

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

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
Plaintiff,	:	
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC;	:	No. 16-cv-6848 (BMC)
PLATINUM CREDIT MANAGEMENT, L.P.;	:	
MARK NORDLICHT;	:	
DAVID LEVY;	:	
DANIEL SMALL;	:	
URI LANDESMAN;	:	
JOSEPH MANN;	:	
JOSEPH SANFILIPPO; and	:	
JEFFREY SHULSE,	:	
Defendants.	:	
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RECEIVER’S REPLY BRIEF IN FURTHER SUPPORT OF HER MOTION FOR 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

Melanie L. Cyganowski, the duly appointed Receiver for the Receiver Entities, files this reply to the Responses (defined below) to her December 6, 2018 Motion seeking two forms of relief: First, entry of the Procedures Order which, *inter alia*, (i) authorizes the Receiver to sell the Receivership’s rights in and to LC Energy free and clear of all Encumbrances and (ii) approves the Bidding and LC Energy Claims Procedures in connection with the Sale. Second, after the Receiver selects a Successful Bidder (defined in the Bidding Procedures) the Receiver

requests entry of the Sale Approval Order approving the sale of LC Energy free and clear of all Encumbrances. In support of the Motion, the Receiver states as follows:¹

Preliminary Statement

Pursuant to this Court’s October 11, 2017 *Order Adopting Protocols for Parties in Interest to be Heard on Receiver Motions* (Dkt. No. 271), the Receiver provided this Court with the following responses to the Motion on December 21, 2018 (collectively, the “**Responses**,” and the entities filing the Responses, the “**Responders**”):

- (i) Limited Objection of Lily Group, Inc. to the Motion;
- (ii) Response in Opposition to the Motion filed by James W. Stuckert, Diane V. Stuckert and Solomon O. Howell; and
- (iii) Response in Opposition by the Committee of Unsecured Creditors in the Bankruptcy Case of Lily Group, Inc. to the Motion. *See* Dkt No. 433.

While the Responses universally support the Receiver’s proposed sale of LC Energy free and clear of all Encumbrances, they seek two modifications to the LC Energy Claims Procedures. These modifications are unacceptable to the Receiver as they would (i) be unduly burdensome, inefficient and costly to the Receivership Estates and (ii) deprive Receivership Entity PPCO of the approximately \$1.2 million that it has infused post receivership into LC Energy to preserve its value for not just the stakeholders in this case, but the Responders’ themselves. The objections should be overruled, and the Receiver’s motion granted.

Argument

First, the Responders demand that the LC Energy Claims Procedures be modified such that the Indiana Bankruptcy Court – which long ago approved PPCO’s acquisition of LC Energy

¹ All capitalized terms not defined herein shall have the meaning ascribed to such term in the pleadings accompanying the Motion.

– adjudicate the allowance of claims against LC Energy. The Indiana Bankruptcy Court, however, no longer has jurisdiction over the LC Energy assets, which were sold to PPCO and are no longer part of the bankruptcy estate. It would be inefficient to allow one court (this Court) to preside over the sale of the assets and another court to adjudicate claims to the proceeds of such sale. Moreover, by virtue of this Court’s Receivership Order, this Court has exclusive jurisdiction to adjudicate the Responders’ claims to Receivership Property. *See* Receivership Order, ¶ 1 (“This Court continues to take exclusive jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities (the “Receivership Assets”).”). *See also* Receivership Order, ¶ 26 (“All Ancillary Proceedings are stayed in their entirety, and all courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court.”). The LC Energy assets are Receivership Property and, just like other creditors asserting a claim against Receivership Property, the Responders must come before this Court to have such claims adjudicated. Any assertion that this Court is not equipped to consider the merits of the asserted claims, including issues that may implicate Indiana state law, is unfounded.

Even if this Court did not have exclusive jurisdiction to administer claims against Receivership Property, judicial economy dictates that streamlined procedures be implemented to administer claims against LC Energy in a single forum. The Responders fail to appreciate that there remain actions outside of the Indiana Bankruptcy Court pending against LC Energy’s assets and so, if the Sale were not conditioned upon approval of the LC Energy Claims Procedures, the Receiver would be forced to litigate the validity and priority of Encumbrances against LC Energy’s assets across multiple jurisdictions, on different timeframes and without

regard to the costs of litigating such disputes. In fact, the expense of the litigations could potentially exceed the value of the very assets the Receiver seeks to sell.

Second, the Responders demand that the approximately \$1.2 million PPCO paid to maintain the value of LC Energy during this receivership not be repaid from the proceeds of the Sale. However, the Responders fail to appreciate that the investment PPCO made to maintain LC Energy benefitted not only the stakeholders in this Receivership Case but indeed, the Responders themselves. Without PPCO's investment into LC Energy, there would be no asset to sell and no benefit to be realized by this Receivership Estate or any other party with an interest in the proceeds of the Sale. Under these circumstances, reimbursement is not only equitable, but a driving factor behind the Receiver's decision to seek to sell LC Energy as opposed to abandoning it.

In addition to their proposed modifications to the LC Energy Claims Procedures, the Responders seemingly cast blame at the Receivership Estate for the inability to expeditiously sell an asset costing the estate over a hundred thousand dollars a month to maintain. But the facts establish otherwise. As set forth in the Receiver's previous declaration in support of the Sale, since her retention the Receivership team has worked earnestly to commence the Sale process. Unfortunately, despite expending material time and resources to prepare LC Energy for immediate sale, the Receiver confronted a complex web of competing secured and unsecured claims being asserted against LC Energy's assets, in federal and state court, on a host of factual and legal grounds.

While the aforementioned complications were not of the Receiver's making, the solution to the problem is: the implementation of a cost-effective and orderly claims reconciliation process that allows LC Energy to be sold, all claims to the proceeds therefrom resolved, and

finality to this matter achieved. Accordingly, based on the Receiver's business judgment, and relying on this Court's powers to devise equitable solutions to otherwise complex problems, the Receiver proposed that a sale of LC Energy through this Court be accompanied by a streamlined set of claims procedures providing all asserted lien and claim holders with a single forum in which to assert their claims while almost assuredly not requiring any party to travel to this Court to resolve disputes.

The Receiver's decision to condition a Sale of LC Energy upon implementation of the LC Energy Claims Procedures was only made after careful contemplation of all her options to resolve the competing liens and claims being asserted against Receivership Property. Ultimately, the Receiver concluded that the LC Energy Claims Procedures provide the most efficient and equitable way to assure that the value of LC Energy is maximized for all stakeholders and that all claimants can assert the amount and priority of their Claims under a set of procedures designed to save expenses and produce finality.

Based upon the forgoing, the Receiver concluded that modifying the LC Energy Claims Procedures as proposed, including subordinating the approximately \$1.2 million PPCO invested in LC Energy post-receivership to the alleged claims of the Responders, or any other claimant, would cause grave injustice to the stakeholders in this case and so, the Receiver cannot support the Sale if the procedures are modified as the Responders demand.

Conclusion

For the reasons set forth herein and in the other pleadings the Receiver filed in support of the Motion, the Receiver respectfully requests entry of an order (a) authorizing the Receiver to sell the Receivership's rights in and to LC Energy free and clear of all Encumbrances; (b) authorizing the Receiver 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 the LC Energy Claims Procedures; (e) approving the Bidding Procedures and (f) granting such other and further relief as this Court deems appropriate.

Dated: New York, New York
December 27, 2018

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