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Via Email

December 12, 2019

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

Re: *Trott, et ano v. Platinum Management (NY) LLC, et al.* (Case No. 18-cv-10936 (JSR)) ("PPVA Litigation") – Objections to Motion to Quash Subpoena Directed to Timothy Bischof and Eric Johnson and to Compel CNO 30(b)(6) witness

Dear Judge Rakoff:

Pursuant to the Court's direction in our conference call on December 11, 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 objecting to the motion by the CNO Parties (the "Motion") to quash subpoenas (the "Subpoenas") directed to Timothy Bischof ("Mr. Bischof") and Eric Johnson ("Mr. Johnson" and collectively with Mr. Bischof, the "CNO Executives"), and further to compel compliance with the Rule 30(b)(6) deposition notice served on the CNO Parties.

The CNO Parties make three primary arguments – (i) that it is too late to take the CNO Parties depositions; (ii) that because other Plaintiffs have not sought to take the CNO Parties' depositions, they are not valuable witnesses in this case; and (iii) that the AGH Litigation in Delaware somehow forecloses the relevancy of the CNO Parties' testimony in this case. All of these arguments should be rejected by the Court.

The testimony of Mr. Johnson and Mr. Bischof is clearly relevant and material to our case. Mr. Johnson and Mr. Bischoff, as well as CNO, are core witnesses in this case and their depositions should be permitted. Accordingly, PPVA respectfully requests that dates for the depositions of Mr. Johnson, Mr. Bischoff and CNO's 30(b)(6) witness be set so that they can occur within the discovery period (by December 31).

First, it is clearly not too late to take the depositions of the three witnesses, and, any perceived delay was caused by CNO and not the JOLs. PPVA served its 30(b)(6) notice to CNO in October and served the individual subpoenas on November 19 – the day after our mediation efforts concluded. Rather than comply, CNO is merely trying to run out the clock on the December 31 discovery cutoff, declining to make its motion to quash until Mr. Bischof was formally served on December. In fact, as detailed below, Mr. Bischof and Mr. Johnson have been actively evading service of process in respect of the subpoenas, which attempts have been ongoing for weeks[1].

[1] To the extent CNO contends that Mr. Johnson was not properly served, PPVA requests that Mr. Johnson be deemed served by virtue of his clear knowledge and this motion to quash.

Second, via soft and hard power and then direct authority (via an asset management "approval" regime effected in June/July 2016) – facilitated or at minimum, is a core witness with respect to the First and Second Scheme by Platinum Management and Beechwood. CNO always knew about the Platinum-Beechwood connections, and when it realized that the assets were overvalued, directed Beechwood to improperly receive outright or lien upon hundreds of millions of dollars in PPVA assets – to the detriment of PPVA's legitimate stakeholders and creditors.[2]

CNO's contention that the other parties to this case did not consider it a material witnesses is simply laughable. The other parties to this litigation noticed approximately ONE DOZEN CNO depositions. CNO pled for extensions, refused to provide dates for depositions and refused to supply witnesses until it was ordered by this Court to do so at a telephonic hearing.

Desperate to not be deposed, and for the truth to remain unstated (under oath), CNO then pled for an extension to the Court's deposition order such that it could have time to convince other noticing parties to forgo their deposition rights. CNO has paid or forgone tens of millions of dollars in order to avoid these depositions. The reason the other parties to this consolidated litigation are no longer seeking more than a dozen depositions from CNO is not because they deem CNO's witnesses to be irrelevant as CNO now contends, but because CNO paid them off.

CNO's substantial knowledge of and indirect (or "soft") participation nearly every First and Second Scheme transaction – from the Beechwood-induced overvaluation to Black Elk to the dissipation -- renders CNO one of the most central witnesses to this case. CNO's knowledge of the Agera transaction clearly relates to the Agera-related claims before this Court. Moreover, CNO is the only party in this consolidated litigation that has refused to provide discovery to PPVA on the ground that CNO is not a "defendant." SHIP has produced four witnesses for depositions and PPVA fully participated and received as much time as other major parties. In fact, when SHIP's 30B witnesses unfortunately became ill during his deposition, and the only party that did not have an opportunity to depose the witness was PPVA, SHIP has agreed to bring back its witness on December 19, solely so that PPVA could conduct its examination.

The Agera Transaction is a central aspect of this litigation.[3] In particular, major defendants such as Beechwood, Mark Feuer, David Bodner, Murray Huberfeld, Kevin Cassidy,[4] Seth Gerszberg (and the primary Platinum Management actors) are liable for stripping PPVA of its most valuable asset. CNO, and Johnson and Bischof, have specific and particularized knowledge about the same via its participation in the Agera sale and the First and Second Schemes. The evidence collected so far supports our view that CNO knew many of its assets were overvalued and, in fact, were complaining about them to the Platinum defendants. It is uncontested that $120 million of the total $170 million in consideration for Agera was worthless, a large portion of which were former CNO assets. The Agera transaction was part of a coordinated scheme that was presented by Mark Feuer to CNO's Eric Johnson in Indiana in or around March and April 2016. The scheme was then actively executed under an assent use approval regime effected just after the first leg of the Agera transaction in July 2016. Via a combination of pressure and apparent litigation threats, and via a complex set of machinations, SHIP and CNO were awarded millions of dollars of debt at the newly created AGH Parent linked to debt previously held by Bodner interests (without consideration). Not only was $120 million of the $170 million purported consideration worthless, but most benefits of the Agera transaction flowed to CNO and SHIP, which

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[2] CNO was sued by PPVA in Delaware in connection with Agera transaction is because CNO did not merely use soft power, but actively directed and executed the Agera transaction for its unjust benefit. The AGH Litigation is concentrated on Agera, concerns a series of Delaware situsd transactions and parties, including Principal Growth Strategies, AGH Parent and the CNO Delaware Trusts, is predicated on Delaware (or in two instances, Cayman) law, and was filed separately for myriad reasons including a desire to avoid further complicating this already-complicated consolidated matter.

[3] The AGH Parent Litigation, approved by the Securities and Exchange Commission and the SEC Receiver, seeks to specifically recover the wrongfully dissipated proceeds of the Agera asset from the transferees of that asset. CNO seems to be unaware that this Court is familiar with the AGH Parent litigation, has ruled on whether SHIP is entitled to contribution and indemnity as a result of the AGH Parent Litigation. D.E. 706 at p. 17 and n. 9.

[4] With whom PPVA has reached a settlement in principle.

respectively received and were offered buyouts within months at valuations placing the same asset above $200 million.[5] And all of these fraudulent efforts were done at the expense and detriment of PPVA.

Each of the Beechwood Entities, Platinum Management, Nordlicht, Bodner, Mark Feuer, Scott Taylor and Dhruv Narain are being sued for breach of duty, aiding and abetting breach of duty and other causes related to the Agera transaction, in this proceeding. The testimony of CNO, Johnson and Bischoff is highly relevant to this proceeding and is needed by the JOLs to attempt to uncover the truth regarding the fraudulent sale of Agera – occurring just a day after Mr. Huberfeld's arrest. The documentary evidence and, in particular, certain emails, support the JOLs' view that CNO, and its two executives, have relevant and material information about the Agera sale. If the motion to quash is granted, the JOLs will lose potentially valuable evidence about the Agera sale, which the discovery process specifically permits. Thus, we respectfully request that the motion to quash be denied, and the Court direct CNO to produce a 30(b)(6) witness and the Mssrs. Johnson and Bischoff appear for their depositions.

1. CNO's Evasion of Service of Process

PPVA's 30(b)(6) notice was issued on September 5, 2019. Around the same time that this Court issued its October 14, 2019 oral ruling directing the CNO witnesses to appear for deposition, CNO approached PPVA and requested that the depositions be deferred so the parties could discuss global resolution.

On November 19, when it became clear that there would not be a resolution, the PPVA Plaintiffs resumed their efforts to depose CNO-affiliated entities and individuals for the reasons set forth above. These service efforts have been resisted at every turn. That same day, John Brownlee, counsel for the PPVA Plaintiffs, emailed Adam Kaiser, attorney for CNO, requesting dates for the Rule 30(b)(6) deposition of the CNO Parties and the depositions of the CNO Executives and Matt Hall, another CNO executive. On November 20, 2019, after Mr. Kaiser did not respond, Mr. Brownlee emailed Mr. Kaiser subpoenas for Messrs. Johnson, Bischof and Hall, requesting that Mr. Kaiser accept service on behalf of his clients. Mr. Kaiser did not respond until five (5) days later, making it clear that the CNO Parties would object to any Rule 30(b)(6) deposition and they would not accept service of the subpoenas on behalf of the CNO Executives. This email thread is attached hereto as **Exhibit 1.**

The PPVA Plaintiffs began attempts to serve the subpoenas on the CNO Executives shortly thereafter. The CNO offices were closed during the Thanksgiving weekend, and after they re-opened, on December 4, 2019, the CNO head of corporate security would not let the PPVA Plaintiffs' process server to enter the building, and barred him from the premises. A similar situation occurred when the process server returned to CNO's offices the next day. On December 7, 2019, service was attempted at the homes of Messrs. Johnson and Bischof, which resulted in Mr. Johnson calling the police and purporting to reject service. On December 9, 2019, Mr. Bischof was served in CNO's parking lot while sprinting to his car to avoid service. True and correct copies of proofs of service and emails received by the process service are attached hereto as **Exhibit 2**.

The CNO Executives argument that these subpoenas pose an undue burden does not hold water. Their counsel has had notice of these subpoenas since November 19, and the CNO Executives and their counsel have made every attempt to run out the clock and avoid depositions that will clearly lead to relevant testimony as to the PPVA Plaintiffs' claims in the Trott Action. *Med. Diagnostic Imaging, PLLC v. CareCore Nat'l, LLC*, 2008 WL 3833238, at *3 (S.D.N.Y. 2008) ("[t]o allow a witness to avoid appearing for his deposition when he acknowledges that he has actual knowledge that he is being sought for a deposition ... undermines the requirement in Federal Rule of Civil Procedure 1").

[5] CNO received the benefit of the buyout and accepted separate offers at this level or similar, while SHIP held out for an even higher price that apparently never materialized.

2. For Exemplary Purposes Only, PPVA Highlights Relevant Emails and Transcript Citations that Relate to Topics for the Depositions

CNO's motion fails to mention is the substantial amount of evidence regarding the CNO Parties' knowledge of the Platinum/Beechwood alter ego relationship, the CNO Parties micromanaging Beechwood's investment activities during the relevant time period, the CNO Parties' efforts to untangle themselves from the "Platinum web" through the course of the Second Scheme and enrich themselves to the detriment of all others. The CNO Executives, as well as the CNO Parties, are core witnesses to the PPVA Plaintiffs' claims against the Beechwood Defendants.

The CNO Parties' assertions that they had no knowledge of the Platinum/Beechwood connection at the outset of the creation of Beechwood has been proven false. At the deposition of Beechwood Defendant Mark Feuer, he testified that CNO conducted due diligence on their behalf and on behalf of Beechwood concerning Platinum/Beechwood Defendant David Levy:

we brought Mr. Levy in front of Eric Johnson at CNO and Fred Crawford and they spent a lot of time doing diligence on him as well for themselves as well as on my behalf. (November 20, 2019 Deposition of Mark Feuer at 49:11 to 50:5).[6]

In December 2013, when the CNO Parties were beginning to negotiate the terms of the reinsurance Agreements with Beechwood, David Levy asked Mark Nordlicht if he wanted to join a call with CNO executives. *See* **Exhibit 4**. Nordlicht was the public face of Platinum Management, the general partner of PPVA, who was joining a call on behalf of Beechwood, and CNO visited Platinum's office, which is where Beechwood was born and operated before having its own space.

The CNO Parties were also well aware that there was a revolving door of employees between Platinum Management and Beechwood and were constantly monitoring the investments (November 20, 2019 Deposition of Mark Feuer at p. 100:13-23, pp. 68:6 to 69:5; November 21, 2019 Deposition of Mark Feuer at pp. 609:12 to 610:2)

Q. And you're confident, sitting here today, that in the time leading up to signing the reinsurance deal with CNO, you told them that Beechwood's employees were coming from Platinum?
A. Confident, yes.
Q. And to whom was that communicated?
A. To both Mr. Crawford and Mr. Johnson and to many other -- I mean, from me personally, Mr. Crawford, for sure.

Q. On the private side, the money that Mr. Levy was investing, were you aware of how he was investing in the privates in 2014?
A. I certainly wasn't aware other than the fact that it was being invested and that, like I said, I relied heavily on Mr. Levy as well as on, quite frankly, my client that had 25 people watching over everything that Mr. Levy did on a daily basis.

Q. Okay. My question to you is, he says he gets where we're coming from and is not trying to stop us from doing this. In January of 2015, what ability, if any, did CNO or Eric Johnson have to stop you from doing anything?
A.· · They were a very important client of ours.· They could stop us from doing Anything
Q.· · How?· How would they go about stopping you? A.· · Fred Crawford picking up the phone and telling me I don't want you to do this, or I want you to do that.

The documents corroborate Mr. Feuer's statements. For example, on November 9, 2014, Mr. Johnson asked other executives of the CNO Parties whether the Beechwood reinsurance agreements should be terminated for fraud. (**Exhibit 5**). An executive with the CNO Parties, responds that "I think we have seen and could readily discover more facts which would lend weight to the argument that, whether or not the definition applies, Beechwood is under direct or

[6] Cited portions of the transcript of the deposition of Mark Feuer are attached hereto as **Exhibit 3.**

indirect common control with Platinum and, more directly, Platinum's various tentacles." *See* **Exhibit 6**. On March 10, 2014, the Eric Johnson, emailed Levy inquiring into the CNO Reinsurance Trusts' investments into Black Elk and Golden Gate Oil, two Platinum-affiliated companies, along with a general inquiry into Platinum Management. (**Exhibit 7**). On November 13, 2014, Eric Johnson was provided a memo concerning the overvaluation of certain Platinum/Beechwood investments in third-party valuation reports submitted by Lincoln International, because they improperly took the sale price of certain investments between Beechwood and Platinum at face value even though they were related parties. *See* **Exhibit 8** at CNO001197.

On January 30, 2015, Danny Saks, a then-Beechwood executive previously employed at Platinum Management until the end of 2014, talked with Mr. Johnson to inform him that Beechwood had sold Beechwood's positions in Black Elk in connection with the 2015 Montsant Transactions. According to Mr. Saks, Mr. Johnson responded that he would not miss the position in Black Elk. *See* **Exhibit 9**. On April 30, 2015, Mark Feuer emailed Mark Nordlicht to tell him that: "we are in a very bad spot re cno regarding northstar. If you can't make payment let's get Murray and duvid on the phone and figure out what we are going to do. I know you are under pressure but we are as well and this is going to have a very bad effect on our cno relationship. As this proves to them that this is a related party transaction" *See* **Exhibit 10**. In this email, "northstar" refers to Northstar Offshore Group, LLC, in which Beechwood and the Platinum Funds co-invested. *See* Second Amended Complaint at ¶¶ 529-550.

Executives for the CNO Parties would regularly discuss the Platinum/Beechwood investments, including concerns that the Black Elk Scheme would result in fraudulent transfer litigations and describing the financial performance of the PEDEVCO investment as "appalling." *See* **Exhibit 11** and **12**, respectively. The near-wortheless PEDEVCO was ultimately exchanged by CNO for Agera.

In February 2016, in connection with preparation of an internal investment summary, the CNO Executives described their Beechwood investments as "entangled in the Platinum web." *See* **Exhibit 13**. The Investment Summary summarized the Beechwood investments as overvalued, underperforming with 85% of private side loans affiliated with Platinum Partners. *See* **Exhibit 14**.

In mid-April 2016, while the Agera Sale was being planned, Beechwood representatives met with the CNO Parties to discuss "asset moves" that would be done with Platinum-affiliated investments, in a scheme CNO instructed Beechwood to carry out to PPVA benefit. *See* **Exhibit 15**. In response to this email by Mark Feuer, Mr. Bischof states that the CNO Parties "continue to struggle with Platinum Partners and related transactions[,] as well as certain other securities and categorization." He then inquires whether Taylor had completed the as-promised "asset moves." *Id.*

In June-July 2016 during the time of the Agera Sale, Beechwood and CNO created a new review, approval and consent process and CNO enforced rights to review all transactions, including Beechwood's moving Golden Gate Oil positions out of the CNO Reinsurance Trusts. (**Exhibit 16**). On August 12, 2016, the CNO sent Beechwood's Scott Taylor a letter denying Beechwood's request to release approximately $28 million from the CNO Reinsurance Trusts. (**Exhibit 17**). The letter makes frequent mention of overvaluation of PPVA positions, and Nordlicht and Huberfeld's association with Beechwood. It is clear from this evidence that depositions of the CNO Executives and the CNO 30(b)(6) are warranted, and that the Motion to Quash should be denied.

Sincerely,

HOLLAND & KNIGHT LLP

/s/Warren E. Gluck, Esq.
Warren E. Gluck, Esq.

c: Counsel for the CNO Executives (via Email)