

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION

18-cv-06658 (JSR)

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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), :

18-cv-10936 (JSR)

Plaintiffs,

**NOTICE OF SUGGESTION  
ON PENDENCY OF  
BANKRUPTCY AND  
MOTION TO STAY**

-v-

PLATINUM MANAGEMENT (NY) LLC, et al.,

Defendants.

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PLEASE TAKE NOTICE THAT, BEECHWOOD RE (in Official Liquidation) s/h/a BEECHWOOD RE LTD, (the “Debtor”) filed a petition for relief under Chapter 15 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). The Debtor’s Chapter 15 case is pending before the Honorable Martin Glenn, United States Bankruptcy Judge, A copy of the petition is attached hereto as Exhibit “A”

PLEASE TAKE FURTHER NOTICE that a Motion to Stay this action, inter alia, (Exhibit “B”) has been filed in the Bankruptcy Court.

Dated: Kew Gardens, New York  
June 16, 2019

Respectively submitted  
LIPSIOUS-BENHAIM LAW LLP

BY S/ Ira S. Lipsius

Ira S. Lipsius  
Cheryl D. Lipsius

80-02 Kew Gardens Road  
Kew Gardens, NY 11415  
Attorneys for Beechwood Re (in  
Official Liquidation) s/h/a/  
Beechwood Re Ltd

EXHIBIT A

Fill in this information to identify your case:

United States Bankruptcy Court for the:

SOUTHERN DISTRICT OF NEW YORK

Case number (if known) \_\_\_\_\_

Chapter 15

Check if this an amended filing

Official Form 401

Chapter 15 Petition for Recognition of a Foreign Proceeding

12/15

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and case number (if known).

1. Debtor's name Beechwood RE (In Official Liquidation)

2. Debtor's unique identifier For non-Individual debtors:  
 Federal Employer Identification Number \_\_\_\_  
 Other 278453. Describe identifier Cayman Island Companies Law.  
For individual debtors  
 Social Security Number: \_\_\_\_  
 Individual Taxpayer Identification Number (ITIN): \_\_\_\_  
 Other \_\_\_\_, Describe identifier \_\_\_\_

3. Name of foreign representative(s) Stuart Sybersma

4. Foreign proceeding in which appointment of the foreign representative(s) occurred Official Liquidation proceedings in the Grand Court of the Cayman Islands with reference FSD 144 of 2018

5. Nature of the foreign proceeding Check one:  
 Foreign main proceeding  
 Foreign nonmain proceeding  
 Foreign main proceeding, or in the alternative foreign nonmain proceeding

6. Evidence of the foreign proceeding  
 A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached.  
 A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached.  
 Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.

7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?  
 No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending).  
 Yes

8. Others entitled to notice Attach a list containing the names and addresses of:

- (i) all persons or bodies authorized to administer foreign proceedings of the debtor,
- (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and
- (iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.

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9. Addresses	Country where the debtor has the center of its main interests:  <u>Cayman Islands</u>  Individual debtor's habitual residence:  <u>N/A</u>  Country	Debtor's registered office:  <u>Citrus Grove, 106 Goring Avenue Grand Cayman KY1-1109</u> <small>P.O. Box, Number, Street, City, State/Province/Region &amp; ZIP/Postal Code</small>  <u>Cayman Islands</u> <small>Country</small>  Address of foreign representative(s):  <u>Same</u> <small>P.O. Box, Number, Street, City, State/Province/Region &amp; ZIP/Postal Code</small>  Country
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10. Debtor's website (URL) N/A

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11. Type of debtor

Check one:

Non-individual (check one):

- Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.
- Partnership
- Other.  
Specify: Cayman Island exempt company

Individual

12. Why is the venue proper in this district?

Check one:

- Debtor's principal place of business or principal assets in the United States are in this district.
- Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district.
- If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:

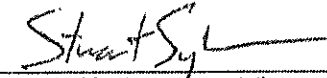
13. Signature of foreign representative(s)

I request relief in accordance with the chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

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

X   
Signature of foreign representative

Stuart Sybersma  
Printed name

Executed on 05/15/2019  
MM / DD / YYYY

X \_\_\_\_\_  
Signature of foreign representative

Printed name

Executed on \_\_\_\_\_  
MM / DD / YYYY

14. Signature of attorney

X   
Signature of Attorney for foreign representative

Date 05/15/2019  
MM / DD / YYYY

John E. Jureller, Jr.  
Printed name

Klestadt Winters Jureller Southard & Stevens, LLP  
Firm name

200 West 41st Street  
17th Floor  
New York, NY 10036-7203  
Number, Street, City, State & ZIP Code

(212) 972-3000  
Contact phone

jjureller@klestadt.com  
Email address

2586451 NY  
Bar number and State

**Exhibit 1**

**Winding Up Order of Grand Court of Cayman Islands  
with Reference FSD 144 of 2018**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD. 144 OF 2018 (NSJ)**

**The Honourable Mr Justice Segal  
In Open Court, 27 November 2018**

**IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)  
IN THE MATTER OF THE INSURANCE LAW, 2010  
AND IN THE MATTER OF BEECHWOOD RE (IN CONTROLLERSHIP)**



**WINDING UP ORDER**

**UPON** hearing Counsel for the Cayman Islands Monetary Authority ("the Petitioner") by its Summons for Directions filed and stamped on the 10 August 2018 and its Winding Up Petition dated 7 August 2018 ("the Petition") for an Order that BEECHWOOD RE (in Controllershship) ("the Company") be wound up

**AND UPON** hearing Counsel for Stuart Sybersma and Michael Penner of Deloitte & Touche (Cayman) ("Deloitte"), the Joint Controllers of the Company ("the Controllers")

**AND UPON** hearing Counsel for the CNO Financial Group (having been granted leave to be heard by the Court)

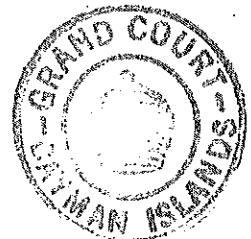
**AND UPON** reading the Petition, the First Affidavit of Audrey Roe sworn on 7 August 2018, the Affidavit of Michael Penner sworn on 6 August 2018 and the First and Second affidavits of Stuart Sybersma sworn on 6 August 2018 and the 21 November 2018 respectively; and the Affidavits of service by Dawn Major sworn on the 7 of September and the 30 of October respectively 2018 and in each case, the exhibits thereto

**AND UPON** reading the Four Controller Reports dated 31 August 2017, 31 October 2017, 27 March 2018 and the 10 October 2018 respectively, as prepared by Stuart Sybersma and Michael Penner of Deloitte in their capacity as Joint Controllers of the Company, pursuant to an appointment made by the Petitioner on 19 July 2017 in the exercise of its regulatory power under section 24 (2) (h) of the Insurance Law (2010)



**IT IS HEREBY ORDERED THAT:**

1. The Company be wound up in accordance with the Companies Law (2018 Revision) ("the Companies Law").
2. Messrs. Stuart Sybersma and Michael Penner both of Deloitte & Touche, Citrus Grove Building, George Town, Grand Cayman, Cayman Islands Deloitte (Cayman), P.O. Box 1787, KY1-1109 be appointed Joint Official Liquidators of Beechwood ("the Joint Official Liquidators" or "JOLs").
3. The JOLs shall not be required to give security for their appointment.
4. The JOLs be authorised to act jointly and severally and to exercise any of the powers within and outside the Cayman Islands as specified in Part II of the Third Schedule to the Companies Law without further sanction of the Court.
5. Without limitation to the foregoing, the JOLs are authorised to commence, bring or defend and to take any such steps as the JOLs may consider appropriate in respect of the following actions or legal proceedings, either in their own name for and on behalf of the Company or in the name of the Company on its behalf:
  - (i) the American Arbitration Association arbitration proceedings entitled, "Bankers Consec Life Insurance Company and Washington National Insurance Company v. Beechwood Re: Limited, AAA Case #: 01-16-0004-2510;"
  - (ii) the CNO filed proceedings in the United States District Court, Southern District of New York entitled, "Bankers Consec Life Insurance Company (BCLIC) and Washington National Insurance Company (WNIC) v Mark Feuer, Scott Taylor, David Levy and Beechwood Capital Group, LLC., case # 1:2016 cv07646;"
  - (iii) the proceedings in the United States Bankruptcy Court, Southern District of Texas, Houston Division entitled, "Richard Schmidt, Litigation Trustee for Black Elk v. Beechwood Re Ltd., et al., case # 15-34287;"
  - (iv) the civil complaint in the United States District Court, Southern District of New York entitled, "Senior Health Insurance Company of Pennsylvania v Beechwood Re Ltd et al., case #:1:18-cv-06658;"



(v) the civil complaint in the United States District Court, Southern District of Indiana, entitled "Fuzion Analytics, Inc. v Beechwood Re Ltd, case # 1:18-cv-03072";

(vi) any other winding up, bankruptcy or any other recognition proceedings in the United Kingdom, United States or other jurisdiction where the Company has assets as the JOLs may consider necessary and appropriate; including, without limitation, proceedings to obtain relief under Chapter 15 of Title 11 of the United States Bankruptcy Code.

6. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Companies Law, the Insolvency Practitioner's Regulations 2018 and Order 20 of the Companies Winding Up Rules 2018.
7. The JOLs be at liberty to meet all disbursements reasonably incurred with the performance of their functions.
8. The JOLs shall have the authority to appoint Cayman Islands attorneys, United States attorneys, English solicitors and counsel, and any other jurisdiction where the Company has or may have assets, or as they may consider necessary to advise and assist them in the performance of their duties and to remunerate them for their reasonable fees and expenses out of the assets of the Company as an expense of the liquidation.
9. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as expenses of the winding up.
10. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Companies Law.
11. No disposition of the Company's property by or with the authority of the JOLs in the carrying out of their duties and functions and the exercise of their powers under this Order shall be avoided by virtue of section 99 of the Companies Law.
12. Any act required or authorised to be done by the JOLs may be done by any one of them.
13. The JOLs shall provide to the Petitioner copies of all reports filed with this Court.



14. Pursuant to section 99 of the Companies Law, the dispositions of the Company's property set out in paragraph 30 of the Second Affidavit of Stuart Sybersma sworn on 21 November 2018 in these proceedings shall not be void.
15. The further remuneration of the Controllers' as approved by the Cayman Islands Monetary Authority and the further expenses of the Controllers shall be paid out of the assets of the Company as an expense of the official liquidation.
16. The costs of the Petitioner and of the Controllers incidental to the Petition be paid from the assets of the Company, to be taxed on the indemnity basis if not agreed.

Dated the 27<sup>th</sup> day of November 2018

Filed the 29<sup>th</sup> day of November 2018



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The Honourable Mr. Justice Segal  
JUDGE OF THE GRAND COURT



**EXHIBIT B**

KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP  
John E. Jureller, Jr.  
200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor  
New York, New York 10036  
Tel.: (212) 972-3000  
Fax: (212) 972-2245

*Attorneys for the Foreign Representative*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re :  
: Chapter 15  
BEECHWOOD RE, :  
: Case No. 19-  
Debtor in a Foreign Proceeding. :  
:  
-----X

**MOTION OF THE FOREIGN REPRESENTATIVE FOR  
PROVISIONAL RELIEF PENDING RECOGNITION OF A FOREIGN MAIN  
PROCEEDING PURSUANT TO 11 U.S.C. §§ 1519, 1521(A)(7), 105(A) AND 362**

Stuart Sybersma (the “Foreign Representative”), in his capacity as a Joint Official Liquidator of Beechwood Re (In Official Liquidation) (“Beechwood” or the “Debtor”), whose corporate winding-up proceeding under the laws of the Cayman Islands is pending before the Grand Court of the Cayman Islands (the “Cayman Court”), under Cause No. 144 of 2018 (NSJ) (the “Cayman Proceeding”), respectfully submits this application (the “Application”) pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the “Bankruptcy Code”), seeking provisional relief applying section 362 of the Bankruptcy Code to the Debtor and its U.S. property pending chapter 15 recognition of the Cayman Proceeding.

In support of the requested relief, the Foreign Representative respectfully refers the Court to the *Verified Petition of Beechwood Re For Recognition and Chapter 15 Relief* (“Verified Petition”), *Memorandum of Law in Support of Chapter 15 Petition of Beechwood Re For*

*Recognition of Foreign Proceeding* (“Memo of Law”), and the statements contained in the *Declaration of Stuart Sybersma in Support of Provisional Relief in Furtherance of Chapter 15 Petition* (“Sybersma Provisional Declaration”), all of which were filed concurrently herewith and are incorporated herein by reference as if fully set forth herein. In furtherance thereof, the Foreign Representative respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. On November 27, 2018, upon the petition of the Cayman Islands Monetary Authority (“CIMA”), the Grand Court of the Cayman Islands (the “Cayman Court”) ordered the winding up of Beechwood and appointed the Petitioner and Michael Penner of Deloitte (Cayman) as Joint Official Liquidators (“JOLs”) to oversee Beechwood’s liquidation (the “Winding Up Order”). Beechwood has now filed its chapter 15 petition (“Petition”), seeking recognition of the Cayman Proceeding as a “foreign main proceeding”.

2. Beechwood is currently a defendant in six (6) separate proceedings in the United States. It is a respondent in the CNO Arbitration (as defined herein), wherein it has asserted a counterclaim against CNO which is one of the main assets of the estate. Pursuant to an order of the Arbitration Panel and confirmed by the District Court for the Southern District of New York (the “District Court”), Beechwood has posted a \$5 million letter of credit as security in the CNO Arbitration.

3. In addition, Beechwood is actively a defendant in five (5) other separate proceedings pending in the United States: three actions pending in the District Court (the “District Court”) (all three consolidated for discovery purposes only) (collectively, the “Platinum-Beechwood Litigation”); one action pending in United States Bankruptcy Court for the Southern District of Texas (the “Texas Bankruptcy Court”) (the “Black Elk Action”); and

one action pending in United States District Court for the Southern District of Indiana (the "Indiana District Court") (the "Fuzion Action") (collectively, the "Litigation Matters").

4. These actions are being aggressively pursued by the respective claimants, and each involves extensive discovery and litigation costs. Currently, each of the Litigation Matters is generally in the early discovery stages. The Foreign Representative has been taking steps to defend against the claims being aggressively pursued in each of these actions; however, the actions necessary to defend these matters, and the lack of available insurance coverage, has significantly diminished the resources available in Beechwood's estate. This lack of resources may cause the Foreign Representative to no longer be able to properly protect the Debtor's rights, assert meritorious defenses, or prosecute any counterclaims for the benefit of the estate. If not stayed, the Litigation Matters risk inflicting irreparable damage on the Debtor, its stakeholders and its assets.

5. Most urgently, CNO has now asserted third party claims against Beechwood in the PPCO Action (one of the consolidated actions in the Platinum-Beechwood Litigation), notwithstanding the pending CNO Arbitration. Based upon these third party claims, CNO has asked the District Court, pursuant to the provisions of New York Insurance Law section 1213(c)(1)(A) ("Section 1213") to "fix the amount of cash or securities that Beechwood must deposit with the clerk of Court to secure Beechwood's payment of any final judgment that may be rendered in this proceeding, *in an amount no lower than \$180 million.*" (emphasis added). While Beechwood believes that CNO's demand is improper, without merit, and subject to defenses under the doctrines of *res judicata* and collateral estoppel as a result of (1) the Arbitration Panel's prior order regarding compelling the posting of the \$5 million letter of credit as security in the CNO Arbitration and (2) the District Court's entry of judgment of the

Arbitration Panel's order, CNO has not withdrawn this demand (despite the District Court entering the Arbitration Panel's order as a judgment in the Platinum-Beechwood Litigation).

6. Beechwood's response to CNO's third party claims is currently due on May 15, 2019. Based upon CNO's position, and while Beechwood disputes any such obligation as a result of the Arbitration Panel's order and District Court's entry of the judgment, Beechwood could be in default in meeting its obligations of the posting of the "no lower than \$180 million" as security under Section 1213. As a result, this situation, along with the inability to fund the other legal expenses necessary to adequately protect its interests in the Litigation Matters, creates an extraordinary situation requiring immediate provisional relief hereunder. Not only is the Debtor subject to claims for security, these demands could also impact Beechwood's counterclaim in the CNO Arbitration which is a significant asset of the estate.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.

8. This case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a petition for recognition of the Cayman Proceeding under section 1515 of the Bankruptcy Code.

9. Venue is proper in this district under 28 U.S.C. § 1410(1) and (2) for two independent reasons: (i) that the Debtor's principal asset in the United States is in New York, namely a counterclaim asserted against CNO in the CNO Arbitration pending in the State of New York which is secured by a five million (\$5,000,000) dollar letter of credit posted as security in the CNO Arbitration, and (ii) that there are pending actions against the Debtor in the District Court.



10. The statutory basis for relief is section 1519 of the Bankruptcy Code.

### **FACTUAL BACKGROUND**

11. The factual background is more fully set forth in the Sybersma Provisional Declaration, all of which is incorporate herein.

#### **A. Beechwood's Business and Capital Structure**

12. Beechwood was incorporated as a Cayman Islands exempt company on June 11, 2013 (Registration No. 278453) and issued a class "B" license by CIMA as an insurer on July 25, 2013 pursuant to section 4(3)(b) of the Cayman Islands Insurance Law, 2010.

13. Until put into controllership by CIMA (as detailed below), Beechwood's registered offices were Global Capital Management Ltd., PO Box 1363 Building 3, 23 Lime Tree Bay Avenue, Governors Square, Grand Cayman KY1-1108. Beechwood has always maintained its registered office in the Cayman Islands. Beechwood's statutory records are held at the Foreign Representative's offices in the Cayman Islands.

14. Beechwood is directly owned by Beechwood Re Holdings Inc. ("BRHI"), a Delaware corporation.

15. At the time of its licensing, Beechwood had been established to provide reinsurance capacity to life, accident and health insurance companies seeking improved capital efficiency through reallocations of surplus.

16. Beechwood's source of business arose out of two separate reinsurance agreements. These reinsurance agreements (collectively as the "CNO Reinsurance Agreements") were signed in February 2014 and involved two subsidiaries of CNO Financial Group, Inc. – the Bankers Conseco Life Insurance Company ("BCLIC") and Washington National Insurance Company ("WNIC", and collectively with BCLIC as "CNO"). Under the

CNO Reinsurance Agreements, Beechwood agreed, *inter alia*, to reinsure certain of CNO's long term disability policies (the "CNO Policies"), and assumed responsibility for, and the right to subcontract for, the administration of the CNO Policies. Under the CNO Reinsurance Agreements, CNO ceded the CNO Policies to Beechwood for administration.

17. In addition, Beechwood entered into a certain Investment Management Agreement ("IMA") with Senior Health Insurance Company of Pennsylvania ("SHIP"), whereby it earned certain fees for management of certain assets held by SHIP. SHIP purported to terminate the IMA on November 17, 2016, and all assets held in the custodian account were returned to SHIP.

18. Upon entering controllership, Beechwood had already ceased operations. During controllership, and following entry of the Winding Up Order, Beechwood has engaged in the business of collecting its assets, defending claims asserted against the company, and preparing for an orderly liquidation under the direction of the JOLs.

**B. Events Leading to Beechwood's Liquidation**

19. In 2016, a number of serious allegations of fraud and criminal activity surfaced within and involving the Platinum Group of companies, its principals and companies associated with it were alleged (the "Platinum Allegations"). Beechwood became entangled in these allegations, although it has been consistent in its dispute of such allegations.

20. On September 29, 2016, Beechwood received notice that BCLIC and WNIC were terminating the CNO Reinsurance Agreements and recapturing the underlying liabilities under the CNO Policies previously ceded to Beechwood under the CNO Reinsurance Agreements (defined as the "Termination and Recapture") in connection with certain demands made by the regulatory bodies of New York Department of Financial Services and the Indiana Department of

Insurance. CNO also submitted an arbitration against Beechwood that same day, alleging several causes of action in connection with the Termination and Recapture and Platinum Allegations (“CNO Arbitration”)

21. Mark Nordlicht, the head of the Platinum funds, and David Levy, who was formerly a director and shareholder of Beechwood, are both facing a civil complaint filed by the United States Securities and Exchange Commission, and criminal charges filed by the United States Attorney’s Office for, *inter alia*, securities fraud, investment adviser fraud, investment adviser fraud conspiracy and wire fraud conspiracy for allegedly defrauding investors through, among other things: (a) the overvaluation of their largest assets; (b) the concealment of severe cash flow problems at Platinum’s signature fund; and (c) the preferential payment of redemptions.

22. Among the charges is that Mr. Nordlicht and Mr. Levy used the Beechwood group of insurance companies, including Beechwood, to rig a bond vote and pay the hedge fund manager ahead of creditors in connection with Black Elk Energy Offshore Operations LLC (“Black Elk”).

23. CNO also filed a lawsuit against Mark Feuer and Scott Taylor (the founders of Beechwood) and Mr. Levy, alleging various RICO claims, unjust enrichment and fraud. CNO claimed that the defendants conspired with the founders of Platinum in order to control sizeable insurance company assets to further the interests of Platinum. CNO alleges that certain material connections between Platinum and Beechwood were concealed from them, including (a) a \$100 million demand note provided by Platinum to Beechwood and (b) several high-level officers of Beechwood were either current or former employees of Platinum. The lawsuit was ordered to arbitration.

24. Lastly, CIMA had concerns that Beechwood was in breach of the Cayman Islands Insurance Law.

**C. CIMA Regulatory Enforcement Actions**

25. On July 21, 2017, the Executive Committee of the Board of Directors of CIMA resolved to exercise their powers under 24(2)(h) of the Cayman Island Insurance Law to appoint persons to assume control of Beechwood's affairs.

26. On July 25, 2017, Stuart Sybersma and Michael Penner also of Deloitte (Cayman) were appointed as Joint Controllers (the "Controllers") of Beechwood to, *inter alia*, (i) assume control of the affairs of Beechwood; (ii) assess whether applications should be made to the Cayman Court to protect the interests of Beechwood's creditors and any other stakeholders; and (iii) prepare and furnish a report in accordance with Section 24(4)(b) of the Insurance Law.

27. In furtherance thereof, the Controllers took immediate control of Beechwood and its operations. Upon taking control of the company, Beechwood's headquarters were in the Controllers' office in the Cayman Islands. All official actions and decisions on behalf of Beechwood were taken from the Controllers' Cayman Islands office. Management of Beechwood's day-to-day affairs (as well as the management of the pending litigation, as described below) was under the Controllers' control in the Cayman Islands. Beechwood's main bank account was at Deutsche Bank in the Cayman Islands and the Controllers immediately took control of this account.

28. In furtherance thereof, the Controllers, *inter alia*, investigated the assets and liabilities, assessed the pending litigations against Beechwood and worked with counsel regarding same, investigated the financial issues involving the company, and prepared required reports for CIMA.

**D. Pending Litigation Matters**

29. A summary of the Litigation Matters, as well as the CNO Arbitration, is outlined below:

**i. CNO Arbitration:**

30. On September 29, 2016, CNO filed the CNO Arbitration. The CNO Arbitration is pending in New York. CNO seeks damages from Beechwood for breach of the various Reinsurance Agreements. Beechwood has denied these claims.

31. In the CNO Arbitration, Beechwood has also asserted a counterclaim against CNO. The counterclaim is the main asset of Beechwood's estate.

32. On October 23, 2017, the Arbitration Panel issued an order requiring Beechwood to provide interim security in the amount of \$5 million, which was duly posted. The interim security order was confirmed as a judgment by the District Court. The \$5 million is held in a letter of credit under a facility with Butterfield Bank (Cayman) Limited in conjunction with its correspondent bank, Bank of New York.

33. The CNO Arbitration is currently stayed by order of the Arbitration Panel pending the conclusion of the SHIP, PPVA and PPCO litigation claims (set forth below).

**ii. Black Elk Action:**

34. On August 3, 2017, the chapter 7 trustee of Black Elk commenced an action against Beechwood, as well as its principals and other Beechwood entities, in the Texas Bankruptcy Court.

35. The chapter 7 trustee of Black Elk has asserted that certain of the Beechwood group of companies and related individuals, including Beechwood, conspired with the Platinum parties, to orchestrate and pay \$98 million in fraudulent transfers to repurchase Series E

preferred equity of the company, rather than use the funds to repay Black Elk's creditors, including Black Elk's Senior Secured Noteholders and trade creditors. The chapter 7 trustee has asserted claims against Beechwood for, among others, Civil RICO, common law fraud, and aiding and abetting common law fraud, fraudulent transfers, breach of fiduciary duty and civil theft.

36. The Black Elk Action is currently in discovery, and defendants (including Beechwood) have a motion to dismiss the second amended complaint pending.

**iii. SHIP Action:**

37. On July 24, 2018, SHIP filed a complaint against Beechwood, as well as its principals, former employees, and other Beechwood entities, in the District Court.

38. SHIP and Beechwood entered into an investment management agreement ("IMA") whereby Beechwood agreed, pursuant to the terms thereof, to manage certain long-term care liabilities on behalf of SHIP. On November 17, 2016 SHIP provided notice that it was terminating the IMA, and instructed Beechwood to (i) immediately instruct Wilmington Trust (the custodian under the IMA) to transfer all cash and short-term investments to SHIP, (ii) immediately transfer all interests in each IMA account not currently registered in SHIP's name into SHIP's exclusive name, and (iii) immediately convert all of SHIP's interests in PPVA to interests in PPCO. SHIP has now asserted claims against, among others, Beechwood seeking damages in an amount in excess of \$100 million, based upon claims for, amongst others, breach of contract, breach of fiduciary duty, and fraud.

39. The SHIP Action has been consolidated for discovery purposes only with the PPCO and PPVA Actions. The parties are currently in discovery on this matter.

**iv. Fuzion Action:**

40. On October 5, 2018, Fuzion Analytics Inc. (“Fuzion”) commenced an action against Beechwood in the Indiana District Court. Fuzion has asserted claims for breach of contract, seeking judgment for amounts it alleges are due and owing under that certain Master Services Agreement between Fuzion and Beechwood.

41. Beechwood has filed a motion for judgment on the pleadings, which is fully briefed and pending before the Indiana District Court. The parties are also in discovery on this matter. The parties have recently notified the Indiana District Court that they have reached a tentative settlement on the matter, subject to written documentation of the terms thereof.

**v. PPVA Action:**

42. On November 21, 2018, the Joint Official Liquidators of Platinum Partners Value Arbitrage Fund L.P. (“PPVA”) commenced an action against Beechwood, as well as Beechwoods’ principals, the other Beechwoods entities, and the Platinum parties. PPVA has filed a chapter 15 petition with this Court, and recognition as a foreign main proceeding was granted on November 23, 2016.

43. As against Beechwood, the PPVA Action asserts claims for aiding and abetting breach of fiduciary duties, aiding and abetting fraud, violating Civil RICO, and alter ego.

44. The PPVA Action was consolidated for discovery purposes only with the SHIP Action and PPCO Action. Certain parties, including Beechwood, have filed motions to dismiss the complaint. The parties are also in discovery on this matter.

**vi. PPCO Action:**

39. On December 20, 2018, Melanie Cyganowski, as the Receiver of Platinum Partners Credit Opportunity Fund LP and related funds (collectively as “PPCO”) commenced an action against Beechwood, as well as the principals, the other Beechwood entities, the Platinum

parties, SHIP, Fuzion and CNO.

40. As against Beechwood, the PPCO Action asserts claims for aiding and abetting breach of fiduciary duties, common law fraud, violations of Section 10(b) of the Exchange Act, violations of RICO, and avoidance and recovery of fraudulent conveyances.

41. The PPCO Action was consolidated for discovery purposes only with the SHIP Action and PPVA Action.

42. On March 27, 2019, CNO filed its Answer, Crossclaims and Third Party Complaint in the PPCO Action. A copy of CNO's redacted Answer, Crossclaims and Third Party Complaint is annexed to the Sybersma Declaration as **Exhibit E**. By its third party claims against Beechwood, CNO alleges that it was injured as a "proximate result of Beechwood Re's numerous breaches of the Reinsurance (and accompanying) Agreements". *Id.* at ¶ 864. Based upon these alleged breaches, CNO asks the District Court, pursuant to the provisions of Section 1213 to "fix the amount of cash or securities that Beechwood Re must deposit with the clerk of Court to secure Beechwood Re's payment of any final judgment that may be rendered in this proceeding, in an amount no lower than \$180 million." *Id.* at ¶ 865.

43. Section 1213 of the New York Insurance Law provides, in pertinent part:

(c)(1) Before any unauthorized foreign or alien insurer files any pleading in any proceeding against it, it shall either:

(A) deposit with the clerk of the court in which the proceeding is pending, cash or securities or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure payment of any final judgment which may be rendered in the proceeding, but the court may in its discretion make an order dispensing with such deposit or bond if the superintendent certifies to it that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in the proceeding, or

(B) procure a license to do an insurance business in this state.



New York Insurance Law, §1213(c)(1).

44. While Beechwood believes that CNO's demand is improper, without merit, and subject to the doctrines of *res judicata* and collateral estoppel as a result of the Arbitration Panel's prior order regarding compelling the posting of the \$5 million letter of credit as security for costs in the CNO Arbitration and (2) the District Court's entry of judgment of the Arbitration Panel's order, CNO has not withdrawn this demand.

**E. The Cayman Proceeding**

45. Based upon the Controllers' reports and other events that had occurred involving Beechwood, on May 16, 2018 the Executive Committee of the Board of Directors of CIMA resolved pursuant to section 24(5) of the Cayman Island Insurance Law to revoke the license of Beechwood and apply to the Cayman Court for an order that Beechwood be wound up.

46. On November 27, 2018, upon CIMA's petition, the Cayman Court ordered the winding up of Beechwood and appointed Stuart Sybersma (the Foreign Representative) and Michael Penner of Deloitte (Cayman) as the JOLs to undertake Beechwood's liquidation (the "Winding Up Order"). The Winding Up Order expressly authorizes the JOLs to, among other things, take possession of the property of Beechwood, ascertain and conduct investigations into the affairs of Beechwood, preserve Beechwood's assets, close or cease to operate Beechwood's business, and bring, prosecute, and defend any actions, suits or other proceedings on behalf of Beechwood. Since entry of the Winding-Up Order, the JOLs have been in the process of managing Beechwood's assets and liabilities and developing a strategy in an effort to discharge their duties under Cayman Law. The JOLs have also spent considerable time working with Beechwood's counsel with respect to the ongoing Litigation Matters and CNO Arbitration.

47. Since the Winding Up Order, the JOLs have attended to the ongoing affairs of the

company, and carried out the following tasks:

- a. Reviewed the position of the company's solvency and filed form CWR No. 13 with the Cayman Court confirming that the company should be treated as being insolvent;
- b. Provided statutory notice of their appointment to the Cayman Islands Register of Companies and all required parties, and publicly advertised notice of the appointment in the Gazette and subsequently advertised notice of the first meeting of creditors;
- c. Held the first meeting of creditors and formed a Liquidation Committee;
- d. Reviewed, approved and settled expenses of the company;
- e. Changed the registered offices to that of Deloitte (Cayman) and maintained the books and records of the company;
- f. Attended to all matters in relation to the CNO Arbitration and the Litigation Matters including instructing legal counsel, reviewing filings, strategizing regarding the company's responses, and attending hearings as necessary;
- g. Applied to Butterfield Bank (Cayman) Limited to obtain a letter of credit in relation to the CNO Arbitration;
- h. Took advice from Cayman Islands and US legal counsel regarding various statutory, legal and strategy matters; and
- i. Prepared a report to the Liquidation Committee, called a first meeting of the Liquidation Committee and are drafting a first report to the Cayman Court.

48. On January 28, 2019, a liquidation committee was formed, with the following representatives: WNIC, PPVA, Fuzion and SHIP (the “Liquidation Committee”). Each of the Liquidation Committee members is a claimant in a pending Litigation Matter, and holds a contingent claim against the Debtor’s estate. In furtherance of same, CWR Form No. 15 was filed with the Cayman Court on February 1, 2019 confirming that the Liquidation Committee had been duly constituted. The purposes of the Liquidation Committee are to act as a sounding board and forum for discussion for the JOLs and to provide guidance and assistance with regard to specific strategic decisions relating to the conduct of the liquidation, including as to realization or other potentially complex or contentious matters. The JOLs retained responsibility for ultimately determining strategy and direction of the liquidation.

**F. Liquidation Proceedings Under Cayman Law**

49. The Companies Law (2018) (the “Companies Law”) and the Winding Up Rules 2018 (the “CWR”, and together with the Companies Law, “Cayman Law”) are the governing law of corporate insolvency in the Cayman Islands. The relevant portions of the Cayman Law, as they apply to the winding up companies, are contained in Part V of the Companies Law and the Third Schedule of the Companies Law and the CWR, which are attached to the Sybersma Declaration as **Exhibit C** and **Exhibit D**, respectively.

50. By the Winding Up Order, the JOLs were appointed as joint official liquidators of Beechwood pursuant to Section 92(d) of the Cayman Law and are duly authorized to act as liquidators of Beechwood.

51. The JOLs are expressly authorized in the Winding Up Order to seek recognition of the Cayman Proceedings. The Winding Up Order provides at paragraph 5 that the JOLs are “to commence, bring or defend and to take any steps as the JOLs may consider appropriate in

respect of the following actions or legal proceedings, either in their own name for and on behalf of the Company or in the name of the Company on its behalf: (vi) any other winding up, bankruptcy or any other recognition proceedings in the United Kingdom, United States or other jurisdiction where the Company has assets as the JOLs may consider necessary and appropriate, including, without limitation, proceedings to obtain relief under Chapter 15 of Title 11 of the United States Bankruptcy Code.” See Sybersma Declaration, **Exhibit A**.

52. Part I of the Third Schedule of the Cayman Law sets out those powers of a liquidator which may be exercised without the sanction of the Cayman Court. In this case, the Winding Up Order provides that the JOLs can exercise most of these powers (including, importantly, the power to seek recognition of the Cayman Proceedings in other jurisdictions) without further approval of the Cayman Court, with the only exception being: (a) the power to pay a class of creditors in full; (b) the power to dispose of any property of the company to a person or persons who is or was related to the company; and (c) the power to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it.

53. Key insolvency procedures provided for in the Cayman Islands including provisional liquidation, official liquidation, schemes of creditor arrangement (which is not strictly an insolvency procedure, but is often employed in respect of insolvent companies), as well as receivership (which is a procedure that may be instigated by a secured creditor pursuant to the terms of its security and not by the Cayman Court). Generally, the Cayman Law contains provisions broadly similar to those contained in the insolvency laws of England. Fundamentally, the key principle of Cayman Islands insolvency is the *pari passu* principle, closely following English law principles.

54. Under Cayman Law, court-appointed liquidators are officers of the Cayman Court. *See* Sybersma Declaration, **Exhibit C**, Cayman Law § 108(2) (providing that a liquidator in a Cayman Islands liquidation proceeding acts as an officer of the Cayman Court). Upon appointment, the JOLs obtained, among other things, the custody and control of the assets of Beechwood, and the power to compromise claims, commence litigation and dispose of property. *See Id.*, Cayman Law § 110.

55. The Cayman Proceeding is not for the benefit of any single creditor; rather it operates to resolve and determine the rights of all claimants and stakeholders; i.e., the creditor body as a whole, vis-à-vis each debtor. *See Id.*, Cayman Law § 140 (1) (providing “... that the property of a Company shall be applied in satisfaction of its liabilities *pari passu* ...”). Any person or entity which a provable debt (defined under § 139 (1) of the Cayman Law, to include, subject to limited statutory exceptions, all lawful liabilities of a company) against Beechwood may assert such claim in the Cayman Proceeding. Any such claim, subject to appropriate proof, may be allowed, thereby entitling such claimant to ratable payment of its claim from the assets of Beechwood, subject to higher priority claims on the assets of Beechwood such as liquidation expenses.

56. The Cayman Court exercises close supervision of the Cayman Proceeding and the JOLs. The judge currently assigned to these matters is the Honorable Mr. Justice Segal, Judge of the Grand Court of the Cayman Islands. In practice, this means that not only is the management of Beechwood conducted from within the Cayman Islands by the JOLs, but that key aspects of that management are subject to court supervision in the Cayman Islands.

#### **G. Beechwood’s Chapter 15 Filing**

58. As a result of, *inter alia*, the pending Litigation Matters, and its inability to fund

the requisite necessary defense to these proceedings, including the possibility of funding the Section 1213 security with respect to the CNO third party claims, the Foreign Representative filed a Petition for Beechwood pursuant to sections 1504 and 1515 of the Bankruptcy Code, commencing the chapter 15 case ancillary to the Cayman Proceeding and seeking recognition of the Cayman Proceeding as a foreign main proceeding as defined in section 1502(4) of the Bankruptcy Code.

### **RELIEF REQUESTED**

59. Pursuant to sections 1519, 1521(a)(7), 105(a) and 362 of the Bankruptcy Code, the Foreign Representative requests that the Court enter an order, substantially in the form annexed hereto as Exhibit A, granting the following provisional relief pending recognition of the Cayman Proceeding:

- (i) Section 362 of the Bankruptcy Code applies with respect to the Debtor and the property of the Debtor that is within the territorial jurisdiction of the United States; for avoidance of doubt, the stay will operate to bar all actions against the Debtor or its U.S. property, including the CNO Arbitration and Litigation Matters; and
- (ii) Such other relief as may be just and proper.

### **ARGUMENT**

#### **A. Governing Law**

60. Section 1519(a) of the Bankruptcy Code permits the Court to grant immediate temporary relief to the foreign representative pending its ruling on the petition for recognition as follows:

- (a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is

urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including –

- (1) staying execution against the debtor’s assets;
- (2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative...in order to protect and preserve the value of assets that...are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

11 U.S.C. §1519(a).

61. Paragraphs (3), (4) and (7) of section 1521(a) provide for suspending the right to transfer, encumber or dispose of assets of the debtor, permitting examination of witnesses and taking of evidence, and granting “any additional relief that may be available to a trustee.” See 11 U.S.C. §1521(a) (3), (4), (7).

62. The provisional relief that may be granted by the court is not limited to the types of relief listed in the statute. As evidenced by the statute’s use of the word “including,” this list “is not exclusive.” *In re Ace Track Co., Ltd.*, 556 B.R. 887, 894 (Bankr. N.D. Ill. 2016); see also *In re Ran*, 607 F.3d 1017, 1021 (5th Cir. 2010) (noting 1519(a)(1)-(3) represents a “non-exhaustive list of relief available to a foreign proceeding’s representative in a Chapter 15”); *In re Vitro, S.A.B. de C.V.*, 455 B.R. 571, 579 (Bankr. N.D. Tex. 2011) (“[T]he relief enumerated in section 1519 is not all-inclusive”). Rather, the purpose of Section 1519 is to allow the court to grant any discretionary relief necessary to “preserve the status quo in the gap period between the filing of the petition and the time the court rules upon the petition for recognition.” *In re Worldwide Educ. Servs., Inc.*, 494 B.R. 494, 499 (Bankr. C.D. Cal. 2013); *In re Ho Seok Lee*, 348 B.R. 799, 802 (Bankr. W.D. Wash. 2006) (noting “discretionary relief” available under section 1519).

63. In particular, a provisional stay of litigation against the debtor, although not expressly enumerated in the statute, is one form of relief that is available and has been granted under section 1519. *See In re Ace*, 556 B.R. at 894 (“The application of the stay is available provisionally prior to recognition.”); *In re Vitro*, 455 B.R. at 579 (“The Court finds that it is empowered under sections 1519(a), 362 and 105 of the Bankruptcy Code to issue the Preliminary Injunction in favor of Vitro SAB to protect its assets, until such time as a determination on recognition is made.”).

64. The requested relief is critical to ensuring that the Foreign Representative can properly manage the Debtor’s estate for the benefit of creditors. The provisional relief requested serves as an “effective mechanism” to implement the chapter 15 policies of promoting cooperation between courts of the United States and courts “of foreign countries involved in cross-border insolvency cases,” as it will promote the “fair and efficient administration of cross border insolvencies that protect the interest of creditors , and other interested entities, including” the Debtor, the “protection and maximization of the value of the Debtor’s assets,” and the “facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment,” as intended by section 1501. *See* U.S.C. §1501(a).

65. Bankruptcy Courts in the United States have routinely imposed section 362 stay or order similar relief to maintain the status quo pending recognition or disposition of foreign proceedings in ancillary cases under chapter 15 and former section 304. *See, e.g. In re Compania Mexicana de Aviacion, S.A. de C.V.*, No. 10-14182 (MG)[ECF No. 140] (Bankr. S.D.N.Y. Aug. 5 2010); *In re Japan Airlines Corp.*, No. 10-10198 (JMP), 2010 WL 1050075 (Bankr. S.D.N.Y. Jan. 28, 2010); *In re Alitalia Linee Aeree Italiane S.p.A.*, No. 08-14321 (BRL) (Bankr. S.D.N.Y. Nov. 13, 2008); *In re Mt. Gox Co., Ltd. a/k/a K.K. MtGox*, NO. 14-31299



(SGJ)(Bankr. N.D. Tex. Nar. 10, 2014); *In re STX Pan Ocean Co.*, No. 13-12046 (SCC)(Bankr. S.D.N.Y. July 1, 2013).

66. An application of the section 362 automatic stay has been granted to protect chapter 15 debtors during the interim period preceding a recognition hearing. *See, e.g., In re Sifco, S.A.*, No. 14-11179 (Bankr. S.D.N.Y. Oct. 23, 2014).

**B. The Requested Relief is Urgently Needed to Protect the Debtor's Assets and the Interest of Stakeholders**

67. Application of the section 362 stay is urgently needed to protect the Debtor and its assets, as well as the interests of its stakeholders, from adverse creditor actions that will divert value from Beechwood outside of the judicially-supervised insolvency proceedings underway in the Cayman Islands. *See* 11 U.S.C. §1519.

68. First, a stay is critical to protect the Debtor's asset - its counterclaim in the CNO Arbitration that is secured by the \$5 million letter of credit therein. The inability to properly prosecute the CNO Arbitration, or defend the claims, could put the Debtor's assets at risk to the detriment of the Debtor's estate and creditors.

69. Second, the Debtor is currently a defendant in the CNO Arbitration and the five other Litigation Matters. These actions are being aggressively pursued by the respective claimants. The Foreign Representative has been taking steps to defend against the claims being aggressively pursued in each of these actions; however, the actions necessary to properly defend these matters have significantly diminished the funds available in the Debtor's estate. The lack of funds may cause it to be no longer able to protect its rights or assert its meritorious defenses. If not stayed, the Litigation Matters risk inflicting irreparable damage on the Debtor, its stakeholders and its assets.

70. Third, Beechwood's response to CNO's third party claims is currently due on

*May 15, 2019*. Despite disputing the merits of CNO’s position, Beechwood risks being in default in meeting its obligations for the posting of the security under Section 1213, which CNO asserts is “no lower than \$180 million.”

71. The Debtor’s current position creates an extraordinary situation requiring immediate provisional relief hereunder. Not only is the Debtor subject to extraordinary claims for security, the failure to impose the immediate stay could harm Beechwood’s ability to prosecute the counterclaim in the CNO Arbitration (the estate’s main asset).

72. Importantly, a stay will also prevent conflicting rulings and ensure that the Debtor’s assets at risk in these litigations are administered in one comprehensive proceeding and under one law – in the Cayman Islands subject to the Cayman Islands distributions scheme. *Compare In re Worldwide*, 494 B.R. at 500 (denying stay under more stringent preliminary injunction standard where no information was provided as to the amount of the alleged potential litigation costs and the litigations had already proceeded to the eve of trial, which would have prejudiced litigants) *with In re Vitro*, 455 B.R. at 579–80 (provisionally staying litigation against the debtor) *and In re Pro-Fit*, 391 B.R. at 860 (“imposing the automatic stay on all U.S. creditors on a preliminary basis”).

73. It is important to note that all of the Liquidation Committee members are claimants in four of the five Litigation Matters, and hold contingent claims against the Debtor’s estate.

**C. The Requested Relief Also Meets the Standards for a Preliminary Injunction**

74. The few courts to analyze provisional relief under section 1519 disagree as to whether a foreign representative must meet the standards applicable to a preliminary injunction, as referred to in section 1519(e). *See* 11 U.S.C. §1519(e) (“The standards, procedures and

limitations applicable to an injunction shall apply to relief under this section.”). While one court has held that the preliminary injunction standards must be met, *In re Worldwide*, 494 B.R. at 499, others have held that they do not apply, particularly where the relief requested is merely application of section 362 of the Bankruptcy Code, *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850, 855 (Bankr. C.D. Cal. 2008) (“[P]ursuant to § 1519, the court orders that § 362 apply in these chapter 15 cases with respect to Pro-Fit’s U.S. assets pending this court’s ruling on the application for recognition....”); *In re Ace*, 556 B.R. at 894 (“The court agrees with *Pro-Fit* that the protections of section 362, while injunctive in nature, are not the same as an injunction.”). Even the court applying the preliminary injunction standards agreed that the preliminary injunction procedures, i.e., commencement of an adversary proceeding, do not apply. *In re Worldwide*, 494 B.R. at 499 n.1 (“[T]he court agrees with the holding in *Pro-Fit Holdings* that an adversary proceeding is not required to obtain provisional relief under Section 1519....”); see also *In re Ace*, 556 B.R. at 894 (“[T]his court agrees with the courts that have considered the question that the structure of sections 1519, 1520 and 1521, when read together, clearly make an adversary unnecessary.”).

75. Based on the foregoing decisions, the Foreign Representative asserts that the injunction standards do not apply here, as the Foreign Representative has not requested an injunction, but merely application of section 362 to stay pending litigation. See *In re Ace*, 556 B.R. at 894; *In re Pro-Fit*, 391 B.R. at 855. Therefore, the Debtor need only establish that the stay is urgently needed to protect the Debtor’s assets or the interests of creditors. See 11 U.S.C. §1519(a).

76. Should the Court determine that it applies, the Foreign Representative also meets the preliminary injunction standards. “A plaintiff seeking a preliminary injunction must establish

that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *In re Worldwide.*, 494 B.R. at 499 (citing *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008)).

**(i) The Foreign Representative is Likely to Succeed on Merits**

77. In connection with a request for provisional relief in a chapter 15 proceeding, the petitioner must show that he or she is likely to obtain recognition of the foreign proceeding. *In re Qimonda*, No. 09-14766-RGM, 2009 WL 2210771, at \*3 (Bankr. E.D. Va. July 16, 2009) (“the issue upon which [the petitioner] must prevail for an injunction to issue is whether an order of recognition will be entered ...”). It is submitted that, for the reasons outlined above, the Foreign Representative is likely to succeed on the merits of his claims, both that the Cayman Proceeding should be recognized as a “foreign main proceeding” and that the provisional stay is urgently needed.

**(ii) The Debtor will Suffer Irreparable Harm if an Injunction is Not Issued**

78. Absent a provisional stay, the harm of litigation costs, potential need to fund any significant security as may be required under Section 1213, potential harm to its ability to prosecute its counterclaims in the CNO Arbitration, conflicting legal determination, and dispersed efforts of the JOLs outlined above would be irreparable, to the detriment of the Debtor’s estate in the Cayman Proceeding. Case law holds that actions which threaten to seize or dissipate a debtor’s assets pose the risk of irreparable harm. *See e.g. In re Netia Holdings S.A.*, 278 B.R. 344, 352-53 (Bankr. S.D.N.Y. 2002).

**(iii) Balancing of Harms Weighs in Favor of the Foreign Representative**

79. In contrast, a provisional stay would be consistent with the equities of this case, as

it would merely preserve the status quo, imposing no undue harm upon any of the litigants, whose entitlement to the Debtor's assets is rightly determined only in the Cayman Proceedings. The Court's determination on recognition will likely be made in short order such that either the stay will be automatically extended or the litigations will simply continue without much delay.

**(iv) The Public Interest Favors Granting the Requested Injunctive Relief Representative**

80. Granting provisional relief would also effectuate the public policy considerations underpinning chapter 15 and serve the public interest. Imposing the stay would further the Bankruptcy Court's general goal of avoiding piecemeal litigation in different forums, depletion of the debtor's estate, and consistent adjudication of claims of the creditors. Moreover, granting the relief requested herein would promote Congress' stated purpose of chapter 15, among which are (i) to foster fair and efficient administration of cross-border insolvencies that protect the interest of all creditors, and other interested parties, including the Debtor, (ii) to protect and maximize the value of the Debtor's assets, and (iv) to promote cooperation between the courts and court-appointed administrators in the United States with those in competent foreign jurisdictions involved in cross-border insolvency cases. *See* 11 U.S.C. §1501, 1525.

**D. No Security Required or Adequate Protection is Required**

81. No security is required for the provisional relief requested herein as the Federal Rules of Bankruptcy Procedure do not require that the debtor post security in order to obtain injunctive relief. *See* Bankruptcy Rule 7065.

82. All parties are sufficiently protected by the requested relief as required under section 1522(a). Relief under section 1519 should only be denied for lack of sufficient protection "if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors. Here, all parties are "sufficiently protected" and the narrowly tailored

relief requested herein will not impose any hardship on any parties that is not outweighed by the benefits to the Debtor and all parties in interest, for the reasons articulated above. The requested relief will preserve the Debtor's status quo pending the Court's ruling on the Petition. In fact, four of the plaintiffs in the Litigation Matters, including CNO, are on the Debtor's Liquidation Committee in the Cayman Proceedings.

83. The Debtor's assets are already subject to the control and jurisdiction of the Cayman Court. Further, if a creditor makes the requisite showing for relief from the automatic stay under section 362, this Court may consider allowing such party to take actions against the Debtor and its assets in the United States. All parties benefit from the protections of the Cayman Court and the Courts of the United States. As all creditors are appropriately protected, the temporary relief sought herein should be granted.

#### CONCLUSION

84. The Foreign Representative respectfully submits that the Court enter an order, pursuant to Bankruptcy Code Section 1519, granting provisional relief to the Foreign Representative and staying all proceedings as against the Debtor pending the recognition hearing.

#### NOTICE

85. Notice of this Application has been provided to (a) the Office of the United States Trustee; (b) all parties to litigation currently pending in the United States in which Beechwood is a party; and (c) all other parties required to be given notice under Bankruptcy rule 2002(q)(1) of which the Foreign Representative is aware. The Foreign Representative submits that no further notices are necessary.

**NO PRIOR REQUEST**

86. No prior request for the relief sought in this Application has been made to this or any other court.

*[Continued on Next Page]*

**WHEREFORE**, the Foreign Representative respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as is just and proper.

Dated: May 15, 2019

KLESTADT WINTERS JURELLER  
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