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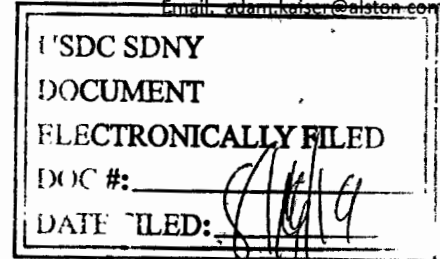
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August 16, 2019

Hon. Jed S. Rakoff
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312



Re: *In re Platinum-Beechwood Litigation*, 18cv6658; *Cyganowski v. Beechwood Re Ltd et al.*, 18cv12018

Dear Judge Rakoff:

We write on behalf of defendants Bankers Conseco Life Insurance Company (“BCLIC”) and Washington National Insurance Company (“WNIC”), pursuant to your Honor’s instructions to submit a letter concerning *In re E.S. Bankest, L.C.*, 2010 WL 2926203 (S.D. Fla. Bankr. July 23, 2010), a case cited by the PPCO Receiver for the first time during oral argument on August 15, 2019.

The Receiver cited *In re E.S. Bankest* for the broad proposition that the *in pari delicto* doctrine does not apply to a court-appointed receiver. As a threshold matter, a clarifying order issued by the Bankruptcy Court for the Southern District of Florida, applying Florida law, has no precedential effect on this Court. More importantly, it is inapposite as a matter of law. The Second Circuit has made clear that New York state law applies to the Receiver’s state law claims. *See Eberhard v. Marcu*, 530 F.3d 122, 133-35 (2d Cir. 2008) (applying New York state law to a receiver’s claims). And, as we made clear in our papers, New York state law provides for an exceedingly expansive application of the *in pari delicto* doctrine. *See BCLIC/WNIC Br.*, Dkt. No. 169, at 18; *BCLIC/WNIC Reply*, Dkt. No. 299, at 12-13.¹ To be sure, that includes applying *in pari delicto* to court-appointed receivers to bar their claims against a third-party—precisely the situation we have here. *See, e.g., Cobalt Multifamily Investors I, LLC v. Shapiro*, 857 F. Supp. 2d 419, 435 (S.D.N.Y. 2012) (barring receiver’s claims against third-party because, “under New York law, any material benefit accruing to a corporation as a result of corporate insiders’ fraud precludes the corporation from pursuing claims based on the fraud. The adverse interest exception cannot apply even where the only benefit conferred is an extension of the corporation’s life.”) (citing *Kirschner v. KPMG LLP*, 912 N.Y.S.2d 512, 519 (2010)).

¹ Citations to the docket refer to the docket in *Cyganowski v. Beechwood Re et al.*, 1:18-cv-12018-JSR.

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The Receiver has not identified a single case in this Circuit, much less one applying New York law, that supports any position to the contrary.

Consequently, and for the reasons set forth in BCLIC and WNIC's motion papers, we respectfully submit that the PPCO Receiver's claims against BCLIC and WNIC should be dismissed.

Sincerely,

/s/ Adam J. Kaiser

Adam J. Kaiser