

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

-----X	
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  
PAYMENTS TO CERTAIN PROFESSIONALS**

**PLEASE TAKE NOTICE** that upon the accompanying declaration and memorandum of law in support of the motion 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 “**District 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 Payments to Certain Professionals (the “*Motion*”).

**PLEASE TAKE FURTHER NOTICE** that any opposition to the Motion must be (i) made in writing; (ii) if by a party, electronically filed with the District Court; or (iii) if by a non-party, electronically mailed to the Receiver, at her email address, [platinumreceiver@otterbourg.com](mailto:platinumreceiver@otterbourg.com), so as to be actually received no later than **February 14, 2020**.

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

Dated: February 7, 2020

**OTTERBOURG P.C.**

By: /s/ Erik B. Weinick  
Adam C. Silverstein  
Erik B. Weinick  
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New York, New York 10169  
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*Attorneys for Melanie L. Cyganowski, as  
Receiver*

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

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SECURITIES AND EXCHANGE	:	
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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 PAYMENTS TO CERTAIN PROFESSIONALS**

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 (collectively, the “*Receivership Entities*”). I submit this declaration in support of my *Motion to Approve Payments to Certain Professionals* (the “*Motion*”).

I.

**PRELIMINARY STATEMENT**

2. In late December 2017, this Court entered orders authorizing me to retain and pay (i) 17 “Limited Scope Professionals” up to a cap set for each professional and (ii) certain Additional Limited Scope Professionals up to \$25,000.00 in accordance with certain procedures approved by this Court (together, the “*Limited Scope Orders*”). See Docket Nos. 294 and 296. Through the accompanying Motion, and in accordance with the Limited Scope Orders, I respectfully request authority to pay certain of the “Limited Scope Professionals” and “Additional Limited Scope Professionals” (together, the “*Professionals*”) amounts in excess of the previously established caps given the additional work each has and may continue to perform for the benefit of the Receivership Estate. A chart setting forth the Professionals for whom I am requesting this relief, the cap amount, the amount incurred thus far in excess of the cap and the amounts requested to be paid through the Motion is attached hereto as **Exhibit A**.

3. The Professionals I seek to pay have assisted me in moving expeditiously to address circumstances that arose while I continued my efforts to wind down the diverse and geographically widespread Platinum portfolio. With the assistance of the Professionals, I was better able to safeguard the interests of the Receivership Entities, which faced and continue to face legal and business challenges around the world, so that the value of these assets may be preserved and maximized for investors and creditors. I anticipate that one of the Professionals’ services will be needed in the future to continue safeguarding the Receivership Estates’ interests and so, through the Motion I also request authority to increase the amount I may pay this Professional without further application to this Court.

4. For the reasons set forth herein, as well as in the contemporaneously filed

*Receiver's Memorandum of Law in Support of Motion to Approve Payments to Certain Professionals*, the Motion should be granted.

## II.

### **THE RETENTIONS HAVE AND WILL CONTINUE TO BENEFIT THE RECEIVERSHIP ESTATE**

5. The proposed payments to the Professionals and my request to increase the amounts I may pay one Professional who will continue providing services for the benefit of the Receivership Estate without further order of this Court is in the best interests of the Receivership Entities and their stakeholders. The requested relief will save the Receivership Entities the time and expense associated with applying separately to retain and pay each Professional and will avoid the incurrance of additional fees for the preparation and prosecution of fee applications in this case. Each of the Professionals for which I request authority to pay have performed (or in the case of one professional, is expected to perform) necessary services providing a substantial benefit to the Receivership Estate. Specifically:

#### **Hatchett & Hauck LLP**

6. I retained Hatchett & Hauck LLP to assist me with the numerous environmental issues arising out of PPCO's ownership of LC Energy. To that end, Hatchett & Hauck assisted me in ultimately agreeing to sell the mine owned by LC Energy (the "*Mine*") to ERC Mining Indiana Corp. ("*Purchaser*"), a wholly owned subsidiary of Quest Energy Inc.

7. By way of background, when it became apparent that no acceptable bids were forthcoming for LC Energy, I met and conferred with Houlihan Lokey, my financial advisors, local Indiana bankruptcy and Hatchett & Hauck, and certain other interested parties, to determine how best to dispose of LC Energy without the prospects of a ready, willing and able buyer for the Mine. Based on those discussions, I initially determined, in my business judgment, that the abandonment

of LC Energy was in the best interests of the Receivership Estate.

8. While I believed that upon abandonment Purchaser – LC Energy’s retained manager at the Mine – would be responsible to remediate the Mine, Purchaser disagreed. Rather, Purchaser asserted that LC Energy would remain liable for any such costs and expenses, expenses that Purchaser asserted could well exceed \$1.5 million. To avoid a lengthy and costly dispute over the ramifications of abandonment, the parties soon commenced negotiations about the future of the Mine, and responsibility for satisfying associated liabilities. Hatchett & Hauck’s counsel was vital in assisting me in those negotiations.

9. I ultimately agreed with Purchaser in an Asset Purchase Agreement dated August 16, 2019 (the “*APA*”) that LC Energy would sell the Mine to it while Purchaser would assume any and all current and future clean-up and other remediation costs at the Mine in consideration for a payment by LC Energy to Purchaser of \$380,000 and an assignment to Purchaser of \$250,000 in cash collateral securing a bond in favor of the State of Indiana.

10. The proposed transaction with Purchaser, in my business judgment, was in the best interests of the Receivership Estate and its stakeholders because it, *inter alia*, (i) fixed the amount of remediation and clean-up costs the Receivership Estate is liable for, (ii) was the highest or otherwise best offer for LC Energy and (iii) ended the last recurring asset maintenance expense of the Receivership Estate, an expense which cost between \$20,000 - \$30,000 per month.

11. Through the Motion, I seek authority to pay Hatchet & Hauck \$3,372.50 over the previously established \$25,000.00 fee cap and do not currently seek authority to make additional payments to it given that its work should be complete.

**Mirman, Bubman & Nahmias LLP**

12. Mirman, Bubman & Nahmias LLP (“*Mirman*”) was retained by me to perform

certain preliminary judgment collection services in California with regard to PPCO's wholly owned subsidiary Hamilton Capital's judgment against Khorrami, LLP and Shawn Khorrami (the "*Judgment Debtors*"). The services provided by Mirman included domesticating a NY judgment in California and filing judgment liens with the appropriate government agency; conducting an initial investigation into the amount and location of the assets of the Judgment Debtors; obtaining the issuance of an Order for Examination of Judgment Debtor (the "*ORAP*") and serving the ORAP and a Subpoena Duces Tecum for the production of documents on the Judgment Debtors and reviewing the documents produced and examining the Judgment Debtors.

13. The services provided by Mirman, and the information learned by me from its work, helped me ultimately determine that further pursuit of the judgment was not cost effective.

14. Through the Motion, I seek authority to pay Mirman \$4,246.75 over the previously established \$25,000.00 fee cap and do not currently seek authority to make additional payments to it given that its work should be complete.

### Lavan

15. Lavan provided services to me in connection with PPCO's secured loan to Cleveland Mining Company Limited ("*Cleveland Limited*"), an Australian company with its principal place of business in Perth, Australia. I retained Lavan in the fall of 2017 and has continued to assist me to date. In summary, due to Cleveland Limited's commencement of a voluntary administrative proceeding in Australia, and the 12 to 13-hour time difference, it has been necessary to rely on Australian counsel in connection with this asset, which is described below. Lavan has participated in a number of proceedings and events on my behalf, including a challenge to PPCO's security position, two failed attempts to sell the Cleveland Limited corporate shell, and its review and comment on two separate proposals, which were documented in proposed Deeds of

Company Arrangement. Lavan has consistently communicated with my New York based counsel for instructions and the time and expense involved are reasonable, given the amount of work that has been performed. More specifically and by way of background:

16. In March of 2014, certain of the Receivership Entities made a loan in the original principal amount of US \$6,800,000 to Cleveland Limited. In August of 2014, certain of the Receivership Entities made an additional loan in the original principal amount of US \$3,000,000 to Cleveland Mining, and its affiliate, Cleveland Iron Holdings Pty Ltd (“*Cleveland Holdings*,” and together with Cleveland Limited, “*Cleveland Mining*”). The loans purported to be secured by all of the assets of each of Cleveland Limited and Cleveland Holdings, including certain gold mining interests located in Brazil.

17. During the fall of 2017, Cleveland Mining demanded that I remove the Receivership Entities’ security interests. In connection with responding to the demand, I retained Lavan, a firm located in Perth, Australia, which specializes in workouts and insolvencies. After Lavan assisted me in responding to the demand, Lavan negotiated with Cleveland Mining to reach an amicable resolution of the secured obligations due the Receivership Entities. When the negotiations failed, Lavan, on my behalf, sought to assert certain rights and remedies.

18. On May 9, 2018, Cleveland filed for voluntary administration in Perth and appointed Administrators to administer its assets in accordance with Australian insolvency law. The Administrators sought to sell the public shell and Lavan participated in extensive discussions with potential bidders and the Administrators in order to increase the amount of the bids and the potential recovery for PPCO. A sale of the shell has yet to close.

19. Lavan has worked closely with my counsel in diligently pursuing my position in Australia and has rendered extensive services since the fall of 2017. It was my plan to pay Lavan

from proceeds recovered from the sale of the corporate shell, however, that sale never closed. Accordingly, Lavan has requested payment of its fees and expenses and I concluded that payment is appropriate given the extensive services provided by Lavan. Lavan informs me that there remains a good possibility for a recovery and accordingly, I seek authority to pay Lavan an additional \$15,000 to aid in my efforts to successfully dispose of this asset.

20. Through the Motion, I seek authority to pay Lavan \$106,149.00 over the previously established \$36,582.00 fee cap and seek authority to make additional payments to it in an amount not to exceed \$15,000.00.

**Kessler Collins**

21. Kessler provided local expertise to PPCO in connection with its loans to Arabella Exploration, Inc., which became the subject of a bankruptcy proceeding in Texas. Specifically, Kessler served as local counsel for me in connection with the Arabella bankruptcy proceedings in Texas. In that capacity, among other things, Kessler monitored the case dockets, filed pleadings on my behalf, appeared at hearings and conferences for which travel by my primary counsel from New York to Texas would not have been justified, and advised my primary counsel on questions of local practice and procedure.

22. Through the Motion, I seek authority to pay Kessler \$21,901.18 over the previously established \$60,000.00 fee cap and do not currently seek authority to make additional payments to it given that its work should be complete.

**III.**

**CONCLUSION**

23. 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 B**, allowing me to

pay the Professionals as set forth in Exhibit A attached to this declaration 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 7th day of February 2020, at New York, New York.

/s/ Melanie L. Cyganowski  
Melanie L. Cyganowski

# **Exhibit A**

<b>Professional</b>	<b>Previously Established Fee Cap</b>	<b>Fees Incurred in Excess of Cap</b>	<b>Requested Increase to Previously Established Fee Cap</b>
Hatchet & Hauck	\$25,000.00	\$3,372.50	\$0
Kessler Collins, P.C.	\$60,000.00	\$21,901.18	\$0
Lavan	\$36,582.00	\$106,149.00	\$15,000.00
Mirman Bubman and Nahmias	\$25,000.00	\$4,246.75	\$0

## **Exhibit B**

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

-----X	
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)

**[PROPOSED]  
ORDER APPROVING PAYMENTS  
TO CERTAIN PROFESSIONALS**

Upon the motion (Docket No. \_\_) 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 payments to certain professionals (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 the Motion, the relief requested in the Motion is warranted.

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

**ORDERED**, that the Motion is approved in all respects; and

**ORDERED**, that the Receiver is hereby authorized, but not directed, to pay Hatchet & Hauck \$3,372.50;

**ORDERED**, that the Receiver is hereby authorized, but not directed, to pay Kessler Collins, P.C. \$21,901.18;

**ORDERED**, that the Receiver is hereby authorized, but not directed, to pay Lavan \$106,149.00 and the Receiver is hereby authorized, but not directed, to pay Lavan up to an additional \$15,000.00 without the need for this Court's further authorization and/ or approval;

**ORDERED**, that the Receiver is hereby authorized, but not directed, to pay Mirman Bubman and Nahmias \$4,246.75;

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

Dated: \_\_\_\_\_, 2020  
Brooklyn, New York

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

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EASTERN DISTRICT OF NEW YORK**

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

**RECEIVER’S MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO APPROVE PAYMENTS TO CERTAIN PROFESSIONALS**

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 Payments to Certain Professionals* (the “*Motion*”). In support of the Motion, the Receiver states as follows:

I.

**PRELIMINARY STATEMENT**

In late December 2017, this Court entered orders authorizing the Receiver to retain and pay (i) 17 “Limited Scope Professionals” up to a cap established for each professional and (ii) certain so-called “Additional Limited Scope Professionals” up to \$25,000.00 in accordance with certain procedures approved by this Court (together, the “*Limited Scope Orders*”). See Docket Nos. 294 and 296. Through the accompanying Motion, and in accordance with the Limited Scope Orders, the Receiver respectfully requests authority to pay certain of the “Limited Scope Professionals” and “Additional Limited Scope Professionals” (together, the “*Professionals*”) amounts in excess of the previously established caps given the additional work each has and in the case of one firm, may continue to perform for the benefit of the Receiver and the Receivership Estate. A chart setting forth the Professional subject to the Motion, the cap amount, the amount incurred thus far in excess of the cap and the amounts requested to be paid through the Motion is attached as **Exhibit A** to the *Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion to Approve Payments to Certain Professionals* (the “*Cyganowski Dec.*”).

The Professionals the Receiver seeks to pay have assisted her in moving expeditiously to address circumstances that arose while she continued her efforts to wind down the diverse and geographically widespread Platinum portfolio. With the assistance of the Professionals, the Receiver was better able to safeguard the interests of the Receivership Entities, which faced and continue to face legal and business challenges around the world, so that the value of these assets may be preserved and maximized for the various stakeholders in this matter. The Receiver anticipates that one of the Professionals’ services will be needed in the future to continue safeguarding the Receivership Estates’ interests and so, through the Motion she also requests

authority to increase the cap on its fees.

For the reasons set forth herein, as well as in the Cyganowski Dec., the Motion should be granted.

## II.

### **PROCEDURAL HISTORY**

#### **A. Case Filing and Appointment of Receivers**

On December 19, 2016, in the above-captioned matter (the “*Receivership Case*”), this Court entered the Order Appointing Receiver, which was amended on January 30, 2017. *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*, Dkt. No. 276 (the “*Receivership Order*”). Among other powers, the Receivership Order granted 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, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval.

Receivership Order, Section I(6)(F).

#### **B. The Professionals**

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,

among other things, retain and pay Kessler Collins, P.C. (“*Kessler*”) up to \$12,677.50 in fees and \$1,592.46 in expenses in connection with services rendered during the First Application Period, and authorized, but not required to pay Kessler up to \$30,000 for any additional reasonable fees and expenses incurred after May 31, 2017, without further order of this Court.

On December 29, 2017, this Court entered an *Order Authorizing Approving Proposed Procedures for the Retention and Payment of Additional Limited Scope Professionals* (the “*Additional Limited Scope Legal Professionals Order*”). Pursuant to the Additional Limited Scope Legal Professionals Order, the Receiver was specifically authorized to, among other things, retain and pay:

- (i) the Lavan law firm located in Perth, Australia, in connection with PPCO’s interests in Cleveland Mining Company Limited, an Australian publicly traded company.
- (ii) Hatchett & Hauck LLP in connection with the environmental issues arising out of PPCO’s ownership of LC Energy.
- (iii) Mirman, Bubman & Nahmias LLP in connection with the Receiver’s enforcement of a judgment against a California resident.

The Receiver has determined that the assistance of the Professionals was, and in one instance remains, necessary to provide limited services to the Receivership Entities to preserve and maximize the value of various Receivership assets.

### **III.**

#### **ARGUMENT**

The Receiver submits that the proposed payments to the Professionals and the request to pay one Professionals up to the modified cap set forth in Exhibit A to the Cyganowski Dec. is in

the best interests of the Receivership Entities and their stakeholders. The relief requested will save the Receivership Entities the time and expense associated with applying separately to retain and pay each Professional and will avoid the incurrence of additional fees for the preparation and prosecution of fee applications in this case. Each of the Professionals for which the Receiver requests authority to pay have performed (or are expected to perform) necessary services providing a substantial benefit to the Receivership Estate. Specifically, and as supported by the Cyganowski Dec., paragraphs 6-22.

### **Hatchett & Hauck LLP**

Hatchett & Hauck LLP was retained by the Receiver to assist her with the numerous environmental issues arising out of PPCO's ownership of LC Energy. To that end, Hatchett & Hauck provided assistance to the Receiver in helping her ultimately agree to sell the mine owned by LC Energy (the "*Mine*") to ERC Mining Indiana Corp. ("*Purchaser*"), a wholly owned subsidiary of Quest Energy Inc.

By way of background, when it became apparent that no acceptable bids were forthcoming for LC Energy, the Receiver met and conferred with Houlihan Lokey, her financial advisors, local Indiana bankruptcy and Hatchett & Hauck, and certain other interested parties, to determine how best to dispose of LC Energy without the prospects of a ready, willing and able buyer for the Mine. Based on those discussions, the Receiver initially determined, in her business judgment, that the abandonment of LC Energy was in the best interests of the Receivership Estate.

While the Receiver believed that upon abandonment Purchaser – LC Energy's retained manager at the Mine – would be responsible to remediate the Mine, Purchaser disagreed. Rather, Purchaser asserted that LC Energy would remain liable for any such costs and expenses, expenses that Purchaser asserted could well exceed \$1.5 million. To avoid a lengthy and costly dispute over

the ramifications of abandonment, the parties soon commenced negotiations about the future of the Mine, and responsibility for satisfying associated liabilities. Hatchett & Hauck's counsel was vital in assisting the Receiver in those negotiations.

The Receiver ultimately agreed with Purchaser in an Asset Purchase Agreement dated August 16, 2019 (the "**APA**") that LC Energy would sell the Mine to it while Purchaser would assume any and all current and future clean-up and other remediation costs at the Mine in consideration for a payment by LC Energy to Purchaser of \$380,000 and an assignment to Purchaser of \$250,000 in cash collateral securing a bond in favor of the State of Indiana.

The proposed transaction with Purchaser, in the Receiver's business judgment, was in the best interests of the Receivership Estate and its stakeholders because it, *inter alia*, (i) fixed the amount of remediation and clean-up costs the Receivership Estate is liable for, (ii) was the highest or otherwise best offer for LC Energy and (iii) ended the last recurring asset maintenance expense of the Receivership Estate, an expense which cost between \$20,000 - \$30,000 per month.

Through the Motion, the Receiver seeks authority to pay Hatchett & Hauck \$3,372.50 over the previously established \$25,000.00 fee cap and does not currently seek authority to make additional payments to it given that its work should be complete.

**Mirman, Bubman & Nahmias LLP**

Mirman, Bubman & Nahmias LLP ("**Mirman**") was retained to perform certain preliminary judgment collection services in California with regard to PPCO's wholly owned subsidiary Hamilton Capital's judgment against Khorrami, LLP and Shawn Khorrami (the "**Judgment Debtors**"). The services provided by Mirman included domesticating a NY judgment in California and filing judgment liens with the appropriate government agency; conducting an initial investigation into the amount and location of the assets of the Judgment Debtors; obtaining the

issuance of an Order for Examination of Judgment Debtor (the “*ORAP*”) and serving the *ORAP* and a Subpoena Duces Tecum for the production of documents on the Judgment Debtors and reviewing the documents produced and examining the Judgment Debtors.

The services provided by Mirman, and the information learned by the Receiver from its work, helped the Receiver ultimately determine that further pursuit of the judgment was not cost effective.

Through the Motion, the Receiver seeks authority to pay Mirman \$4,246.75 over the previously established \$25,000.00 fee cap and does not currently seek authority to make additional payments to it given that its work should be complete.

### **Lavan**

Lavan provided services to the Receiver in connection with PPCO’s secured loan to Cleveland Mining Company Limited (“*Cleveland Limited*”), an Australian company with its principal place of business in Perth, Australia. Lavan was retained by the Receiver in the fall of 2017 and has continued to assist the Receiver to date. In summary due to Cleveland Limited’s commencement of a voluntary administrative proceeding in Australia, and the 12 to 13-hour time difference, it has been necessary to rely on Australian counsel in connection with this asset, which is described below. Lavan has participated in a number of proceedings and events on behalf of the Receiver, including a challenge to PPCO’s security position, two failed attempts to sell the Cleveland Limited corporate shell, and its review and comment on two separate proposals, which were documented in proposed Deeds of Company Arrangement. Lavan has consistently communicated with the Receiver’s New York based counsel for instructions and the time and expense involved are reasonable, given the amount of work that has been performed. More specifically and by way of background:

In March of 2014, certain of the Receivership Entities made a loan in the original principal amount of US \$6,800,000 to Cleveland Limited. In August of 2014, certain of the Receivership Entities made an additional loan in the original principal amount of US \$3,000,000 to Cleveland Mining, and its affiliate, Cleveland Iron Holdings Pty Ltd (“*Cleveland Holdings*,” and together with Cleveland Limited, “*Cleveland Mining*”). The loans purported to be secured by all of the assets of each of Cleveland Limited and Cleveland Holdings, including certain gold mining interests located in Brazil.

During the fall of 2017, Cleveland Mining demanded that the Receiver remove the Receivership Entities’ security interests. In connection with responding to the demand, the Receiver retained Lavan, a firm located in Perth, Australia, which specializes in workouts and insolvencies. After Lavan assisted the Receiver in responding to the demand, Lavan negotiated with Cleveland Mining to reach an amicable resolution of the secured obligations due the Receivership Entities. When the negotiations failed, the Receiver, through Lavan, sought to assert her rights and remedies.

On May 9, 2018, Cleveland filed for voluntary administration in Perth and appointed Administrators to administer its assets in accordance with Australian insolvency law. The Administrators sought to sell the public shell and Lavan participated in extensive discussions with potential bidders and the Administrators in order to increase the amount of the bids and the potential recovery for PPCO. A sale of the shell has yet to close.

Lavan has worked closely with counsel for the Receiver in diligently pursuing the Receiver’s position in Australia and has rendered extensive services since the fall of 2017. It was the Receiver’s plan to pay Lavan from proceeds recovered from the sale of the corporate shell, however, that sale never closed. Accordingly, Lavan has requested payment of its fees and

expenses and the Receiver concluded that payment is appropriate given the extensive services provided by Lavan. Lavan informs the Receiver that there remains a good possibility for a recovery and accordingly, the Receiver seeks authority to pay Lavan an additional \$15,000 to aid in the Receiver's efforts to successfully dispose of this asset.

Through the Motion, the Receiver seeks authority to pay Lavan \$106,149.00 over the previously established \$36,582.00 fee cap and seeks authority to make additional payments to it in an amount not to exceed \$15,000.00.

#### **Kessler Collins**

Kessler provided local expertise to PPCO in connection with its loans to Arabella Exploration, Inc., which became the subject of a bankruptcy proceeding in Texas. Specifically, Kessler served as local counsel for the Receiver in connection with the Arabella bankruptcy proceedings in Texas. In that capacity, among other things, Kessler monitored the case dockets, filed pleadings on my behalf, appeared at hearings and conferences for which travel by my primary counsel from New York to Texas would not have been justified, and advised my primary counsel on questions of local practice and procedure.

Through the Motion, the Receiver seeks authority to pay Kessler \$21,901.18 over the previously established \$60,000.00 fee cap and does not currently seek authority to make additional payments to it given that its work should be complete.

#### **IV.**

#### **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 B to the Cyganowski Dec., (i) allowing the payment to Professionals as set forth in Exhibit A to the

Cyganowski Dec. and (ii) granting such further relief as the Court deems appropriate.

Dated: New York, New York  
February 7, 2020

**OTTERBOURG P.C.**

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Receiver*