

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

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
-v-	:	
PLATINUM MANAGEMENT (NY) LLC;	:	No. 16-cv-6848 (BMC)
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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**REPLY DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER, IN
FURTHER 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 further 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, Dkt. No. 311 (collectively with the declarations filed in support thereof, the “*Sale Motion*”).¹

2. The Sale Motion should be approved because *there are no objections to the sale itself*. While I did receive two responses to the Sale Motion, addressed below, neither object to the sale itself, but rather, they are concerned with the assertion of certain alleged rights to the proceeds of the sale, issues that the Court need not adjudicate at this time.

3. The relevant facts to the Sale Motion are set forth therein, but the salient facts are that following a comprehensive marketing process led by my Court-retained professional, Houlihan Lokey, I selected two separate buyers – BroadRiver Asset Management, L.P. (“*BroadRiver*”) and Cromwell Asset Partners LLC – to purchase the Policies for a total of \$10,785,950. Although I received two additional bids after filing the Sale Motion, following consultation with Houlihan Lokey and my team of professionals, I rejected those bids as being, among other things, untimely.

4. In addition, after the filing of the Sale Motion, one of the insureds under one of the policies to be sold to BroadRiver passed away. Pursuant to the PSA with BroadRiver, ALS is now entitled to retain the death benefits payable under the matured policy and the purchase price under the PSA will be reduced accordingly. As a result, ALS will receive a net death benefit of \$4,780,000 and the purchase price under the PSA will be reduced by \$2,721,000, for a net increase of proceeds to ALS of \$2,059,000. Hence, ALS should be receiving gross proceeds from the sale and the maturity in the aggregate amount of \$12,844,950, from which Houlihan Lokey’s transaction fee in the amount of \$750,000 will be deducted and paid at closing.

5. The first response was received from Senior Health Insurance Company of Pennsylvania (“*SHIP*”). SHIP, which does not oppose the sale itself, alleges that it has a secured

¹ All capitalized terms not defined herein shall have the meanings ascribed to them in the Sale Motion.

interest in PPCO's assets, including those of ALS, by virtue of a purported participation interest in a secured lending facility agented by BAM Administrative Services LLC. SHIP asserts a security interest in the Policies and claims that it is concerned that the Receiver's proposed sale of the Policies includes no mechanism, such as escrowing the sale proceeds, to protect SHIP's alleged secured interests. SHIP's assertions are incorrect because, among other things: (a) SHIP, as an alleged participant in a syndicated loan facility agented by another entity, and thus lacks the standing to object to the Sale Motion; and (b) the purported agent of that facility released its security interests and SHIP does not hold any alleged perfected lien on the life insurance policies. Moreover, the specific relief SHIP seeks, would, among other things, interfere with my ability to operate the estate pursuant to the Receivership Order.

6. The second response was received from (i) Pee & En, LLC; (ii) Purchase of Stock LLC; (iii) William Korn; and (iv) Chaim Lunger (collectively, the "***Responding Minority Members***").² Like SHIP, the Responding Minority Members do not oppose the sale of the Policies themselves, but request that the "Platinum-related members of ALS" not be permitted to receive distributions from the sale prior to the Responding Minority Members being made whole for their investment in ALS. In essence, the Responding Minority Members seek to subordinate Platinum's right to receive its *pro rata* distribution of the sale proceeds. The relief the Responding Minority Members seek is contrary to the terms of the governing operating agreement, and while I take their allegations seriously and will continue to investigate any potential claims relating to ALS, mere allegations, without admissible evidence, do not provide grounds for this Court to modify the governing ALS Operating Agreement.

² Pursuant to this Court's October 11, 2017 *Order Adopting Protocols for Parties in Interest to Be Heard on Receiver Motions*, I filed the Response from SHIP with this Court on April 9, 2018, Docket No. 314, and I filed the Response from the Responding Minority Members on April 16, 2018, Docket No. 315.

7. In sum, no parties or parties-in-interest have submitted objections to the sale itself. Rather, these two alleged parties-in-interest have articulated concerns regarding the use of sale proceeds. While they are not correct in their factual assertions nor are they entitled to the relief they seek, a determination of their alleged entitlement to the relief they seek does not bear on the Court's approval of the Sale Motion. I do however, reserve my right to, if necessary, raise arguments and make additional claims with respect to these Responses at the appropriate time.

8. Finally, I wish to inform that Court that consistent with my rights under the ALS Operating Agreement and my authority as the Manager of ALS, following the sale, I will cause ALS to make a preliminary reimbursement to PPCO of \$7,478,000 for the life insurance premiums it paid on behalf of ALS during the receivership in order to keep the Policies in effect and thereby maintain the value of ALS's assets.³ The payment to the Receivership Estate will be made directly from the net sale proceeds, with the balance of such net sale proceeds kept in the ALS bank account pending a decision by me, as Manager, to make further distributions or use of the sale proceeds in accordance with the terms of the ALS Operating Agreement.

9. In conclusion, for the reasons set forth herein, as well as in the previously submitted Sale Motion, I respectfully request that this Court approve the Sale Motion and enter the Proposed Order in the form attached as Exhibit A hereto.

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

Executed this 20th day of April, 2018, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

³ I reserve my rights to make additional reimbursements and/or distributions once all the final costs borne by the Receivership on behalf of ALS are calculated.

EXHIBIT A

Proposed Order

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

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SECURITIES AND EXCHANGE COMMISSION, :
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Plaintiff, :
:
-v- :
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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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No. 16-cv-6848 (BMC)

**[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*”)¹ and the Court having considered the Sale Motion and exhibits and other documents filed in support of the Sale Motion and the oppositions to the Sale Motion submitted by (A) (i) Pee & En, LLC; (ii) Purchase of Stock LLC; (iii) William Korn; and (iv) Chaim Lunger (collectively, the “*Minority Members*”) and (B) Senior Health Insurance Company of Pennsylvania (“*SHIP*”) (such responses of the Minority Members and SHIP, the “*Responses*”) and the Court having found that the Sale Motion complies with applicable standards for granting the relief requested therein;

¹ Capitalized terms utilized but not otherwise defined herein shall have the meaning ascribed to them in the Sale Motion.

and the Court having found that neither of the Responses seeks to oppose entry of this Order; and after due deliberation and for good and sufficient cause shown; it is hereby

ORDERED that the Sale Motion is approved and the relief requested therein granted; and it is further

ORDERED that entry of this Order shall not be deemed a determination of the rights and claims of the Minority Members and SHIP in their Responses and the Minority Members and SHIP reserve their rights to assert such claims and rights and the Receiver reserves all defenses and claims thereto; and it is further

ORDERED that the Receiver may proceed to consummate the sale transactions contemplated by the PSAs upon satisfaction or waiver of the closing conditions therein set forth.