

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (BMC)

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

Defendants. :
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**NOTICE OF MOTION OF
MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN
ORDER APPROVING THE SALE OF CERTAIN LIFE INSURANCE POLICIES**

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Melanie L. Cyganowski, as Receiver duly appointed by the Court (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*” or “*Platinum*”), and upon the Declarations of the Receiver and Houlihan Lokey Capital, Inc., as well as upon the Receiver’s Memorandum in

Support of the Sale Motion (the “*Memorandum in Support*”), the Receiver moves before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York, located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an order approving the Receiver’s consummation of the sale of certain life insurance policies in which Platinum has a majority ownership interest pursuant to Purchase and Sale Agreements (the “*PSAs*”) entered into with the proposed purchasers of such policies (the “*Sale Motion*”).

PLEASE TAKE FURTHER NOTICE that any opposition to the Sale Motion must be made in writing and (i) if by a party, electronically filed with the District Court or (ii) if by a non-party, electronically mailed to the Receiver at her e-mail address, platinumreceiver@otterbourg.com, in each case so as to be actually received no later than April 6, 2018.

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

Dated: March 23, 2018

OTTERBOURG P.C.

By: /s/ Philip C. Berg
Philip C. Berg

230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
pberg@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

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

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JEFFREY SHULSE,	:
	:
Defendants.	:
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No. 16-cv-6848 (BMC)

**DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER, IN SUPPORT
OF MOTION TO APPROVE SALE OF CERTAIN LIFE INSURANCE POLICIES**

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*”), in support of my motion for entry of an order approving the sale of certain life insurance policies in which Platinum has a majority ownership interest (the “*Sale Motion*”).

INTRODUCTION

2. At the onset of this receivership, Platinum indirectly held a portfolio of life insurance policies (the “*Policies*” or the “*Portfolio*”), some of which were sold by the prior receiver. By this Sale Motion, I am seeking approval to exercise my authority and business judgment to sell the balance of the Policies, with one exception.

3. As the Court is aware, in the life settlements market investors purchase life insurance policies either directly from the insureds or on a secondary market, assume the obligation to pay the premiums to keep the policy in force, and then, either sell the policy on the secondary market, or hold them until the insured dies, at which point the investor can collect the death benefit on the policy.

4. Upon my appointment as Receiver, I began taking steps to sell the Policies that had not been sold by the prior receiver. The prior receiver had sold thirteen (13) life insurance policies to Vida Longevity Fund, LP in February, 2017 and so, at the time I was appointed Receiver, the Portfolio was (and is currently) comprised of twenty (20) separate life insurance policies on fifteen (15) separate insureds with an aggregate net death benefit (“*NDB*”) of approximately \$119.6 million.¹ It is my understanding that the policies sold by the prior receiver were the more valuable policies in the Portfolio at the time. As further explained below, the Policies that are being sold now are more problematic and presented a greater challenge to achieving higher values.

5. Selling the Portfolio was, and is, a priority because:

- (a) the Policies represent a potential significant source of funds for the receivership. As will be detailed below, the receivership’s recovery on these policies will only be a fraction of the respective NDB of each. This is consistent with prevailing pricing in

¹ There is one additional life insurance policy in which Platinum is a majority owner not included in the twenty (20) policies. This additional policy is currently the subject of a dispute with the insurer.

the life settlement asset class, and also reflects how the marketplace values policies generally as well as how the marketplace perceives the specific Policies in this Portfolio. In addition, as Platinum is not the sole owner of the Policies, it will not receive the entire sale price; and

- (b) ongoing maintenance of Platinum's position in the Policies (in the form of premium payments and other expenses such as servicing costs) is a major portion of the receivership's monthly overhead, currently running approximately \$575,000 per month.

6. While I took immediate steps at the beginning of my tenure to sell the Policies that the prior Receiver had not already sold, the process was not easy or quick.

7. First, the files for the Policies lacked up-to-date medical information, which is critical in determining value. As detailed below, my professionals spent a great deal of time updating these records and preparing the Policies for marketing. Although my team was able to increase value by updating some of the files (such as by obtaining new medical information from the insureds), a number of policies continue to have stale medical information and/or are missing other documentation typically required by purchasers.

8. Second, the Policies are beset by many characteristics that typically drive away bidders and/or lower prices. For example, some of the Policies have unfavorable jurisdictional clauses, some have incomplete origination documentation, and still others have unfavorable life expectancy information.

9. In the face of these challenges, I nonetheless instituted a robust marketing and sales process that began with thirty-six (36) potential purchasers. After receiving an initial "teaser" about the Portfolio, twenty-three (23) potential purchasers signed non-disclosure agreements and accessed an online data room to conduct due diligence. At the conclusion of that process, I received seven (7) bids of varying amounts for various components of the Portfolio.

10. After reviewing the bids, I, in consultation with my professionals, determined that the optimum value for the Portfolio will be achieved through the implementation of the sale for

which the Receiver seeks Court-approval, consisting of a “mosaic” of two separate purchases of “sub-portfolios,” for an aggregate purchase price of \$10,785,950.

11. For these reasons, as well as those more fully set forth herein, as well as in my contemporaneously filed Memorandum of Law in Support of Motion to Approve Sale of Certain Life Insurance Policies and the Declaration of Houlihan Lokey Capital, Inc. in Support of Motion to Approve Sale of Certain Life Insurance Policies (the “*Houlihan Dec.*”), I respectfully request that this Court grant the Sale Motion.

CORPORATE AND OWNERSHIP OF THE PORTFOLIO

12. With the exception of one (1) of the Policies in the Portfolio,² Platinum’s interest in the Portfolio is a result of its position as the sole member and owner of the non-receivership entity, Credit Strategies LLC (“*Credit Strategies*”). In turn, Credit Strategies is the majority member and manager of ALS Capital Ventures, LLC (“*ALS*”), which is the direct or indirect owner of each of the Policies. As of the date hereof, Credit Strategies owns approximately 79% of the membership interests in ALS. Thus, the PPCO investors indirectly hold a 79% interest in ALS.

13. In addition to Credit Strategies’ ownership interest, several individuals and entities own the balance of ALS (collectively, the “*ALS Minority Members*”). The ALS Minority Members hold their interests in ALS by having made capital contributions to ALS in the amounts set forth in the ALS Operating Agreement (defined below).

THE MARKETING AND SALE OF THE PORTFOLIO

14. With authority granted by this Court, I previously retained Houlihan Lokey Capital, Inc. (“*Houlihan Lokey*”) to, among other things, assist me with the marketing and sale of the Portfolio. Pursuant to that retention (Dkt. Nos. 275, 285), and based upon the parameters

² Secure Holdings, a wholly owned subsidiary of PPCO, owns one Policy in the Portfolio.

of the sale contemplated herein, Houlihan Lokey will be entitled to a Life Settlement Transaction Fee of \$750,000 upon closing of the sale, as such term is defined in the retention motion.

15. Established in 1972, Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions (M&A), financings, financial restructurings and financial advisory services. Houlihan Dec. ¶3.

16. Among other areas of expertise, Houlihan Lokey is a leading investment bank advising market participants on sales of life settlement portfolios, having completed several of the largest tertiary portfolio transactions in the life settlement market, representing more than \$12 billion in net death benefits (“*NDB*”) across more than 3,600 policies, in aggregate. As a leader in this sector, I understand that Houlihan Lokey is in frequent contact with life settlement investors as well as providers and servicers in order to maintain a detailed understanding of market appetite and key value drivers. I further understand that Houlihan Lokey has developed extensive knowledge of the dynamics impacting life settlement assets, owners of assets, and investors, and an appreciation of the complexities and nuances of executing complex life settlement transactions. Houlihan Dec. ¶4.

17. As part of Houlihan Lokey’s engagement by the Receiver, Houlihan Lokey advised and assisted the Receiver and my team with respect to the marketing and sale of the majority of the Portfolio. Houlihan Dec. ¶5.

THE PORTFOLIO LACKED CRITICAL INFORMATION

18. Prior to launching a formal marketing process, Houlihan Lokey and my team spent significant time and resources preparing the Portfolio for market. This expenditure of time and resources was necessary because, among other things, the medical information on each of the Policies had not been updated in years, and other critical documents, such as purchase and sale agreements, were missing. Before bringing the Portfolio to market, Houlihan Lokey and my

team sought to address these critical gaps, among other steps, in order to maximize the marketability of the asset. Houlihan Dec. ¶6.

19. After a detailed review of the electronic and non-electronic documentation provided by Platinum regarding the Portfolio, Houlihan Lokey and the Receiver worked with her third party professional servicer NorthStar Life Services, LLC (“**NorthStar**”) to assist with (a) contacting the underlying insurance carrier of each policy to request key policy documentation, (b) compiling underlying Portfolio and insured information to create a comprehensive Portfolio data tape, (c) compiling and organizing detailed policy files on each policy, (d) requesting updated HIPAA authorization forms and medical reports from each insured, (e) ordering / receiving new life expectancy reports (“**LEs**”) from both AVS Underwriting, LLC and ITM TwentyFirst, LLC, and (f) accurately projecting future policy cash flows to realize significant cash savings through optimized premium streams. This work was critical to improving the Portfolio’s marketability and seeking to maximize buyers’ pricing of these Policies. Houlihan Dec. ¶7.

20. While Northstar was successful in obtaining updated information, including HIPAA authorizations from nine (9) of the insureds, as of October 2017, five (5) of the insureds had not responded or had outright refused to provide updated forms and information. Therefore, I instructed my counsel, Otterbourg P.C. (“**Otterbourg**”) to engage with those insureds to secure their cooperation. As a result of Otterbourg’s efforts, two (2) of these insureds provided the required authorizations and information, increasing the sale value of five (5) separate policies with an aggregate NDB of \$22,150,000 on which those individuals are the named insureds. As of the date hereof, Otterbourg is continuing its efforts to obtain updated information from two (2) additional insureds.

THE MARKETING AND SALE PROCESS

21. At my directive, Houlihan Lokey launched a comprehensive marketing process on February 5, 2018, contacting thirty-six (36) prospective buyers to solicit interest in the Portfolio. The list of prospective buyers was constructed based on Houlihan Lokey's knowledge of life settlement market participants and consisted of dedicated life settlement investors, multi-strategy hedge funds, private equity funds, other institutional investors, as well as various investors who proactively contacted the Receiver to express interest in acquiring the Portfolio. Of the thirty-six (36) entities contacted, twenty-three (23) executed non-disclosure agreements and were provided with access to an online data room containing the information required to submit a bid on the Portfolio, including (i) a Portfolio and process overview document summarizing the Portfolio characteristics and process timing, (ii) a detailed Portfolio data tape with key policy and insured information, (iii) detailed policy files with available / relevant documentation related to the policies and insureds, (iv) a bid process letter detailing the form and deadline for bids, and (v) a form of Purchase and Sale Agreement ("*PSA*"). Houlihan Dec. ¶9.

THE BIDS

22. The marketing process yielded seven (7) bid proposals for the Policies comprising the Portfolio. I understand that Houlihan Lokey's discussions with bidders suggested that pricing was impacted by, among other factors, bidders' ability to gain comfort with the Portfolio's (i) origination profile, (ii) LE profile (both issue data and length of LE), (iii) jurisdiction of each policy, (iv) completeness of policy files, (v) mortality factors and sensitivity to LE extensions, and (vi) ongoing litigation surrounding the insurable interest of certain policies. Houlihan Dec. ¶10.

THE SELECTION OF PREVAILING BIDS

23. Based upon the policy-by-policy mosaic analysis, the policies will be sold to two (2) separate buyers: BroadRiver Asset Management, L.P. (“**BroadRiver**”) and Cromwell Asset Partners LLC (“**Cromwell**”), neither of which have any affiliation with Platinum.

24. BroadRiver will acquire eighteen (18) Policies representing \$89.6 million in NDB for approximately \$7.6 million. In addition, BroadRiver will pay ALS approximately \$1.3 million in reimbursement for premiums paid by the Receiver on such Policies on behalf of ALS, resulting in an aggregate purchase price of approximately \$8.9 million. I understand that BroadRiver is an experienced life settlement investor that specializes in the management of fixed income alternative investments for institutional investors, including pension plans, endowments, and high net worth family offices. Houlihan Dec. ¶12.

25. Cromwell will acquire two (2) Policies representing \$30.0 million in NDB for \$1.5 million. In addition, Cromwell will pay ALS \$373,800 in reimbursement for premiums paid by the Receiver on such Policies on behalf of ALS, resulting in an aggregate purchase price of approximately \$1.9 million. I understand that Cromwell invests capital into life settlements on behalf of its high net worth clients. Houlihan Dec. ¶13.

26. This mosaic approach results in an aggregate gross purchase price of \$10,785,950 for the twenty (20) Policies; which amount is inclusive of premium reimbursements, but is before deducting Houlihan Lokey’s transaction commission. As noted, there is an additional policy being retained by the receivership which is currently the subject of dispute with the insurer.

27. Based on Houlihan Lokey’s comprehensive life settlement market experience, I believe that the sales process was robust and when closed, will result in optimal value for the receivership estate.

THE PSAs AND CLOSING

28. Each of the Policies is held or is in the process of being held in a securities account owned by ALS at the Bank of Utah (the “*Securities Intermediary*”). I understand that the winning bidders—BroadRiver and Cromwell—currently maintain securities accounts at the Securities Intermediary. Each PSA provides that the closing of the sale (the “*Closing*”) will take place by debiting the policies from ALS’ account and crediting them to the applicable purchaser’s account upon satisfaction of applicable closing conditions, which include this Court’s issuance of the Sale Order.

29. I am and will continue to pay the premiums on each policy through the applicable Closing. According to the PSAs, should any of the Policies mature prior to Closing, ALS will receive the insurance proceeds therefrom and such matured policy will not be subject to sale under the applicable PSA (therefore the aggregate purchase price paid by the applicable purchaser will be reduced by the portion of purchase price allocated to such Policy).

30. According to the PSAs, the closing consideration for the Policies that are sold will be equal to (i) the purchase price allocated to such Policies on Schedule I of the applicable PSA *plus* (ii) certain premiums paid by ALS on such Policies during the period from applicable cut-off date set forth in the applicable PSA through and including the applicable Closing.

31. The PSAs provide for an “as is, where is” sale with limited seller representations and warranties. Those representations and warranties are generally limited to ALS’ due organization and existence, due authorization, execution and delivery of the PSA, no conflicts or required consents not obtained, valid title to the policies, policies currently in effect and no broker.

THE RELATIONSHIP OF THE ALS OPERATING AGREEMENT TO THIS SALE

32. ALS is governed by the November 15, 2012 ALS Capital Ventures LLC Operating Agreement (as amended, the “*ALS Operating Agreement*”).

33. Section 5.01 of the ALS Operating Agreement grants the Manager, in this case, Credit Strategies and in turn, me, the authority to, among other actions, sell all of the company’s assets. The provision specifically provides:

The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Manager [Credit Strategies]. No Member (other than in such Person’s capacity as a Manager) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to incur any expenditures on behalf of the Company. The Company shall have one (1) Manager.

34. Based upon Section 5.01 of the ALS Operating Agreement, the Manager (Credit Strategies and in turn, me as Receiver), has the sole authority to operate ALS, including the authority to sell its life insurance policies. Any distribution to ALS Minority Members shall be in accordance with the ALS Operating Agreement, and pending any distribution to the ALS Minority Members, their share of proceeds, as determined by me in my role as the managing member, will be held in the segregated ALS bank account.

CONCLUSION

35. For the reasons set forth herein, I respectfully request that this Court approve the Sale Motion and enter the Proposed Order, attached as Exhibit A hereto.

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

Executed this 23rd day of March, 2018, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

EXHIBIT A

Proposed Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

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PLATINUM MANAGEMENT (NY) LLC; :
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DANIEL SMALL; :
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JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :

Defendants. :
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[PROPOSED]
ORDER APPROVING RECEIVER’S MOTION FOR ORDER
APPROVING THE SALE OF CERTAIN LIFE INSURANCE POLICIES

THIS MATTER coming before the Court on the Motion of Melanie L. Cyganowski, the duly appointed receiver herein (the “*Receiver*”), for entry of an order approving the sale of certain life insurance policies [Dkt. No. ____] (the “*Sale Motion*”)³ and the Court having considered the Sale Motion and exhibits and other documents filed in support of the Sale Motion; and the Court having found that the Sale Motion complies with applicable standards for granting the relief requested therein; and after due deliberation and for good and sufficient cause shown; it is hereby

ORDERED that the Sale Motion is granted; and it is further

³ Capitalized terms utilized but not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

ORDERED that the Receiver may proceed to close on the sales contemplated by the PSAs once all conditions to closing have been satisfied.

UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE :
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DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
Defendants. :
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No. 16-cv-6848 (BMC)

**DECLARATION OF HOULIHAN LOKEY CAPITAL, INC.
IN SUPPORT OF RECEIVER’S MOTION TO APPROVE SALE
OF CERTAIN LIFE INSURANCE POLICIES**

I, Paul Sanabria, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as Managing Director of Houlihan Lokey Capital, Inc. (“*Houlihan Lokey*”), which has been retained by Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*”), pursuant to an order

of this Court dated November 11, 2017 (the “*Houlihan Appointment Order*”), and in support of the Receiver’s motion for entry of an order approving the sale of certain life insurance policies in which Platinum has a majority ownership interest (the “*Sale Motion*”).

2. As set forth more fully herein, Houlihan Lokey advised and assisted the Receiver in the marketing and sale of a portfolio of life settlements, including assisting the Receiver in preparing the Portfolio (defined below) for sale and designing and executing a marketing process which sought to maximize bids and obtain the highest value for the Portfolio.

HOULIHAN LOKEY’S QUALIFICATIONS IN THE LIFE SETTLEMENTS MARKET

3. Established in 1972, Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions (M&A), financings, financial restructurings and financial advisory services.

4. Among other areas of expertise, Houlihan Lokey is a leading investment bank advising market participants on sales of life settlement portfolios, having completed several of the largest tertiary portfolio transactions in the life settlement market, representing more than \$12 billion in net death benefits (“*NDB*”) across more than 3,600 policies, in aggregate. As a leader in this sector, we are in frequent contact with life settlement investors as well as providers and servicers in order to maintain a detailed understanding of market appetite and key value drivers. We have developed extensive knowledge of the dynamics impacting life settlement assets, owners of assets, and investors, and an appreciation of the complexities and nuances of executing complex life settlement transactions.

5. As part of Houlihan Lokey’s engagement by the Receiver, Houlihan Lokey advised and assisted the Receiver and her team with respect to the marketing and sale of the portfolio of life insurance policies (the “*Policies*” or the “*Portfolio*”) in which Platinum is a

majority owner. It is my understanding that several life insurance policies were sold prior to the appointment of the Receiver and prior to Houlihan Lokey's engagement. At the time of Houlihan Lokey's engagement, the Portfolio was (and is currently) comprised of twenty (20) separate life insurance policies on fifteen (15) separate insureds with an aggregate net death benefit of approximately \$119.6 million.¹

PREPARING THE PORTFOLIO FOR SALE

6. Prior to launching a formal marketing process, Houlihan Lokey and the Receiver spent significant time and resources preparing the Portfolio for market. This expenditure of time and resources was necessary because, among other things, the medical information on each of the Policies had not been updated in years, and other critical documents, such as purchase and sale agreements, were missing. Before bringing the Portfolio to market, Houlihan Lokey and the Receiver sought to address these critical gaps, among other steps, to maximize the marketability of the asset.

7. After a detailed review of the electronic and non-electronic documentation provided by Platinum regarding the Portfolio, Houlihan Lokey and the Receiver worked with her third party professional servicer NorthStar Life Services, LLC ("*NorthStar*") to assist with (a) contacting the underlying insurance carrier of each policy to request key policy documentation, (b) compiling underlying Portfolio and insured information to create a comprehensive Portfolio data tape, (c) compiling and organizing detailed policy files on each policy, (d) requesting updated HIPAA authorization forms and medical reports from each insured, (e) ordering / receiving new life expectancy reports ("*LEs*") from both AVS Underwriting, LLC and ITM TwentyFirst, LLC, and (f) accurately projecting future policy cash flows to realize significant

¹ My understanding is that there is one additional life insurance policy in which Platinum is a majority owner that is not included in the twenty (20) policies, which policy is currently the subject of a dispute with the insurer.

cash savings through optimized premium streams. This work was critical to improving the Portfolio's marketability and seeking to maximize buyers' pricing of these Policies.

8. While Northstar was successful in obtaining updated information, including HIPAA authorizations from nine (9) of the insureds, as of October 2017, five (5) of the insureds had not responded or had outright refused to provide updated forms and information. We understand that the Receiver instructed her counsel, Otterbourg P.C. ("*Otterbourg*") to engage with those insureds to secure their cooperation. We understand that as a result of Otterbourg's efforts, two (2) of these insureds provided the required authorizations and information, increasing the sale value of five (5) separate policies with an aggregate net death benefit of \$22,150,000 on which those individuals are the named insureds. We understand that as of the date hereof, Otterbourg is continuing its efforts to obtain updated information from two (2) additional insureds. Cyganowski Dec. ¶ 20.

THE MARKETING AND SALE PROCESS

9. As directed by the Receiver, Houlihan Lokey launched a comprehensive marketing process on February 5, 2018, contacting thirty-six (36) prospective buyers to solicit interest in the Portfolio. The list of prospective buyers was constructed based on Houlihan Lokey's extensive knowledge of life settlement market participants and consisted of dedicated life settlement investors, multi-strategy hedge funds, private equity funds, other institutional investors, as well as various investors who proactively contacted the Receiver to express interest in acquiring the Portfolio. Of the thirty-six (36) entities contacted, twenty-three (23) executed non-disclosure agreements and were provided with access to an online data room containing the information required to submit a bid on the Portfolio, including (i) a Portfolio and process overview document summarizing the Portfolio characteristics and process timing, (ii) a detailed

Portfolio data tape with key policy and insured information, (iii) detailed policy files with available / relevant documentation related to the policies and insureds, (iv) a bid process letter detailing the form and deadline for bids, and (v) a form of Purchase and Sale Agreement (“*PSA*”).

THE BIDS

10. The marketing process yielded seven (7) bid proposals, including bids for both all of the Policies and bids for only certain of the Policies comprising the Portfolio. Our discussions with bidders suggested that pricing was impacted by, among other factors, bidders’ ability to gain comfort with the Portfolio’s (i) origination profile, (ii) LE profile (both issue data and length of LE), (iii) jurisdiction of each policy, (iv) completeness of policy files, (v) mortality factors and sensitivity to LE extensions, and (vi) ongoing litigation surrounding the insurable interest of a certain policy.

11. Based upon the policy-by-policy mosaic analysis, the Portfolio will be sold to two separate buyers: BroadRiver Asset Management, L.P. (“*BroadRiver*”) and Cromwell Asset Partners LLC (“*Cromwell*”). Cyganowski Dec. ¶23.

12. BroadRiver will acquire eighteen (18) Policies representing \$89.6 million in NDB for approximately \$7.6 million. In addition, BroadRiver will pay ALS Capital Ventures, LLC (“*ALS*”) approximately \$1.3 million in reimbursement for premiums paid by the Receiver on such Policies on behalf of ALS, resulting in an aggregate purchase price of approximately \$8.9 million. Houlihan Lokey understands that BroadRiver is an experienced life settlement investor that specializes in the management of fixed income alternative investments for institutional investors, including pension plans, endowments, and high net worth family offices.

13. Cromwell will acquire two (2) Policies representing \$30.0 million in NDB for \$1.5 million. In addition, Cromwell will pay ALS \$373,800 in reimbursement for premiums

paid by the Receiver on such Policies on behalf of ALS, resulting in an aggregate purchase price of approximately \$1.9 million. Houlihan Lokey understands that Cromwell invests capital into life settlements on behalf of its high net worth clients.

14. This mosaic approach results in an aggregate gross purchase price of \$10,785,950. There is an additional policy that was not included in the sale to either BroadRiver or Cromwell which is currently the subject of dispute with the insurer.

THE PSAs AND CLOSING

15. We understand that each of the Policies is held or is in the process of being held in a securities account owned by ALS at the Bank of Utah (the “*Securities Intermediary*”). We understand that the winning bidders—BroadRiver and Cromwell—currently maintain securities accounts at the Securities Intermediary. Each PSA provides that the closing of the sale (the “*Closing*”) will take place by debiting the Policies from ALS’ account and crediting them to the applicable purchaser’s account upon satisfaction of applicable closing conditions, which include this Court’s issuance of the Sale Order.

16. We understand that the Receiver is and will continue to pay the premiums on each Policy through the applicable Closing. Cyganowski Dec. ¶29. According to the PSAs, should any of the Policies mature prior to Closing, ALS will receive the insurance proceeds therefrom and such matured Policy will not be subject to sale under the applicable PSA (therefore the aggregate purchase price paid by the applicable purchaser will be reduced by the portion of purchase price allocated to such Policy).

17. According to the PSAs, the closing consideration for the Policies that are sold will be equal to (i) the purchase price allocated to such Policies on Schedule I of the applicable PSA

plus (ii) certain premiums paid by ALS on such Policies during the period from applicable cut-off date set forth in the applicable PSA through and including the applicable Closing.

18. The PSAs provide for an “as is, where is” sale with limited seller representations and warranties. We understand that those representations and warranties are generally limited to ALS’ due organization and existence, due authorization, execution and delivery of the PSA, no conflicts or required consents not obtained, valid title to the Policies, Policies currently in effect and no broker.

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

Executed this 23rd day of March, 2018, at New York, New York.

/s/ Paul Sanabria
Paul Sanabria

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

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**MEMORANDUM IN SUPPORT OF MOTION OF
MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN
ORDER APPROVING THE SALE OF CERTAIN LIFE INSURANCE POLICIES**

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

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Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*” or “*Platinum*”), through her counsel, Otterbourg P.C., respectfully submits this memorandum in support of her motion seeking authority to consummate the sale of certain life insurance policies pursuant to Purchase and Sale Agreements (the “*PSAs*”) entered into with the two (2) successful bidders on such policies, and for related relief (the “*Sale Motion*”). In support of the Sale Motion, the Receiver states as follows:

PRELIMINARY STATEMENT

At the onset of this receivership, Platinum indirectly held a portfolio of life insurance policies (the “*Policies*” or the “*Portfolio*”), some of which were sold by the prior receiver. Upon the current Receiver’s appointment, she began taking steps to market and sell the remaining Policies. By this motion, the Receiver seeks approval to consummate the sale of the twenty (20) remaining Policies.¹ The sale will not only result in the recovery of millions of dollars for the receivership estate, but will eliminate a significant monthly expenditure borne by it with respect to premiums paid on the Policies.

As the Court is aware, in the life settlements market, investors purchase life insurance policies either directly from the insureds or on a secondary market, assume the obligation to pay

¹ There is one (1) additional life insurance policy in which Platinum is a majority owner but is not included in the twenty (20) Policies. It is currently the subject of a dispute with the insurer.

the premiums to keep the policy in force, and then, either sell the policy on the secondary market, or hold them until the insured dies, at which point the investor can collect the death benefit on the policy.

The Portfolio which the Receiver seeks to sell is comprised of twenty (20) separate Policies on fifteen (15) separate insureds, with an aggregate net death benefit (“*NDB*”) of approximately \$119.6 million. Other than interests in one (1) policy which is the subject of a dispute with the insurer, the Policies in this Portfolio are what remains of the Policies in which Platinum has an indirect majority interest.

Selling the Portfolio was, and is, a priority because:

- (a) the Policies represent a potential significant source of funds for the receivership. As will be detailed below, the receivership’s recovery on these policies will only be a fraction of the respective *NDB* of each. This is consistent with prevailing pricing in the life settlement asset class, and also reflects how the marketplace values policies generally as well as how the marketplace perceives the specific Policies in this Portfolio. In addition, as Platinum is not the sole owner of the Policies, it will not receive the entire sale price; and
- (b) ongoing maintenance of Platinum’s position in the Policies (in the form of premium payments and other expenses such as servicing costs) is a major portion of the estate’s monthly overhead, currently running approximately \$575,000 per month.

While the Receiver took immediate steps at the beginning of her tenure to sell those Policies which the prior receiver had not already sold, the process was not easy or quick.

First, the files for the Policies lacked up-to-date medical information, which is critical in determining value. As detailed below, the Receiver’s professionals spent a great deal of time updating these records and preparing the Policies for marketing. Although the Receiver’s team was able to increase value by updating some of the files (such as by obtaining new medical information from the insureds), a number of policies continue to have stale medical information and/or are missing other documentation typically required by purchasers.

Second, these Policies are beset by many characteristics which typically drive away bidders and/or lower prices. For example, some of the Policies have unfavorable jurisdictional clauses, some have incomplete origination documentation, and still others have unfavorable life expectancy information.

In the face of these challenges, the Receiver nonetheless instituted a robust marketing and sales process which began with thirty-six (36) potential purchasers. After receiving an initial “teaser” about the Portfolio, twenty-three (23) potential purchasers signed non-disclosure agreements and accessed an online data room to conduct due diligence. At the conclusion of that process, the Receiver received seven (7) bids of varying amounts for various components of the Portfolio.

After reviewing the bids, the Receiver determined that the optimum value for the Portfolio will be achieved through the implementation of the sale for which the Receiver seeks Court-approval, consisting of a “mosaic” of two separate purchases of “sub-portfolios,” for an aggregate gross purchase price of \$10,785,950.

For these reasons, as well as those more fully set forth herein and in the Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion to Approve Sale of Certain Life Insurance Policies (“*Cyganowski Dec.*”) and the Declaration of Houlihan Lokey Capital, Inc. in Support of Motion to Approve Sale of Certain Life Insurance Policies (the “*Houlihan Dec.*”), the Receiver respectfully requests that this Court approve the Sale Motion.

BACKGROUND

Corporate Structure and Ownership of the Portfolio

With the exception of one (1) of the Policies in the Portfolio,² Platinum's interest in the Portfolio is a result of its position as the sole member and owner of the non-receivership entity Credit Strategies LLC ("*Credit Strategies*"). In turn, Credit Strategies is the majority member and manager of ALS Capital Ventures, LLC ("*ALS*"), which is the direct or indirect owner of the Policies. As of the date hereof, Credit Strategies owns approximately 79% of the membership interests in ALS. Thus, the PPCO investors indirectly hold a 79% interest in ALS. Cyganowski Dec. ¶12.

In addition to Credit Strategies' ownership interest, several individuals and entities own the balance of ALS (collectively, the "*ALS Minority Members*"). The ALS Minority Members hold their interests in ALS by having made capital contributions to ALS in the amounts set forth in the ALS Operating Agreement (defined below). Cyganowski Dec. ¶13.

The prior receiver had sold thirteen (13) life insurance policies to Vida Longevity Fund, LP in February, 2017 and so, at the time the current Receiver was appointed, the Portfolio was (and is currently, with the exception of the Policy described at Footnote 1) comprised of twenty (20) separate life insurance policies on fifteen (15) separate insureds with an aggregate NDB of approximately \$119.6 million. It is the Receiver's understanding that the policies sold by the prior receiver were the more valuable policies in the Portfolio at the time. Cyganowski Dec. ¶4. As further explained below, the Policies that are being sold now are more problematic and presented a greater challenge to achieving higher values.

² Secure Holdings, a wholly owned subsidiary of PPCO, owns one Policy in the Portfolio of Policies being sold.

Houlihan Lokey's Role in the Marketing and Sale of the Portfolio

With the authority of this Court, the Receiver previously retained Houlihan Lokey Capital, Inc. ("***Houlihan Lokey***") to, among other things, assist her with the marketing and sale of the Portfolio. Pursuant to that retention (Dkt. Nos. 275, 285), and based upon the parameters of the sale contemplated herein, Houlihan Lokey will be entitled to a Life Settlement Transaction Fee of \$750,000 upon closing of the sale. Cyganowski Dec. ¶14.

Established in 1972, Houlihan Lokey is a leading global investment bank with expertise in mergers and acquisitions (M&A), financings, financial restructurings and financial advisory services. Houlihan Dec. ¶3.

Among other areas of expertise, Houlihan Lokey is a leading investment bank advising market participants on sales of life settlement portfolios, having completed several of the largest tertiary portfolio transactions in the life settlement market, representing more than \$12 billion in net death benefits ("***NDB***") across more than 3,600 policies, in aggregate. As a leader in this sector, Houlihan Lokey is in frequent contact with life settlement investors as well as providers and servicers in order to maintain a detailed understanding of market appetite and key value drivers. Further, Houlihan Lokey has developed extensive knowledge of the dynamics impacting life settlement assets, owners of assets, and investors, and an appreciation of the complexities and nuances of executing complex life settlement transactions. Houlihan Dec. ¶4.

As part of Houlihan Lokey's engagement by the Receiver, Houlihan Lokey advised and assisted the Receiver and her team with respect to the marketing and sale of the Portfolio. Houlihan Dec. ¶5.

The Portfolio Lacked Critical Information Required for Sale

Prior to launching a formal marketing process, Houlihan Lokey and the Receiver spent significant time and resources preparing the Portfolio for market. This expenditure of time and

resources was necessary because, among other things, the medical information on each of the Policies had not been updated in years, and other critical documents, such as purchase and sale agreements, were missing. Before bringing the Portfolio to market, Houlihan Lokey and the Receiver sought to resolve these critical issues, among other things, in order to maximize the marketability of the Portfolio. Houlihan Dec. ¶6.

After a detailed review of the Portfolio's electronic and non-electronic documentation provided by Platinum, Houlihan Lokey and the Receiver worked with her third party professional NorthStar Life Services, LLC ("**NorthStar**") to assist with (a) contacting the underlying insurance carrier of each policy to request key policy documentation, (b) compiling underlying Portfolio and insured information to create a comprehensive Portfolio data tape, (c) compiling and organizing detailed policy files on each policy, (d) requesting updated HIPAA authorization forms and medical reports from each insured, (e) ordering / receiving new life expectancy reports ("**LEs**") from both AVS Underwriting, LLC and ITM TwentyFirst, LLC, and (f) accurately projecting future policy cash flows to realize significant cash savings through optimized premium streams. This work was critical to making the Portfolio marketable and maximizing buyers' pricing of these Policies. Houlihan Dec. ¶7.

While Northstar was successful in obtaining updated information, including HIPAA authorizations from nine (9) of the insureds, as of October 2017, five (5) of the insureds had not responded or had outright refused to provide updated forms and information. Therefore, the Receiver instructed her counsel, Otterbourg P.C. ("**Otterbourg**") to engage with those insureds to secure their cooperation. As a result of Otterbourg's efforts, two (2) of these insureds provided the required authorizations and information, increasing the sale value of five (5) separate policies with an aggregate NDB of \$22.2 million on which those individuals are the named insureds. As

of the date hereof, Otterbourg is continuing its efforts to obtain updated information from two (2) additional insureds. Cyganowski Dec. ¶20.

The Marketing and Sale Process

Houlihan Lokey launched a comprehensive marketing process on February 5, 2018, contacting thirty-six (36) prospective buyers to solicit interest in the Portfolio. The buyers list was carefully constructed based on Houlihan Lokey's knowledge of life settlement market participants and consisted of dedicated life settlement investors, multi-strategy hedge funds, private equity funds, other institutional investors, as well as various investors who proactively contacted the Receiver to express interest in acquiring the Portfolio. Of the thirty-six (36) entities contacted, twenty-three (23) executed non-disclosure agreements and were provided with access to an online data room containing the information required to submit a bid on the Portfolio, including (i) a Portfolio and process overview document prepared by Houlihan Lokey summarizing the Portfolio characteristics and process timing, (ii) a detailed Portfolio data tape with key policy and insured information, (iii) detailed policy files with available / relevant documentation related to the policies and insureds, (iv) a bid process letter detailing the form and deadline for bids, and (v) a form of PSA. Houlihan Dec. ¶9.

The Bids

The Receiver received seven (7) bid proposals for the Policies comprising the Portfolio. Houlihan Lokey's discussions with bidders suggested that pricing was impacted by, among other factors, bidders' ability to gain comfort with the Portfolio's (i) origination profile, (ii) LE profile (both issue data and length of LE), (iii) jurisdiction of each policy, (iv) completeness of policy files, (v) mortality factors and sensitivity to LE extensions, and (vi) ongoing litigation surrounding the insurable interest of certain policies. Houlihan Dec. ¶10.

The Selection of Prevailing Bids

Based upon the policy-by-policy mosaic analysis, the policies will be sold to two (2) separate buyers: BroadRiver Asset Management, L.P. (“*BroadRiver*”) and Cromwell Asset Partners LLC (“*Cromwell*”), neither of which has any affiliation with Platinum. Cyganowski Dec. ¶23; Houlihan Dec. ¶11.

BroadRiver will acquire eighteen (18) Policies representing \$89.6 million in NDB for approximately \$7.6 million. In addition, BroadRiver will pay ALS approximately \$1.3 million in reimbursement for premiums paid by the Receiver on such Policies on behalf of ALS, resulting in an aggregate purchase price of approximately \$8.9 million. The Receiver understands that BroadRiver is an experienced life settlement investor that specializes in the management of fixed income alternative investments for institutional investors, including pension plans, endowments, and high net worth family offices. Houlihan Dec. ¶12; Cyganowski Dec. 24.

Cromwell will acquire two (2) Policies representing \$30.0 million in NDB for \$1.5 million. In addition, Cromwell will pay ALS \$373,800 in reimbursement for premiums paid by the Receiver on such Policies on behalf of ALS, resulting in an aggregate purchase price of approximately \$1.9 million. The Receiver understands that Cromwell invests capital into life settlements on behalf of its high net worth clients. Cyganowski Dec. ¶25.

This mosaic approach results in an aggregate gross purchase price of \$10,785,950 for the twenty (20) Policies; which amount is inclusive of premium reimbursements, but is before deduction of Houlihan Lokey’s transaction commission. There is an additional policy which is currently the subject of dispute with the insurer. Cyganowski Dec. ¶26.

Based on Houlihan Lokey's comprehensive life settlement market experience, the Receiver believes that the sales process was robust and when closed, will result in optimal value for the Receivership Entities. Cyganowski Dec. ¶27; Houlihan Dec. ¶15.

The PSAs and Closing

Each of the Policies is held or is in the process of being held in a securities account owned by ALS at the Bank of Utah (the "***Securities Intermediary***"). Each of the winning bidders—BroadRiver and Cromwell—currently own securities accounts at the Securities Intermediary. Each PSA provides that the closing of the sale (the "***Closing***") will take place by debiting the policies from ALS' account and crediting them to the applicable purchaser's account upon satisfaction of applicable closing conditions, which include this Court's issuance of the Sale Order. Cyganowski Dec. ¶28.

The Receiver is and will continue to pay the premiums on each Policy through the applicable Closing. Should any of the Policies mature prior to Closing, ALS will receive the insurance proceeds therefrom and such matured Policy will not be subject to sale under the applicable PSA (therefore the aggregate purchase price paid by the applicable purchaser will be reduced by the portion of purchase price allocated to such Policy). Cyganowski Dec. ¶29.

The closing consideration for the Policies that are sold will be equal to (i) the purchase price allocated to such Policies on Schedule I of the applicable PSA *plus* (ii) certain premiums paid by ALS on such Policies during the period from the applicable cut-off date set forth in the applicable PSA through and including the applicable Closing. Cyganowski Dec. ¶30.

The PSAs provide for an "as is, where is" sale with limited seller representations and warranties. Those representations and warranties are generally limited to ALS' due organization and existence, due authorization, execution and delivery of the PSA, no conflicts or required consents not obtained, valid title to the Policies, Policies currently in effect and no broker.

Cyganowski Dec. ¶31.

The Applicability of the ALS Operating Agreement to this Sale

ALS is governed by the November 15, 2012 ALS Capital Ventures LLC Operating Agreement (as amended, the “*ALS Operating Agreement*”).

Section 5.01 of the ALS Operating Agreement grants the Manager, in this case, Credit Strategies and in turn, the Receiver, the authority to, among other actions, sell all of ALS’ assets.

The provision specifically provides:

The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Manager [Credit Strategies]. No Member (other than in such Person’s capacity as a Manager) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to incur any expenditures on behalf of the Company. The Company shall have one (1) Manager.

Cyganowski Dec. ¶¶32,33.

Based upon Section 5.01 of the ALS Operating Agreement, the Manager (Credit Strategies and in turn, the Receiver), has the sole authority to operate ALS, including the authority to sell its life insurance policies. Any distribution to members shall be in accordance with the ALS Operating Agreement, and pending any distribution to the ALS Minority Members, their share of proceeds, as determined by the Manager, will be held in the segregated ALS bank account. Cyganowski Dec. ¶34.

APPLICABLE AUTHORITY

Entry into the PSAs and closing on the sales of the Policies provided for therein is well within the scope of the authority vested in the Receiver by both the Receivership Order and the ALS Operating Agreement. See Second Amended Order Appointing Receiver, October 16, 2017, Dkt. No. 276 at ¶¶ 3, 6, 27, and 30 – 32 and ALS Operating Agreement at § 5.01. It is also

well within this Court's inherent equitable power to approve the Sale Motion. See S.E.C. v. Credit Bancorp Ltd., 290 F.3d 80, 82-83 (2d Cir. 2002) (a receivership court has broad equitable authority to issue orders necessary for the proper administration of the estate and all of the assets and property thereof). This is especially true where, as here, the sale represents the Receiver's exercise of her sound business discretion and judgment as a course of action that is in the best interests of the Receivership Estate. The Receiver is entitled to great deference in this regard. See In re JFD Enter., Inc., 2000 WL 560189, *5 (1st Cir. 2000) ("The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee's business judgment is subject to great judicial deference.") (internal citations omitted).

CONCLUSION

For the reasons set forth herein, the Receiver respectfully requests entry of an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec.: (a) authorizing and approving the sale of the Policies; and (b) granting the Receiver such other and further relief as the Court deems appropriate.

Dated: New York, New York
March 23, 2018

OTTERBOURG P.C.

By: /s/ Philip C. Berg
Philip C. Berg

230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
pberg@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver