, the Chief Investment Officer and President of B Asset Manager LP,[4] which was both the Administrative Agent for Black Elk's credit facility and also the investment arm of the Beechwood entities; (ii) Daniel Small ("Small"), a Managing Director and Portfolio Manager at Platinum, an executive at Beechwood, and a member of Black Elk's Board of Managers; (iii) Naftali Manela ("Manela"), a Platinum financial executive for a number of the Platinum entities, including PPBE,[5] and also at Beechwood; and (iv) Jeff Shulse ("Shulse"), whom Platinum placed at Black Elk in January 2014 as the company's CFO and who became Black Elk's CEO later that year.

[4] Levy also was the CIO, CFO, and 49.99% owner of Beechwood Re Ltd. and the CIO and 49.99% owner of Beechwood Bermuda, Ltd.

[5] Naftali Manela was listed as a "key personnel" of PPBE (Chief Financial Officer of the Management Company), was one of the Platinum people that orchestrated the payments to PPBE and its investors, and also was served a post-judgment subpoena to learn the identities of the PPBE investors and additional facts regarding the PPBE redemptions. Manela asserted his Fifth Amendment rights against self-incrimination.

Levy, Small, and Shulse also are all under criminal indictment, along with other Platinum executives, for, among other things, their role in the fraudulent transfer of Black Elk's assets that underlies this lawsuit.

D. Huberfeld Family Foundation Inc. Background

41. Murray Huberfeld is the principal and alter ego of the Huberfeld Foundation Inc., which is a 501(c)(3) charity for the benefit of Orthodox Jewish charitable causes. Huberfeld is a sophisticated, sharp businessman, having owned and managed a number of investment management companies.

42. Murray Huberfeld is a longtime associate of Mark Nordlicht. Huberfeld was a founder of and original investor in Platinum Partners in 2003. Huberfeld also owned and managed the Centurion Credit Management hedge funds, which Huberfeld folded into Platinum Partners in 2011. Gilad Kalter, Mark Nordlicht's brother-in-law and a Senior Vice President at Platinum, has testified that Murray Huberfeld "seeded" Platinum Partners and ran Platinum Partners with Mark Nordlicht – "[t]hey were partners, so to speak...."[6] Jona Rechnitz, a family friend and prior business associate of Huberfeld, *see infra* ¶ 52, has said that Huberfeld secretly ran the Platinum funds but is not publicly acknowledged because of his prior legal issues. Murray Huberfeld was a Platinum Partners insider, maintaining an office at the Platinum offices.

43. Murray Huberfeld has a long history of civil and criminal cases providing him more than sufficient notice of the impropriety of his and Platinum's actions. In 1992, Murray Huberfeld and his long-time business partner David Bodner pled guilty to misdemeanor charges

[6] Although Gilad Kalter testified in Murray Huberfeld's criminal case, Kalter asserted his Fifth Amendment rights against self-incrimination when served with a post-judgment subpoena from the Trustee's case against PPBE where Kalter also was listed as a "key personnel" of PPBE (Chief Operating Officer of the Management Company).

for sending imposters to take their broker-license exams. Another PPBE investor also was implicated as the middleman providing the test takers.

44. In July 1998, the SEC filed a complaint against Huberfeld, his partner Bodner, and their company Broad Capital regarding a company called Incomnet and "their roles in a series of fraudulent schemes in violation of the federal securities laws." In particular, the SEC Complaint charged Huberfeld, Bodner and Broad Capital with receiving more than 513,000 shares of restricted Incomnet stock and immediately reselling those shares for a profit of approximately $3.7 million in violation of the securities registration provisions of the federal securities laws. Additionally, the SEC Complaint alleged that Broad Capital never disclosed that it held over 5% of Incomnet's outstanding securities, as required by the reporting provisions of the federal securities laws. Huberfeld, Bodner and Broad Capital agreed to settle the SEC Complaint by consenting to a judgment, without admitting or denying the allegations in the SEC's Complaint, that enjoined them from committing future violations of the securities registration and reporting provisions of the federal securities laws. The consent judgment also ordered Broad Capital, Huberfeld, and Bodner, to disgorge their profits plus interest, for a total of $4,694,125. The consent judgment also ordered Huberfeld, Bodner and Broad Capital each to pay a civil penalty.

45. Murray Huberfeld also had knowledge and notice of a similar fraudulent scheme perpetrated by his former business associate. David Schick was the first legal agent of Huberfeld's Broad Capital. Schick later started Venture Mortgage Corp. In 2001, more than a decade before these PPBE investments, the investors of Venture Mortgage Corp., including Mark Nordlicht, his father Jules Nordlicht and Mark Nordlicht's two siblings, were plaintiffs in a Southern District of New York Bankruptcy Court proceeding against David Schick and Venture

Mortgage Corp., alleging (now, ironically) that "Schick was an attorney/businessman who used his position of respect in the Orthodox Jewish community to perpetrate a Ponzi scheme...." These Schick investments, like the PPBE investments in this case, typically "specified a percentage [return] plus an equity participation." These investments also included "rollovers," where instead of returning the funds, Schick would recommend and then invest (with his clients' permission) the funds in a new or different investment. The Schick case, involving a prominent family in the Orthodox Jewish community, was followed closely by the community. Huberfeld also had personal knowledge from his family's involvement in the Schick scandal. A Trustee was appointed and brought adversary proceedings in the Southern District of New York Bankruptcy Court on behalf of the bankruptcy estate against a number of people, including the wives of Huberfeld and Bodner, *Cassirer v. Bodner, Huberfeld*, Adversary Proceeding No. 96-09193, seeking the return of fraudulently transferred funds.

46. In the late 1990s, Huberfeld was a defendant in civil litigation regarding breach of contract, *e.g. Daly v Cellura, et al.*, Cause No. 99-cv-03914, and securities violations, *e.g. Levy v Klugman, et al.*, Cause No. 99-cv-00446, both in the Southern District of New York.

47. In the early 2000s, Huberfeld and his business partners were prohibited by the SEC from completing three reverse mergers based on their prior disciplinary history, and also were ordered by the Federal Reserve Bank of New York and the FDIC to have written authorization before commencing work with federally insured financial institutions.

48. Huberfeld also has been involved in Platinum Partners investments in which the SEC charged illegal activity. In 2007, for example, Platinum's fund BDL invested in insurance annuities that paid only after an investor died. Personal information was stolen from hospice patients so that BDL could purchase annuities using the dying person's name. Huberfeld was

among the people at Platinum to whom this scheme was pitched, and who agreed to invest. On March 13, 2014, the SEC publicly announced charges regarding this scheme. In 2015, the SEC found that BDL had improperly obtained and used confidential medical information, and required as part of a settlement that BDL forfeit over $4 million.

49. In 2008 and 2009, Huberfeld was subpoenaed for information in connection with lawsuits involving Solomon Dwek, another fraudulent schemer.

50. Huberfeld also has been a defendant in an adversary proceeding regarding his participation in fraudulent transfers. In 2011, the Trustee of the Rothstein bankruptcy estate brought an adversary complaint against Huberfeld, Bodner, Nordlicht, their wives, and their entities to avoid and recover fraudulent transfers made in connection with the Rothstein fraudulent scheme. The Trustee alleged that Huberfeld and the other defendants became aware of the Rothstein fraud scheme, and instead of revealing the fraud, worked out a deal with Rothstein allowing them to unwind their investment positions while new investors were found. The Complaint also alleged that as part of that arrangement, Huberfeld and the other defendants were provided an incentive of an investment that would double their money, from $11,000,000 to $22,000,000, within six months. In a deposition, Rothstein testified that Huberfeld, Bodner, and Nordlicht were aware of the scheme, and further testified that "you want to reward the people that are taking care of you and helping you sustain the Ponzi scheme." These claims were settled in 2012 for payments totaling more than $30 million, among other terms.

51. In 2013, Murray Huberfeld, along with Mark Nordlicht, was a founder, investor, and "consultant" or "advisor" with the Beechwood companies that participated in 2014 with Platinum Partners in the Black Elk Offer to Purchase and Consent Solicitation scheme that caused the Black Elk proceeds to be transferred to PPBE. Huberfeld's nephew, David Levy, was

the Platinum Partners' executive who was the first managing director and portfolio manager of PPBE.[7] David Levy also created and directed the Beechwood investment management company B Asset Manager LP, and has been described by Beechwood's spokesman David Goldin as the person "responsible for Beechwood's purchase of Black Elk bonds and for voting them in Platinum's favor, along with the approval of other covenant changes." After the Black Elk Offer to Purchase and Consent Solicitation scheme was completed, Huberfeld's nephew Levy returned to Platinum Partners as its Co-Chief Investment Officer. The Trustee believes, based upon Huberfeld's ownership interests, advisor status, and relationships with the other participants, that Huberfeld was aware of and approved implementation of the scheme to fraudulently consent the Black Elk Notes.

52. In late 2013 and 2014, in the same time frame as the Black Elk scheme, Murray Huberfeld also was involved in other criminal activity related to Platinum Partners. Huberfeld, looking for institutional investors, was introduced to the head of the New York City Corrections Officers Benevolent Association ("COBA"), Norman Seabrook, by a family friend and business associate named Jona Rechnitz. Huberfeld, Seabrook, and Jona Rechnitz worked out a plan whereby Seabrook would steer millions of dollars in COBA's investments to Platinum Partners in exchange for Seabrook receiving a percentage of the amount invested. Rechnitz, Huberfeld and Seabrook were later arrested and charged with bribery and wire fraud relating to COBA's investments of $20 million (losing $19 million) into Platinum Partners. Jona Rechnitz pled guilty and cooperated with the government. Huberfeld pled guilty to one count of conspiracy to commit

[7] Levy also was listed as a "key personnel" of PPBE's management company (Chairman and Chief Investment Officer and General Partner of the Management Company). The Trustee also served a post-default judgment subpoena on Levy to learn the identities of the PPBE investors and additional facts regarding the redemptions. Levy refused to respond, continuing to assert his Fifth Amendment rights.

wire fraud and is awaiting sentencing. In pleading guilty, Huberfeld testified that he understood that "the money was requested by Rechnitz as payment to Norman Seabrook for his efforts to get COBA to invest in Platinum Partners." Seabrook later was convicted of bribery and conspiracy and is also awaiting sentencing.

53. The Huberfeld Foundation is not the typical, conservatively managed family foundation. Although it gives substantial money to Orthodox Jewish causes, the Foundation's investment strategy is atypical – in addition to a high percentage of hedge fund investments and real estate mortgage investments, the Foundation has invested in "stranger originated life insurance" (STOLI) policies in order to obtain high rates of return, and then been involved in litigation, *e.g.* with Lincoln Benefit Life Company regarding a $6.65 million STOLI policy, regarding those investments. In addition, the Huberfeld Foundation has provided high interest rate loans to friends, business associates and investors, including PPBE Investors – with some of the loans and notes receivable having interest rates listed at 700% to 1200%.

54. The Huberfeld Foundation Inc. Return of Private Foundation 2014 Form 990-PF disclosed total 2014 revenue of $5,911,821, 2014 expenses of $1,629,938 and net assets of $37,435,064. That form also disclosed the Huberfeld Foundation's investment in PPBE, as well as investments in Platinum Partners Value Arbitrage (International) LTD and Platinum Liquid Opportunity Fund LTD. The 2014 Form 990-PF also shows that Dahlia Kalter Nordlicht, Mark Nordlicht's wife, contributed $600,000 to the Huberfeld Foundation.

55. The Huberfeld Foundation received a $1,026,676.83 redemption from PPBE, fraudulently comprised of Black Elk proceeds, in August 2014.

E. Twosons / Hararis Background

56. Twosons is a Panamanian corporation whose Articles of Incorporation state wide-ranging purposes and objects, including among others "[t]he purchase, sale … and investment in

all kinds of movable or immovable properties, merchandise, commodities ….," the "carrying out of any type of commercial operation ….," the "participation in any form in other corporations or companies, be they Panamanian or foreign," the "purchase, sale and trade in general of shares, bonds, securities and effects of any kind or description," and/or the "purchase, construction, chartering, owning operation, management and administration of ships and vessels…."

57. Twosons was created in April 2007 by the Mossack Fonseca law firm in Panama, a law firm that The Atlantic has described as having "special expertise in creating tax shelters for wealthy global elites," but also perhaps being "deeply involved in all manner of unsavory and possible illegal practices across continents…."[8] The Times of Israel described Mossack Fonseca as a "discreet outfit with a roster of big-name clients and a quiet reputation for hiding money from the tax man."[9] Mossack Fonseca created more than 113,000 shell companies. When the British Virgin Islands was forced to clamp down on some methods that had previously permitted anonymous ownership of companies, Mossack Fonseca moved their business to Panama and to the Caribbean island of Anguilla.

58. Jurgen Mossack and Ramon Fonseca, the firm's principals, were arrested as part of a Panamanian government investigation in 2017. In describing the raid and arrests, The Guardian stated: "Kenia Porcell, Panama's attorney general, said she had information that identified Mossack Fonseca 'allegedly as a criminal organization that is dedicated to hiding money assets from suspicious origins.'"[10] The Mossack Fonseca law firm now is being wound down.

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[8] https://www.theatlantic.com/international/archive/2016/04/panama-papers-mossack-fonseca/476727/

[9] https://www.timesofisrael.com/law-firm-at-heart-of-panama-papers-leak-owned-by-nazis-son/

[10] https://www.theguardian.com/world/2017/feb/10/panama-papers-mossack-fonseca-offices-raided-over-odebrecht-bribery-scandal

59. Not surprisingly then, Twosons maintains no public presence or information; for example, it has no site on the World Wide Web. Like other Mossack Fonseca companies, it appears to have intentionally shrouded itself from the public.

60. The Twosons Articles of Incorporation list as the Directors and Officers: George Allen as a Director and President, Carmen Wong as a Director and Secretary, Yvette Rogers as Director and Vice President and Treasurer, Jacqueline Alexander as Director and Assistant Secretary, and Verna De Nelson as Director and Assistant Secretary. However, it appears that none of these individuals actually were associated with Twosons, other than to be listed in order to preclude any public recognition of the actual owners and directors of Twosons. According to the Articles of Incorporation, each Director could be located at the address for Mossack Fonseca. Moreover, it has been reported that these alleged directors were employees of the Mossack Fonseca law firm,[11] and that some of them - Allen, Wong, Rogers, and Alexander - now have been arrested as part of the Mossack Fonsenca criminal investigation.[12]

61. The Twosons Articles of Incorporation also refer to "bearer shares," which the Atlantic describes as "something of a MF [Mossack Fonseca] specialty. A bearer share grants control of an instrument or company directly to whoever possesses a physical certificate. The ownership is not recorded or registered anywhere else. Bearer shares are banned in some countries because of the high potential for fraud."

62. The Panama Papers reveal that Twosons has as an "intermediary" Patrick Belaich, an individual residing in Geneva, Switzerland, and that Twosons also has issued bearer shares.[13]

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[11] https://www.affino.com/blogs/blogs/why-the-panama-papers-are-important-for-all-citizens-and-what-they-say-about-the-state-of-our-world

[12] https://manueldelia.com/2018/08/jaqueline-alexander-denied-bail-by-panama-court-and-detained-as-part-of-organised-crime-and-money-laundering-investigation/

[13] https://offshoreleaks.icij.org/nodes/10047593

The Guardian describes the Panama Papers as "millions of documents belonging to Mossack Fonseca and leaked in April 2016, provoking a global scandal after showing how the rich and powerful used offshore corporations to avoid paying taxes."[14] The Panama Papers further show that Patrick Belaich as being associated as an intermediary with two other companies – Songey Limited and Rampley Limited.[15] In turn, Songey Limited has as its shareholders Raphael Harari and Gabriel Harari, who are both identified as being located in Geneva, Switzerland.[16] Rampley Limited again lists Patrick Belaich as an intermediary and also lists Raphael Harari and Eliane Harari as shareholders.[17] Patrick Belaich is listed on other websites as having business relationships with the Hararis, and particularly Raphael Harari – for example, they own together a book store in Geneva, Switzerland.[18]

63. In September 2016, Twosons Corporation sued Platinum Partners in New York, New York for breaching a $14 million promissory note, which had a balance of about $6 million. Mark Nordlicht had signed the promissory note, dated as of September 18, 2014, for Platinum Partners, and Patrick Belaich had signed as a "Director" for Twosons Corporation. Twosons charged Platinum an interest rate of 1.33% per month. The promissory note also references another $36 million promissory note "entered into as of the date hereof" between Twosons and Platinum Partners, as well as a prior "Note dated July 1, 2014."

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[14] https://www.theguardian.com/world/2017/feb/10/panama-papers-mossack-fonseca-offices-raided-over-odebrecht-bribery-scandal

[15] https://offshoreleaks.icij.org/nodes/11006247

[16] https://offshoreleaks.icij.org/nodes/10109176

[17] https://offshoreleaks.icij.org/nodes/10176894

[18] https://www.moneyhouse.ch/en/company/gallia-livres-sarl-10571363541; http://www.monetas.ch/htm/684/fr/Donnees-personnelles-Raphael-Harari-France-Geneve.htm?ident=D4qETLPLcvd0ybX3v%2FYA2Ky6vJCXNo1GJ%2FUdaBAZ%2BVE%3D

64. Therefore, Twosons appears to be principally owned by the Hararis, a family from France and Geneva, Switzerland with an estimated net worth of 400 - 500 million Swiss francs (about $400 - $500 million USD).

65. The Hararis made a fortune in France from a pharmaceutical company called Negma Laboratories, which they owned for 35 years and sold in 2007 for a reported $250 million.[19] The Hararis sold Negma Laboratories in part to fund a company called Steba Biotech, which they created in 1996 to begin developing a new prostate cancer drug called Tookad.[20] "In 2004, [Steba Biotech] graduated from an academic venture to an actual company."[21] Tookad reached Phase II trials in 2008.[22] Steba Biotech completed its Phase III Tookad trials in 2016.[23] Mexico approved the use of Tookad for early-stage prostate cancer in 2016,[24] the European Medicines Agency approved Tookad in November 2017,[25] and Tookad is under review by the United States Food and Drug Administration.

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[19] https://en.globes.co.il/en/article-eu-cttee-approves-israel-cancer-drug-1001206170

[20] https://www.weizmann-usa.org/news-media/in-the-news/ema-approves-steba-s-prostate-cancer-drug; https://en.globes.co.il/en/article-eu-cttee-approves-israel-cancer-drug-1001206170 ("Negma Laboratories was sold to finance Steba Biotech").

[21] https://www.weizmann-usa.org/news-media/in-the-news/steba-offers-prostate-cancer-patients-a-better-approach

[22] https://www.weizmann-usa.org/news-media/in-the-news/steba-offers-prostate-cancer-patients-a-better-approach

[23] https://www.prnewswire.com/news-releases/steba-biotechs-tookad-vascular-photodynamic-therapy-maintains-significant-reduction-in-overall-progression-and-conversion-to-radical-therapy-in-low-risk-prostate-cancer-patients-at-4-years-685999402.html

[24] https://www.weizmann.ac.il/WeizmannCompass/sections/features/literal-ray-of-hope

[25] https://www.prnewswire.com/news-releases/steba-biotechs-tookad-vascular-photodynamic-therapy-maintains-significant-reduction-in-overall-progression-and-conversion-to-radical-therapy-in-low-risk-prostate-cancer-patients-at-4-years-685999402.html

66. Steba Biotech is a private company, and has been self-financed by the Hararis, who have said that they have invested hundreds of millions of dollars into the company.[26] The self-financing explains in part the Twosons / Hararis' involvement with Platinum Partners attempting to lock in unusually high rates of return in 2013 and 2014, which was about seven years after the Hararis' initial investment in Steba Biotech, and two years before Steba Biotech received approvals for Tookad from Mexico and the European Union.

67. Twosons, and its principals the Hararis, have evaluated and done substantial business, in addition to the Black Elk-related PPBE investments, with Platinum and its principals, *e.g.* the previously referenced $50 million+ in promissory notes (¶ 63). The Trustee believes, based on information available on the World Wide Web, that there are substantial family, friendship, religious, political and charitable connections between the Twosons principals and the Platinum principals. The Trustee further believes, based on Twosons' loans and investments into Platinum, their rates of return and timing, and the relationships between the parties, that Twosons and the Hararis knowingly acted to prop up Platinum when it was illiquid in order to keep Platinum afloat, and that Platinum in turn agreed to provide Twosons and the Hararis unusually high rates of return and to protect their investments.

[26] https://www.weizmann-usa.org/news-media/in-the-news/steba-offers-prostate-cancer-patients-a-better-approach; https://en.globes.co.il/en/article-eu-cttee-approves-israel-cancer-drug-1001206170 ("Raphael Harari previously told 'Globes' that he had invested hundreds of millions of dollars in the company."); https://www.weizmann-usa.org/news-media/in-the-news/steba-offers-prostate-cancer-patients-a-better-approach ("'Raphael Harari: [The family has invested] Hundreds of millions of dollars. Our wish is to fund our own operation was one of the major reasons we sold the family company, Negma.'").

V.
HUBERFELD FOUNDATION AND TWOSONS INVEST IN BLACK ELK, HAVE NOTICE OF AND PARTICIPATE IN THE SCHEME, AND IMPROPERLY RECEIVE BLACK ELK PROCEEDS

68. The Huberfeld Foundation and Twosons were long-term investors with significant relationships to Platinum Partners. Both were aware of and participated in the scheme to salvage the Black Elk Series E preferred equity investments and also benefit Platinum and the PPBE Investors. An understanding of the general scheme provides context for the participation of Huberfeld Foundation and Twosons in the scheme.

A. Platinum's Dominion and Control through Platinum's Equity Position; the Renaissance Sale and the Series E Wire Transfers to Benefit Platinum and the PPBE Investors, including Huberfeld Foundation and Twosons.

69. **Platinum dominates and controls Black Elk's equity position.** As of December 31, 2013, Platinum owned approximately 85% of Black Elk's outstanding voting membership interests and approximately 66% of Black Elk's total outstanding membership interests, giving it significant influence and control in corporate transactions and other matters. As a result of its majority ownership interest in Black Elk, Platinum had the ability to and did exercise its rights to remove and appoint key personnel and to direct and control company affairs, including management policies, financing arrangements, payment of dividends or other distributions, and other company transactions or matters submitted to members for approval, including potential mergers or acquisitions, asset sales and other significant company transactions. Company documents, including Black Elk's Operating Agreement, which refers to the role of a "Platinum Manager," and e-mail communications referenced herein reveal overwhelming evidence of Black Elk management conferring with, and seeking approvals from, Platinum for day-to-day business decisions, as well as any significant or extraordinary transactions.

70. Prior to the Petition Date, Platinum had the ability to appoint members of the Black Elk's Board of Managers, who in turn, had the power to appoint and remove Black Elk's Officers. Through this influence, Platinum has dominated Black Elk, exerting control over its day-to-day operations. As reflected in SEC filings, Platinum's control over Black Elk included, among other indicia of domination, Platinum having directed Black Elk to engage in specific business transactions, causing Black Elk to terminate existing business relationships in favor of entities related to or affiliated with Platinum, and controlling which of Black Elk's vendors were paid (if at all) and when. Platinum used this domination of Black Elk inequitably and to the detriment of Black Elk and Black Elk's creditors by, among other actions, preventing Black Elk from paying is legitimate debts while diverting assets to the benefit of Platinum and its affiliates and insiders. By example, Platinum caused Dan Small to breach his duties as a manager, and Jeff Shulse to breach his duties as the CFO, with respect to the Offer to Purchase and Consent Solicitation scheme.

71. Black Elk's then-CEO, John Hoffman, has testified that "Platinum was calling all of the financial shots. I would say as of February [2014], they were in complete control of, you know, essentially almost every daily activity and most certainly stayed on top of every penny in and every penny out." Also according to Hoffman, Platinum had the ultimate decision-making authority on whether Black Elk would enter into an acquisition or buy any properties.

72. Platinum consolidated and further exerted its control over Black Elk, and stepped up the implementation of its schemes to plunder Black Elk, when it appointed Jeff Shulse as Black Elk's CFO in January 2014.

73. Almost from his first day on the job as Black Elk CFO, Shulse worked for the benefit of Platinum, and not Black Elk. Platinum rewarded Shulse's misplaced loyalty by

(i) reinstating him multiple times after Black Elk's then-CEO Hoffman tried to fire him and (ii) promoting him to CEO of Black Elk in fall 2014 after Hoffman's departure. Shulse was the main Black Elk facilitator of Platinum's scheme to enrich itself at Black Elk's expense.

74. As Platinum and Shulse knew by July 2014, and was reflected in Black Elk's public filings, Black Elk did not have enough income to pay all of the bills that were outstanding and thus was unable to pay its debts as they became due. Black Elk did not have the funds or liquidity to pay its mounting trade debt, more than $100 million. Black Elk was financially stressed to the point where Black Elk's only short-term alternative to a bankruptcy filing was to sell substantially all of its assets.

75. **The Renaissance Sale occurs.** On or about July 10, 2014, Black Elk entered into a Purchase and Sale Agreement with Renaissance Offshore, LLC that would transfer certain assets to Renaissance in exchange for $170 million, subject to certain closing adjustments (the "Renaissance Sale").[27] The Renaissance Sale represented a significant amount of Black Elk's cash flow, proved reserves, and production. The Renaissance Sale closed on August 15, 2014, at which time Black Elk received approximately $125 million in net proceeds.

76. Rather than use these Renaissance Sale proceeds to pay Black Elk's substantial debts, including the Senior Secured Notes or trade payables, Platinum used the proceeds to retire Black Elk's Series E preferred equity units, which not only provided no real value to Black Elk, but also cemented Black Elk's insolvency and avoided the proper order of priority.

77. Platinum accomplished this end through an improper Offer to Purchase and Consent Solicitation, which sought approval of an amendment to the Indenture governing the

[27] Although Black Elk was the party on the Renaissance PSA, Platinum was representing in an E&P Ventures PowerPoint that Renaissance was part of its assets in the GoM.

Notes to allow the vast majority of the Renaissance proceeds to be used to retire the Series E preferred equity and to purchase only a small number of the Senior Secured Notes.

78. **The Offer to Purchase and Consent Solicitation Scheme is implemented.** The Offer to Purchase and Consent Solicitation required a majority of the non-Platinum-affiliated Senior Secured Noteholders to consent. Platinum, primarily through Nordlicht, Small, and Levy, caused the following representation to appear in the Offer to Purchase and Consent Solicitation Statement: "As of the date hereof [July 16, 2014], there are $150 million aggregate principal amount of Notes issued and outstanding under the Indenture. Platinum Partners Value Arbitrage Fund L.P. and its affiliates, which own approximately 85% of our outstanding voting membership interests, own approximately $18,321,000 principal amount of outstanding Notes. Otherwise, neither we, nor any person directly or indirectly controlled by or under direct or indirect common control with us, nor, to our knowledge, any person directly or indirectly controlling us, held any Notes." This last sentence was false, and designed to cover up Platinum's scheme to fix the consent vote.

79. Platinum's actual purpose was (i) to avoid having a large number of Notes tendered, but (ii) to allow Platinum to receive the benefit of approximately $98 million from retiring Series E preferred equity in disregard of the proper priority order of distribution. By avoiding tender of any significant amount of Senior Secured Notes, Platinum maximized the amount of cash available for retiring the Series E preferred equity, while also maintaining the priority position of Platinum's own Senior Secured Notes.

80. The first purpose of discouraging a large number of tenders was achieved primarily by the unpalatable terms of the Offer to Purchase and Consent Solicitation, which provided no redemption premium on tendered Notes. Platinum accomplished the first part of its

goal, as only 11,333,000 of the 150,000,000 Notes, or less than 8%, were tendered. Platinum tendered none of their own Notes.

81. Platinum achieved the second part of its goal, allowing an improper priority redemption of its Series E preferred equity, through a scheme to fix the vote. In the months leading up to the Offer to Purchase and Consent Solicitation, Platinum orchestrated the scheme explained by Nordlicht in a February 4, 2014 email: "the move is going to be to inform bondholders we have sales lined up but we are going to use the proceeds for working capital and for drilling. That will lead to friendlies getting control of bonds at decent prices. Once friendlies have control of bonds, we can then execute with flexibility according to what we would like to do."

82. Platinum, at the primary direction of Nordlicht, Levy, and Small, obtained alleged approval of the Indenture amendment in part through Platinum's improper "disclaimer of beneficial interest" in $43,293,000 of Notes that were in fact beneficially owned by Platinum affiliates.

83. Platinum also achieved the improper consent approval in part through implementation of the scheme to have "friendly" Notes bought and held by the affiliated but undisclosed Beechwood entities voted in favor of amending the Indenture. Platinum, Nordlicht, Levy and Small were the primary architects that implemented this scheme. Beechwood was owned in substantial part by Platinum principals and associates—primarily Nordlicht, Levy, Huberfeld, and others associated with them. Platinum, including Nordlicht, Huberfeld, and Levy, formed Beechwood with two other people acting as front men for the purpose of entering into reinsurance agreements in which they would be able to access, control, and use institutional

investor assets to benefit Platinum and themselves. Platinum exercised dominance and control of Beechwood.

84. In order to implement the scheme to have "friendlies" purchase and vote the Notes as directed by Platinum, Platinum installed Levy as the Chief Investment Officer and President at B Asset Manager, the investment arm of the Beechwood entities. At the same time, Levy continued to work for and on behalf of Platinum with respect to Black Elk.[28] Levy, acting at the direction of Nordlicht and Huberfeld and for the benefit of Platinum, began making the investment decisions for Beechwood.

85. As CIO and President of B Asset Manager, Levy caused the "friendly" Beechwood entities, including Beechwood Bermuda International Ltd., BBIL ULICO 2014, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, Bre BCLIC, and SHIP to obtain approximately $37 million worth of Notes, and then vote them as directed by Platinum and in support of Platinum's scheme. Beechwood consented but did not tender its Notes. As Reuters has reported, a "Beechwood spokesman . . . confirmed that Levy was responsible for Beechwood's purchase of Black Elk bonds and for voting them in Platinum's favor, along with the approval of the covenant changes."[29] Beechwood, through and by David Levy, voted

[28] Levy, for example, on behalf of Platinum, but while at B Asset Manager / Beechwood and using his dlevy@beechwood.com email, addressed disputes at Black Elk among Black Elk Officers Shulse, Hoffman, and Art Garza on July 13, 2014, 3 days before the Black Elk 8-K announcing the Offer to Purchase and Consent Solicitation. Beechwood also had a number of other Platinum plants, including Will Slota, at Chief Operating Officer, Paul Poteat, as Chief Technology Officer, David Ottensoser, as General Counsel, Daniel Small, as Senior Secured Collateralized Loans Project Manager, David Leff, as United States Fixed Income Project Manager, Rick Hodgdon, as Chief Underwriting Officer, Daniel Saks, as B Asset Manager's Chief Investment Officer (after Levy resigned and returned full-time to Platinum), and Naftali Manela and Eli Rakower, who provided consulting services to Beechwood.

[29] Platinum's effective control of the Beechwood Notes also is illustrated in the email communications among Platinum executives on May 16, 2014 regarding Platinum lending out and getting back Black Elk Notes from B Asset Manager.

Beechwood's Black Elk Notes, without tendering those [and did not tender their Notes], including the Notes against their own economic interest and in favor of Platinum's interests, even though the vote meant that the Beechwood Notes would be exposed to greater risk because all the value went to Platinum.

86. In addition to the improper rigging of the vote through "disclaiming" affiliates and obtaining "friendly" votes, Platinum also obtained any truly non-affiliated consents by concealing from Noteholders (i) the amount of Notes disclaimed by Platinum, (ii) the relationships between the consenting parties such as Beechwood and Platinum, and (iii) Platinum's intentions to cause Black Elk to repurchase all of Platinum's Series E preferred equity, and the effect that such repurchase would have on the ability of Black Elk to continue as a going concern.

87. Platinum dominated and controlled the Renaissance Sale closing, as well as the Offer to Purchase and Consent Solicitation. On August 12, 2014, Daniel Small, on behalf of Platinum, emailed David Levy at dlevy@beechwood.com to ask whether he has [redacted] Levy responded one minute later from his iPad, [redacted] At 10:49 pm, Small then instructed Levy: [redacted] The next day, August 13, 2014, Levy, as President of B Asset Manager LP, executed and provided consent for the Renaissance Sale.

88. On August 14, 2014, Black Elk, under the influence of Platinum, issued a press release falsely reporting approval by a majority of Notes, disregarding Notes held by affiliates.

These alleged results were achieved only by improperly including all of the Platinum controlled, but "deemed not affiliated" and "friendly" votes.[30]

89. On August 15, 2014, Black Elk issued a Form 8-K announcing that it had received consent from holders of its 13.75% Senior Secured Notes to, among other things, apply the proceeds from the Renaissance Sale to retire the tendered Senior Secured Notes and utilize the remaining proceeds to re-purchase Series E preferred equity issued by Black Elk. The purported consent was memorialized in a Second Supplemental Indenture. Again, it was only by improperly including the votes of the affiliated Platinum-controlled, but "disclaimed" or "friendly" entities, that consent allegedly was obtained.

90. Beginning on August 15, 2014, Black Elk received the following wire transfers relating to the Renaissance Sale:

Date	Sender	Recipient	Amount
08/15/14	Renaissance Offshore, LLC	Black Elk Energy Offshore Operations LLC	$99,999,999.99
08/15/14	Renaissance Offshore, LLC	Black Elk Energy Offshore Operations LLC	$19,240,898.44
08/15/14	Petroleum Strategies, Inc.	Black Elk Energy Offshore Operations LLC	$5,713,164.51
08/22/14	Renaissance Offshore, LLC	Black Elk Energy Offshore Operations LLC	$1,059,810.55
		TOTAL	**$126,013,873.49**

[30] This representation also directly contradicts the method of tabulating results set forth in the Offer to Purchase and Consent Solicitation and as stated in Black Elk's press release of July 16, 2014, which observed that the Indenture could not be amended unless "Consents from the holders of at least a majority in principal amount of the outstanding Notes (disregarding any Notes held by affiliates of the Company) have been validly received...."

91. On August 18, 2014, the Monday following the first three Renaissance wire transfers to Black Elk, Shulse again followed up with Platinum regarding his reward. In an email to Nordlicht, Small and Levy, Shulse said that [redacted][31]

92. **Platinum causes the Renaissance Sale proceeds to be wired to and through Platinum for its and the PPBE Investors' improper benefit.** E-mail communications on August 18, 2014 by and between Nordlicht, Shulse, Small, and Levy demonstrate the mechanics of the final implementation of the plan to improperly transfer nearly $98 million from Black Elk for the benefit of Platinum. That day, Shulse emailed Nordlicht, with the subject line, "Wire is NOT approved," explaining that Shulse understood that Nordlicht was "talking to John [Hoffman] at 4:00, [but] the wire transfer deadline is 3:30 ... if you want New Mountain paid today, you are going to have to make a decision soon. I am happy to hit send if the board tells me to, if not it will likely be tomorrow assuming John approves at 4:00."[32]

[31] The August 18-21, 2014 wire transfers for the Series E preferred equity no doubt cemented Black Elk's insolvency. However, Black Elk was insolvent or in the zone of insolvency months earlier. By example, Shulse, in a May 20, 2014 email, stated that [redacted]

[32] New Mountain had acquired its Series E preferred equity from Platinum, and had an agreement with Platinum requiring Platinum to repurchase the Series E preferred equity. The amendments to that agreement with New Mountain extended the time until August 15, but Platinum was three days overdue on August 18.

93. Five minute later on August 18, 2014, Nordlicht sent an email to Shulse, copying Small, and Levy, in which Nordlicht represented that "the board is in agreement to send New Mountain wire and 50 million to **ppbe**. ZThe [sic] balance of the preferred I am going to get you john email so u have unanimous consent on top of his verbal agreement that he has already given me … but send these wires out already!!!!!" (emphasis added).[33] At approximately the same time, Daniel Small also emailed Shulse: "Jeff, on behalf of Sam Salfati and myself constituting a majority of the board of managers you are hereby authorized to wire $70 MM in partial payment of Preferred E units. Regards, Dan." Based on Nordlicht's emphatic, five exclamation point email, and Small's confirmatory email, Shulse then authorized and requested the release of the wires "per Mark's [Nordlicht's] direction."

94. On August 18, David Levy, from his Platinum email address, also sent Shulse, at his personal email address, the PPCO wire transfer instructions. On August 20, Shulse then forwarded on these instructions with the direction to Black Elk employees that "[t]he board has also requested and approved the payment of $24,600,584.31 of Series E preferred to Platinum Partners Credit Opportunities Master Fund LP … wire instructions below ... needs to go today."

95. Between August 18 and 21, 2014, Black Elk remitted the following wire transfers, pursuant to the instruction of Platinum, including Nordlicht, Levy and Small:

[33] Nordlicht's reference to "ppbe" -- the shorthand used by Nordlicht, Huberfeld, Levy, and Manela (among others at Platinum) to refer to PPBEO and PPBEOI – is telling regarding the ultimate intended recipients of the wire transfers. Nordlicht was thinking of the PPBE inside investors, including his father, a Nordlicht family foundation, Huberfeld Foundation, David Levy, Daniel Small, PPVAF and PPCO, as well as other close personal and business associates of Platinum, such as Twosons.

Date	Sender	Recipient	Amount
08/18/14	Black Elk Energy Offshore Operations LLC	Chardan Capital Markets LLC	$81,666.67
08/18/14	Black Elk Energy Offshore Operations LLC	New Mountain Finance Corp.	$20,462,777.78
08/18/14	Black Elk Energy Offshore Operations LLC	PPVA Black Elk Equity LLC	$32,563,819.73
08/18/14	Black Elk Energy Offshore Operations LLC	Platinum Partners Value Arbitrage	$15,332,672.97
08/19/14	Black Elk Energy Offshore Operations LLC	The Bank of New York Mellon	$11,773,608.13
08/20/14	Black Elk Energy Offshore Operations LLC	The Bank of New York Mellon	$4,366.77
08/20/14	Black Elk Energy Offshore Operations LLC	Platinum Partners Credit Opportunities Master Fund LP	$24,600,584.31
08/21/14	Black Elk Energy Offshore Operations LLC	Platinum Partners Liquid Opportunity Fund LP	$5,000,000.00
		Total	**$109,819,496.36**

96. The absence of any paperwork before the August 18, 2014 wire transfers from Black Elk is indicative of the improper nature of the transactions. By example, there is no indication that Black Elk complied with the publicly available Third Amendment to the Black Elk Operating Agreement requiring that Black Elk "shall give all of the holders of the Class E Preferred Units a written notice at the last address of each holder designated on the records of the Company of its determination to effect a redemption (the 'Company Redemption Notice'), specifying the redemption date (the 'Redemption Date'), which shall be no less than ten (10) and not more [than] twenty (20) days after delivery of the Redemption Notice, [and] the number of Class E Preferred Units to be redeemed...." In addition, there is no evidence that Platinum or

Black Elk complied with the publicly available Operating Agreement's requirement of proof of ownership to effect a redemption: "On the Redemption Date and upon receipt by the Company of evidence satisfactory to [Black Elk] of the ownership of the Class E Preferred Units, the holder thereof shall be entitled to receive payment therefor." Finally, the Third Amendment to the Operating Agreement provides that if the amount of Series E preferred equity to be repurchased is "less than all outstanding Class E Preferred Units," then the redemption "shall be on a pro rata basis among all holders of Class E Preferred Units in accordance with the number of Class E Preferred Units held by such holder...." Here, some Platinum entities, such as PPVAF and PPVA Equity, had their entire Series E holdings repurchased, but Platinum entity PPLO only had $5 million repurchased and was left holding more than $7 million in Series E preferred equity after August 18, 2014, violating the pro rata requirement.

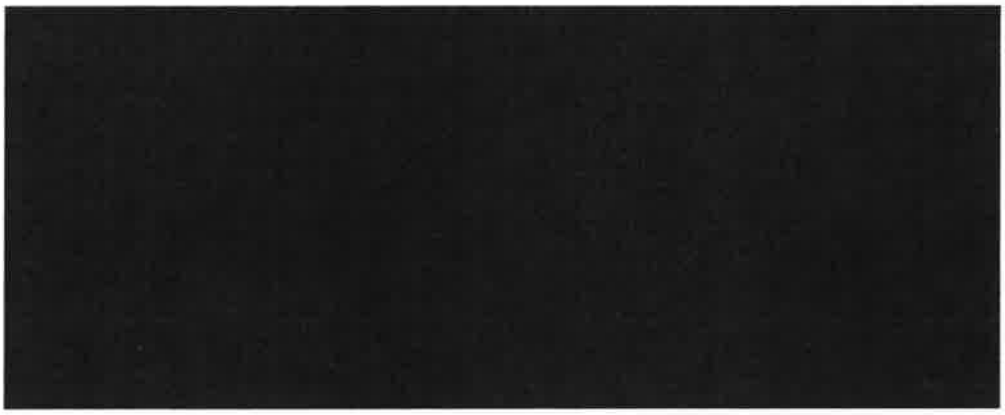
97. These August 2014 wire transfers from Black Elk, except to the Bank of New York Mellon for the tendered Notes, all benefitted Platinum and ultimately the PPBE's Investors, including the Huberfeld Foundation and Twosons.

98. Although the first set of funds were transferred at Platinum's direction from Black Elk to the Platinum entities PPVAF, PPCO, PPVA Equity and PPLO, those entities (at the direction of Platinum including Nordlicht, Huberfeld, and Levy) then immediately transferred the funds to PPBE (also controlled by Platinum including Nordlicht, Huberfeld and Levy). The Platinum entities, all under the same control and ownership, are one and the same -- alter egos of one another.

99. PPBE then immediately distributed the Black Elk funds to their investors, including Nordlicht's family, David Levy individually, Daniel Small individually, other

Platinum owners and management, and other close friends and business partners, including Huberfeld Foundation and Twosons.

100. The PPBE inside investors were the planned recipients of the Black Elk transfers. In late June 2014, Nordlicht, Levy and Manela discussed by email the need to make payments to PPBE Investors, and the timing of the closing of the Black Elk Renaissance Sale. PPBE Investors were told by July and early August 2014 that their interests would be redeemed when the Renaissance Sale proceeds were obtained. In December 2014, an investor letter drafted by Platinum for Nordlicht's signature confirms that the investors were the intended recipients:



The Trustee believes, from documentation produced by other entities and also from the Platinum-PPBE-PPBE Investors' actions with respect to the Series E preferred equity and Black Elk Notes in the April-June 2014 time frame, *e.g. infra* ¶¶ 101-163, that the PPBE Investors including the Huberfeld Foundation and Twosons were aware of Black Elk's financial troubles and agreed that they would be paid once the Black Elk Renaissance Sale closed and the proceeds could be forwarded. And, the Huberfeld Foundation and Twosons were paid – to the detriment of Black Elk and its secured and trade creditors.

B. Huberfeld Foundation and Twosons Invest in 2013 in Black Elk Series E Preferred Equity, Plan and Agree in 2014 to Allow Platinum to Manipulate the Black Elk Notes and Preferred Equity for Platinum's and Their Benefit, and Receive over $16 Million in Fraudulent Transfers from the Black Elk Renaissance Sale Proceeds.

101. Huberfeld and the Huberfeld Foundation are Platinum, Beechwood and PPBE insiders. Twosons also has had numerous business relationships with Platinum and its principals, including Mark Nordlicht and Murray Huberfeld, *e.g.*, the previously discussed tens of millions of dollars of promissory notes. *See e.g. supra* ¶ 63.

102. Black Elk, after the West Delta explosion in November 2012, began to suffer both increased costs and decreased revenue, requiring additional financial resources to stay afloat. Platinum, suffering its own liquidity crisis, needed to find investment money for Black Elk and also address its own liquidity problems.

103. On January 16, 2013, Black Elk released an 8-K stating that "[f]or the third quarter 2012, we realized a net loss of $32.6 million compared to $51.1 million net income in the same quarter of 2011." That 8-K further stated that "[t]otal revenues for the third quarter 2012 decreased from the same period in 2011 by $84.2 million, or 60%, due to lower realized and unrealized gains on derivative financial instruments, decreased oil and gas production and lower gas and plant product prices." Black Elk also disclosed the appointment of an interim CFO and search for a permanent CFO.

104. **The creation of PPBE and the initial investments into Series E preferred equity.** On January 23, 2013, Platinum created Platinum Partners Black Elk Opportunities Fund LLC ("PPBEO") and then, on February 8, 2013, its international counterpart Platinum Partners Black Elk Opportunities Fund International LLC ("PPBEOI"), as investment fund vehicles.[34]

[34] PPBEOI funneled money through a Caymans affiliate, Platinum Partners Black Elk Opportunities Fund International Ltd.

105. Platinum Partners issued a private placement memorandum for PPBEO dated as of January 2013 ("2013 PPM"). That PPM lists David Levy, Huberfeld's nephew, as the principal of the Managing Member and the Management Company. The 2013 PPM lists the key management personnel, in addition to David Levy, as the Platinum owners and executives Mark Nordlicht, Gilad Kalter (Nordlicht's brother-in-law), Naftali Manela, Daniel Small and Joel Edelstein. Nordlicht, Levy and Small (among others) orchestrated Platinum's Black Elk scheme.

106. The 2013 PPM states that PPBEO's purpose is to issue "the interests and using the net proceeds of the interests to purchase Class E Preferred Units" of Black Elk (the "Interests"). The PPM anticipates that up to $40 million will be purchased directly from Black Elk and up to $55 million from PPVA Equity.[35]

107. The 2013 PPM recognizes the highly risky nature of any investment into Black Elk. The PPM says that the investment opportunity is only open to "sophisticated investors" that have a "pre-existing relationship with the Managing Member," are "accredited investors" under the Rule 501 of Regulation D of the Securities Act, and "have such knowledge and experience in financial and business matters that they are capable evaluating the merits and risks of an investment" In PPBEO. The PPM further states that only investors with "adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments" should invest. It specifically warns that no investment should be made by someone who "cannot afford a total loss of its principal" or "who has not carefully read or does

[35] Platinum created PPVA Equity "for the purpose of issuing the [PPBE] Interests and using the net proceeds of the Interests to purchase Preferred Units." Platinum acknowledged that PPVA was an affiliate under common control, and also represented that "[i]f, as anticipated, the Issuer [Black Elk] pays dividends on the Preferred Units in kind, the Company [PPBE] expects sell the payment in kind portion of such Preferred Units to PPVA Black Elk (Equity) LLC in order to make quarterly distributions."

not understand this [PPM], including the portions concerning the risks, conflicts of interest and income tax consequences." The minimum initial subscription, which could be waived by the Managing Member, was $1 million.

108. The 2013 PPM made clear to prospective investors Black Elk's precarious financial condition – the proposed terms made sense only in the context of a potential bankruptcy and loss of investment: the prospective investors were given a 20% dividend return on the investment for 14 months, increasing to a 36% dividend if the Series E preferred equity was not repurchased by the end of that 14 months. The investors, though, understood that Black Elk could not even afford to pay the 20% dividend in 2013 – the dividend would be issued as payment-in-kind ("PIK"), *i.e.* additional preferred equity would be issued instead of cash. The PPM provides that there will be a "Quarterly Purchase," *i.e.* PPVA Equity will purchase the PIK preferred equity from PPBEO in order for PPBEO to be able to make quarterly distributions to its investors. Recognizing the troubled financial condition of Platinum, the PPM states that if PPVA Equity "does not purchase such in kind portion of the Preferred Units for a particular quarter, there will be no quarterly distributions for such quarter…."

109. The 2013 PPM also provides that "[n]o Member may require a redemption of an Interest," and that the "Interests are expected to be redeemed when the Preferred Units are repurchased by the Issuer [Black Elk]." The PPM also prohibited transfer, assignment, sale, pledge or other disposition of the Interests without the approval of the Managing Member. Not only was the investment risky, but the investors would be locked into the investment until Black Elk redeemed its preferred equity.

110. It was clear from the beginning to the PPBE Investors that Black Elk and their investment was a bankruptcy risk. Black Elk released an 8-K on February 28, 2013 that disclosed Black Elk's financial defaults:

> On February 22, 2013, the Company entered into a Limited Waiver and Seventh Amendment to Credit Agreement (the "Seventh Amendment to Credit Agreement") by and among the Company, the Guarantors party thereto, Capital One, N.A., as Administrative Agent for the Lenders signatory thereto, and the Lenders signatory thereto. Effective February 22, 2013, the Seventh Amendment to Credit Agreement (i) provides a limited waiver of (A) the Company's non-compliance with certain financial covenants as of and for the fiscal quarter ended December 31, 2012 and (B) the Company's violation of certain provisions of the Credit Agreement relating to the unwind of certain hedges executed under the BP Swap Agreement (as such term is defined in the Credit Agreement), (ii) extends the effectiveness of the $61 million borrowing base and the scheduled redetermination until April 15, 2013, (iii) adds affirmative covenants requiring the Company to furnish on a weekly basis (A) updated cash flow projection, (B) updated accounts payable and accounts receivable aging schedules and (C) daily production reports for the prior week, (iv) adds an affirmative covenant that the Company receive certain specified capital contributions from Platinum Partners Black Elk Opportunities Fund LLC, and (v) revises the definition of "Event of Default" to include non-compliance with new affirmative covenants.

The 8-K further disclosed that Black Elk did not timely file its 2012 10-K because Black Elk was seeking an amendment to its credit facility.

111. On April 2, 2013, Black Elk issued another 8-K disclosing a sale of four fields to Renaissance Offshore LLC and an Eighth Amendment to its credit facility further restricting Black Elk's borrowing base and preventing any returns of capital to Black Elk's stockholders or distributions of Black Elk's property to equity interest holders.

112. Black Elk's 2012 10-K, issued on April 15, 2013, also revealed Black Elk's financial trouble to any investor – in addition to discussing the West Delta explosion, it reported that there was a net working capital deficit of approximately $71.7 million at December 31, 2012, a net loss of $64 million for the year 2012, total liabilities exceeded total assets by $88 million, accounts payable and accrued expenses had jumped by 50%, or $36.4 million, in one

quarter (from $72.3 to $108.7 million), the members deficit was $118.5 million, and acknowledged that "[o]ur substantial indebtedness and other obligations could have important consequences," including potential debt covenant defaults.

113. **Huberfeld Foundation and Twosons invest in Black Elk's subordinate Series E preferred equity in 2013, with knowledge of Black Elk's dire financial condition.** With knowledge of Black Elk's financial condition, Huberfeld Foundation and Twosons obtained a total of about $16 million of Black Elk's Series E preferred equity and PPBE interests. Platinum (PPVA Equity) and Twosons, for example, entered into a Purchase Agreement dated as of April 24, 2013 ("the Purchase Agreement") with respect to Black Elk Series E preferred equity.

114. Through the Purchase Agreement, Twosons agreed to provide liquidity in exchange for a substantial and unusually high return (20% return through a quarterly dividend (possibly increasing to 36% if the preferred equity was not repurchased within 14 months), as well as a Series B units equity kicker) on Twosons' investment.[36]

115. The Platinum-Twosons Purchase Agreement required, under certain circumstances, for Platinum (and specifically PPVAF) to repurchase from Twosons the Black Elk Series E preferred equity.

116. Huberfeld and the Huberfeld Foundation knew, and Twosons entered into the Purchase Agreement based in part upon its knowledge, that Platinum controlled Black Elk, *e.g.* the Black Elk 10Ks and the Platinum 2013 PPM both disclosed Platinum's controlling interest in

[36] The 20% dividend return evidences the PPBE Investors' knowledge, including Huberfeld Foundation's and Twosons' knowledge, of Black Elk's financial trouble and the possibility of bankruptcy – only a troubled and desperate company would provide a 20% dividend return in exchange for an investment. The jump to 36% if not quickly repaid, as well as the Series B equity kicker further underscore that the PPBE Investors understood that there was substantial risk of bankruptcy.

Black Elk, as well as Platinum's ability to "determine and control its company and management policies, its financing arrangement, the payment of dividends or other distributions, and the outcome of certain company transactions or other matters," and also the "ability to remove and appoint key personnel, including all of the Issuer's managers."[37]

117. In 2013, Huberfeld Foundation and Twosons were aware that Black Elk could not make the payments on the Series E preferred equity, and instead was issuing payments-in-kind ("PIK"), *i.e.* additional Series E units, that were then purchased by Platinum. Platinum's (including PPVAF's) pressing financial obligations therefore included the PIK obligations to the PPBE Investors, including Huberfeld Foundation and Twosons.

118. **Black Elk's financial condition remained dire throughout 2013 and into 2014, and was publicly disclosed to actual and potential investors.** Black Elk's first quarter 2013 10-Q, released on May 15, 2013, confirmed Black Elk's financial trouble to any investor – total liabilities exceeded total assets, there already was a members deficit (before the new preferred equity investments) of $141.8 million, a net working capital deficit of $75.3 million, increasing accounts payable and accrued expenses of $127.2 million, and the 10-Q acknowledged that "[o]ur liquidity outlook changed during the year ended December 31, 2012 primarily as a result of lower gas prices and lower production as a result of wells that watered out, delays in the capital program, shut-ins due to pipeline repairs and Hurricane Isaac as well as the explosion and fire on our West Delta 32-E platform, which caused downtime and delays in the fields due to the BSEE requirement for approval after the incident." Black Elk also reported that it had no amount available for additional borrowings under its credit facility.

[37] The New Mountain Purchase Agreement, executed in the same time period, also has a clause addressing Platinum's control of Black Elk.

119. The rating agencies downgraded Black Elk, first in June and then in September 2013. On June 7, 2013, Moody's downgraded Black Elk because of "the significant deterioration in BEE's liquidity position since the third quarter of 2012." On September 17, 2013, Reuters published an article titled "S&P cuts Black Elk Energy Offshore rating to 'CCC+'," reporting a downgrade in both Black Elk's credit rating and Note rating. That article stated: "The outlook is negative" and explained its rationale that "[t]he rating on Black Elk reflects our view of its 'vulnerable' business risk and 'highly-leveraged' financial risk, incorporating the company's small reserve and production base, high operating costs, and acquisitive growth strategy."

120. On August 6, 2013 Black Elk issued another 8-K reporting another limited waiver of financial covenants and amendment to its credit agreement.

121. Black Elk's second quarter 2013 10-Q, issued on August 14, 2013, discussed at length the legal effects of the West Delta 32 explosion and again showed that total liabilities exceeded total assets, accounts payable and accrued expenses growing to $160.1 million, a members deficit of $186.0 million, and acknowledged "restricted credit availability." Black Elk also reported that it was evaluating other credit sources, including Platinum.

122. On August 21, 2013, Black Elk reported in an 8-K the departure of its Chief Accounting Officer due to a reduction in workforce.

123. On September 6, 2013, Black Elk announced by 8-K an additional waiver and amendment to its credit facility with Capital One and the assignment of its credit facility from Capitol One to Platinum affiliates Resource Value Group LLC ("RVG") and White Elk LLC.

124. The news reporting regarding Black Elk at the end of 2013 made clear to any investor that Black Elk was troubled and heading toward bankruptcy. A Houston Business Journal article entitled "Feds say Black Elk must make additional safety improvements" dated

September 19, 2013 began with the line: "To avoid disqualification as a Gulf of Mexico operator, Houston's Black Elk Energy Offshore Operations LLC first must comply with additional safety measures...." A follow up Houston Business Journal article dated November 5, 2013 was titled "Investigation identifies safety failures related to Black Elk's Gulf platform" and reported that the federal Bureau of Safety and Environmental Enforcement found that the West Delta explosion and deaths were caused by Black Elk and its subcontractors and that Black Elk remained under a safety performance improvement plan. Another Houston Business Journal article dated November 21, 2013 was titled "2012 explosion costs Black Elk millions," and reported that Black Elk had spent $12.4 million in the first months of 2013 on costs associated with the explosion, that civil lawsuits were pending regarding the West Delta explosion, that the Department of Justice had issued a subpoena for information regarding the West Delta explosion, that Black Elk had a net loss of $18.4 million for the third quarter of 2013, and that its production had declined 18 percent for the third quarter and 23 percent for the year compared to the prior year.

125. Black Elk's third-quarter 2013 10-Q, filed on November 14, 2013, disclosed that total liabilities exceeded total assets by more than $100 million and that the members deficit was $209.1 million. In addition to reporting on the money raised from PPBE, that 10-Q also reported a net capital working deficit of $149.6 million, reported that additional capital would be needed to fund drilling operations, and disclosed a separate, failed attempt to improve liquidity by selling Class B units to a company called Asiasons. Accounts payable and accrued expenses had nearly doubled in nine months, from $108.7 million at 2012 year-end to $193.4 million. That 10-Q reported that: "As of September 30, 2013, we were not in compliance with the financial covenants set forth in Section 9.01(a), (b) and (c) of the Letter of Credit Agreement dated

December 24, 2010 … as our payables restriction covenant was calculated to be $27.2 million which was higher than our maximum of $6 million, our total leverage ratio was calculated to be 6.0 to 1.0 which was higher than the required 2.5 to 1.0 and our interest coverage ratio was calculated to be 1.2 to 1.0 which was lower than the required 3.0 to 1.0." That 10-Q also reported that Black Elk had sold some assets to reduce the amount on its credit line and that Black Elk was "evaluating additional potential asset sales of core and non-core assets to optimize our portfolio and normalize the age of our accounts payable."

126. **Platinum, recognizing Black Elk's troubled financial condition and Platinum's own liquidity problems, began to scheme.** By early 2014, Platinum recognized that Black Elk was in severe financial trouble. Platinum, including PPVAF, also lacked the ability to repay its ongoing obligations, including its obligations to New Mountain and the inside PPBE Investors, and needed yet more liquidity. Platinum, including Nordlicht and Huberfeld, therefore schemed on how to satisfy their obligation to New Mountain, obtain additional liquidity from Black Elk, protect their inside PPBE Investors, and also maintain the best position in the event of a Black Elk bankruptcy.

127. Black Elk's on-going financial crisis also was obvious to any actual or potential investor in Black Elk. On January 14, 2014, Black Elk issued an 8-K regarding the announced resignation of Black Elk's CFO, who had only been with the company a very few months. That same 8-K also disclosed the termination of a $50 million Subscription Agreement with potential investor Asiasons.

128. On March 31, 2014, Black Elk's 2013 10-K again showed that total liabilities exceeded total assets, a net working capital deficit of $109.5 million as of December 31, 2013, and acknowledged that "[t]o increase liquidity, we stretched accounts payable, aggressively

pursued accounts receivable and sold assets." Black Elk said that it was "working to normalize the age of accounts payable," *i.e.* it was way behind on its vendor bills. Black Elk also revealed that although it got a waiver from indenture covenants in 2013, "the waiver will not apply to any future fiscal quarter" and that "a default could occur." That 10-K further acknowledged that "[o]ur level of indebtedness and our negative working capital may limit our ability to borrow additional funds, fund our operations or capitalize on acquisition or other business opportunities."

129. Black Elk's 2013 10-K, while acknowledging its severe financial troubles, also disclosed: "In March 2014 we paid all outstanding indebtedness under our revolving credit facility and terminated the facility." By paying off and terminating the Black Elk credit facility, Platinum took the first step in pulling money out of Black Elk and protecting its inside investors. Platinum directed that Black Elk, a financially troubled company, pay off the credit facility owed to Resource Value Group LLC ("RVG"), which was "affiliated with Platinum" and included as investors PPVAF President Uri Landesman and another significant PPBE investor. Platinum did not have a replacement credit facility with another lender for Black Elk. Black Elk acknowledged that it "may not be able to obtain funding in the capital markets on terms we find acceptable," and that Black Elk could not "assure you that our business will generate sufficient cash flow from operations to service our outstanding indebtedness, or that future borrowings will be available to us in an amount sufficient to enable us to pay our indebtedness or to fund our other capital needs." Platinum's payoff of Black Elk's credit facility for its and its investors' benefit without providing or obtaining any additional credit for Black Elk was notice to any investor of Black Elk's financial condition, potential bankruptcy and voidability of any transfer.

130. In 2014, Huberfeld Foundation, Twosons, and other Black Elk and PPBE Investors, aware of Black Elk's precarious financial position, were seeking and demanding that Platinum (and specifically PPVAF) repurchase or transfer their interests in the Black Elk Series E preferred equity and/or PPBE.

131. **Platinum, with the agreement of the PPBE Investors including Huberfeld Foundation and Twosons, allegedly flipped Black Elk Series E preferred equity for Black Elk Notes for the duration of the scheme, providing some additional comfort to the PPBE Investors**. Platinum, including Nordlicht and Huberfeld, decided that for the time period of the Black Elk scheme, it would allegedly flip the ownership of Black Elk Notes and Series E preferred equity – moving the secured, first priority Notes from the Platinum entities to PPBE, and moving the subordinate Series E preferred equity from PPBE to the Platinum entities. This purported flip of interests should somewhat mollify the PPBE Investors, giving them better protection through a better priority position while the scheme was implemented. Platinum and the PPBE Investors also planned for Platinum to buy back the Black Elk Notes from PPBE, paying out the proceeds from the Black Elk Series E preferred equity redemption to the PPBE Investors including Nordlicht's family, Huberfeld's family, David Levy, Daniel Small, PPVAF and PPCO, and Twosons, and then essentially shut down PPBE, leaving Platinum with the Black Elk Notes and a potential priority position in an anticipated Black Elk bankruptcy.

132. Because of Platinum's severe liquidity problems, Platinum also determined to raise additional cash through PPBE, and circulated a second private placement memorandum ("2014 PPM"), describing the plan to allow the prior PPBE Investors (including Nordlicht's family, Huberfeld's family, Twosons, etc.) to exchange their Class A Interests that were directed to Black Elk's Series E preferred equity to obtain the new Class C Interests that would be used to

obtain Black Elk's Notes. The Class A Interest holders also would get to keep their prior common equity interest kickers. The 2014 PPM also contained a description that the investments would be used to obtain Notes that were newly issued by Black Elk (none were), or those held by PPVA Equity (which were), or third parties (*e.g.*, Beechwood). The 2014 PPM also contained the same requirement of a prior relationship with Platinum, and the other warnings and limitations of the 2013 PPM, and referred PPBE Investors to Black Elk's public filings. *See e.g. supra* ¶¶ 107-109. The 2014 PPM also contained factual misstatements regarding Black Elk, the Notes, and the manner in which Notes would be repurchased that should have put any investor on notice regarding the investment and eventual redemption. The 2014 PPM also contained procedures that were not followed by Platinum and the PPBE Investors, further providing notice of the impropriety of the investment and the redemption.

133. The PPBE Investors also were on notice of potential bankruptcy and voidability from the terms of their PPBE investments. The flipping of Black Elk's Series E preferred equity for Black Elk Notes, or a new investment in PPBE for Black Elk Notes, makes little sense outside the fraudulent scheme.[38] Black Elk Notes were available on the open market and could be bought and sold through any broker. Why would an investor need or want to purchase through Platinum a position in publicly available Black Elk Notes, paying [redacted] of any net profits to Platinum? They would not – it only makes sense in the context that the Platinum investors understood that Platinum would protect their investment, through Platinum's control of Black Elk, which was clearly set forth in the 2014 PPM.

[38] For example, given Black Elk's dire financial condition, what incentive would Platinum have to trade its priority position under the Notes for a subordinate equity position, unless it knew that it could control the outcome through its control of Black Elk, which it emphasized to the PPBE investors? The alleged flip of positions also put the PPBE Investors on notice.

134. Platinum's 2014 PPM also makes no economic sense for investments in the publicly available Black Elk Notes. The 2014 PPM provides on overview of an investment with anticipated returns of [redacted] per annum, net to investors, with quarterly cash distributions to begin June 30, 2014. Yet, in March and April 2014, the Black Elk Notes were listed on the open market with a price in the mid-to-upper 90s range. A [redacted] net return, after paying [redacted] to Platinum, on an investment purchased in the mid-to-upper 90s and having a 13.75% interest rate, seems at best a stretch and most likely an impossible return.

135. The 2014 PPM stated that the expected duration of the investment was until December 1, 2015, when the Black Elk Notes were due. Platinum's redemption of the investments after less than four months, and 16 months early, also should have raised questions regarding the investments and was notice of potential voidability.

136. Huberfeld, as a principal of Platinum and a person involved in and directing the PPBE investment decisions, participated in the scheme and agreed on behalf of Huberfeld Foundation to the scheme and the flip of debt and equity positions. By example, on March 14, 2014, Huberfeld was copied at his personal email address on an email exchange between Gilad Kalter and other Platinum executives and agents regarding the Executive Summary and Marketing Presentation for the new class of PPBE shares, revealing Huberfeld's involvement with Platinum in the scheme, 2014 PPM and alleged flip of debt and equity positions.

137. Twosons also agreed to the scheme. Platinum, including its principals and executives Mark Nordlicht, David Levy, and Naftali Manela, discussed and agreed with Twosons that the PPVAF obligations to Twosons regarding Black Elk should be transferred to PPBE, also controlled by Platinum, including particularly Nordlicht, Huberfeld, Levy and

Manela. Twosons agreed to the shifting of the obligations in order to assist Platinum effectuate its scheme and stay afloat.

138. By an Assignment Agreement dated as of April 11, 2014 and made effective as of April 1, 2014, PPVAF assigned to PPBEO [redacted] The Assignment Agreement was signed by Mark Nordlicht for PPVAF and by Naftali Manela, at the direction of Mark Nordlicht and the other Platinum principals, for PPBEO.[39] Twosons also agreed to this transfer to PPBEO. In addition, Twosons sold its Black Elk Series E preferred equity that it purchased from Black Elk to Platinum and PPBE in early April 2014.

139. On this same date, April 11, Platinum caused to be executed a Purchase Agreement between the Platinum entities and PPBE whereby Platinum purportedly sold to PPBE [redacted] in Black Elk Notes in exchange for [redacted] in Black Elk Series E preferred equity (including the Twosons Series E preferred equity, confirmed in a Manela email dated April 9, 2014) and a promise to pay [redacted] in cash at the time of redemption of the Notes. Oddly, this Platinum-PPBE Purchase Agreement first states [redacted]

[39] Twosons, a foreign corporation almost certainly owned by foreign nationals, should have been assigned to PPBEOI, not PPBEO. The 2014 PPM states clearly that [redacted]

[redacted][40] [redacted] This agreement was signed by Mark Nordlicht for the Platinum entities and Dov Rauchwerger, who is Nordlicht's close associate from Optionable Inc. and had officially (though not in function) replaced David Levy at PPBE while Levy was at Beechwood implementing the consent vote scheme. Nordlicht was going to sign for all entities, but was advised that it would be better if there were different signatories for the two sides of the transaction.

140. Although Platinum had shifted its obligations to Twosons within the Platinum-controlled companies, and perhaps slightly mollified Twosons and the other PPBE Investors for the short term with the transactions, Platinum still had substantial obligations to the PPBE Investors, Huberfeld Foundation and Twosons (relating to the PPBE and other Platinum investments) – which could not be repaid until Black Elk closed the Renaissance transaction and Platinum then redeemed its preferred equity.

141. **Black Elk's financial condition remained bleak.** Black Elk's financial condition only worsened, providing additional notice to the PPBE Investors. On April 25, 2014, Moody's again downgraded Black Elk based upon "BEE's tight liquidity and heightened refinancing risk." The article noted that Black Elk lacked "a readily available external source of funding" and had "limited cash balances." The downgrade noted: "Operationally, Black Elk has performed poorly since late 2012. Production and reserves have declined substantially over the past 15 months as

[40] It was the Platinum entities, not PPBE, that submitted the consent votes regarding the Black Elk Offer to Purchase and Consent Solicitation, showing the coordination of Platinum and PPBE in effectuating the scheme. If PPBE was independent of the Platinum and really owned the Notes, then PPBE should have submitted a consent and tender (if acting in its economic interests). These Platinum entities are all alter egos of the investment group headed by Nordlicht and Huberfeld.

a result of asset sales." The article noted that even though Black Elk had sold $182 million of assets and issued $50 million of preferred equity since the beginning of 2013 that Black Elk "will need more external financing in 2014 to adequately cover costs…." The article stated that Black Elk "will continue to face high default risk through 2015."

142. Black Elk's first quarter 2014 10-Q, signed on May 14, 2014, reinforced the possibility of a bankruptcy. The 10-Q again showed the total liabilities exceeded total assets. The working capital deficit was $107.5 million, and there was "restricted credit availability." Although Black Elk had restricted credit availability, Black Elk had paid off, at Platinum's direction, its credit facility that was held by RVG (which the 10-Q disclosed was "affiliated with Platinum")[41] at Platinum's direction on March 17, 2014, removing Black Elk's access to credit.[42] The 10-Q also revealed that "cash flows were lower than previously projected," and that to increase liquidity, Black Elk stretched accounts payable (again) and sold assets (again).

143. On July 10, 2014, Black Elk filed an 8-K and issued a press release regarding the sale of assets to Renaissance. The 8-K and press release described the assets to be sold as "a significant amount of our cash flow, proved reserves and production."

144. **The Consent Solicitation provides notice of voidability to the PPBE Investors**. On July 16, 2014, it was publicly announced as part of the Offer to Purchase and Consent Solicitation that Black Elk -- a company with $150 million in Senior Secured Note debt,

[41] Other Platinum insiders, such as Uri Landesman, had multi-million dollar interests in RVG.

[42] Black Elk, a company with reduced cash flow, a huge accounts payable overhang, and restricted credit, acknowledging its need for increased credit and capital sources, but it instead pays off its credit facility to an affiliate of its primary owner Platinum, meaning Black Elk no longer had access to any credit facility. Platinum had concluded that it was time to start pulling out what it could from Black Elk before its financial demise, and directed the repayment of the credit facility.

a huge accounts payable overhang, and a lack of credit resources -- would take the proceeds from the sale of its assets to Renaissance and, after repurchasing tendered Senior Secured Notes, use those proceeds to pay off preferred equity. Once the proceeds were applied to repurchase equity instead of decreasing debt, it was obvious (because of the very small remaining revenue and very large debt) that bankruptcy would only be a matter of time. In fact, the Offer to Purchase and Consent Solicitation stated in a section entitled "***We may not be able to generate sufficient cash to meet our debt service obligations***" that, after the sale of the Renaissance assets: "We cannot assure you that our business will generate sufficient cash flow from operations to service the Notes that are not purchased pursuant to the Offer...." The PPBE Investors were on notice that if a substantial part of the Renaissance Sale proceeds were used to repurchase preferred equity, then Black Elk would not be able to service its Notes and other debt obligations.

145. The Trustee believes that both Huberfeld Foundation and Twosons were aware from their communications with Platinum and its agents of the Black Elk Renaissance Sale and that the proceeds of the Renaissance Sale would be used to repay Platinum's obligations to Twosons. By example, on July 24, just eight days after the Offer to Purchase and Consent Solicitation, another PPBE investor emailed a PPBE executive: [redacted] The PPBE executive confirmed that: [redacted] On August 6, the investor followed up: [redacted] Platinum executive emailed an investor: [redacted] By further example, Huberfeld was informed by email at his personal email address, in an email to other Platinum executives (not other investors), when the redemption payments were made to the PPBE Investors.

146. On July 29, 2014, Black Elk's internal records still showed Twosons owning $10 million in Black Elk Series E preferred equity that had been purchased from Black Elk.

147. **The reported results of the Consent Solicitation put the PPBE Investors on notice of voidability.** On August 14, 2014, Black Elk issued a press release regarding the closing of the Offer to Purchase and Consent Solicitation. That press release stated that only $11,333,000 face value of Notes had consented and been tendered for repurchase, but that $110,565,000 notes had consented without tendering, meaning that nearly $100 million worth of Notes voted to subordinate their priority position without tendering their Notes for payment or receiving other benefit. Since only about $11.3 million Notes had been tendered and consented, it was apparent that PPBE did not tender the Notes that it might have possessed. Yet, the PPBE Investors did not raise any alarm or questions because they knew that they would be taken care of (by repurchasing their Interests) when Platinum completed the Black Elk scheme.

148. The PPBE Investors including Huberfeld Foundation and Twosons had ample reason, in addition to the announced results, to question the validity of the reported consent solicitation vote. The Investors understood that the Platinum principals, including Nordlicht, Huberfeld, Levy, and Small, controlled Black Elk as well as the Platinum entities, including PPBE, and could and had transferred rights and obligations between the Platinum entities, as they already had done with respect to PPVAF's obligations to Twosons being assigned to PPBE and a purported exchange of debt and equity positions between Platinum and PPBE. The Investors knew that Platinum had a substantial position in Black Elk's debt and preferred equity. The Investors also understood that its investments would not be redeemed until Black Elk repurchased them. The Investors understood that Platinum was in a position to control the consent vote process and outcome.

149. Moreover, the reported consent vote was illogical and inconsistent with a noteholder's economic interests – priority is a key aspect of any indenture, and holders of secured debt are always favored over equity holders, a jealously guarded and enforced right. Why would any rationale economic actor holding a senior priority position consent to having their priority bypassed in receiving the proceeds from the sale of the significant remaining assets of a clearly troubled company – particularly when they receive no economic benefit from such consent? They would not, and did not in this case – the vote was rigged by Platinum. As a non-consenting Black Elk Noteholder has been quoted by the financial press: "No bondholder in their right mind would ever vote to have their covenants stripped like that." Since only about $11.3 million Notes consented, and then only when also tendering their Notes to get repaid, that meant that more than $100 million worth of Noteholders consented against their economic interest, by allowing their priority position to be bypassed for no compensation. Yet, the PPBE investor did not object to Platinum's failure to consent and tender the Notes. The only way such a vote against a Noteholder's interest makes sense is if those Noteholders knew that they would be taken care of, even though the vote was against their interest. Platinum, its affiliates and the PPBE Investors already had in place and understood the scheme and planned recipients – Platinum avoiding its $20 million obligation to New Mountain and received a significant portion of the PPBE distributions, $23,679,368.34, with the PPBE Investors (including Platinum insiders) receiving the remainder of the Black Elk proceeds – all of the principal, dividend and interest, with Platinum keeping the Black Elk Notes for a potential priority position in Black Elk's anticipated bankruptcy.

150. **Black Elk's repurchase of Series E preferred equity, given Black Elk's debt to the Noteholders and trade creditors, put the PPBE Investors on notice of voidability.**

Not only were the reported results of the consent vote illogical, but it was also illogical that Black Elk, an extremely financially troubled company, would decide to repurchase the preferred equity held by affiliates of Black Elk's controlling owner rather than pay off Black Elk's senior debt position or reduce its crushing accounts payable obligations.[43] Equity typically is repurchased when a company is doing well financially and has excess cash. That was not Black Elk. Once Black Elk's significant assets were gone to Renaissance, there was going to be very little revenue, but there would still be the hundreds of millions of dollars of debt and accounts payable. No rationale economic actor in that circumstance would repurchase preferred equity. None of the PPBE Investors appears to have questioned the repurchase of equity (supposedly held by Platinum) by a financially troubled company before debt (supposedly held by PPBE). The most straightforward explanation was that Platinum was improperly grabbing back cash before Black Elk imploded, and transferring those proceeds for the benefit of Platinum, Platinum's principals, and Platinum's inside investors including Huberfeld Foundation and Twosons.

151. **Black Elk's contemporaneous financial reporting also provided notice to the PPBE Investors of potential bankruptcy and voidability.** Black Elk's financial reporting that same day, August 14, 2014, reinforces the impropriety of a nearly $100 million preferred equity repurchase. Black Elk's second quarter 2014 10-Q again showed that total liabilities exceeded total assets, a net working capital deficit of $110 million at June 30, 2014, continuing lower than expected cash flow, continuing "stretch of accounts payable" ($135 million), continuing "restricted capital availability," no new credit facility, the termination of Black Elk's letters of

[43] Black Elk was making no cash outlay for dividends on the Series E preferred equity – it was paying in kind ("PIK") with additional Series E preferred equity. It was Platinum that had to make good on cash dividend payments to PPBE investors.

credit on June 8, 2014, and the expectation of continued asset sales to "improve our liquidity position."

152. On August 21, 2014, Black Elk issued a press release that the sale of the Renaissance assets had been completed, and confirmed that the Renaissance assets had been "a significant amount of the Company's cash flow, proved reserves and production." The press release went on to announce that the consent solicitation and Second Supplemental Indenture had been approved, allowing the repurchase of preferred equity ahead of debt, including the Senior Secured Notes and accounts payable.

153. **The wire transfers were made for the benefit of Platinum and the PPBE Investors.** Platinum used the vast majority of the Renaissance proceeds to repurchase preferred equity, sending the money first to PPVAF, PPCO, PPLO and PPVA Equity, beginning on August 18, 2014. That repurchase of preferred equity and transfer of the proceeds left Black Elk unable to pay its debts.

154. The Platinum entities received on August 18, 20 and 21, 2014 wire transfers for Black Elk Series E preferred equity proceeds totaling $77,497,077.01. Those Platinum entities then transferred the Black Elk preferred equity proceeds to PPBEO and PPBEOI on August 20 and 21, 2014: PPCO transferred a total of $25,930,083 to PPBEO and PPBEOI (it had received a wire transfer from Black Elk for $24,600,584.31); PPLO transferred $12,814,096 (the $5,000,000 that it received directly from Black Elk and also an additional $7,814,096.89, which Platinum's CFO has testified and documents show came from an internal transfer that included Black Elk proceeds from a PPVAF account) to PPBEO and PPBEOI; and PPVAF and PPVA Equity transferred a total of $42,224,217 to PPBEO and PPBEOI (having received $47,896,492.70 from Black Elk, $15,332,672.97 and $32,563,819.73, respectively). Platinum

transferred to PPBEO and PPBEOI a total of $80,968,396. Platinum transferred the entire amount of the Black Elk Series E preferred equity proceeds to PPBEO and PPBEOI.[44]

155. The PPBE accounts were almost empty prior to the transfers of the Black Elk proceeds. On the morning of August 20, the PPBE International account contained exactly $40.00, and had had no activity since a withdrawal on August 7. With the transfer of the Black Elk proceeds, the account ballooned on August 21 to $36,179,042.83, and then the redemption payments were made with those Black Elk proceeds. The account was again virtually empty by the end of August, containing $229,975.63.

156. Beginning on August 21, PPBE, directed by Nordlicht, Levy and other Platinum executives, distributed the Black Elk preferred equity proceeds to the PPBE Investors, including Nordlicht's family, Huberfeld's family, David Levy, Daniel Small, PPVAF, PPCO and Twosons. The total amount distributed from PPBE to its investors was $79,385,727.43, the amount being almost identical (a 97.6% correlation) to that coming from the Platinum transfers of the Black Elk Series E preferred equity proceeds.

157. On August 20, 2014 Platinum executives also were discussing winding down the PPBE fund. On August 21, Platinum's Manela informed Nordlicht, Huberfeld, Levy, Small, and others at Platinum that "Redemption wires to investors have been released." The day after paying off the PPBE Investors, Platinum then on August 22, 2014 transferred $2,085,418 from PPBE to PPVAF, essentially emptying the PPBE coffers and shutting down PPBE. These quick transfers (basically as fast as the wire transfers could be made) from Black Elk through Platinum to PPBE,

[44] The $7,814,096.89 internal transfer from a "PPVA account" of Black Elk proceeds to PPLO contained the difference in the $47,896,492.70 that PPVAF and PPVA Equity received from Black Elk and the $42,224,217 that they transferred to PPBE. Effectively, the transfer of Black Elk proceeds was $24,600,584.31 from PPCO, $10,672,275.70 (after the internal PPVAF transfer) from PPLO and $42,224,217 from PPVAF and its subsidiary PPVA Equity.

and then to the PPBE Investors including Huberfeld Foundation and Twosons are further evidence of fraud and notice to the PPBE Investors, including Huberfeld Foundation and Twosons.

158. Huberfeld Foundation was paid $1,026,676.83 and Twosons was paid a total of $15,400,152.42, with funds from Platinum that had been transferred from Black Elk. Huberfeld Foundation and Twosons did not receive their payments in good faith,[45] and were aware of the voidability of the payments. Huberfeld Foundation and Twosons are owned by sophisticated investors with long-term ties to Platinum, were on notice of the impropriety regarding the return of their investment, did no investigation, did not act in good faith, but instead acted in concert with Platinum to protect Platinum's position and their investment. Huberfeld Foundation and Twosons must return their improper transfers.

159. In addition, because of their conspiracy with and aiding and abetting of Platinum, Huberfeld Foundation and Twosons are jointly and severally liable for the entire $97,959,854.79 fraudulently transferred from Black Elk.

160. The fraudulent scheme underlying this case has required much effort to uncover, from the initial discovery of the scheme, through the transfers to Platinum entities, through the Platinum transfers to PPBE, and eventually the taking of a default judgment against PPBEO and PPBEOI in order to obtain, through post-default discovery, the identities of the PPBE Investors improperly receiving Black Elk proceeds. The fraudulent concealment of the claims by Platinum and their related parties has further complicated the discovery and pursuit of the claims.

[45] Good faith is an affirmative defense for which the Huberfeld Foundation and Twosons bear the burden of proof.

161. These remittances improperly enriched Platinum by approximately $98 million (including its avoided obligations to New Mountain), and improperly enriched the PPBE Investors, including Huberfeld Foundation and Twosons by more than $16 million.[46]

162. Although Platinum, Huberfeld Foundation and Twosons improperly and greatly benefitted, the effect on Black Elk was equally stark and devastating. As Black Elk's founder and CEO Hoffman has testified, "As soon as the 96 [sic] million went to New York [to benefit Platinum], we [Black Elk] were bankrupted." When asked whether Black Elk was insolvent after the wire transfers to Platinum, Hoffman unequivocally responded "Absolutely" and "No question."

163. Huberfeld Foundation and Twosons improperly benefitted from their close relationship to Platinum at the expense of Black Elk's unaffiliated Noteholders and trade creditors. Huberfeld Foundation must return the fraudulently transferred principal amount of $1,026,676.83. Twosons must return the fraudulently transferred principal amount of $15,400,152.42. Moreover, Huberfeld Foundation and Twosons are jointly and severally liable for their conspiracy with and aiding and abetting of Platinum with respect to total transfer of $97,959,854.79.

[46] Twosons later sued PPVAF in New York (before the Platinum fraud became publicly and widely known), for the approximately $6 million amount remaining under that $14 million promissory note executed in September 2014, just after the Black Elk scheme was implemented and Twosons received its share of the Platinum proceeds. That New York case was dismissed when bankruptcy was declared, and Twosons made the same claim in the Cayman's liquidation legal proceeding. The amount that Twosons has made over the years from its Platinum connections almost certainly exceeds the unpaid balance of the September 2014 promissory note.

VI.
CLAIMS FOR RELIEF

A. COUNT I – FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. § 548(A)(1)(A).

164. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

165. Pursuant to § 548(a)(1)(A) of the Bankruptcy Code, a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor that was made or incurred on or within two years before the date of the filing of the petition, if the debtor voluntarily or involuntarily made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

166. As set forth above, immediately following the Renaissance Sale and within the two-year period prior to the Petition Date, Platinum directed and caused Black Elk to wire the sale proceeds to and/or for the benefit of PPBE. Platinum also then caused PPBE to distribute those proceeds to investors, including Platinum-related parties Huberfeld Foundation and Twosons.

167. There are creditors of Black Elk who have allowable claims against Black Elk that were in existence at the time of the transfers. The subject transfers were made by Black Elk at Platinum's direction with actual intent to hinder, delay, or defraud Black Elk's then existing and future creditors.

168. As set forth above, Black Elk's (and Platinum's) fraudulent intent in this instance is evidenced by the following factors: (i) the transfers were made to insiders and close associates of Black Elk and Platinum; (ii) the transfers were concealed or effectuated via fraudulent representations in connection with the consent solicitation process; (iii) the transfers were substantially all of Black Elk's productive assets (or the proceeds thereof); (iv) Black Elk and

Platinum removed or concealed assets; (v) the value of the consideration received by Black Elk was not reasonably equivalent to the value of the transfers; (vi) Black Elk was insolvent or became insolvent shortly after the transfers were made; (vii) the transfers occurred shortly before or shortly after Black Elk incurred substantial debt; (viii) Black Elk transferred essential assets (or the proceeds thereof) to a lienor who transferred the assets to an insider; and (ix) Black Elk, at Platinum's direction, engaged in a pattern of sharp dealing prior to bankruptcy.

169. Accordingly, the Trustee requests that the Court avoid the subject transfers as actual fraudulent transfers under section § 548(a)(1)(A).

B. COUNT II – FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. § 548(A)(1)(B).

170. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

171. Pursuant to § 548(a)(1)(B) of the Bankruptcy Code, a bankruptcy trustee may avoid any transfer of an interest of the debtor in property that was made or incurred on or within two years before the date of the filing of the petition, if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer and was insolvent on the date that such transfer was made or became insolvent as a result of such transfer.

172. As set forth above, immediately following the Renaissance Sale and within the two-year period prior to the Petition Date, Platinum directed and caused the Renaissance Sale proceeds to be wired to and/or for the benefit of PPBE, and then to their investors, including Huberfeld Foundation and Twosons. Black Elk received less than a reasonably equivalent value in exchange for each of these transfers.

173. Further, both before and after the Renaissance Sale, Black Elk was insolvent or became insolvent because of the transfers, had unreasonably small capital remaining, had debts

that were beyond its ability to repay as such debts matured, and/or made the transfer for the benefit of an insider which was not in the ordinary course of business.

174. Accordingly, the Trustee requests that the Court avoid the subject transfers as actual fraudulent transfers under section § 548(a)(1)(B).

C. COUNT III – PREFERENTIAL TRANSFER PURSUANT TO 11 U.S.C. § 547.

175. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

176. Pursuant to § 547 of the Bankruptcy Code, a trustee may avoid any transfer of an interest of the debtor in property that was made or incurred on or within one year before the date of the filing of the petition, if the debtor made the transfer to or for the benefit of a creditor, for or on account of an antecedent debt owed by the debtor before the transfer, while the debtor was insolvent, and if such creditor was an insider. Platinum, PPBE were insiders. On information and belief, and as set forth above, Huberfeld Foundation and Twosons also was an insider.

177. As set forth above, immediately following the Renaissance Sale and less than one year prior to the Petition Date, Platinum directed and caused Black Elk to wire to and for the benefit of Platinum more than $97 million of the Renaissance Sale proceeds and thereafter transferred proceeds to PPBE, and then to their investors including Huberfeld Foundation and Twosons.

178. Further, both before and after the Renaissance Sale, Black Elk was insolvent and unable to pay its debts as they became due.

179. Accordingly, the Trustee requests that the Court avoid the subject transfers as improper preferential transfers under section § 547.

D. COUNT IV – VIOLATIONS OF THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT.

180. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

181. The Texas Uniform Fraudulent Transfer Act ("TUFTA"), codified as chapter 24 of the Texas Business and Commerce Code, permits the recovery of the value of any transfers made with "actual intent to hinder, delay, or defraud any creditor of the debtor" as well as those made "without receiving a reasonably equivalent value in exchange for the transfer or obligation." TEX. BUS. & COM. CODE ANN. § 24.005. TUFTA defines transfers fraudulent as to present or future creditors as:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> > (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
> >
> > (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
> >
> > > (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
> > >
> > > (B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

TEX. BUS. & COM. CODE ANN. § 24.005.

182. Section 544(b) of the Bankruptcy Code allows the Trustee to avoid a transfer of Black Elk's interest in property that is voidable under applicable law—in this case, TUFTA. Section 550 of the Bankruptcy Code allows the Trustee to recover the property transferred or the value of the property transferred in violation of sections 544 and 548.

183. As it relates to the Renaissance Sale and the Series E wire transfers, the transfers to and for the benefit of Platinum, as well as the subsequent transfers to PPBE and their

investors, were fraudulent as to Black Elk's present and future creditors and in violation of TUFTA, as set forth above.

184. Further, TEX. BUS. & COM. CODE ANN. § 24.006 defines transfers fraudulent as to present creditors as:

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
>
> (b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

TEX. BUS. & COM. CODE ANN. § 24.006.

185. Platinum's transfers of the Renaissance Sale proceeds to PPBE, and Huberfeld Foundation and Twosons, are likewise in violation of § 24.006 of TUFTA.

186. Huberfeld Foundation and Twosons are liable as the recipient or mediate transferees of these funds or the persons for whose benefit the transfers were made. These transfers were intentional and initiated by Platinum.

187. Accordingly, the Trustee respectfully requests that the Court avoid the subject transfers as actual and/or constructive fraudulent transfers under section 544(b) and applicable Texas state law, and permit the Trustee to recover the value of the transferred property pursuant to section 550 of the Bankruptcy Code.

E. COUNT V – RECOVERY OF AVOIDED TRANSFERS PURSUANT TO 11 U.S.C. § 550.

188. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

189. Section 550 of the Bankruptcy Code allows the Trustee to recover, for the benefit of the estate, the property or the value of the property transferred and avoided under sections 544, 547 and 548 and TUFTA from "any immediate or mediate transferee of [the] initial transferee" of such property.

190. Here, as set forth above, the Trustee is entitled to avoid, under sections 544, 547 and 548, transfers of up to $15,400,152.42 of Renaissance Sale proceeds, which Platinum improperly transferred to PPBE, Huberfeld Foundation and Twosons.

191. Huberfeld Foundation and Twosons are the intended recipients of the Black Elk wire transfers, and thus is treated as and is liable as an initial transferee. In the alternative, Twosons is liable as a subsequent or mediate transferee.

192. Thus, pursuant to section 550 of the Bankruptcy Code, the Trustee is entitled to recover the amounts transferred.

F. COUNT VI – AIDING AND ABETTING FRAUD, FRAUDULENT TRANSFERS, BREACHES OF FIDUCIARY DUTY AND/OR CIVIL THEFT.

193. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

194. In the alternative or in addition to the above causes of action, Huberfeld Foundation and Twosons were aware of Platinum's liquidity problems and specifically acted to benefit Platinum and themselves by facilitating and allowing Platinum's misappropriation of Black Elk's assets through their agreements to delay, exchange ownership, and accept payment once the Black Elk fraudulent scheme was completed. In that circumstance, the Huberfeld Foundation and Twosons aided and abetted Platinum's fraudulent transactions.

195. Liability for aiding and abetting requires: (i) the existence of a violation of law by the primary party; (ii) knowledge of this violation on the part of the aider and abettor; and (iii) substantial assistance by the aider and abettor in achievement of the primary violation.

196. Here, Platinum has committed fraud and also caused fraudulent transfers to occur, as well as conversion or civil theft, including but not limited to violation of Texas Penal Code Sections 31.02 and 31.03.

197. Defendants Huberfeld Foundation and Twosons were aware of Platinum's liquidity problem, and also had their own interests in seeing that Platinum continued, including recouping part of their otherwise likely worthless investments. Huberfeld Foundation and Twosons substantially assisted Platinum, including Huberfeld's directing of the scheme, the agreements to delay repurchase of the Series E preferred equity, the transfer of obligations within the Platinum entities, the acceptance of the PPBE distributions, and the knowledge and concealment of the Platinum scheme while attempting to recoup their investments.

198. As set forth above, Defendants' agreements to work with Platinum thus provided substantial assistance in the effectuation of fraud, fraudulent transfers, breaches of duty by Small and Shulse, and theft of Black Elk's assets.

199. The Trustee seeks to recover at least $98 million in actual damages, and also punitive damages because of the intentional, willful and wanton, reckless and malicious nature of Defendants' actions, and such other and further relief as the Court deems appropriate.

G. COUNT VII – CONSPIRACY TO COMMIT FRAUD, FRAUDULENT TRANSFERS, BREACHES OF FIDUCIARY DUTY AND/OR CIVIL THEFT.

200. The Trustee incorporates all preceding paragraphs as if fully re-alleged herein.

201. Alternatively or in addition to the prior causes of action, Huberfeld Foundation and Twosons conspired with Platinum to effectuate the Platinum schemes to strip assets from, defraud Black Elk, and cause fraudulent transfers to occur, as well as conversion or civil theft, including but not limited to violation of Texas Penal Code Sections 31.02 and 31.03.

202. Liability for conspiracy generally requires: (i) two or more persons; (ii) an end to be accomplished; (iii) a meeting of the minds on the end or course of action; (iv) one or more overt, unlawful acts; and (v) proximate injury.

203. Here, Platinum, Huberfeld Foundation and Twosons recognized and agreed upon the end to be accomplished — obtaining closing of the Renaissance Sale and distribution of its proceeds to allow Platinum to satisfy its $20 million obligation to New Mountain, keep Platinum's Black Elk Notes and priority position, and allow the PPBE Investors to back get their full principal as well as their dividends and interest.

204. Huberfeld Foundation and Twosons committed one or more unlawful acts, including the agreements to delay repurchase of the Series E preferred equity, the transfer of obligations within the Platinum entities, the acceptance of the PPBE distributions, and the knowledge and concealment of the Platinum scheme while attempting to recoup their investments.

205. As set forth above, Huberfeld Foundation and Twosons thus conspired in the effectuation of fraud, fraudulent transfers, breaches of duty by Small and Shulse, and the theft of Black Elk's assets.

206. As a direct result of the Huberfeld Foundation and Twosons Defendants' misconduct, Black Elk sustained damages of almost $98 million. The Trustee also seeks punitive damages because of the intentional, willful and wanton, reckless and malicious nature of Defendants' actions.

VI.
PRAYER

207. For these reasons, the Trustee asks for judgment against Huberfeld Foundation and Twosons for the following:

(a) actual damages and punitive damages;

(b) prejudgment and post-judgment interest on all amounts recovered in this adversary proceeding;

(c) reasonable attorney fees;

(d) court costs; and

(e) all other legal and equitable relief to which the Trustee is entitled.

Dated: November 30, 2018.

Respectfully submitted,

By: */s/ Craig Smyser*

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ATTORNEYS FOR TRUSTEE

EXHIBIT 6

ENTERED
02/06/2019

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC	§	CASE NO. 15-34287 (MI)
	§	
DEBTOR.	§	CHAPTER 11
	§	
RICHARD SCHMIDT, LITIGATION TRUSTEE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	ADVERSARY NO. 4:18-AP-03386
HUBERFELD FAMILY FOUNDATION INC. AND TWOSONS CORPORATION,	§	
	§	
DEFENDANTS.	§	

ORDER OF DISMISSAL WITH PREJUDICE OF HUBERFELD FAMILY FOUNDATION INC.

Pending before the Court is the Motion of Plaintiff Richard Schmidt, Trustee for the Black Elk Litigation Trust (the "Trustee") to dismiss with prejudice all claims against Defendant Huberfeld Family Foundation Inc. The Court finds and holds that the Motion should be granted. Accordingly, the Court orders that all of the Trustee's claims against Defendant Huberfeld Family Foundation Inc. are dismissed with prejudice. The parties will bear their own attorney fees, costs and expenses. Trustee's claims against all other Defendants remain pending.

SIGNED on 2-6, 2019.

U.S. BANKRUPTCY JUDGE MARVIN ISGUR

824691.1

EXHIBIT 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	
BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC	§	CASE NO. 15-34287 (MI)
	§	
DEBTOR.	§	CHAPTER 11
	§	
RICHARD SCHMIDT, LITIGATION TRUSTEE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	ADVERSARY NO. 4:16-AP-3237
PLATINUM PARTNERS VALUE ARBITRAGE FUND LP, PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, PLATINUM PARTNERS LIQUID OPPORTUNITIES MASTER FUND LP, AND PPVA BLACK ELK (EQUITY) LLC,	§	
	§	
DEFENDANTS.	§	

PLAINTIFF'S SUPPLEMENT TO MOTION FOR ENTRY OF DEFAULT JUDGMENT

Pursuant to FRCP 55(b)(2), made applicable to this adversary proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure, Plaintiff Richard Schmidt, Trustee ("Trustee"), files this Supplement to his Motion for Entry of Default and Default Judgment (Dkt. No. 94) against Defendants Platinum Partners Value Arbitrage Fund LP ("PPVA") and PPVA Black Elk (Equity) LLC ("PPVABE").

General Statement of Relief Sought

The Trustee seeks to modify his Motion for Entry of Default Judgment against only one of the two remaining Defendants in this adversary proceeding: PPVA. The Motion is based on the approval by the Grand Court of Cayman Islands of a settlement between PPVA and the

Trustee in which the Trustee agreed to limit the amount he sought by default judgment against PPVA to $15,332,672.97, while preserving his right to litigate the Trustee's remaining claims against PPVA at a later date. The Trustee maintains his remaining claims against PPVA for the full amount set forth in the Trustee's Original Complaint and does not seek any modification over the motion for default judgment against PPVABE.

Procedural Background

1. On December 12, 2017, the Trustee filed his original Motion for Default and for Judgment against PPVA and PPVABE, seeking entry of a default judgment against each of them, jointly and severally, for, among other things, recovery of $97,959,854.79 fraudulently transferred from Debtor Black Elk Energy Offshore, LLC ("Black Elk").

2. PPVA is in official liquidation in a proceeding styled *In re Platinum Partners Value Arbitrage Fund L.P.* (In Official Liquidation), Cause No. FSD 131 of 2016, In the Financial Services Division of the Grand Court of the Cayman Islands (the "Cayman Liquidation Proceeding").

3. Effective March 13, 2018, the Trustee and the Joint Official Liquidators of PPVA appointed by the Court in the Cayman Liquidation Proceeding (the "JOLs") entered into a settlement agreement (the "Settlement Agreement"), pursuant to which, among other things, (i) the Trustee agreed to limit the relief he seeks through his Motion for Default Judgment against PPVA to a request for entry of a money judgment in the amount of $15,332,672.97, (ii) the Trustee retained his right to seek a default judgment against PPVABE for all relief asserted against it, as originally requested in the Trustee's Motion, (iii) the Trustee reserved his right to litigate his claims for additional relief against PPVA asserted in this adversary proceeding at a later date, and (iv) the JOLs agreed not to cause PPVA or PPVABE to oppose entry of a default

judgment consistent with the Trustee's Motion as herein modified. A copy of the Settlement Agreement is attached hereto as Exhibit A.

4. The Settlement Agreement was subject in its entirety to approval of the Court in the Cayman Liquidation proceeding, which was granted on July 5, 2018. A copy of the Cayman Court's approval order is attached as Exhibit B.

Modified Request for Entry of Default Judgment

5. Based on the foregoing, the Trustee hereby modifies his request for entry of a default judgment as to PPVA such that the Trustee seeks entry of a default judgment against PPVA in the amount of $15,332,672.97. The Trustee's request for entry of a default judgment against PPVABE is in no way modified by this Supplement, and the Trustee expressly reserves his right to seek additional relief against PPVA on his remaining claims.

Conclusion

For the foregoing reasons, the Trustee respectfully requests that the this Court enter default judgment against PPVA as re quested herein and against PPVABE as requested in the Trustee's original Motion, and grant the Trustee such other and further relief to which he may be justly entitled.

Dated: September 17, 2018

Respectfully submitted,

By: */s/ Craig Smyser*

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ATTORNEYS FOR TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served on counsel for Defendants in accordance with Rule 7005 of the Federal Rules of Bankruptcy Procedure on the 17th day of September, 2018.

/s/ Craig Smyser
Craig Smyser

EXHIBIT A

Settlement Agreement

This Settlement Agreement (the "Agreement") is entered into by and among the following individuals and entities (each individually a "Party" and collectively the "Parties"), effective as of March 13, 2018 (the "Effective Date"):

Richard Schmidt, Trustee (the "Trustee") of the Black Elk Energy Offshore Operations, LLC Litigation Trust (the "Trust"),

and

Christopher Barnett Kennedy and Martin Nicholas John Trott, Joint Official Liquidators (the "JOLs") for Platinum Partners Value Arbitrage Fund, L.P. (now in official liquidation) ("PPVA").

Recitals

1. On August 11, 2015, three petitioning creditors filed an involuntary bankruptcy petition against Black Elk Energy Offshore Operations, LLC ("Black Elk") under Chapter 7 of Title 11 of the United States Code in an action styled *In re Black Elk Energy Offshore Operations, LLC*, Case No. 15-34287, in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Case").

2. On September 1, 2015, the court entered an order on Black Elk's motion converting the Bankruptcy Case into a voluntary case under Chapter 11 of the Bankruptcy Code.

3. On January 15, 2016, PPVA filed a proof of claim in the Bankruptcy Case based upon its ownership of 13.75% Black Elk Second Lien Notes in an aggregate principal amount of US$22,622,000.00 (the "Senior Secured Notes").

4. On June 20, 2016, Black Elk filed its Third Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code (the "Plan") in the Bankruptcy Case.

5. On July 14, 2016, the court entered an order in the Bankruptcy Case confirming the Plan under Chapter 11 of the Bankruptcy Code (the "Confirmation Order").

6. Among other things, the Plan provided for the establishment of the Trust, to which Black Elk's claims against PPVA and other entities operating under the umbrella Platinum Partners were transferred.

7. Pursuant to the Plan, Richard Schmidt was duly appointed as Trustee of the Trust.

8. On October 26, 2016 the Trustee filed an Original Complaint and Application for Emergency Relief in an adversary proceeding in the Bankruptcy Case assigned Case No. 16-3737 (the "Adversary Proceeding").

9. The Defendants in the Adversary Proceeding included PPVA and PPVA Black Elk (Equity) LLC ("PPVABE"), and two other Platinum-affiliated entities.

10. The Trustee asserts claims against PPVA and PPVABE in the Adversary Proceeding for, among other things, recovery of fraudulent conveyances, avoidance of preferential payments, equitable subordination of claims these entities have made in the Bankruptcy Case, and alter ego, whereby the Trustee claims PPVA, PPVABE and the other Defendants are jointly and severally liable for all of Black Elk's outstanding, unpaid claims, which, based on proofs of claim filed in the Bankruptcy Case, presently exceed $100 million. The Trustee also contends, among other things, (i) PPVA was the recipient of fraudulently transferred funds of Black Elk totaling US$15,332,672.97 (the "Direct PPVA Transfer"), (ii) PPVABE was the recipient of fraudulently transferred funds of Black Elk totaling US$32,563,819.73, (iii) New Mountain Finance Corp. was the recipient of US$20,462,777.78 in fraudulently transferred funds of Black Elk, in satisfaction of a financial obligation of PPVA and PPVABE, and (iv) other Platinum-affiliated entities were the recipients of fraudulently transferred funds of Black Elk totaling US$29,600,584.31. PPVA disputes the Trustee's claims.

11. On August 23, 2016, PPVA filed a voluntary petition for the winding up of its business in the Grand Court of the Cayman Islands, which commenced an action styled *In re Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation)*, Cause No. FSD 131 of 2016, In the Financial Services Division of the Grand Court of the Cayman Islands (the "Cayman Liquidation Proceeding").

12. The court in the Cayman Liquidation Proceeding initially appointed Christopher Barnett Kennedy and Matthew James Wright as joint official liquidators of PPVA. Matthew James Wright subsequently resigned his position as joint official liquidator of PPVA and was replaced by further court order in the Cayman Liquidation Proceeding by Martin Nicholas John Trott.

13. On October 18, 2016, the PPVA filed a petition for recognition of a foreign proceeding under Chapter 15 of the U.S. Bankruptcy Code, commencing an action styled *Platinum Partners Value Arbitrage Fund L.P.*, Case Number: 16-12925-scc, in the United States Bankruptcy Court for the Southern District of New York (the "Chapter 15 Proceeding").

14. On November 11, 2016, the Trustee and the original JOLs entered into a letter agreement providing, among other things, that (i) the Trustee would not oppose PPVA's petition in the Chapter 15 proceeding and (ii) the JOLs agreed to litigation of the Trustee's claims in the Adversary Proceeding before the U.S Bankruptcy Court for the Southern District of Texas, (iii) the JOLs agreed to support admission of a claim by the Trustee in the Cayman Liquidation Proceeding in an amount equal to whatever money judgment was entered in the Adversary Proceeding, and (iv) the Trustee agreed not to execute on any judgment entered in the Adversary Proceeding absent leave of court in the Chapter 15 Proceeding and the Cayman Liquidation Proceeding.

15. On November 23, 2016, the court in the Chapter 15 Proceeding entered an order granting PPVA's petition for recognition of the Cayman Liquidation Proceeding as a foreign main proceeding (the "Recognition Order"). The Recognition Order stayed litigation against PPVA, including the Adversary Proceeding.

16. On March 15, 2017, the court in the Chapter 15 Proceeding entered an order partially lifting the stay imposed by the Recognition Order for the limited purpose of permitting the Trustee to proceed with reducing his claims against PPVA in the Adversary Proceeding to judgment, but prohibiting the Trustee's execution on any such judgment absent leave of court in the Chapter 15 Proceeding and the Cayman Liquidation Proceeding.

17. On July 21, 2017, the court in the Cayman Liquidation Proceeding entered an order permitting the Trustee to proceed with his claims against PPVA in the Adversary Proceeding.

18. On December 12, 2017, the Trustee filed a Motion for Default Judgment (the "Default Motion") against PPVA and PPVABE in the Adversary Proceeding. The Trustee has agreed to extend PPVA's deadline to respond to the Default Motion to January 30, 2018.

In order to avoid the cost, expense, and uncertainty of litigation, the Parties hereby agree as follows:

Agreement of the Parties

In consideration of the agreements and actions set forth in the recitals and the mutual covenants set forth herein, the receipt and sufficiency of which the Parties each hereby acknowledge, the Parties agree as follows:

1. **Modification of, and Non-Opposition to, Default Motion.**

1.1. Within five (5) days of the Cayman Court Approval Date (as hereinafter defined), the Trustee shall file a supplement to the Default Motion stating that the Trustee amends and restates the Default Motion insofar as it seeks judgment against PPVA to limit the amount of the judgment sought against PPVA to US $15,332,672.97 (the "Agreed Judgment Amount"), based on the Trustee's claim for recovery of the Direct PPVA Transfer (the "Modified Default Motion"). The Modified Default Motion will continue to seek a judgment against PPVABE for the full amount of the Trustee's claims against PPVABE as set forth in the Trustee's Original Complaint in the Adversary Proceeding, and will be without prejudice to the Trustee's right to pursue additional claims in excess of the Agreed Judgment Amount.

1.2. The JOLs and PPVA agree not to oppose, and not to cause or induce PPVABE or any other party to oppose, (i) the Modified Default Motion or (ii) the entry and severance by the court in the Adversary Proceeding of a judgment that is consistent with the relief requested in the Modified Default Motion and that awards monetary relief against PPVA in an amount no greater than the Agreed Judgment Amount.

1.3. The JOLs and PPVA agree not to appeal, collaterally attack, or otherwise seek to set aside on any basis, and not to cause or induce PPVABE or any other party to appeal, collaterally attack, or otherwise seek to set aside on any basis, in any jurisdiction, any default judgment entered by the court in the Adversary Proceeding that is consistent with the relief requested in the Modified Default Motion and that does not award monetary relief against PPVA in excess of the Agreed Judgment Amount, provided, however, that PPVA reserves for itself and

any relevant subsidiaries aside from PPVABE the right to defend against the claims other than the Agreed Judgment Amount that is the subject of the Modified Default Motion on any bases other than those expressly precluded by Paragraph 2.1 hereof.

2. Preservation of the Trustee's Remaining Claims and PPVA's Defenses Thereto.

2.1. The JOLs and PPVA agree that, in the event the court in the Adversary Proceeding enters a partial default judgment as requested in the Modified Default Motion, (i) the Trustee shall be free to pursue any and all claims asserted against PPVA in the Trustee's Original Complaint in the Adversary Proceeding other than the claim for recovery of the Direct PPVA Transfer (the "Retained Trustee Claims"), and (ii) the JOLs and PPVA shall not argue, or cause or induce any other party to argue, in any future proceedings, whether in the Adversary Proceeding or otherwise, in any jurisdiction, that the entry of a partial default judgment on less than all of the Trustee's claims against PPVA precludes the Trustee's continued assertion of the Retained Trustee Claims for any reason, including but not limited to on the basis of claim or issue preclusion or any similar doctrine.

2.2. Except as expressly provided in Section 2.1 hereof, PPVA reserves and retains for itself and any subsidiary entity other than PPVABE any and all defenses to any Retained Trustee Claims.

3. Litigation of Retained Trustee Claims.

3.1. The JOLs agree to cause PPVA to file an answer to or motion to dismiss the Retained Trustee Claims in the Adversary Proceeding on or before the earlier of (i) February 1, 2019 and (ii) thirty (30) days following the JOLs' first material dollar recovery for the benefit of PPVA unsecured creditors (the Parties understand and agree that, as used in this paragraph, the phrase "material dollar recovery" shall mean any recovery in excess of $500,000). The JOLs will inform the Trustee within three (3) business days of the first such material dollar recovery. The Trustee shall not seek a default judgment on the Retained Trustee Claims so long as the JOLs cause PPVA to file an answer to or motion to dismiss those claims on or before the deadline specified in this paragraph.

3.2. The Trustee agrees that he will seek no discovery from PPVA in the Adversary Proceeding on or before the date the court in the Adversary Proceeding enters an order disposing of the Modified Default Motion. In the event that the court in the Adversary Proceeding enters a default judgment consistent with the Modified Default Motion, all matters relating to the Retained Claims, including discovery, shall be stayed from the date of entry of such default judgment until PPVA's deadline to file an answer or motion to dismiss concerning the Retained Claims specified in Paragraph 3.1 hereof. Nothing herein shall preclude the Trustee from seeking discovery in the Adversary Proceeding from any person or entity relating to (i) any claims presently or hereafter asserted in the Adversary Proceeding against any party other than PPVA, (ii) any intervention in the Adversary Proceeding filed by Credit Suisse or any other party, or (iii) the Trustee's pursuit of relief permitted under Paragraph 4.1 hereof. In the event that the Trustee pursues any discovery in the Adversary Proceeding at any time, PPVA shall have the right to participate in any such discovery, including any depositions the Trustee may take prior to PPVA's answer date in the Adversary Proceeding. PPVA reserves the right to

object to the admissibility of any documentary or testimonial evidence discovered before PPVA's answer date in the Adversary Proceeding on any basis, provided however, that PPVA shall not object to the admissibility of deposition testimony on the ground that it was obtained prior to PPVA's answer date in the Adversary Proceeding if further testimony of the deponent is unavailable (including but not limited to the deponent's refusal to testify on Fifth Amendment grounds) following PPVA's answer date in the Adversary Proceeding. PPVA reserves the right to seek to redepose any witness deposed by the Trustee prior to PPVA's answer date in the Adversary Proceeding, and the Trustee shall not oppose any effort by PPVA to redepose any such witness after the answer date.

3.3 Nothing herein is intended to modify the rights and defenses or objection of the Trustee, the JOLs, or PPVA, including but not limited to PPVA's defenses to discovery based upon the automatic stay in effect in the United States and in Cayman, in respect of discovery in connection with any legal proceeding other than the Adversary Proceeding or any other action in which any of the Retained Claims are asserted.

3.4 Nothing herein waives, relinquishes, or prejudices the Trustee's right to challenge on any basis any lien, possessory or ownership interest, or any other rights claimed by any party, including but not limited to Credit Suisse, relating to the Senior Secured Notes.

4. Non-Objection to Relief Concerning Senior Secured Notes and Black Elk Litigation Trust Assets.

4.1. The JOLs and PPVA agree not to oppose, or to cause or induce any other person to oppose, any relief the Trustee may hereafter seek in any court and/or against any person relating to the Senior Secured Notes in the possession and control of Credit Suisse, including but not limited to injunctive relief against Depository Trust Company and/or Delaware Trust Company, so as to prevent the distribution of funds from the Trust directly or indirectly to or for the benefit of PPVA, Credit Suisse, any successor-in-interest to Credit Suisse , any other Platinum entity, or any person asserting any interest in any Senior Secured Notes by, through or on account of Senior Secured Notes currently or previously held by PPVA or any other Platinum entity that are in the possession and control of Credit Suisse or any successor-in-interest to Credit Suisse. The JOLs and PPVA represent that to the best of their knowledge, all Senior Secured Notes are in the possession and control of Credit Suisse. The JOLs and PPVA agree that the pursuit of any action by the Trustee to prevent distributions as described in this paragraph shall not constitute execution or attachment of assets of PPVA.

4.2. With the sole exception of the Senior Secured Notes described in paragraph 4.1 and the prospective actions by the Trustee described in paragraph 4.1 concerning distributions from the Trust on account of Senior Secured Notes, and/or any claim the holder of the Senior Secured Notes may have upon any portion of the assets of the Trust, nothing herein constitutes or should be construed to constitute a waiver of the Chapter 15 Proceeding stay, the Cayman Liquidation Proceeding stay or a consent by PPVA or the JOLs to the Trustee's execution upon or attachment of any assets or property of PPVA or any of its affiliates or subsidiaries other than PPVABE, regardless of where such assets or property may be located and regardless of who may presently have possession of such assets or property, and the stays against execution or

attachment imposed in the Cayman Liquidation Proceedings and Chapter 15 Proceedings shall otherwise be in full effect.

4.3. Apart from the relief specified in Sections 4.1 hereof, the Trustee shall not seek any emergency injunctive relief or other provisional relief against PPVA or otherwise seek to execute on or seize assets of PPVA or any PPVA subsidiary (other than PPVABE) other than on motion to the court in the Chapter 15 Proceeding or the court in the Cayman Liquidation Proceeding.

5. Claims Allowance.

5.1. The JOLs stipulate and agree that the Trustee shall have an admitted unsecured creditor claim in the amount of the Agreed Judgment Amount in the Cayman Liquidation Proceeding in connection with the Modified Default Motion, and such admitted claim of the Trustee shall be treated *pari passu* with the claims of similarly situated unsecured creditors under Cayman Islands law.

5.2. The JOLs and PPVA agree that, in the event that a final judgment in the Trustee's favor on the Retained Trustee Claims is issued in the Adversary Proceeding and is no longer subject to further appeal, the JOLs shall immediately admit the full amount of that final judgment as an unsecured creditor claim of the Trustee in the Cayman Liquidation Proceeding, and any such admitted claim of the Trustee shall be treated *pari passu* with the claims of similarly situated unsecured creditors under Cayman Islands law.

5.3. The Trustee may seek post-liquidation interest on the claims specified in Sections 5.1 and 5.2 hereof to the extent permitted under Cayman law.

6. Court Approval. Apart from the parties' obligations specified in the remainder of this Section 6, this Agreement is conditional in its entirety upon the court in the Cayman Liquidation Proceeding granting an order sanctioning the JOLs' power to enter into this Agreement (the "Sanction Order"). The JOLs and PPVA agree to make an application to the court in the Cayman Liquidation Proceeding for the Sanction Order not later than ten (10) business days after the Effective Date and to take all such actions as are reasonably practicable to maximize the likelihood that the Sanction Order is granted. Without limitation of the foregoing, the JOLs, PPVA, and the Trustee agree not to object to, or to cause or induce any other party to object to, the application for the Sanction Order. The date on which the court in the Cayman Liquidation Proceeding seals the Sanction Order is referenced herein as the Cayman Court Approval Date.

7. Counterparts. This Agreement may be executed in multiple counterparts, and an electronic or facsimile copy of a signature hereto shall have the same force and effect as an original signature.

8. Merger and Waiver of Reliance. The parties acknowledge and agree that this Agreement contains the entire agreement between the Trustee, the JOLs on behalf of themselves and PPVA, and that this Agreement supersedes all prior representations, warranties and agreements, whether written or oral, regarding the subject matter of, or relating to this Agreement. The Parties have entered into this Agreement freely and without duress after having consulted with professionals of their choice. Each Party expressly warrants and represents that

no promise or agreement that is not expressed in this Agreement has been made to such Party as an inducement to execute this Agreement and that such Party is not relying upon any such statement or representation of any person other than those expressly stated in this Agreement. In entering into this Agreement, the Parties each expressly disclaim and waive any reliance on any written or oral representations, other than those expressly stated herein. The Parties further represent that their respective counsel have read and explained to each of them the entire contents of this Agreement as well as its legal consequences. This Merger and Waiver of Reliance clause is not a boilerplate provision and has been specifically negotiated by the Parties.

9. **Further Acts.** Each Party shall do and perform, or shall cause to be done and performed, all such further acts and deeds, and shall execute, deliver, file, and record all such other agreements, certificates, instruments and documents, as another Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated herein.

10. **Notices.** All notices, requests, claims, demands and other communications permitted or required hereunder shall be in writing and sent by email and either personal delivery, regular mail, or registered or certified mail, first class postage prepaid, return receipt requested, to the address specified below for such Party or such other future address as may be specified by any Party by notice to the other Parties. Any such notice shall be deemed to have been given three (3) days after mailing if sent by registered or certified mail or upon actual receipt for any other method of delivery:

The Trustee, c/o Craig Smyser, Jeff Potts, and Justin Waggoner, Smyser Kaplan and Veselka, LLP, 700 Louisiana Street, Suite 2300, Houston, Texas 77002, 713-221-2300, csmyser@skv.com, jpotts@skv.com, jwaggoner@skv.com.

The JOLs and/or PPVA, c/o/ Warren Gluck, Holland & Knight, LLP, 31 West 52nd Street, 12th Floor, New York, NY 10019 212-513-3200, Warren.Gluck@hklaw.com.

11. **No Admission.** Neither this Agreement nor anything contained in it shall be treated in any respect as an admission by any Party hereto of any liability or wrongdoing by the Party or any entity.

12. **Construction.** The plural shall include the singular and vice versa.

13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unlawful or unenforceable, then such provision shall be severed from this Agreement, and the remainder of the Agreement shall remain in full force and effect and shall be enforced as closely in accordance with the Parties' intent as expressed in the language of this Agreement as permitted by law.

14. **No Waiver.** No provision of this Agreement may be waived, modified, or amended except by a written agreement executed by all Parties hereto. No breach of any provision hereof can be waived unless done in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions hereof.

15. **Headings.** The headings on paragraphs of this Agreement are for convenience only, and shall have no effect on the terms of this Agreement; the text of the paragraphs alone states those terms.

16. **Authority.** Each of the undersigned individuals executing this Agreement on behalf of a Party to this Agreement represents and warrants that such individual is authorized to enter into and execute this Agreement on behalf of such Party and that this Agreement shall be binding on and enforceable against the Parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

AGREED:

Signed this 13th day of March, 2017

By: [signature]
Title: [illegible]

FOR: RICHARD SCHMIDT, TRUSTEE

Signed this 13th day of MARCH, 2017

By: [signature]
Title: JOINT OFFICIAL LIQUIDATOR

FOR: MARTIN NICHOLAS JOHN TROTT, JOINT OFFICIAL LIQUIDATOR OF PLATINUM PARTNERS VALUE ARBITRAGE FUND, L.P.

Signed this [illegible] day of [illegible], 2017 28 March 2018

By: [signature]
Title: JOINT OFFICIAL LIQUIDATOR

FOR: CHRISTOPHER ~~M.~~ KENNEDY, JOINT OFFICIAL LIQUIDATOR OF PLATINUM PARTNERS VALUE ARBITRAGE FUND, L.P.

EXHIBIT B

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 131 of 2016 (NAS)

IN CHAMBERS

BEFORE THE HONOURABLE MR. JUSTICE NICHOLAS A. SEGAL

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)

AND IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2014 REVISION)

AND IN THE MATTER OF PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (IN OFFICIAL LIQUIDATION)

ORDER

UPON reading the application of Mr. Martin Trott and Mr. Christopher Kennedy both of RHSW (Cayman) Limited, Windward 1, Regatta Office Park, P.O. Box 897, Grand Cayman, KY1-1103, Cayman Islands, the joint official liquidators (the "**JOLs**") of Platinum Partners Value Arbitrage Fund L.P. (the "**Master Fund**") made by letter dated 27 March 2018 (the "**Application**")

AND UPON reading the Application and its enclosures

AND UPON the Liquidation Committee of the Master Fund consenting to the Application

AND UPON the application having been dealt with on the papers

IT IS ORDERED THAT:

1. The JOLs shall have the power to enter into the Settlement Agreement dated 13 March 2018 referred to in the Application.

2. The costs of and incidental to this application shall be paid out of the assets of the Master Fund as an expense of the official liquidation.

This Order is filed by Collas Crill, Attorneys-at-Law for and on behalf of the Joint Official Liquidators of Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation) herein, whose address for service is that of their said Attorneys, 2nd Floor , Willow House, Cricket Square, PO Box 709, Grand Cayman, KY1-1107, Cayman Islands

3. The Application and the supporting documents enclosed with it shall be sealed for a period of twelve months from the date of this order.

DATED this 5 day of July 2018

FILED this 9th day of July 2018

The Honourable Mr. Nicholas A. Segal
Judge of the Grand Court

This Order is filed by Collas Crill, Attorneys-at-Law for and on behalf of the Joint Official Liquidators of Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation) herein, whose address for service is that of their said Attorneys, 2nd Floor , Willow House, Cricket Square, PO Box 709, Grand Cayman, KY1-1107, Cayman Islands