UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -v- 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.	:	No. 16-cv-6848 (BMC)

DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER, IN CONNECTION WITH HER MOTION FOR ENTRY OF AN ORDER (I) (A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP'S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/ OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the duly appointed Receiver (the "***Receiver***") of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, 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.

2. I submit this declaration in connection with my December 6, 2018 motion for an order (I) (a) authorizing me to sell (the "***Sale***") the Receivership's rights in and to LC Energy Operations LLC and/ or its assets ("***LC Energy***") free and clear of all liens, claims, encumbrances and other interests (collectively, "***Encumbrances***"); (b) authorizing me to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse and (II) approving the sale of LC Energy free and clear of all Encumbrances (the "***Motion***"). Dkt No. 422.

3. Pursuant to this Court's October 11, 2017 *Order Adopting Protocols for Parties In Interest to be Heard on Receiver Motions*, Dkt. No. 271, attached hereto are the following responses to the Motion that were timely delivered to my counsel's e-mail address (collectively, the "***Responses***"):

- **Exhibit A**: Limited Objection of Lily Group, Inc. to the Motion;
- **Exhibit B**: Response in Opposition to the Motion filed by James W. Stuckert, Diane V. Stuckert and Solomon O. Howell; and
- **Exhibit C**: Response in Opposition by the Committee of Unsecured Creditors in the Bankruptcy Case of Lily Group, Inc. to the Motion.

4. The Receiver also received two informal responses to the Motion, but those responses address the relief requested in Part II of the Motion (approval of the sale of LC Energy free and clear of all Encumbrances). Nevertheless, one of the responders requested that I provide

this Court with its response and so, it is attached hereto as **Exhibit D**.

5. Absent a consensual resolution of the Responses, I will be filing an omnibus reply to them no later than Thursday, December 27, 2018. Accordingly, I respectfully request that this Court defer ruling on the Motion until all briefing is complete.

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

Executed this 21st day of December 2018, at New York, New York.

/s/ Melanie L. Cyganowski

Melanie L. Cyganowski

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES & EXCHANGE COMMISSION,	:	
Plaintiff,	:	Case No. 16-cv-6848 (BMC)
v.	:	
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.	:	

LIMITED OBJECTION OF LILY GROUP, INC., DEBTOR-IN-POSSESSION TO RECEIVER'S MOTION FOR ENTRY OF AN ORDER (I)(A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP'S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELEATED RELIEF AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS

Lily Group, Inc., the Debtor-in-Possession ("**LGI**"), in Chapter 11 Bankruptcy Case No. 13-81073-BHL-11 (the "**LGI Bankruptcy Case**") pending in the United States Bankruptcy Court for the Southern District of Indiana (the "**LGI Bankruptcy Court**"), by and through its Court-Appointed Chief Restructuring Officer (the "**LGI CRO**") and undersigned counsel, hereby file this limited objection to the Receiver's Motion for Entry of an Order (I)(A) Authorizing the Receiver to Sell the Receivership's Rights in and to LC Energy Operations LLC Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (B) Approving Procedures for the Filing of Claims Against LC Energy and/or Its Assets and the Resolution Thereof and (C) Granting Certain Related Relief and (II)

Approving the Sale of LC Energy Free and Clear of All Liens, Claims, Encumbrances and Other Interests (the "**LC Energy Sale Motion**") and in support thereof, states as follows:

RELEVANT FACTUAL AND PROCEDURE HISTORY

1. LGI filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") on September 23, 2013 (the "**LGI Petition Date**").

2. The Unsecured Creditors Committee (the "**LGI Committee**") was appointed by the Office of the United States Trustee on October 18, 2013 [Docket 47 and as later amended][1].

3. The LGI Bankruptcy Court appointed Wendy D. Brewer as the LGI CRO on March 31, 2014 [Docket 321].

4. On the LGI Petition Date Debtor's assets consisted of owned and leased coal, and leased real property and certain improvements thereon, equipment and vehicles used in in its mining business, computers and other office equipment and furnishings, cash and cash equivalents, and certain agreements and permits necessary to the operation of the Landree Mine, located in Greene and Sullivan counties in Indiana.

THE PRE-BANKRUPTCY TRANSACTIONS

5. On or about February 16, 2012, Platinum Partners Credit Opportunity Master Fund LP ("**Platinum**") entered into a complicated multi-party transaction with LGI, and various related parties, including but not limited to, VHGI Coal, Inc. (the parent of LGI) ("**VHGI Coal**"), and VHGI Holdings, Inc. (the publicly traded parent of VHGI Coal, Inc.) ("**VHGI**"), and other VHGI related entities (the "**Platinum Transaction**").

6. For purpose of this Limited Objection, the details of the Platinum Transaction are not set forth, but in very general terms, LGI's purpose in entering into the Platinum Transaction was to

[1] Docket references herein refer to the PACER ECF Docket in the LGI Bankruptcy Case.

secure $13million in short term financing (i.e. 90 days) that would allow LGI to repay its existing secured lenders approximately $7million, and generate working capital to continue to bring the coal mine operational, until LGI could identify and close on a more substantial long term debt and equity transaction.

7. In effect, however, funds from the Platinum Transaction, were distributed to repay LGI's secured lenders, settle three mechanic's liens, make partial payments to 2 trade creditors, pay over $3.6millon to VHGI, and pay a $1.3million fee to Platinum, leaving LGI with roughly $500,000 in new working capital.

8. Platinum described the transaction in its June 1, 2012 Confidential Fund Overview as "Collateralized Loans to Natural Resources Companies" and "Capital Outstanding $13million", "Interest Rate 52%" and "Maturity Date August 2012".

9. The documents entered into as part of the Platinum Transaction excluded from the collateral pledged by LGI certain agreements described in the LGI Bankruptcy Case as the IRR Coal Lease, the IRR Sidetrack Agreement, and the Hillenbrand Agreement (the "**Non-Lien Assets**").

10. Very generally, the Non-Lien Assets can be described as follows:

a. Hillenbrand Agreement – an agreement controlling the use of the surface property overlaying the coal estates owned and leased by LGI adjacent to the mine pit on which the conveyor belt, sorting apparatus, coal washing facility, and equipment for rail loading is constructed and maintained;

b. IRR Coal Lease – a lease agreement for coal underlying a railroad right-of-way owned by the Indiana Rail Road Company; and

c. IRR Sidetrack Agreement – an agreement allowing for the construction of a rail spur and a lease of an existing rail line that allows coal to be moved from the Hillenbrand property by rail.

11. As of the Petition Date, Platinum had transferred its interest in the financing arrangement to LC Energy Holdings, LLC ("**LC Holdings**") and LC Holdings contended that $18,317,700.00 was now due and owing to LC Holdings (the "**LC Prepetition Claim**").

KEY EVENTS IN THE LGI BANKRUPTCY CASE

12. Following the Petition Date, LGI entered into a secured debtor-in-possession financing arrangement with LC Holdings (the "**LC DIP Loan**") pursuant to which LC Holdings received a first priority lien on all assets of LGI, to the extent of funds loaned pursuant to the LC DIP Loan (between $650,000 and $800,000) (the "**LC Post-Petition Secured Claim**").

13. Without funding sufficient to operate the mine, LGI determined to sell substantially all its assets including the Non-Lien Assets pursuant to a Bankruptcy Court authorized auction and sale process.

14. In the context of that sale process, the LGI Committee filed its *Motion of the Official Committee of Unsecured Creditors to Limit Credit Bidding in the Sale of Debtor's Assets* ("**Credit Bid Motion**") on January 8, 2014 [Case Docket No. 153]. The Credit Bid Motion sought a limitation on the ability of LC to credit bid at the Auction including a determination of the value of the Non-Lien Assets to the Sale purchase price.

15. The Credit Bid Motion, and LC Holding's objection thereto, was resolved by an Agreed Order entered February 3, 2014 ("**Credit Bid Order**") [Docket No. 262]. The Agreed Order provided that LC could credit bid at the proposed Auction but preserved for later determination any and all disputes as to the value of the Non-Lien Assets to the Purchase Price, which value would be paid in cash (rather than credit bid) to LGI's bankruptcy estate. In short, LC Holding did not have a lien on the Non-Lien Assets and therefor LC Holding could not acquire the Non-Lien Assets by credit bid.

16. Thereafter, LC Energy made a credit bid for the assets of LGI in the total amount of $18million, based on both the LC Pre-Petition Secured Claim and the LC Post-Petition Secured Claim [Docket #242].

17. The Bankruptcy Court entered an order on February 28, 2014, approving the sale to LC Holding, however the approval was subject to an asset purchase agreement to be negotiated among LGI, the Committee, and LC Holding [Docket No. 302]. The asset purchase agreement was negotiated and dated March 31, 2014 and preserved any and all disputes as to the amounts if any that LC Holding would have to pay to LGI's Bankruptcy estate in cash for the value of the Non-Lien Assets and the difference between the value of the Credit Bid and the final allowed amount of LC's Claim ("**Asset Purchase Agreement**").

18. Following the sale, the parties in the LGI Bankruptcy Case set about negotiating and filing relevant motions and complaints to determine the allowed amount of the LC Pre-petition Secured Claim (and potential difference between that claim and the amount of the credit bid), and the value of the Non-Lien Assets for which LC Holding would be required to compensate the LGI Bankruptcy estate in cash.

THE INTERVENING SEC RECEIVERSHIP

19. Those issues had not yet been finally determined by the LGI Bankruptcy Court when this receivership was commenced, and this Court issued a stay against further action in the LGI Bankruptcy Case.

20. Following commencement of the Receivership in late 2016, efforts to bring the coal mine into full operation ceased and the Receivership began incurring expenses to maintain the mine.

21. Counsel for the LGI Committee, LGI and the CRO (along with counsel for James Stuckert and Dennis Howell)[2] (referred to herein for ease of reference as the "**LGI Parties**") all attempted to negotiate a resolution to the outstanding issues, and for over a year and a half, repeatedly encouraged the Receiver's local Indiana counsel to work with the LGI Parties to accomplish a sale of

[2] Stuckert and Howell were parties to a separate agreement with Platinum that gave rise to a dispute regarding the priority of their security interest in certain equipment sold to LC Holding as part of the LGI Bankruptcy Court sale.

the coal mine in order to avoid waste of resources maintaining the coal mine, and then to negotiate regarding allocation of the sale proceeds among the various interested parties.

22. Only recently, after the Receiver hired new Indiana counsel who actively engaged in evaluating the situation and conferred regarding the matter with the LGI Parties, and (unfortunately) after substantial funds were incurred simply maintaining the coal mine for nearly 2 years (the Receiver alleges those expenses are in the range of $80,000-$110,000/month) were the LGI Parties finally successful in conveying their concerns to the Receiver, and to consider a sale of the coal mine, and the LC Energy Sale Motion is the result.

THE LC ENERGY SALE MOTION

23. By the LC Energy Sale Motion filed on December 6, 2018, the Receiver seeks approval of a process whereby the Receiver will enter into a stalking horse agreement with a potential buyer, conduct an auction in accordance with certain bid procedures, close on a sale transaction, and conduct a claims administration process with regard to the LC related claims. All of these events related to real property and assets located in Indiana, and involving claims of multiple Indiana parties, are proposed to occur under the supervision of this Court, in New York.

24. Previously, the Receiver requested and obtained a protective order limiting the ability of interested parties such as the LGI Parties from appearing and participating in the Receivership action. As such, the LGI Parties have had only limited access to the Receivership proceedings.

25. Additionally, the LC Energy Sale Motion requests entry of an Order allowing the Receiver to: (1) submit all issues related to the sale of the LC Energy assets and the claims related to same to the jurisdiction of this Court; and (2) to apply the sale proceeds first to payment of the LC Post-Petition Secured Claim, to post-Bankruptcy sale expenses related to the mine, and to the Receiver's expenses incurred in maintaining the mine.

THE LIMITED OBJECTION OF LGI

26. As described above, the LGI Parties have been clamoring for the sale of the mine for nearly 2 years, and as such, LGI and the CRO do not object to the concept selling the LC Energy assets to stop spending funds to maintain the assets, and to generate a pool of assets (the sale proceeds) that will not further diminish in value.

27. However, LGI does object to inclusion in the Order of any authority for application of the sale proceeds or any determination regarding the priority of the various claims against those sale proceeds without a full and fair opportunity for the LGI Parties to assert their respective interests and claims.

28. As described above, LC Holding made a credit bid in the LGI Bankruptcy Case based on the LC Pre-Petition Secured Claim AND the LC Post-Petition Secured Claim (thereby satisfying and/or extinguishing all of some portion of the LC Post-Petition Secured Claim). However, the Receiver's Motion seeks authority to use the sale proceeds to pay the LC Post-Petition Secured Claim (see p. 15 of the LC Energy Sale Motion). Such a determination at this stage in the proceedings is premature, and unnecessary to move the sale process forward.

29. LGI and the CRO first received a copy of the LC Energy Sale Motion by U.S. Mail service on Friday December 14, 2018, just six (6) days prior the December 20, 2018 objection deadline.

30. The LGI Parties have not had sufficient time to consider and respond to all aspects of the LC Energy Sale Motion and therefore requests that any hearing or consideration of the proposed structure and process for administering claims against the LC Energy assets and the sale proceeds be continued to allow sufficient time for the LGI Parties and the Receiver to attempt to negotiate an agreed upon claims process, the venue for such claims process, and the priority and nature of the various claims against the sale proceeds.

WHEREFORE, LGI submits this limited objection and requests the Court sustain its limited objection, defer ruling on the Receiver's request to establish a claims process and authorize the application of the sale proceeds, and direct the Receiver to confer with the LGI Parties in an attempt to negotiate an agreed upon claims process, the venue for such claims process, and the priority and nature of the various claims against the sale proceeds.

Respectfully submitted this 20th day of December, 2018,

/s/ David R. Krebs
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Court-Appointed CRO for Lily Group, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Limited Objection* was submitted by electronic mail to platinumreceiver@otterbourg.com in accordance with the Notice of Motion [DN 422] dated December 6, 2018.

/s/ Wendy D. Brewer
Wendy D. Brewer

UNITED STATES DISCTRIC COURT
EASTER DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff -v- 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	:	NO. 16-cv-6848 (BMC)

RESPONSE IN OPPOSITION TO THE MOTION FOR ENTRY OF AN ORDER (I)(A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP'S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS

Come now James W. Stuckert, Diane V. Stuckert ("Stuckert"), and Solomon O. Howell ("Howell", and together "Stuckert and Howell"), by counsel, and for their Response in Opposition to the Motion for Entry of an Order (I)(A) Authorizing the Receiver to Sell the Receivership's Rights In and To LC Energy Operations LLC Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (B) Approving Procedures for the Filing of Claims Against LC Energy and/or Its Assets and the Resolution Thereof and (C) Granting Certain Related Relief and (II) Approving

the Sale of LC Energy Free and Clear of All Liens, Claims, Encumbrances and Other Interests (the "Motion") respectfully state:

BACKGROUND

1. Stuckert is the holder of the McAllister Mechanic's Lien described at Paragraph 15 of the Cyganowski Declaration.

2. Stuckert and Howell are the lenders under the Stuckert and Howell Loan described at Paragraph 16 of the Cyganowski Declaration.

3. McAllister and Stuckert and Howell are named as parties in the Lien Challenge Complaint filed by LC Energy in the United States Bankruptcy Court for the Southern District of Indiana ("Indiana Bankruptcy Court") described at Paragraph 17 of the Cyganowski Declaration.

A

THE PROPOSED LC ENERGY CLAIMS PROCEDURE IS PREMATURE; RESOLUTION OF THE LC ENERGY CLAIM DISPUTES INVOLVE INDIANA LAW AND INDIANA BANKRUPTCY COURT ORDERS

4. Stuckert and Howell oppose the LC Energy claims procedure described in the Cyganowski Declaration at Paragraphs 36 to 40, and the Proposed Order, Paragraphs 9 and 10. The central relief the Receiver requests – a sale free and clear of liens and encumbrances – can be accomplished without imposing a claims procedure on Stuckert and Howell and other claimants which requires resolution in New York and which deprives the parties of the opportunity to present argument concerning the most efficient, convenient, cost effective and fair forum for the litigation of the outstanding disputes. While it is appropriate that those with claims make them known to the Receiver, or otherwise be barred, there is no need to implement the detailed claims and litigation procedure in the New York Receivership Court.

5. Paragraph 36 of the Cyganowski Declaration adequately describes issues yet to be resolved to determine liens, claims and interests in the LC Energy Assets. The issues arise under Indiana real estate and mechanic's lien laws, involve allegations made by LC Energy as Plaintiff in the Lien Challenge Complaint it commenced before the Indiana Bankruptcy Court, and the interpretation of orders entered by the Indiana Bankruptcy Court. A cursory reading of the "Background" at Paragraphs 7 to 21 of the Cyganowski Declaration make it clear that the resolution of these disputed claims is determined by Indiana law. The Indiana Bankruptcy Court has entered orders that bear on these disputes and there are pending adversary proceedings on these issues before the Indiana Bankruptcy Court.

6. Those with claims to the LC Energy assets – other than the Receiver – have no connection to New York and incur significant costs if forced to litigate in New York. On the other hand, the Receiver has Indiana legal counsel with expertise in bankruptcy matters and local real estate. Receiver's Memorandum of Law at p. 12.

7. For all these reasons a compelling argument can be made that the proper course is for the Receivership Court to grant stay relief and allow litigation of the claims against LC Energy assets to proceed in Indiana.

8. Stuckert and Howell are not asking for stay relief now. They do say that the fairest course is for the sale process to go forward without a determination at this time of the most convenient, efficient, cost effective and fair forum for determining the various claimants' rights to the proceeds of sale of the LC Energy assets.

B.

ALL NET SALE PROCEEDS SHOULD BE ESCROWED

9. Stuckert and Howell contend all net proceeds of sale of the LC Energy assets should be held in escrow by the Receiver for determination of the rightful claims, liens and interests to be paid. They oppose that part of the Motion and Proposed Order, at Paragraph 12, that authorizes payment of the DIP Loan or payment of "Post Receivership Costs" which are claimed to be $1.2 million (Cyganowski Declaration at Paragraph 30). There are legitimate questions as to propriety of the payment of these amounts. Payment of the DIP Loan as an administrative expense in the Lily Group bankruptcy case is a question for the Indiana Bankruptcy Court in the context of PPCO's actions and conduct in that case. Similar questions arise concerning "Post Receivership Costs". In its first report to the Court (Doc. 288) filed more than one year ago the Receiver reported it was "working constructively to assess and prepare for a potential sale of LC Energy". Whether all of the over $1.2 million in "costs" were reasonable and necessary costs of administration, and whether they should be paid ahead of other claimants, including potential lien claimants, are determinations that should be made at a later date when claimants have the opportunity to review the amount of the costs incurred, the purposes of the expenditures, and benefit to the ultimate sale of the LC Energy assets. These are determinations that are best made after full disclosure of the costs and after the sale results are known.

CONCLUSION

10. The central relief requested by the Receiver is a sale free and clear of the liens and encumbrances. That relief can be accomplished without immediate approval of a claims procedure that requires claimants to consent to jurisdiction of the Receivership Court for the determination of their claims and without giving consideration to the most efficient, convenient, cost effective and fair forum for such a determination. Similarly, a sale free and clear of liens and encumbrances can be accomplished without making an immediate determination as to the propriety of paying the

DIP Loan or over $1.2 million in costs and without the claimants having the opportunity to fully understand those costs, challenge their propriety, or to determine what benefit has actually been conferred based on the results of sale.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Notice (Doc 422) submitted by counsel for the Receiver, the undersigned has served this Response on the Receiver at the email address platinumreceiver@otterbourg.com, this 20th day of December, 2018.

Thomas C. Scherer

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. 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 1:16-cv-06848-DLI-VMS

RESPONSE IN OPPOSITION BY THE COMMITTEE OF UNSECURED CREDITORS IN THE BANKRUPTCY CASE OF LILY GROUP, INC. TO MOTION FOR ENTRY OF AN ORDER (I)(A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP'S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF ALL LIENS, CLAIMS ENCUMBRANCES AND OTHER INTERESTS

The Official Committee of Unsecured Creditors ("**Committee**") duly appointed in the bankruptcy case of In re: Lily Group, Inc. ("**Lily Group**"), pending in the United States Bankruptcy Court for the Southern District of Indiana ("**Indiana Bankruptcy Court**"), Case No. 13-81073-BHL-11 ("**Lily Group Bankruptcy Case**"), by counsel, makes this response ("**Response**") to the *Motion For Entry Of An Order (I)(A) Authorizing The Receiver To Sell The Receivership's Rights In And To LC Energy Operations LLC Free And Clear Of All Liens, Claims, Encumbrances And Other Interests; (B) Approving Procedures For The Filing Of Claims Against LC Energy And/Or Its Assets And The Resolution Thereof And (C) Granting Certain Related Relief And (II) Approving The Sale Of LC Energy Free And Clear Of All Liens,*

Claims, Encumbrances And Other Interests ("**Sale Motion**") filed by Melanie L. Cyganowski, the receiver ("**Receiver**") appointed in the above captioned case ("**Receivership Case**") on December 6, 2018 [Docket No. 422] and states in support of its Response:

1. By the Sale Motion, the Receiver is seeking authority to (a) sell the Receivership's rights in and to LC Energy Operations, LLC ("**LC Energy**") and/or its assets identified as the Gold Star Mine free of liens, claims and encumbrances, (b) immediately pay from the proceeds of any such sale (i) all of the Receiver's asserted costs purportedly incurred with the Sale Assets ("**Costs**") (ii) a $700,000 administrative claim asserted by LC Energy ("**Administrative Claim**") against the bankruptcy estate of Lily Group, Inc. ("**Lily Group**"), the debtor-in-possession in the Lily Group Case, and (iii) the costs of the sale and the fees and expenses of Houlihan Lokey and (c) set up a claims procedure to resolve claims including disputes that have been materially engaged in and remain pending before the Indiana Bankruptcy Court.

2. The Receiver, in her declaration, asserts that the Receivership has rights to the assets of LC Energy acquired through orders entered in the Lily Group Case and recites certain disputes that remain pending and unresolved in the Lily Group Case as to the extent and validity of LC Energy's rights in and to the assets of Lily Group, the debtor in the Lily Group Case and the owner of the assets then known as the Landree Mine, subsequently renamed the Gold Star Mine ("**Coal Mine**"). [1]

[1] Throughout the Sale Motion, the Receiver makes certain assertions regarding the Receiver's efforts to attempt to resolve the Disputes with the claimants in the Lily Group Case, including the Committee, with respect to the claims against LC Energy and PPCO and would appear to indicate frustration over the inability to get a resolution. These inferences by the Receiver fail to appreciate the actions of the Receiver and her predecessor and prior to the receivership by LC Energy and PPCO in delaying, proposing settlements, agreeing to mediations that don't occur or if held are not attended, and the nearly four years that the claimants in the Lily Group Case have been engaged in attempting to resolve or litigate the Disputes. It is an inaccurate inference that the failure to resolve the Disputes lies

3. The Sale Motion recites some, but not all of the claims and disputes pending in the Lily Group Bankruptcy Case and arising from the prepetition and postpetition conduct of LC Energy and its indirect parent, Platinum Partners Credit Opportunities Master Fund LP ("**PPCO**"). The Limited Objection of Lily Group to the Sale Motion filed by its counsel sets forth some of the history. In the Lily Group Bankruptcy Case, the Mine was transferred to LC Energy subject to the terms, conditions and obligations placed on LC Energy as set forth in orders of the Bankruptcy Court relating to the credit bid made by LC Energy and the sale of the Mine to LC Energy. In the Lily Group Case and under similar "urgent" circumstances as recited by the Receiver of a costly and failing asset, LC Energy was allowed to credit bid for the Mine, subject to resolution and allowance of its claim, payment of the value of assets it received that were not subject to any lien ("**Non-Lien Assets**"), and resolution of the priority of mechanic's liens and other liens against the Mine (collectively and generally, the "**Disputes**"). LC Energy's claim has not been allowed, it has not paid any value for the Non-Lien Assets, and the mechanic's and other liens have not been resolved. Under the facts and circumstances, the Bankruptcy Court orders, the asset purchase agreement related to the sale, and the unresolved issues and the unmet conditions, LC Energy may only hold only bare legal title to the Mine. And the Receiver's interests in the Mine can be no greater than the interests held by LC Energy.

4. Notwithstanding the Disputes that are unresolved in the Lily Group Case as to the Receiver's derivative rights to the Mine through LC Energy, the Receiver proposes to pay from the proceeds of the sale, prior to the resolution of any claims, the Disputes and without review, the (a) Administrative Claim (identified as the DIP Loan advanced by PPCO in the Lily Group Case by the Receiver), and (b) the Costs (identified as all post-receivership costs and

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with claimants in the Lily Group Case who have time and time again agreed to attempt to resolve the Disputes and have incurred fees and expenses while the representatives of LC Energy/PPCO have delayed and backtracked.

expenses paid for by the Receiver for or on behalf of LC Energy). *See* Proposed Order filed at Docket No. 422-2 at para. 12.

5. The Committee has been a proponent of selling the Coal Mine as it became more and more apparent that LC Energy/PPCO were not acting in good faith to resolve the Disputes, including advocating such a sale at the commencement of the Receivership Case and providing information that indicated the Coal Mine was losing value and the cost of maintaining the Coal Mine would likely exceed its value. Notwithstanding those discussions the Receiver continued to pay to maintain the Coal Mine, asserted by the Receiver to be an estimated $80,000 to $110,000 per month. *See* Sale Motion (Declaration) at para. 40. While it is understandable that the Receiver would need a reasonable period of time to assess the potential value of the Coal Mine, the Receivership Case has been pending for two years (commenced on December 19, 2016). Two years would appear to be an unreasonable time to assess and support an asset that had never, even before the involvement of PPCO prior to the Lily Group Case, produced any net income. On information and belief, the Mine has been the subject of fines and environmental citations during the management of the current operator.[2] Until the Disputes are resolved and there is a means to establish whether the Costs are valid, reasonable, and should in fact be reimbursed, there should be no such automatic application of the proceeds.

6. The importance of first resolving the Disputes before authorizing distribution of the proceeds is supported by the Receiver's request to pay the Administrative Claim. First, the Administrative Claim would appear to have been part of the credit bid of LC

[2] The agreement between the Receiver and Operator has not been disclosed so the financial terms, division of responsibility and sharing of any income derived from the Coal Mine cannot be ascertained. It is known that fines were paid by the Receivership to the Indiana Department of Natural Resources for violations occurring at the Coal Mine as operated by the Operator and that IDNR has continued to be concerned about the operation of the Coal Mine.

Energy and thus was extinguished. Second, what legal basis is there to pay that particular Indiana Bankruptcy Claim before all other claims? LC Energy has paid nothing to all the parties under which it was required to pay pursuant to the Bankruptcy Court Orders, including carve-out payments owed to counsel under the debtor-in-possession financing. It (and the Receiver) should not jump ahead of all other claimants, until that claim is actually allowed and determined to be prior to all other claims. All the proceeds, subject to the allowance of the costs of sale including the fees of Houlihan Lokey, should be held in escrow pending determination of the validity and priority of payment and resolution of the Disputes and the opportunity to challenge the asserted claims of the Receiver for Costs and the Administrative Claim.

7. The Committee also objects to the establishment at this time of a claims and litigation procedure as set forth in the Sale Motion. All the parties would appear to agree that the Mine needs to be sold before any more value is lost. That can be accomplished without establishing a procedure that would require parties to travel to New York to resolve claims (and the Disputes) that are already pending before a competent court and involve for the most part Indiana law and orders of the Indiana Bankruptcy Court. The Committee received service of the Sale Motion by US mail only six days before the deadline noticed for responding. There is ample time during the time Houlihan Lokey is searching for a buyer and establishing a sale process to craft a claims process that is fair, does not discriminate, and efficiently uses forums that are already engaged in and are competent and knowledgeable as to the Disputes. The Receiver's most recent local Indiana counsel is competent and knowledgeable in bankruptcy law and is familiar with the Indiana Bankruptcy Court and no prejudice would result from discussing a more equitable process.

In conclusion, the Committee supports the efforts of the Receiver to sell the Mine, but objects to the concurrent establishment of a claims and litigation process and the authority to apply proceeds to Costs or the Administrative Claim. There does not need to be an immediate establishment of a claims resolution process that as proposed provides no consideration of the best forum or more efficient and equitable means of resolving claims. Nor is there a need to allow the application of sale proceeds to pay $1.2 million in costs or pay the Administrative Claim without providing an opportunity to review and/or challenge those claims.

Respectfully submitted,

FAEGRE BAKER & DANIELS LLP

By: /s/ Terry E. Hall

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Counsel for the Official Committee of Unsecured Creditors of Lily Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that as a non-party, on December 20, 2018, a copy of the foregoing was emailed to the Receiver at platinumreceiver@otterbourg.com.

/s/ Terry E. Hall

From: Sullivan, Chad [mailto:cjsullivan@jacksonkelly.com]
Sent: Wednesday, December 19, 2018 2:07 PM
To: Platinum Receiver
Cc: gwooten@wpplp.com
Subject: SEC v. Platinum Management LLC et. al

Ms. Cyganowski,

This email is in response to the Notice of Motion for Entry of an Order filed December 6, 2018 in the matter of *SEC v. Platinum Management, LLC*, Cause No. 16-cv-6848 (BMC) in the United States District Court, Eastern District of New York. We represent Western Pocahontas Properties, L.P. ("WPP"). WPP currently has a lease agreement with LC Energy Holdings, LLC ("LCEH"). Pursuant to the terms of a Letter Agreement modifying the Lease between WPP and LCEH, in the event LCEH assigns the Lease it shall pay "a transfer fee of 2% of the total payments or other compensation received by LCEH or received by a third party for the account or on behalf of LCEH (the "Transfer Fee"), such Transfer Fee for such assignment shall not exceed $250,000.00." A copy of the Letter Agreement is attached hereto. The Letter Agreement further provides that LCEH will serve WPP a 30-day advance written notice for approval of its intent to assign the lease. WPP has the right to deny the transfer of the lease if it is not to a Reputable and Prudent Coal Mining Company as defined in the Letter Agreement. WPP does not object to the proposed sale of assets, including the referenced Lease, so long as the sale or assignment of the lease complies with the obligations and payments set forth in the Letter Agreement. If the receiver's sale purports to sell or assign the Lease without meeting these obligations or paying the Transfer Fee, then this email shall serve as WPP's objection to the Motion and the proposed sale.

Should you have any questions regarding this matter, please do not hesitate to contact me.

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