

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Case No. 18-cv-06658 (JSR)

PLATINUM-BEECHWOOD LITIGATION

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.

Case No. 18-cv-10936 (JSR)

PLATINUM MANAGEMENT (NY) LLC, et al.,

Defendants.

ANSWER

Wilmington Trust, N.A. (“WTNA”), in its capacity as custodian for certain custodial accounts named as defendants in this action (the “Accounts”)¹ formerly maintained at WTNA, through its attorneys, Hodgson Russ LLP, answering the second amended complaint on behalf of the Accounts:

1. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1-222 of the second amended

¹ The “Accounts,” as identified in the second amended complaint, means Private Bankers Life Annuity LTC 2, as successor in interest to BBIL ULICO 2014 Trust; Washington National LTC 2, as successor in interest to BRE WNIC 2013 LTC Primary and BRE WNIC 2013 LTC SUB; and Bankers Consecro Life Insurance Co. – LTC 2, as successor in interest to BRE BCLIC Primary and BRE BCLIC Sub.

complaint (“SAC”).

2. Admit the allegations in paragraphs 223-224 of the SAC.
3. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 225 of the SAC.
4. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 226-762 of the SAC.
5. Repeat and reallege every response to the allegations incorporated by reference in paragraph 763 of the SAC.
6. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 764-773 of the SAC.
7. Repeat and reallege every response to the allegations incorporated by reference in paragraph 774 of the SAC.
8. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 775-781 of the SAC.
9. Repeat and reallege every response to the allegations incorporated by reference in paragraph 782 of the SAC.
10. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 783-791 of the SAC.

11. Repeat and reallege every response to the allegations incorporated by reference in paragraph 792 of the SAC.

12. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 793-813 of the SAC.

13. Repeat and reallege every response to the allegations incorporated by reference in paragraph 814 of the SAC.

14. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 815-837 of the SAC.

15. Repeat and reallege every response to the allegations incorporated by reference in paragraph 838 of the SAC.

16. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 839-845 of the SAC.

17. Repeat and reallege every response to the allegations incorporated by reference in paragraph 846 of the SAC.

18. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 847-857 of the SAC.

19. Repeat and reallege every response to the allegations incorporated by reference in paragraph 858 of the SAC.

20. States that the Accounts are without knowledge or information sufficient

to form a belief as to the truth of the allegations in paragraphs 859-868 of the SAC.

21. Repeat and reallege every response to the allegations incorporated by reference in paragraph 869 of the SAC.

22. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 870-885 of the SAC.

23. Repeat and reallege every response to the allegations incorporated by reference in paragraph 886 of the SAC.

24. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 887-899 of the SAC.

25. Repeat and reallege every response to the allegations incorporated by reference in paragraph 900 of the SAC.

26. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 901-910 of the SAC.

27. Repeat and reallege every response to the allegations incorporated by reference in paragraph 911 of the SAC.

28. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 912-925 of the SAC.

29. Repeat and reallege every response to the allegations incorporated by reference in paragraph 926 of the SAC.

30. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 927-937 of the SAC.

31. Repeat and reallege every response to the allegations incorporated by reference in paragraph 938 of the SAC.

32. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 939-947 of the SAC.

33. Repeat and reallege every response to the allegations incorporated by reference in paragraph 948 of the SAC.

34. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 949-959 of the SAC.

35. Repeat and reallege every response to the allegations incorporated by reference in paragraph 960 of the SAC.

36. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 961-967 of the SAC.

37. Repeat and reallege every response to the allegations incorporated by reference in paragraph 968 of the SAC.

38. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 969-985 of the SAC.

39. Repeat and reallege every response to the allegations incorporated by

reference in paragraph 986 of the SAC.

40. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 987-1000 of the SAC.

41. Repeat and reallege every response to the allegations incorporated by reference in paragraph 1001 of the SAC.

42. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1002-1012 of the SAC.

43. Repeat and reallege every response to the allegations incorporated by reference in paragraph 1013 of the SAC.

44. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1014-1020 of the SAC.

45. Repeat and reallege every response to the allegations incorporated by reference in paragraph 1021 of the SAC.

46. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1022-1027 of the SAC.

47. Repeat and reallege every response to the allegations incorporated by reference in paragraph 1028 of the SAC.

48. States that the Accounts are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1029-1041 of the SAC.

DENIAL

49. The Accounts deny each and every allegation of the SAC not specifically admitted, controverted, or denied.

FIRST DEFENSE

50. The SAC and each and every count contained therein, fails to state a cause of action or claim upon which relief can be granted.

SECOND DEFENSE

51. Some or all of plaintiffs' claims are barred by the applicable statutes of limitation.

THIRD DEFENSE

52. The Court lacks personal jurisdiction over the Accounts.

FOURTH DEFENSE

53. Plaintiffs' claims are barred, in whole or in part, by ratification, laches, waiver, and/or estoppel.

FIFTH DEFENSE

54. Plaintiffs' claims are barred, in whole or in part, because the SAC fails to plead facts to support a claim for relief.

SIXTH DEFENSE

55. Plaintiffs' claims are barred, in whole or in part, because the Accounts complied fully with all applicable laws.

SEVENTH DEFENSE

56. Plaintiffs' claims are barred, in whole or in part, because the Accounts owed no duty to plaintiffs.

EIGHTH DEFENSE

57. Any damages allegedly sustained by plaintiffs were caused by their own culpable conduct, including contributory/comparative negligence or assumption of the risk, and not by the alleged culpable conduct of the Accounts.

NINTH DEFENSE

58. Plaintiffs' recovery, if any, should be barred or reduced in the proportion that their culpable conduct, including without limitation contributory/comparative negligence or assumption of the risk, bears to the total culpable conduct found to have caused plaintiffs' damages.

TENTH DEFENSE

59. Plaintiffs' damages were caused by their failure to take reasonable actions to avoid or mitigate damages.

ELEVENTH DEFENSE

60. Any alleged culpable conduct by the Accounts was not the proximate cause of plaintiffs' injuries.

TWELFTH DEFENSE

61. At all relevant times, the Accounts were engaged in the reasonable operation of their businesses.

THIRTEENTH DEFENSE

62. The Accounts did not breach any duty owed to plaintiffs and/or the putative class members.

FOURTEENTH DEFENSE

63. Plaintiffs' claims are barred, in whole or in part, because the Accounts exercised due care and conducted themselves in accordance with the applicable customs and practices in the industry, and the Accounts complied with all then-existing and applicable federal, state, and local statutory and regulatory requirements.

FIFTEENTH DEFENSE

64. Plaintiffs' claims are barred by the economic loss doctrine.

SIXTEENTH DEFENSE

65. The Accounts' duties were contractual in nature and any associated duties in tort were pre-empted.

SEVENTEENTH DEFENSE

66. Plaintiffs' claims for damages must be reduced by any amounts recovered by them from other sources.

EIGHTEENTH DEFENSE

67. Plaintiffs' claims that the Accounts substantially assisted the alleged wrongful conduct of others by performing legitimate banking services are barred because holding accounts, processing deposits and withdrawals, and effecting transactions at the

instruction of an alleged wrongdoer with authority to issue such instructions do not constitute substantial assistance to the wrongdoer on the part of the Accounts.

NINETEENTH DEFENSE

68. To the extent that any employee, agent, or officer of the Accounts is found to have engaged in conduct resulting in liability to plaintiffs, said employee, agent, or officer did not act within the scope of his or her employment.

TWENTIETH DEFENSE

69. Plaintiffs have failed to plead their claims against the Accounts with the required specificity.

TWENTY-FIRST DEFENSE

70. Plaintiffs at all times gave consent, express or implied, to the alleged acts, omissions, and conduct of the Accounts (which acts, omissions, and conduct alleged in the SAC the Accounts deny).

TWENTY-SECOND DEFENSE

71. Plaintiffs' claims are barred by the doctrine of unclean hands.

TWENTY-THIRD DEFENSE

72. Plaintiffs' claims are barred, in whole or in part, because any injury they allegedly suffered was not caused by the Accounts.

TWENTY-FOURTH DEFENSE

73. Plaintiffs' damages, if any, were caused by their own actions and/or omissions or by conduct of other parties for which the Accounts are not liable.

TWENTY-FIFTH DEFENSE

74. No fiduciary relationship exists between the Accounts and the plaintiffs.

TWENTY-SIXTH DEFENSE

75. Plaintiffs' claims are barred, in whole or in part, because of ratification, agreement, assent, acquiescence, or consent to the Accounts' alleged conduct.

TWENTY-SEVENTH DEFENSE

76. The Accounts acted in accordance with the applicable agreements.

TWENTY-EIGHTH DEFENSE

77. Plaintiffs and/or their predecessors failed to conduct due diligence or ignored due diligence regarding the investments.

TWENTY-NINTH DEFENSE

78. Plaintiffs and/or the parties they represent had actual or constructive notice of the alleged scheme, and yet invested, and continued to invest, in the alleged scheme.

THIRTIETH DEFENSE

79. Plaintiffs' lack standing to bring the claims alleged in the SAC.

THIRTY-FIRST DEFENSE

80. Plaintiffs have sustained no damages as a result of any action or inaction on the part of the Accounts.

THIRTY-SECOND DEFENSE

81. Plaintiffs' reliance, if any, on the Accounts was unreasonable.

RESERVATION OF RIGHTS

82. The Accounts reserve the right to assert further defenses that may become known during discovery.

WHEREFORE, the Accounts demand judgment dismissing the all claims in the SAC and all costs, attorneys' fees, and such other relief the Court deems proper.

Dated: May 14, 2018

HODGSON RUSS LLP

*Attorneys for Wilmington Trust, N.A., as
Former Custodian for the Accounts*

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