

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

-against-

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.

Case No.: 1:16-cv-06848-BMC

**LIMITED OPPOSITION OF DAVID LEVY TO MOTION OF
MELANIE L. CYGANOWSKI FOR ENTRY OF AN ORDER (I) ESTABLISHING
CLAIMS BAR DATES AND (II) APPROVING (A) A PROOF OF CLAIM FORM,
(B) THE FORM AND MANNER OF NOTICE OF THE CLAIMS BAR DATES AND
(C) PROCEDURES FOR SUBMITTING PROOFS OF CLAIM**

1. Defendant David Levy, through undersigned counsel, objects on a limited basis to the Motion (DE 424) of Receiver Melanie L. Cyganowski (the “Receiver”) for entry of an order (i) establishing dates by which all claims other than administrative claims must be filed (the “*Claims Bar Date*”) and (ii) approving (a) a proof of claim form, (b) the form and manner of notice of the Claims Bar Date and (c) procedures for submitting proofs of claim. Mr. Levy objects to the form of the Receiver’s Proposed Order and the other proposed forms because they do not expressly permit creditors (such as Mr. Levy) who have documented rights for advancement and indemnification from the Receivership Entities, and who will continue to incur attorneys’ fees and defense costs following the proposed Claims Bar Date, to submit supplemental claims to the Receiver.

2. As the Court will recall, Mr. Levy's advancement and indemnification rights, and those of other Defendants in this action, were explicitly recognized just weeks ago in the Court's Order on Defendants' motions for advancement of attorneys' fees. DE 417. While the Court found that the Defendants had not demonstrated an entitlement to *priority* of payment against the Receivership Entities' other creditors, the Court recognized that Mr. Levy and others *did have contractual entitlement to advancement and indemnification*. The Court explicitly held that "[a]ll of the former officers are covered by various provisions in Platinum Partners internal documents giving them rights in connection with getting their lawyers paid." *Id.* at 2.

3. Regarding Mr. Levy in particular, the Court found that he "entered into multiple agreements in which Platinum Partners entities agreed to indemnify him, including three agreements that provided for mandatory advancement of Levy's legal fees." *Id.* at 3. The Court referred to the Credit Funding Agreement, the PPCO Master Fund Agreement, and the June 2016 Letter Agreement. *Id.* The Court concluded that Mr. Levy, along with Messrs. Small and SanFilippo, "are entitled to advancement of their legal fees." *Id.* at 4.

4. Mr. Levy is set to incur steep legal expenses through the coming months leading up to and continuing through trial in the parallel criminal matter pending before this Court, *United States v. Nordlicht, et al.*, No. 1:16-cr-00640-BMC, in addition to the multiple related civil proceedings Mr. Levy is currently defending.¹ Accordingly, and in light of Mr. Levy's recognized indemnification and advancement rights, Mr. Levy's counsel reviewed the Receiver's Proposed Order regarding a claims process to confirm that it expressly permitted Mr. Levy and

¹ The civil matters include (1) this Action; (2) *Schmidt v. Nordlicht et al.*, No. 2016-76291 (129th Judicial Dist. Ct., Harris County, Texas); (3) *Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd., et al.*, No. 1:18-cv-06658-JSR (S.D.N.Y.); and (4) *Bankers Consec Life Insurance Company, et al. v. Beechwood Re Ltd., et al.*, No. 01-16-0004-2510 (AAA).

similarly situated creditors to submit supplemental claims for expenses incurred following the Claims Bar Date.

5. Mr. Levy's counsel determined that the Proposed Order and related forms did not expressly permit Mr. Levy to submit the required supplemental claims for defense costs and attorneys' fees that are an integral part of his judicially-recognized advancement and indemnification rights. Mr. Levy's counsel raised the issue with counsel for the Receiver, proposed language to be added to the Proposed Order and related forms, and engaged in a meet-and-confer process regarding this language. Through this process, Mr. Levy's counsel and the Receiver's counsel agreed in principle on language to be added to the Proposed Order. That language is as follows:

Advancement, Indemnification and Other Non-Administrative Claims. Creditors (including but not limited to the Defendants in this action and their retained attorneys and professionals) holding claims for indemnification, advancement or reimbursement ("**Indemnification Claimants**") based on having suffered or incurred, or who may suffer or incur, any costs, losses, damages or liabilities (including without limitation legal fees or other expenses incurred in investigating or defending against any losses, claims, or liabilities) arising from any investigation, claim, allegation, action, or proceeding, whether civil, criminal, administrative, arbitral or investigative, or any appeal in connection with any of the foregoing, that relates to their service in any office or other capacity of, or otherwise representing or acting for or on behalf of any Receivership Entity, or based on a post-receivership agreement with a Receivership Entity (other than for professional services) are required to submit proofs of claim on or before the applicable Bar Date. Indemnification Claimants shall have the right to amend, supplement, and update any claims, provided the original proofs of claims are timely filed, to take into account costs, losses, damages, liabilities, legal fees or other expenses incurred following the Bar Date ("**Supplemental Claims**"), and all such Supplemental Claims will be deemed timely filed and not barred. The Receiver retains her right to object to any Advancement and Indemnification Claims and/or any Supplemental Claims on any other basis, and to set a final Bar Date (with notice to the Indemnification Claimants) after which no additional Supplemental Claims may be filed.

6. Mr. Levy submits this limited objection to reserve his rights and to the extent that the Receiver has not yet amended the Proposed Order or related forms to include the above

clause. Counsel for the Receiver indicated that the Receiver would do so once the deadline for objecting to the Motion had passed. Once the Receiver does amend the Proposed Order to include this language, the Court may consider Mr. Levy's limited objection withdrawn.

7. For all of the reasons set forth above, Mr. Levy respectfully requests that the Court amend the Proposed Order by incorporating the language proposed above in order to permit Mr. Levy (and others similarly situated) to assert claims for advancement and indemnification through the pendency of the trial in the criminal matter.

Respectfully submitted,

Dated: December 17, 2018
New York, New York

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

s/ Michael S. Sommer

Michael S. Sommer

Eli B. Richlin

1301 Avenue of the Americas, 40th Floor
New York, New York 10019

Telephone: (212) 999-5800

Facsimile: (212) 999-5899

Email: msommer@wsgr.com

Email: erichlin@wsgr.com

Counsel for Defendant David Levy