

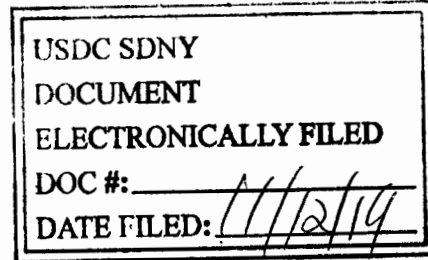


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November 8, 2019
VIA E-MAIL

Honorable Jed. S. Rakoff
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312



Re: **In re Platinum-Beechwood Litigation, 18-cv-06658 (JSR)**, 18cv12018 (JSR)
Opposition to Motion to sever claims against Ezra Beren [ECF No. 687]

Dear Judge Rakoff:

On behalf of Senior Health Insurance Company of Pennsylvania (“SHIP”), we submit this letter in opposition to Ezra Beren’s (“Beren”) letter motion to sever the claims against him in the cases consolidated under the *In re Platinum-Beechwood Litigation*, 18-cv-06658 (JSR) case caption.¹ Severance of SHIP’s claims against Beren is unwarranted as a legal matter, unnecessary as a practical matter, and contrary to the very purposes of both this Court’s orders regarding consolidation and the Federal Rules of Civil Procedure.

I. Beren was adequately served in June and has therefore had ample opportunity to participate in this case for the past five months.

Contrary to Beren’s unsupported assertion, SHIP adequately served Beren in June 2019, dispelling the notion that he “is not at fault for coming to this case late.” In New York, an individual may be served “by delivering the summons within the state to a person of suitable age and discretion at the . . . dwelling place or usual place of abode of the person to be served [and] mailing the summons to the person to be served at his or her last known address[.]” NY CPLR 308(2); Fed. R. Civ. P. 4(e)(1).

The affidavit of service completed by the process server who served Beren with SHIP’s Third-Party Complaint (“TPC”) indicates that on June 5, 2019, the TPC and summons were delivered to a woman of suitable age and discretion who refused to give her name. According to the affidavit, the woman stated that the address where service occurred was Beren’s “dwelling house (usual place of abode) within the state.” The affidavit also indicates that a copy of the summons and the TPC were mailed to Beren at the same address to which they were delivered. A

¹ Specifically, Beren has been named as a defendant in *Trott v. Platinum Management NY, et al.*, 18-cv-10936 (JSR) (the “Trott Action”) and in SHIP’s Third-Party Complaint in the *Cyganowski v. Beechwood Re, et al.*, 18-cv-12018 (JSR) (the “PPCO Action”).



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process server's affidavit creates a presumption of proper service. *See, e.g., CIT Bank, N.A. v. Nwanganga*, 328 F. Supp. 3d 189, 198 (S.D.N.Y. 2018). A copy of the affidavit of service is attached to this letter opposition as Exhibit 1.

The above facts demonstrate that SHIP strictly complied with CPLR 308(2) (and thus with Fed. R. Civ. P. 4(e)(1)) in connection with its June service on Beren. Moreover, even accepting Beren's representation as true, it defies both logic and reason to believe that Beren's own parents would have accepted service of not one, but two complaints against Beren and never have relayed that information to their own son. Accordingly, as of early June, at a minimum, Beren was placed on constructive notice, if not actual notice, of the claims brought by SHIP against him. Beren therefore has had ample opportunity to defend himself against SHIP's TPC for the past five months and should not be severed from the Consolidated Actions.²

II. Beren is not unfairly prejudiced by being required to defend this case on the schedule afforded to all other parties to this litigation.

Even assuming, *arguendo*, that he was not served in June, Beren is not unfairly prejudiced by having to comply with the discovery timeline that binds all other parties to the Consolidated Actions. Counsel for Beren accepted service of the TPC in October—nearly ten weeks before the close of discovery. Furthermore, SHIP has accommodated Beren by agreeing to extend the deadline to respond to the TPC until December 2, 2019. Neither SHIP nor any other party has denied Beren the opportunity to serve and conduct his own discovery, and Beren may also participate in the depositions that have been noticed by other parties. Moreover, Beren's own deposition has been confirmed for December 5, 2019, allowing him several weeks in advance to prepare. Beren therefore has "a meaningful opportunity to participate in discovery and understand the claims against him."

III. Severing Beren from the Consolidated Actions would frustrate judicial economy.

Severing Beren from the Consolidated Actions would waste the judicial resources of this Court. Although this Court has discretion to sever claims against parties under Fed. R. Civ. P. 21, the Court should only exercise that discretion in a manner that aids the "just, speedy, and inexpensive determination" of the proceedings. Fed. R. Civ. P. 1.

² In addition, Beren is the son-in-law of Murray Huberfeld, who is a defendant in the Consolidated Actions, making it highly unlikely that Beren was unaware of this litigation and the claims against him.



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Severing the claims against Beren—an actor in the Platinum-Beechwood scheme alleged by SHIP and others—would be counterproductive. In the same breath that Beren describes himself as having a “peripheral role in these actions,” he also complains that the documents produced by the parties to these actions that mention him are so voluminous that he needs several months to prepare a defense. He cannot have it both ways. If Beren truly played a peripheral role in the facts in this case as he insists, then to create a separate docket for his benefit—with a separate scheduling order and separate discovery—would run counter to the aim of judicial economy. Conversely, if he was a central member of the Platinum-Beechwood scheme as alleged by SHIP and other parties, then his presence in the Consolidated Actions before this Court is essential for judicial economy. In either scenario, Beren’s request to sever the claims against him should be denied.

For the foregoing reasons as well as those articulated in the opposition being filed by Plaintiffs in the Trott Action, SHIP respectfully requests that this Court deny Beren’s request to sever the claims against him from the Consolidated Actions.

Sincerely,

/s/
Ellen E. Dew

cc: S. Christopher Provenzano (*via* ECF)
All Counsel of Record in the Consolidated Actions (*via* ECF)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Attorney: DLA Piper US LLP - New York, NY
Address: 1251 Avenue Of The Americas New York, NY 10020

MELANIE L. CYGANOWSKI, as Receiver, et al., Plaintiff,
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, et al., Defendant, Third-party Plaintiff
VS
BEECHWOOD CAPITAL GROUP, et al., Third-party Defendant

Civil Action #
: 1:18-cv-12018
Consolidated Case #: 1:18-cv-06658

Client's File No.:
Court Date:
Date Filed:

STATE OF NEW YORK, COUNTY OF ROCKLAND, SS.:

AFFIDAVIT OF SERVICE

Alexa Foley, being sworn says:

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 06/05/2019, at 3:43 PM at 3 DEERWOOD ROAD, SPRING VALLEY, NY 10977 Deponent served the within Summons on a Third-Party Complaint (Filed on 05/17/19), Answer of Senior Health Insurance Company of Pennsylvania and Fuzion Analytics, Inc. and Crossclaims, and Third-Party Complaint of Senior Health Insurance Company of Pennsylvania (Filed on 05/15/19), Consolidated Protective Order (Filed on 03/28/19), Individual Rules of Practice Hon. Jed S. Rakoff, Individual Practices in Civil Cases One T. Wang, United States Magistrate Judge and Electronic Case Filing Rules & Instructions
On: EZRA BEREN, therein named.

Said documents were conformed with index number endorsed thereon.

#1 SUITABLE AGE PERSON

By delivering thereto a true copy of each to "Jane Doe" (Refused First and Last Name) (Co-Resident) a person of suitable age and discretion. Said premises is recipient's: actual place of business / employment dwelling house (usual place of abode) within the state.

#2 DESCRIPTION

Sex: Female Color of skin: White Color of hair: Brown Glasses: No
Age: 36 - 50 Yrs. Height: 5ft 7Inch - 5ft 9Inch Weight: 131-160 Lbs. Other Features:

#3 MILITARY SERVICE

I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatsoever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

#4 WITNESS FEES

Subpoena Fee Tendered in the amount of

#5 OTHER

Sworn to before me on June 11, 2019
Geraldina Schiavone

GERALDINA SCHIAVONE
NOTARY PUBLIC STATE OF NEW YORK
NO. 01SC6168525
QUALIFIED IN ROCKLAND COUNTY
COMMISSION EXPIRES JUNE 11, 2023

Alexa Foley
Alexa Foley
DCA License #

#6 MAILING

Alexa Foley being duly sworn, deposes and says: that deponent completed service by depositing a copy of the said documents in a postpaid properly addressed envelope, bearing the words "Personal and Confidential" by first class mail on: 6/11/2019 to EZRA BEREN at 3 DEERWOOD ROAD, SPRING VALLEY, NY 10977 in an official depository of the United States Postal Service in the State of New York. The envelope did not indicate on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served.

Sworn to before me on June 11, 2019
Geraldina Schiavone

GERALDINA SCHIAVONE
NOTARY PUBLIC STATE OF NEW YORK
NO. 01SC6168525
QUALIFIED IN ROCKLAND COUNTY
COMMISSION EXPIRES JUNE 11, 2023



Alexa Foley
Alexa Foley
DCA License #

Holland & Knight

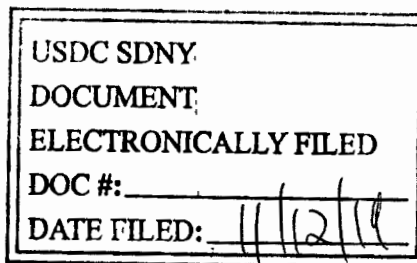
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Warren E. Gluck
(212) 513-3396
warren.gluck@hkllaw.com

Via Email

November 8, 2019

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



18cv 6658 (JSK) X

Re: *Trott, et ano v. Platinum Management (NY) LLC, et al.* (Case No. 18-cv-10936 (JSR)) (“PPVA Litigation”) – Objection to Defendant Ezra Beren’s Motion to Sever Claims)

Dear Judge Rakoff:

Pursuant to the Court’s direction in our conference call of November 4, 2019, Plaintiffs 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) (collectively, the “PPVA Plaintiffs”), by and through their counsel Holland & Knight LLP, respectfully submit this letter objection to the motion of Defendant Ezra Beren (“Beren”) to sever the PPVA Plaintiffs’ claims against Beren in the PPVA Litigation pursuant to Fed. R. Civ. P. 21 (the “Motion”).

“New York courts have traditionally and wisely had little tolerance for the type of gamesmanship” that involves evading service of process. *Metropolitan Life Insurance Company v. Totten*, 2007 WL 9771106 *2 (N.D.N.Y. February 12, 2007) citing *Davis v. Musler*, 713 F.2d 907, 914 (2d Cir. 1983). Here, Beren has been well aware of the PPVA Plaintiffs’ complaint against him since the outset of this case. Beren is the son-in-law and next door neighbor to Murray Huberfeld, another prominent defendant in this litigation. Indeed, Mr. Beren’s attorney has attended status hearings in this case as early as December 2018, lying in wait before making a formal appearance, the exact type of gamesmanship disfavored by this Court.

Mr. Beren has now been properly served with the PPVA Plaintiffs’ Second Amended Complaint [Dkt. No. 226] (“SAC”), but has moved to sever the claims against him from the wider consolidated litigation before this Court. As discussed during the November 4, 2019 conference with the Court, Mr. Beren’s Motion is without basis and should be denied.

Under Federal Rule of Civil Procedure 21, “[o]n motion or on its own, the court may at any time . . . sever any claim against a party.” Fed. R. Civ. P. 21. Courts consider the following factors when determining whether to sever a claim against a party: (1) whether the claims arise out of the same transaction or occurrence; (2) whether the claims present some common questions of law or fact; (3) whether settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5) whether different witnesses and documentary proof are required for the separate claims. *Erausquin v. Notz, Stucki Mgmt. (Berm.)*, 806 F. Supp. 2d 720, 720 (S.D.N.Y. 2011), *citing In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 214 F.R.D. 152, 154-55 (S.D.N.Y. 2003).

Judicial economy would not be facilitated by severing the PPVA Plaintiffs’ claims against Beren, as common questions of law and fact exist, and the claims against Beren and the other Platinum Defendants and Beechwood Defendants arise out of the same transactions and occurrences, namely the First Scheme and Second Scheme detailed in the SAC.

Mr. Beren is named as a Platinum Defendant and a Beechwood Defendant. SAC at ¶ 3. From March 2007 until December 31, 2015, Beren was a vice president and a portfolio manager at Platinum Management, and served from time to time on Platinum Management’s valuation committee. SAC at ¶ 12(xiii); 113. In 2014, at the same time he served as a Platinum Management executive, Beren was performing services to the Beechwood Entities pursuant to an investment management agreement. SAC at ¶ 12(xiii). On January 1, 2016, as the Second Scheme and the dissipation of PPVA’s assets for the benefit of Beechwood accelerated, Beren formally resigned from Platinum Management and was hired full-time by Beechwood. *Id.* As stated in Mr. Beren’s Motion, Mr. Beren is referenced in at least 80,000 documents produced in this case, evidencing his involvement in the affairs of Platinum Management and the Beechwood Entities. Among those documents is a May 1, 2015 consulting agreement whereby Lawrence-Monsey Management LLC, an entity affiliated with Defendants David Bodner and Murray Huberfeld, provided undisclosed consulting services to Beechwood in exchange for substantial payments. The Consulting Agreement is signed by Jessica Beren, wife of Ezra Beren and daughter of Murray Huberfeld, on behalf of Lawrence-Monsey Management LLC. Accordingly, any characterization of Mr. Beren’s involvement in the First Scheme and Second Scheme as “peripheral” is without basis. It would not serve judicial economy to sever the claims against Beren that are intertwined with the claims against other Platinum Defendants and Beechwood Defendants, including his father-in-law Murray Huberfeld.

In addition, prejudice does not exist here as the Court has already set an expedited briefing schedule for any motion to dismiss to be filed by Mr. Beren, and Mr. Beren is free to engage in discovery, including the depositions of parties and witness that is underway, and has access to the documents produced by the parties in the PPVA Litigation. Accordingly, the PPVA Plaintiffs respectfully request that Mr. Beren’s Motion be denied.

Sincerely,

HOLLAND & KNIGHT LLP

/s/Warren E. Gluck, Esq.

Warren E. Gluck, Esq.

c: Counsel for Ezra Beren (via Email)
Counsel for the Senior Health Insurance Company of Pennsylvania (via Email)