

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
IN RE PLATINUM-BEECHWOOD LITIGATION : 18-cv-6658 (JSR)
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MELANIE L. CYGANOWSKI, as Equity Receiver for : 18-cv-12018 (JSR)
PLATINUM PARTNERS CREDIT OPPORTUNITIES :
MASTER FUND LP, *et al.*, :

Plaintiffs, :

v. :

BEECHWOOD RE LTD., *et al.*, :

Defendants. :

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:
WASHINGTON NATIONAL INSURANCE COMPANY and :
BANKERS CONSECO LIFE INSURANCE COMPANY, :

Third-Party Plaintiffs, :

v. :

MARK NORDLICHT, *et al.*, :

Third-Party Defendants. :

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**REPLY MEMORANDUM OF LAW OF DEFENDANTS
BEECHWOOD TRUST NOS. 7-14 IN FURTHER SUPPORT OF THEIR
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

Third-party defendants the Beechwood Trust Nos. 7-14 (the “Movant Trusts”) respectfully submit this reply memorandum of law in further support of their Motion to Dismiss the Third-Party Complaint (TPC) (ECF No. 75)¹ of third-party plaintiffs WNIC and BCLIC (jointly, Conseco) pursuant to Federal Rule of Civil Procedure 12(b)(6).

Conseco’s 67-page Omnibus Memorandum in Opposition to Defendants’ Motions to Dismiss the Third-Party Complaint (the “Opposition” or “Opp.”) (ECF No. 253) fails to remedy the deficiencies of its TPC allegations against the Movant Trusts. It cannot save the serious and substantive counts asserted against the Movant Trusts in the TPC: Counts One and Two under RICO; Counts Seven and Twelve for aiding and abetting fraud and fiduciary breaches; Count Eighteen for contribution and indemnification; and Count Nineteen for unjust enrichment/constructive trust.

The Opposition merely restates the conclusory and group-pled claims that the Movant Trusts were “alter egos of” and “asset protection devices for” third-party defendant David Bodner. (Opp. at 43, 49). It asserts that “[e]ach of the Beechwood Trusts is an alter ego of either Nordlicht, Bodner, Huberfeld or Levy” allegedly used “in siphoning off and secreting the[ir] ill-gotten gains.” (TPC ¶ 518). But the TPC never once identifies a transaction or distribution or payment to the Movant Trusts, either in amount or timing or character. *Id.* The TPC provides no factual detail that the Movant Trust substantially assisted a fraud or fiduciary breach, and the Opposition fails to explain how the Movant Trusts could be liable for any of the other counts in the TPC.

¹ ECF citations refer to the *Cyganowski* docket, 18-cv-12018 (JSR). Capitalized terms not defined herein shall have the meanings ascribed to them in the Movant Trusts’ Memorandum of Law in Support of Their Motion to Dismiss. (ECF No. 281).

The TPC also relies on the alter ego allegations made by the plaintiffs in *Trott v. Platinum Management (NY) LLC, et al.*, Case No. 18-cv-10936. *See, e.g.*, TPC ¶ 470, n. 5. But this Court found that the *Trott* plaintiffs “ma[de] no specific allegations about Beechwood Trust Nos. 7-14,” and dismissed them from the case. *In re Platinum-Beechwood Litig.*, Nos. 18-cv-6658 (JSR), 18-cv-10936 (JSR), 2019 U.S. Dist. LEXIS 62745, at *34-35 (S.D.N.Y. April 11, 2019). The TPC merits the same result.

For these reasons and for the reasons set forth in the Reply Memorandum of Law filed by defendant David Bodner, the TPC’s counts against the Movant Trusts should be dismissed in their entirety, and with prejudice.

Dated: June 26, 2019
New York, New York

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