

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

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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.	:
-----X	

No. 16-cv-6848 (BMC)

**NOTICE OF MOTION TO APPROVE
PAYMENT TO MASLON LLP**

PLEASE TAKE NOTICE that upon the accompanying declaration and memorandum of law by Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for 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, the Receiver moves before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York (the “*Court*”), located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an Order approving payment to Maslon LLP (the “*Motion*”).

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be (i) made in writing; (ii) if by a party named in the above captioned action, electronically filed with the Court; or (iii) if by a non-party, electronically mailed to the Receiver, at her email address, platinumreceiver@otterbourg.com, so as to be actually received no later than **July 23, 2019**.

PLEASE TAKE FURTHER NOTICE that in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion without further hearing or notice.

Dated: July 16, 2019

OTTERBOURG P.C.

By: /s/ Erik B. Weinick
Adam C. Silverstein
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*Attorneys for Melanie L. Cyganowski, as
Receiver*

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

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JOSEPH MANN;	:	
JOSEPH SANFILIPPO; and	:	
JEFFREY SHULSE,	:	
Defendants.	:	
-----X	:	

**DECLARATION OF MELANIE L. CYGANOWSKI,
AS RECEIVER, IN SUPPORT OF MOTION TO
APPROVE PAYMENT TO MASLON LLP**

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 (“*PPCO*”), 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 (collectively, the “*Receivership Entities*”). I submit this declaration in support of my *Motion to Approve Payment to Maslon LLP* (the “*Motion*”).

I.

BACKGROUND

A. Buffalo Lake Advanced Biofuels

2. Prior to the commencement of this receivership, West Ventures, LLC (“*West Ventures*”), of which PPCO is the majority and managing member, extended \$18 million in financing to Purified Renewable Energy, LLC (“*PRE*”) secured by a mortgage on its ethanol plant in Buffalo, Minnesota (the “*Ethanol Plant*”). PRE filed for bankruptcy protection in 2013 and West Ventures credit bid \$5 million of its mortgage to acquire the Ethanol Plant. Buffalo Lake Advanced Biofuels, LLC (“*BLAB*”), an entity indirectly owned by PPCO, subsequently took title to the Ethanol Plant subject to West Ventures’ mortgage for the remaining unpaid balance. After funding some capital improvements, BLAB operated the Ethanol Plant for several months before it was shut down late in 2015 when market prices for corn and ethanol made it unprofitable for the Ethanol Plant to continue operating.

B. Maslon’s Retention

3. Tasked with disposing of PPCO’s interest in BLAB, I enlisted the support of Maslon, a law firm of approximately 80 attorneys with an office in Minneapolis, Minnesota. Maslon had been representing West Ventures since 2013 in seeking to maximize the recovery on its \$18 million mortgage debt and so, was intimately familiar with BLAB, the Ethanol Plant and the legal and operational issues confronting BLAB’s business. Moreover, I found that Maslon’s attorneys had experience in a variety of fields relevant to the issues confronting BLAB, including corporate and real estate law, mechanic’s lien rights and other litigation and creditor/debtor rights. Thus, I concluded in my business judgment that it was prudent to continue utilizing Maslon’s services in order to dispose of PPCO’s interest in BLAB.

4. On December 26, 2017, this Court entered an *Order Authorizing the Receiver's Application to Retain and Pay Limited Scope Legal Professionals* (the "**Limited Scope Legal Professionals Order**"). Pursuant to the Limited Scope Legal Professionals Order, I was authorized to, *inter alia*, retain and pay Maslon up to \$79,065.60 in fees and \$595.71 in expenses in connection with services rendered during the First Application Period (defined in the Limited Scope Legal Professionals Order), and authorized, but not required, to pay Maslon up to \$20,000.00 for any additional reasonable fees and expenses incurred after May 31, 2017 without Court approval.

5. PPCO has since made two payments towards the additional \$20,000.00 I was authorized to pay Maslon under the Limited Scope Legal Professionals Order:

- (i) \$9,852.40 on May 31, 2018; and
- (ii) \$8,757.10 on June 28, 2018.

Maslon has now concluded providing services to West Ventures and BLAB. In addition the fees and expenses incurred in connection with services rendered during the First Application Period, Maslon has incurred \$53,975.50 in fees and \$308.65 in expenses, for a total of \$54,284.15. Maslon may thus be paid \$1,390.50 without further court order, leaving a balance of \$52,893.65. It is this amount for which I request authority to pay pursuant to the Motion.

II.

MASLON'S SERVICES HAVE BENEFITED THE RECEIVERSHIP ESTATE

6. From approximately June 1, 2017, through August 31, 2018, Maslon continued providing legal services to protect Receivership Property (defined in the October 16, 2017 *Second Amended Order Appointing Receiver*) consisting of the interests of PPCO in the Ethanol Plant owned by BLAB and its related personal property. Due to the decline in the market prices

for ethanol, the Ethanol Plant had ceased operating in October 2015, and BLAB had undertaken efforts to “mothball” the Ethanol Plant in a manner to protect its long-term value.

7. Following the appointment of the original receiver, Bart M. Schwartz, Esq., (the “*Prior Receiver*”) and at the direction of the Prior Receivers’ professionals and later at my direction, Maslon provided legal services to protect the value of the Ethanol Plant for future monetization for the benefit of the Receivership Estate. These actions included working with the Renville County Tax Assessor to avoid tax forfeiture proceedings that were pending against the Ethanol Plant for accrued, unpaid real estate taxes in excess of \$600,000, protecting the Ethanol Plant from mechanic lienholder claims, and protecting the Ethanol Plant and the BLAB personal property from unsecured creditors who were seeking to obtain and record their judgments against the Ethanol Plant or use such judgments to seize the BLAB personal property.

8. For example, real estate taxes for the Ethanol Plant that were owing to Renville County and were unpaid for several years had resulted in tax forfeiture proceedings being triggered under Minnesota state law. Without the Maslon firm’s involvement, the Ethanol Plant would have forfeited to the State of Minnesota on or about May 15, 2018. Maslon negotiated a payment plan with the Renville County Tax Assessor that avoided the forfeiture proceeding which allowed my professionals to continue evaluating the market for the Ethanol Plant. Maslon also worked with counsel for Leo Fischer, BLAB’s former president who held a second priority mortgage on the Ethanol Plant, to advance the funds for the initial tax plan payment due to Renville County and for payment of the first half of 2018 real estate taxes so that PPCO did not have to advance these funds. Leo Fischer had obtained a mortgage on the Ethanol Plant when he advanced \$1.7 million to BLAB, prior to the commencement of these receivership proceedings, to

start up operations at the Ethanol Plant and keep it operating before it was mothballed near the end of 2015.

9. Eventually it was determined through an evaluation of the market for similar plants that the likely sale proceeds would be insufficient to pay the \$600,000 in first priority real property taxes and the \$1.7 million second priority mortgage held by Leo Fischer. Maslon's legal services continued until the end of August 2018, when I determined, after consulting with my professionals, that the continued costs of protecting and monetizing the Ethanol Plant outweighed the potential benefit of the Ethanol Plant to the Receivership Estate. Prior to August 2018, and based upon the advice of my professionals, I had a good faith basis to believe that the monetization of the Ethanol Plant and BLAB's other assets would result in a return of value to PPCO. As soon as it was determined that a return was unlikely, Maslon was asked to cease providing legal services.

10. Based on the forgoing, the proposed payment to Maslon of its invoices in the total amount of \$52,893.65 is in the best interests of the Receivership Entities and their stakeholders.

III.

CONCLUSION

11. For the reasons set forth herein and in the accompanying pleadings, I respectfully request entry of an order, in substantially the form annexed hereto as Exhibit A, authorizing me to pay Maslon for its post-receivership services and that I be granted such other and further relief as this Court deems appropriate.

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

Executed this 16th day of July 2019, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

Exhibit A

**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.	:	
-----X	:	

ORDER APPROVING PAYMENT TO MASLON LLP

Upon the motion of Melanie L. Cyganowski, 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, (collectively, the “*Receivership Entities*”) for entry of an order approving payment to Maslon LLP (the “*Motion*”), the Receiver’s Memorandum of Law in Support of the Motion and the *Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion*

to Approve Payment to Maslon LLP, the relief requested in the Motion is warranted, reasonable and appropriate.

NOW, THEREFORE after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is approved in all respects;

ORDERED, that the Receiver is hereby authorized, but not directed, to pay Maslon \$52,893.65; and

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____, 2019
Brooklyn, New York

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

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

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PLATINUM MANAGEMENT (NY) LLC;	:
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JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**RECEIVER’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO APPROVE PAYMENT TO MASLON LLP**

Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), 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 (collectively, the “*Receivership Entities*”), through her counsel, Otterbourg P.C., respectfully submits this memorandum of law in support of the *Motion to Approve Payment to Maslon LLP* (the “*Motion*”). In support of the Motion, the Receiver states as follows:

I.

PROCEDURAL HISTORY

A. Case Filing and Appointment of Receivers

On December 19, 2016, this Court entered the *Order Appointing Receiver* (amended on January 30, 2017) in the above-captioned case (the “**Receivership Case**”). See Docket Nos. 6 and 59. On July 6, 2017, this Court accepted the resignation of the original receiver, Bart M. Schwartz, Esq., (the “**Prior Receiver**”) and appointed Melanie L. Cyganowski as Receiver effective immediately (*i.e.*, July 6, 2017). See Docket No. 216.

On October 16, 2017, this Court entered the *Second Amended Order Appointing Receiver*, Docket No. 276 (the “**Receivership Order**”). Among other powers, the Receivership Order grants the Receiver authority:

To engage and employ persons in the Receiver’s discretion to assist the Receiver in carrying out the Receiver’s duties and responsibilities hereunder, including, but not limited to ... attorneys ... subject to Court approval.

Receivership Order, ¶ I(6)(F).

B. Buffalo Lake Advanced Biofuels

Prior to the commencement of this receivership, West Ventures, LLC (“**West Ventures**”), of which PPCO is the majority and managing member, extended \$18 million in financing to Purified Renewable Energy, LLC (“**PRE**”) secured by a mortgage on its ethanol plant in Buffalo, Minnesota (the “**Ethanol Plant**”). See *Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion to Approve Payment to Maslon LLP* (“**Cyganowski Decl.**”), at ¶ 2. PRE filed for bankruptcy protection in 2013 and West Ventures credit bid \$5 million of its mortgage to acquire the Ethanol Plant. See *id.* Buffalo Lake Advanced Biofuels, LLC (“**BLAB**”), an entity indirectly owned by PPCO, subsequently took title to the Ethanol Plant subject to West Ventures’ mortgage for the remaining unpaid balance. See *id.* After funding some capital

improvements, BLAB operated the Ethanol Plant for several months before it was shut down late in 2015 when market prices for corn and ethanol made it unprofitable for the Ethanol Plant to continue operating. *See id.*

C. Maslon's Retention

Tasked with disposing of PPCO's interest in BLAB, the Receiver enlisted the support of Maslon, a law firm of approximately 80 attorneys with an office in Minneapolis, Minnesota. *See Cyganowski Decl.*, at ¶ 3. Maslon had been representing West Ventures since 2013 in seeking to maximize the recovery on its \$18 million mortgage debt and so, was intimately familiar with BLAB, the Ethanol Plant and the legal and operational issues confronting BLAB's business. *See id.* Moreover, the Receiver found that Maslon's attorneys had experience in a variety of fields relevant to the issues confronting BLAB, including corporate and real estate law, mechanic's lien rights and other litigation and creditor/debtor rights. *See id.* Thus, the Receiver, in her business judgment, concluded that it was prudent to continue utilizing Maslon's services in order to dispose of PPCO's interest in BLAB.¹ *See id.*

On December 26, 2017, this Court entered an *Order Authorizing the Receiver's Application to Retain and Pay Limited Scope Legal Professionals* (the "**Limited Scope Legal Professionals Order**"). Pursuant to the Limited Scope Legal Professionals Order, the Receiver was authorized to, *inter alia*, retain and pay Maslon up to \$79,065.60 in fees and \$595.71 in expenses in connection with services rendered during the First Application Period (defined in the Limited Scope Legal Professionals Order), and authorized, but not required, to pay Maslon up to

¹ Maslon incurred pre-receivership fees for its services to BLAB and West Ventures in the approximate amount of \$150,000. To secure a portion of the amounts it's due, Maslon holds a perfected security interest in all personal property owned by BLAB at the Ethanol Plant under the terms of a June 24, 2016 Security Agreement. Through the Motion, the Receiver seeks only to pay Maslon for its post-receivership fees and expenses. Maslon filed a secured Proof of Claim in the receivership case for its pre-receivership fees and expenses to which the Receiver reserves her rights to oppose.

\$20,000.00 for any additional reasonable fees and expenses incurred after May 31, 2017 without Court approval.

PPCO has since made two payments towards the additional \$20,000.00 the Receiver was authorized to pay Maslon under the Limited Scope Legal Professionals Order:

- (i) \$9,852.40 on May 31, 2018; and
- (ii) \$8,757.10 on June 28, 2018.

See Cyganowski Decl., at ¶ 5. Maslon has now concluded providing services to West Ventures and BLAB. *See id.* In addition to the fees and expenses incurred in connection with services rendered during the First Application Period, Maslon has incurred \$53,975.50 in fees and \$308.65 in expenses, for a total of \$54,284.15. *See id.* Maslon may thus be paid \$1,390.50 without further court order, leaving a balance of \$52,893.65. *See id.* It is this amount for which the Receiver requests authority to pay pursuant to the Motion.

II.

ARGUMENT

In furtherance of her fiduciary duties, the Receiver worked expeditiously to dispose of PPCO's interest in BLAB. To that end, she engaged Maslon to assist her in confronting the numerous legal issues BLAB and West Ventures faced. Maslon's historical knowledge of the Ethanol Plant, the capital structure of BLAB and the competing claims to its assets provided a tremendous cost savings to the Receivership Estate as it actively sought to dispose of BLAB. Maslon was instrumental in assisting the Receiver in preserving and protecting the value of the Receivership Estate, including by defending BLAB from claims asserted by third-parties and facilitating the efforts to sell the Ethanol Plant. While the Receiver ultimately concluded that a sale of the Ethanol Plant was not economically feasible, Maslon assisted the Receiver in minimizing the costs and expenses of disposing of PPCO's interests in BLAB and the Ethanol

Plant while limiting any future claims against the Receivership Entities.

Specifically, from June 2017 to August 2018, Maslon provided legal services to protect the value of the Receivership Estate, including working with the Renville County Tax Assessor to avoid tax forfeiture proceedings that had been pending against the Ethanol Plant for accrued, unpaid real estate taxes in excess of \$600,000, protecting the Ethanol Plant from mechanic lienholder claims, and protecting the Ethanol Plant and the BLAB personal property from unsecured creditors who were seeking to obtain and record their judgments against the Ethanol Plant or use such judgments to seize the BLAB personal property. *See Cyganowski Decl.*, at ¶ 8. Real estate taxes owing in connection with the Ethanol Plant had not been paid for several years and this had resulted in tax forfeiture proceedings being triggered under Minnesota state law. *See id.* Without the Maslon firm's involvement, the Ethanol Plant would have been forfeited to the State of Minnesota on or about May 15, 2018. *See id.*

Maslon negotiated a payment plan with the Renville County Tax Assessor that avoided the forfeiture while allowing the Receivers' professionals to continue marketing the Ethanol Plant. *See Cyganowski Decl.*, at ¶ 8. Maslon also worked with counsel for Leo Fischer, BLAB's former president who held a second priority mortgage on the Ethanol Plant, to advance the funds for the initial tax plan payment due to Renville County and for payment of the first half of 2018 real estate taxes so that the Receivership Estate did not have to advance these funds. *See id.* Leo Fischer had obtained a mortgage on the Ethanol Plant when he advanced \$1.7 million to BLAB, prior to the commencement of these receivership proceedings, to start up operations at the Ethanol Plant and keep it operating before it was mothballed near the end of 2015. *See id.*

Ultimately it was determined through an evaluation of the market for similar plants that the likely sale proceeds would be insufficient to pay the \$600,000 in first priority real property

taxes and the \$1.7 million second priority mortgage held by Leo Fischer. *See* Cyganowski Decl., at ¶ 9. Maslon's legal services continued until the end of August 2018, when the Receiver determined, after consulting with her professionals, that the continued costs of protecting and monetizing the Ethanol Plant outweighed the potential benefit of the Ethanol Plant to the Receivership Estate. *See id.* Prior to this time, the Receiver and her professionals had a good faith basis to believe that the monetization of the Ethanol Plant and BLAB's other assets would result in a return of value to the Receivership Estate. *See id.*

Based on the forgoing, the Receiver submits that the proposed payment to Maslon is in the best interests of the Receivership Entities and their stakeholders.

III.
CONCLUSION

For the reasons set forth herein and in the accompanying Cyganowski Dec., the Receiver respectfully requests entry of an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec., (i) authorizing the payment of Maslon's post-receivership fees and (ii) granting such further relief as the Court deems appropriate.

Dated: New York, New York
July 16, 2019

OTTERBOURG P.C.

By: /s/ Erik B. Weinick
Adam C. Silverstein
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*Attorneys for Melanie L. Cyganowski, as
Receiver*