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VIA ECF AND FEDERAL EXPRESS

Honorable Brian M. Cogan
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: SEC v. Platinum Mgmt. (NY) LLC, et al., No. 1:16-cv-06848-BMC

Dear Judge Cogan:

This letter is jointly submitted to Your Honor pursuant to Your Individual Practice Rule III(A)(1) by, on the one hand, counsel to 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**"), and on the other hand, Norman Klein, counsel to Schafer and Weiner, PLLC ("**S&W**" together with Platinum, the "**Parties**").

The Parties are unable to resolve a dispute which has arisen during discovery currently being conducted in accordance with the schedule submitted on June 22, 2018, Dkt. No. 346, that Your Honor "so ordered" on June 25, 2018, with respect to S&W's Final Motion for Attorneys' Fees and Reimbursement of Expenses, Dkt. No. 326, (the "**Fee Application**"). The specific discovery dispute at issue is whether or not S&W should be permitted to depose the Receiver.

The Receiver's Position

The Receiver's position is that S&W's notice to depose the Receiver is improper and should be quashed because S&W has been unable to articulate why it is necessary to depose the Receiver, who has no first-hand knowledge of the facts, circumstances and events relevant to an adjudication of the Fee Application. As has been reiterated to S&W, the Receiver was appointed *after* the prior Receiver's determination not to submit a retention and fee application to the Court for S&W, and *after* the prior Receiver's termination of S&W's services. The Receiver's only factual knowledge is the result of communications with her counsel and review of documents



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after-the-fact. As a result, a deposition of the Receiver is unwarranted, an unnecessary expenditure of estate resources, and appears solely intended to harass her, rather than assist S&W in its prosecution of the Fee Application.

As a compromise, and if S&W's aim in deposing the Receiver is to ascertain the Receiver's position on issues relevant to the Court's adjudication of the Fee Application, the Receiver is prepared to respond to a limited number of appropriately tailored contention interrogatories. However, a deposition replete with objections and instructions not to answer on the grounds of privilege, or in the alternative, responses of I do not have any first-hand-knowledge, is not a prudent use of estate resources.

S&W's Position

S&W believes that a deposition of the Receiver is relevant to the adjudication of the Fee Application. The Receiver objected to the Fee Application based on numerous disputed factual allegations. These include the Receiver's allegations that S&W had impermissible ethical issues and conflicts of interest in its representation of the Initial Receiver; that S&W performed poor work for the Receivership; and that S&W's services were detrimental to the Receivership. S&W believes that the Receiver made these allegations, and objected to the Fee Application, based on misinformation and inaccurate and incomplete facts.

The Receiver, in her June 6 Webinar Investor and Creditor Forum, stated that "I have made, and will continue to make, informed decisions regarding each asset." The Receiver, and not her attorneys, presumably made the decision to object to S&W's Fee Application, and is responsible for this decision. S&W is entitled to know the reason(s) the Receiver made her decision and the factual allegations on which she based her decision. Similarly, S&W is entitled to question the Receiver about the basis and accuracy of the factual allegations the Receiver has made in her objection to S&W's Fee Application.

S&W is not seeking to discover the communications between the Receiver and her attorneys. S&W simply seeks to know how the Receiver made her decision to object to the Fee Application and what facts she considered. The Receiver, the objecting party, cannot avoid being deposed about how she made that decision and the factual basis which allegedly supported it.

Conclusion

Counsel for the Parties have conducted numerous "meet and confers" regarding their respective objections to their respective discovery requests, including teleconferences on July 6, 10, 16, 24 and 25, constituting in excess of four (4) hours in the aggregate. Substantial time during the meet and confers was devoted to discussion of the propriety of S&W's notice to



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depose the Receiver, as well as the document requests. S&W is drafting a joint letter regarding the document dispute which should be filed shortly.

As a result of the foregoing, the Parties respectfully request that Your Honor convene a conference to address these concerns or otherwise advise the Parties as to how they should proceed.

Thank you for your continued consideration of these matters.

Respectfully submitted,

/s/ Erik B. Weinick

/s/ Norman Klein

Erik B. Weinick,
*Counsel for Melanie L. Cyganowski,
as Receiver*

Norman Klein,
Counsel for Schafer and Weiner, PLLC

cc: Melanie L. Cyganowski, Esq.
Counsel of Record via ECF