

**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)

**MEMORANDUM OF LAW IN SUPPORT OF THE RECEIVER’S MOTION FOR
ENTRY OF AN ORDER (A) APPROVING SETTLEMENT AGREEMENTS WITH
(1) CNO FINANCIAL GROUP, INC. AND RELATED PARTIES, AND (2) SENIOR
HEALTH INSURANCE COMPANY OF PENNSYLVANIA AND FUZION
ANALYTICS, INC., AND (B) APPROVING USE OF FUNDS**

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

Of Counsel:

Adam C. Silverstein
Erik B. Weinick
Andrew S. Halpern

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	2
FACTS	5
A. The Relevant Parties	5
B. The December 2015 Transaction	7
C. The March 2016 Transaction	7
D. Ownership of the PPCO Notes as of September 30, 2019.....	8
E. The Receivership and the Proofs of Claim	9
F. The Receiver’s Investigation of the December 2015 and March 2016 Transactions	10
G. The SDNY Action.....	11
H. The Settlement Agreements	14
1. The CNO Settlement Agreement	14
2. The SHIP Settlement Agreement.....	15
I. The Receiver’s Plan for Resolving Secured Debt Held by Other Noteholders	17
J. The Receiver’s Authority to Enter into the Settlement Agreements	18
ARGUMENT	21
THE COURT SHOULD APPROVE THE SETTLEMENT AGREEMENTS.	21
CONCLUSION.....	25

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>Cases</u>	
<i>Gordon v. Dadante</i> , 336 Fed. Appx. 540 (6th Cir. 2009).....	21
<i>In re Platinum-Beechwood Litig.</i> , 427 F. Supp. 3d 395 (S.D.N.Y. 2019).....	19
<i>Lyondell Chem. Co. v. Occidental Chem. Corp.</i> , 608 F.3d 284 (5th Cir. 2010).....	22
<i>S.E.C. v. Credit Bancorp, Ltd.</i> , 2002 WL 1792053 (S.D.N.Y. August 2, 2002).....	21
<i>S.E.C. v. Parish</i> , 2010 WL 8347143 (D.S.C. Feb. 10, 2010)	21
<i>S.E.C. v. Princeton Economic International, Inc.</i> , 2002 WL 206990 (S.D.N.Y. Feb. 8, 2002)	21
<i>Sterling v. Stewart</i> , 158 F.3d 1199 (11th Cir. 1998).....	21-22
 <u>Statutes and Rules</u>	
Fed. R. Civ. P. 41(d)	15, 17
N.Y. Debtor & Creditor Law §§ 273-78.....	12
N.Y. Debtor & Creditor Law § 278 (McKinney’s)	23
 <u>Treatises</u>	
3 Clark, Ralph Ewing, <i>A Treatise on the Law and Practice of Receivers</i> , § 770 (3d ed. 1992)	21

Melanie L. Cyganowski, the court-appointed equity receiver of the Receivership Entities and representative of the Receivership Entities' Subsidiaries (the "**Receiver**"),¹ respectfully submits this memorandum of law in support of her motion (the "**Motion**") for an order:

- approving a settlement agreement dated as of July 1, 2020 (the "**CNO Settlement Agreement**"), a copy of which is attached as **Exhibit A** to the Declaration of Melanie L. Cyganowski, as Receiver (the "**Receiver Decl.**") between (1) the Receiver and the PPCO Receivership Entities (together with the Receiver, the "**Platinum Plaintiffs**"), on one hand, and (2) CNO Financial Group, Inc. ("**CNO**"), Bankers Consec Life Insurance Company ("**BCLIC**"), Washington National Insurance Company ("**WNIC**"), 40|86 Advisors, Inc. ("**40|86 Advisors**," together with CNO, BCLIC and WNIC, collectively, the "**CNO Defendants**"), and BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary and BRe BCLIC Sub, as represented by Wilmington Trust, in its capacity as their former custodian (collectively, the "**Accounts**," and with the CNO Defendants, the "**CNO Parties**"), on the other hand;
- approving a settlement agreement dated as of July 1, 2020 (the "**SHIP Settlement Agreement**," together with the CNO Settlement Agreement, collectively, the "**Settlement Agreements**"), a copy of which is attached to the Receiver Decl. as **Exhibit B** between (1) the Receiver, on behalf of the Receivership Entities and Subsidiaries, on one hand, and (2) Senior Health Insurance Company of Pennsylvania ("**SHIP**") and

¹ The "**Receivership Entities**" are: Platinum Credit Management, L.P. ("**PPCO Portfolio Manager**"), Platinum Partners Credit Opportunities Master Fund LP ("**PPCO**"), Platinum Partners Credit Opportunities Fund (TE) LLC ("**TE Feeder**"), Platinum Partners Credit Opportunities Fund LLC ("**US Feeder**"), Platinum Partners Credit Opportunities Fund (BL) LLC ("**Blocker**"), Platinum Partners Credit Opportunities Fund International Ltd. ("**Int'l Feeder**") and Platinum Partners Credit Opportunities Fund International (A) Ltd. ("**Int'l (A) Feeder**"), Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P. (collectively, the "**Receivership Entities**," and, with the estate created by the receivership, the "**Receivership Estate**"). The "**PPCO Receivership Entities**" are: PPCO, TE Feeder, US Feeder, Blocker, Int'l Feeder and Int'l A Feeder. The "**Subsidiaries**" are identified and defined as the "PPMF Subsidiaries" in section 2 of the SHIP Settlement Agreement (defined below).

Fuzion Analytics, Inc. (“*Fuzion*,” with SHIP, collectively the “*SHIP Parties*”), on the other hand;

- authorizing the Receiver to pay \$14 million payable to SHIP in accordance with the terms of the SHIP Settlement Agreement (the “*Settlement Amount*”);
- authorizing the Receiver to use up to approximately \$1.8 million (approximately 11.8% of the Settlement Amount) of funds from PPCO’s subsidiaries ALS Capital Ventures, LLC (“*ALS*”) and/or ALS Life Holdings LLC (“*ALS Life*”), including funds in ALS’ operating account (the “*ALS Operating Account*”) to fund a portion of the Settlement Amount, and to use funds of PPCO to fund the remainder of the Settlement Amount; and
- granting such other and further relief as the Court deems just.²

PRELIMINARY STATEMENT

One of the primary obstacles to the successful completion of the receivership and formulation of a plan of liquidation is more than \$79 million (principal amount) of secured debt (the “*Secured Debt*”) allegedly owed by PPCO to a group of secured lenders for which BAM Administrative Services, LLC (“*BAM Admin*”) is the agent for the noteholders (the “*Noteholders*”). The Secured Debt is the subject of an action (the “*SDNY Action*”) pending in the United States District Court for the Southern District of New York (Rakoff, U.S.D.J.) (the “*SDNY Court*”),³ in which the Receiver is pursuing fraudulent conveyance claims seeking avoidance of the Secured Debt and related liens and transfers, and other claims. The remaining defendants in

² The Receiver has conferred with the staff of the Securities and Exchange Commission (the “*SEC*”) before entering into the Settlement Agreements and the SEC indicated to the Receiver that it has no objection to the Receiver’s entry into those agreements or the relief requested in the Motion.

³ The SDNY Action is entitled *Cyganowski v. Beechwood Re Ltd.*, No. 18-cv-06658, and has been administratively consolidated with two other actions under the caption entitled *In re Platinum-Beechwood Litig.*, No. 18-cv-12018. References to “SDNY ECF No. _____” refer to docket entries in *In re Platinum-Beechwood Litig.*, No. 18-cv-12018.

the SDNY Action include BAM Admin, for itself and as agent for the Noteholders, SHIP, BCLIC, WNIC, Beechwood Bermuda International Ltd. (“**BBIL**”), its parent Beechwood Bermuda Ltd. (“**BBL**”), their affiliate, Beechwood Re Limited (“**BRe**”), and the Accounts.

By the Motion, the Receiver seeks approval of two settlements in which the estates of the PPCO Receivership Entities and more than sixty subsidiaries of PPCO (including the Subsidiaries) would receive, among other consideration, satisfaction of more than \$44 million of the Secured Debt (principal amount) owned by SHIP, BCLIC, WNIC and BBIL and a total of 38 proofs of claim filed by BCLIC, WNIC, SHIP and Fuzion in the Receivership in exchange for, among other consideration, a total payment of \$14 million (\$4.5 million of which will be paid into escrow and used, if needed, to indemnify PPCO for claims based on alleged Secured Debt of three other Noteholders, which Noteholders failed to file their own proofs of claim), and dismissal of her claims against the settling defendants and certain other parties.

SHIP, BCLIC, WNIC and BBIL purportedly own Secured Debt as “Lender of Record” in the following amounts:

Lender of Record	Principal Amount of Secured Debt Held as Lender of Record
SHIP	\$27,355,042.17
BCLIC	\$6,079,417.95
WNIC	\$1,642,428.50
BBIL	\$9,532,669.40
TOTAL	\$44,609,558.02

The remaining \$35.2 million (principal amount) of the Secured Debt is purportedly held by four Noteholders, one of which, Principal Growth Strategies (“**PGS**”), which is owned 45% by PPCO and 55% by Platinum Partners Value Arbitrage Fund, LP (“**PPVA**”), holds \$30,650,512.27 of the Secured Debt (principal amount). The Receiver expects to obtain the release of the Secured Debt held by PGS in a separate agreement with PPVA that is in the process of being negotiated. As for the remaining \$4.5 million (principal amount) of the Secured Debt, as part of the SHIP

Settlement Agreement the Receivership Estate is being indemnified by the SHIP Parties for that amount, with the funds for the indemnity obligation to be paid into escrow as part of the Settlement Amount.

The Receivership Entities would also exchange general releases with the CNO Parties and the SHIP Parties, BBIL, BRe, BBL and the other Beechwood Parties (as defined below) other than BAM Admin in its capacity as “Agent” for the Noteholders (subject to certain exceptions described below). SHIP, BCLIC, WNIC, BBIL and BAM Admin would execute documents that would permit the release of more than \$6.3 million currently being held in an escrow account containing the proceeds of the sale of certain life insurance policies by ALS and/or ALS Life (the “*ALS Escrow Account*”), enabling the Receiver to use and/or distribute those funds as appropriate.

Because the Settlement Agreements will allow for the release of more than \$44 million (principal value) of Secured Debt and 38 proofs of claim and release the funds in the ALS Escrow Account for a total payment of \$14 million (\$4.5 million of which can be used to indemnify PPCO against other Noteholder claims), the Receiver has determined in her business judgment that the settlements are equitable, reasonable and in the best interests of the Receivership Estate.

The Court should also authorize the Receiver to fund up to approximately \$1.8 million (approximately 11.8%) of the Settlement Amount from funds of ALS and/or its wholly-owned subsidiary, ALS Life. Use of ALS’ funds for the Settlement Amount is within the Receiver’s authority under the *Second Amended Order Appointing Receiver* entered on October 16, 2017 [ECF No. 276] (the “*Receivership Order*”). The Settlement Agreements will benefit ALS and ALS Life by releasing the liens (except for the PGS lien and the amounts subject to a funded indemnity escrow) on \$12 million of cash remaining in the ALS Escrow Account and the ALS Operating Account (after the disbursement of approximately \$1.8 million from those accounts) from SHIP’s and BBIL’s purported liens against the ALS Funds, and from SHIP, BBIL, BCLIC

and WNIC's purported claims against ALS on its guarantees of \$44 million of the Secured Debt. ALS' contribution of 11.8% of the Settlement Amount is equitable because, as of December 19, 2016, the date the Receivership Entities were placed in receivership (the "***Receivership Date***"), ALS' assets totaled approximately 11.8% of the total encumbered assets of PPCO and ALS. The percentage of the Settlement Amount that ALS will be contributing is thus proportionate to the benefit (relative to the Receivership's) that ALS will be receiving through the settlements. Thus, this portion of the Motion should also be granted.

FACTS

A. The Relevant Parties

Melanie L. Cyganowski is the Receiver for two groups of hedge funds referred to as the "***PPCO Funds***" and the "***PPLO Funds***." The PPCO Funds include the following Receivership Entities: PPCO (the master fund, which made investments); four feeder funds that accepted investments from investors – US Feeder, TE Feeder, Int'l Feeder, and Int'l (A) Feeder – and Blocker (established for tax purposes). Another Receivership Entity, the PPCO Funds' portfolio manager, PPCO Portfolio Manager, managed their investments.

The PPLO Funds include two Receivership Entities: Platinum Partners Liquid Opportunity Master Fund L.P. and Platinum Partners Liquid Opportunity Fund (USA) L.P. Platinum Liquid Opportunity Management (NY) LLC, also a Receivership Entity, is their portfolio manager.

PPCO has more than 60 direct and indirect subsidiaries. The Subsidiaries include, among others, ALS and ALS Life and their parent, Credit Strategies LLC ("***Credit Strategies***"). ALS and ALS Life were formerly in the business of purchasing, paying premiums on, and collecting benefits on life insurance policies issued to insureds.

PPCO is the sole and managing member of Credit Strategies, which owns approximately 65% of the membership interests in ALS. ALS is the sole member of ALS Life.

Pursuant to a February 17, 2017 Escrow Agreement (the “*ALS Escrow Agreement*”) among ALS and ALS Life (acting through Bart M. Schwartz), Vida Longevity Fund, LP (“Purchaser”) and Mills, Potoczak & Co. (the “*ALS Escrow Agent*”) proceeds from the sale of certain life insurance policies sold by ALS and ALS Life to Purchaser are being held in escrow by the ALS Escrow Agent. A February 17, 2017 letter (the “*Escrow Direction Letter*”) from Credit Strategies, ALS and ALS Life to BAM Admin sets forth the terms under which the funds being held pursuant to the Escrow Agreement in the amount of \$6,365,409.11 (the “*Remaining Escrow Proceeds*”) will be released. Pursuant to the Escrow Direction Letter, ALS, ALS Life and Credit Strategies agreed that the Remaining Escrow Proceeds will remain with the ALS Escrow Agent until ALS, ALS Life, Credit Strategies, SHIP, BCLIC, WNIC and BBIL all agree in writing to the disbursement of the Remaining Escrow Proceeds pursuant to § 5 of the ALS Escrow Agreement.

PPCO owns at least 45% of the membership interests in PGS, the other member of which is PPVA, which is in liquidation in the Cayman Islands and under the control of court-appointed joint official liquidators (the “*JOLs*”).

SHIP is an insurance company based in Indiana that was formerly in the business of writing long-term care insurance policies and is currently in receivership. Fuzion is an affiliate of SHIP.

BCLIC and WNIC are insurance companies based in Indiana that wrote long-term care insurance; CNO is their parent; 40|86 Advisors is their affiliate.

The final group of parties relevant to this matter – referred to herein as the “*Beechwood Parties*” – include a web of domestic and offshore entities that were owned by a series of trusts, the beneficiaries of which include Moshe Feuer (“*Feuer*”), Scott Taylor (“*Taylor*”) and various Platinum principals and/or their family members and associates, and were purportedly involved in the business reinsurance and investment advisory businesses, and their principals, Feuer and Taylor. The “*Beechwood Parties*” are: BBIL, BRe, BBL, Beechwood Capital Group, LLC

(“*BCG*”), Beechwood Re Investments, LLC (“*BRILLC*”), B Asset Manager LP (“*BAM I*”), BAM Admin, B Asset Manager II (“*BAM II*”), Beechwood Re Holdings Inc. (“*BReHo*”), Feuer and Taylor. The Beechwood Parties are responsible for bringing PPCO and PPVA together with the SHIP Parties and the CNO Parties, and were or are defendants in multiple litigations and/or arbitrations in which SHIP, BCLIC, WNIC and PPVA assert claims against various Beechwood Parties. See, e.g., *Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd., et al.*, No. 18-cv-06658 (S.D.N.Y.); *Trott v. Platinum Management (NY) LLC, et al.*, 18-cv-10936 (S.D.N.Y.).

B. The December 2015 Transaction

On or about December 23, 2015, PPCO issued a \$15.5 million “Delayed Draw Demand Note” pursuant to which SHIP made secured loans to PPCO (the “*SHIP Note*”). SHIP disbursed \$14.2 million under the SHIP Note to purchase at face value \$9.2 million of notes issued by Desert Hawk Gold Corp., a severely distressed company, and to discharge at face value \$5.0 million of notes in LC Energy Operations LLC, another severely distressed company. The SHIP Note was secured by a December 23, 2015 Master Security Agreement (the “*MSA*”), which granted BAM Admin, as agent for SHIP, security interests in substantially all of the assets of PPCO and of 35 of the Subsidiaries, including ALS. On December 15, 2015, BAM Admin, as “Agent,” filed a UCC-1 Financing Statement with the Delaware Secretary of State as to PPCO. On or about January 20, 2016, PPCO issued an \$18.5 million “Amended and Restated Delayed Draw Demand Note” (the “*A&R SHIP Note*”), which replaced the SHIP Note, pursuant to which SHIP disbursed an additional \$2 million to PPCO. The MSA remained in place.

C. The March 2016 Transaction

On March 21, 2016, PPCO and BAM Admin entered into a Note Purchase Agreement (the “*NPA*”) pursuant to which PPCO issued notes to the following secured lenders (the “*Original*

Noteholders”) in the following amounts (the “*PPCO Notes*”):

PPCO Note	Purchaser/Noteholder	Principal Amount of Note
1	SHIP	\$42,963,949.04 (\$123,190.55 consisting of accrued interest)
2	BRe BCLIC Primary	\$10,000,000
3	BRe BCLIC Sub	\$500,000
4	BRe WNIC 2013 LTC Primary	\$14,989,677.78
5	BRe WNIC 2013 LTC Sub	\$700,000
Total		\$69,153,626.82

The A&R SHIP Note was rolled into PPCO Note 1.

The additional funds disbursed under the PPCO Notes were used to purchase notes issued by Northstar Offshore GOM Holdings LLC – a distressed company on the verge of bankruptcy – from BRe WNIC 2013 LTC Primary and SHIP, at face value for \$52.8 million.

PPCO and BAM Admin, as agent, simultaneously entered into an Amended and Restated Master Security Agreement dated March 21, 2016 (the “*A&R MSA*”), in which PPCO granted BAM Admin, as agent, a security interest in substantially all of PPCO’s assets. In a March 21, 2016 “Subsidiary Guaranty” (the “*A&R Subsidiary Guaranty*”), thirty-six “Guarantors,” all of which were Subsidiaries, including ALS, guaranteed the amounts due under the PPCO Notes.

D. Ownership of the PPCO Notes as of September 30, 2019

At various times after March 21, 2016, the Original Noteholders and/or their assignees or participants, entered into assignment agreements, participation agreements and/or elevation agreements (which elevated participations into assignments) with respect to specified portions of the PPCO Notes, and, in some cases, the assignees or participants entered into further assignments.

A pdf copy of a spreadsheet entitled “PPMF Debt Registry” dated as of September 30, 2019 (the “*Debt Registry*”), which the Receiver’s attorneys received from SHIP’s attorneys, is

attached as **Exhibit C** to the Receiver Decl. The Debt Registry SHIP provided was provided to them by BAM Admin, which purportedly maintained the Debt Registry pursuant to Section 10.5(b) of the NPA. According to the Debt Registry, as of September 30, 2019, the following entities owned, as “Lender of Record,” Secured Debt issued by PPCO with the following amounts of outstanding principal and accrued interest⁴:

Lender of Record	Principal Amount of Secured Debt Held as Lender of Record	Accrued Interest	Definition
SHIP	\$27,355,042.17	\$6,772,942.93	“SHIP Secured Debt”
BCLIC	\$6,079,417.95	\$1,530,715.27	“BCLIC Secured Debt”
WNIC	\$1,642,428.50	\$413,541.34	“WNIC Secured Debt”
BBIL	\$9,532,669.40	\$2,486,508.13	“BBIL Secured Debt”
PBLA ULICO 2017	\$339,261.21	\$79,668.15	“PBLA ULICO 2017 Secured Debt”
BBIL ULICO 2014	\$1,530,543.58	\$397,883.98	“BBIL ULICO 2014 Secured Debt”
OMNIA Ltd.	\$2,660,350.89	\$777,163.67	“OMNIA Secured Debt”
PGS	\$30,650,512.27	\$5,951,657.98	“PGS Secured Debt”
TOTAL	\$79,790,255.97	\$18,410,101.46	

According to the Debt Registry, SHIP, BCLIC, WNIC and BBIL collectively owned, as “Lender of Record,” Secured Debt with outstanding principal of \$44,609,588.03, and the other Noteholders owned, as “Lender of Record,” the remaining \$35,180,667.94 of Secured Debt.

E. The Receivership and the Proofs of Claim

On the Receivership Date, this Court placed certain of the Receivership Entities in receivership (the “*Receivership*”) and appointed Bart M. Schwartz as receiver for the original Receivership Entities. On July 6, 2017, Melanie L. Cyganowski replaced Mr. Schwartz as receiver. ECF No. 276.⁵ The Court later added three of the Receivership Entities to the

⁴ The principal grew from approximately \$69.2 million to approximately \$79.8 million as a result of recapitalization of interest.

⁵ References to “ECF No. _____” refer to docket entries in this case.

Receivership. ECF No. 297.

The deadline for filing proofs of claim in the Receivership was March 29, 2019. On March 26, 2019, BCLIC filed nine proofs of claim against certain of the Receivership Entities asserting unsecured claims in amounts ranging from \$13 to \$45 million, which were assigned claim nos. 59-67 (the “*BCLIC Proofs of Claim*”). On March 26, 2019, WNIC filed nine proofs of claim against the same Receivership Entities asserting unsecured claims in amounts ranging from \$180 to \$275 million, which were assigned claim nos. 127-135 (the “*WNIC Proofs of Claim*”).

On March 28, 2019, BAM Admin filed a proof of claim against PPCO asserting a secured claim against PPCO for approximately \$95 million, as agent for all of the Noteholders, which was assigned claim no. 145 (the “*BAM Proof of Claim*”). (The portions of the BAM Proof of Claim asserted on behalf of BCLIC, WNIC, SHIP and BBIL are referred to, respectively, as the “*BAM-BCLIC Proof of Claim*,” the “*BAM-WNIC Proof of Claim*,” the “*BAM-SHIP Proof of Claim*” and the “*BAM-BBIL Proof of Claim*.”)

On March 29, 2019, SHIP filed ten proofs of claim asserting secured claims against the Receivership Entities for \$34,427,980.86 and unsecured claims in unspecified amounts, which were assigned claim nos. 247-49, 253-58 and 326 (the “*SHIP Proofs of Claim*”). On March 29, 2019, Fuzion filed ten proofs of claim asserting “[p]otential [c]laims” in unspecified amounts against the Receivership Entities, which were assigned claim nos. 237-46 (the “*Fuzion Proofs of Claim*”).

F. The Receiver’s Investigation of the December 2015 and March 2016 Transactions

Under the Receivership Order, the Receiver is authorized and required to investigate the Receivership Entities’ financial and business affairs and institute such actions and proceedings as she deems necessary and appropriate. Receivership Order, ¶ 35. The Receiver and her team, including attorneys at Otterbourg PC and financial advisors at Goldin Associates, LLC, have collectively spent thousands of hours investigating the financial and business affairs of the

Receivership Entities. The Receiver's team analyzed hundreds of thousands of documents (including emails) and thousands of pages of trial testimony from the criminal prosecutions of certain Platinum insiders and ran thousands of searches of millions of pages of electronically stored information. Counsel researched relevant case law regarding claims of the Receivership Estate. The investigation required the development of viable damage models and causation theories regarding potential claims of the Receivership Estate. Investigation and prosecution of those potential claims also required hundreds of hours of investigation and analysis of the structure and transactions of the complex web of Platinum entities, and the transactions, interrelationships and communications among the Platinum entities and their creditors and investors.

G. The SDNY Action

As a result of her investigation, the Receiver concluded, among other things, that the notes, note purchase agreement, security agreements, assignments and related transactions in December 2015 and March 2016 transferred tens of millions of dollars of value from PPCO to SHIP, the Accounts (as proxies of BCLIC and WNIC), BBIL and BRe by ridding the four Accounts (as proxies for BCLIC and WNIC), SHIP, BBIL (in part as a proxy for other entities) and BRe of notes issued by three distressed companies, which had little to no chance of performing, and a receivable from an equally financially-precarious PPVA, while leaving the Receivership Entities and their portfolio companies saddled with \$69.2 million of debt secured by liens against all of their assets. The CNO Parties and the SHIP Parties have disputed these conclusions.

On December 19, 2018, the Receiver commenced the SDNY Action against, among other defendants, the CNO Parties, the SHIP Parties, BAM Admin, as agent and for itself, and various Beechwood Entities. On March 29, 2019, the Receiver filed a First Amended Complaint in the SDNY Action (the "*FAC*"), asserting 19 causes of action against 21 defendants, for alleged violations of the Racketeer Influenced and Corrupt Organizations Act ("*RICO*") and the Securities

Exchange Act, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, constructive and actual fraudulent conveyance under the N.Y. Debtor & Creditor Law (“*NYDCL*”), unjust enrichment and declaratory judgment. The Receiver’s claims under the NYDCL §§ 273-78 allege that the notes, note purchase agreement, security agreements, assignments and related transactions in December 2015 and March 2016 were actually and constructively fraudulent under the NYDCL because they were designed to transfer, and did transfer, tens of millions of dollars of value from PPCO and the Subsidiaries to SHIP, the Accounts (as proxies of BCLIC and WNIC), BBIL, BRe and others in the manner described above. The Receiver has asserted claims against BAM Admin, as agent for all Noteholders, which include, in addition to the Original Noteholders, BBIL, PGS, PBLA ULICO 2017, BBIL ULICO 2014 and Omnia Ltd., all of which are subsequent transferees of the initial transfers. Her claims for unjust enrichment, declaratory judgment, and aiding and abetting breach of fiduciary duty and fraud arise, in part, out of those transactions.

In a “bottom-line” Order issued on August 18, 2019 (the “*Bottom Line Order*”), and an Opinion and Order issued on October 7, 2019 (the “*Opinion and Order*”), the SDNY Court granted motions to dismiss all of the Receiver’s claims against CNO, 40|86 Advisors, Fuzion, BRILLC, BAM I, BAM II, BReHo, Feuer and Taylor, and dismissed some of the claims against other remaining defendants. SDNY Action ECF No. 380. The following claims remained pending:

DEFENDANT	REMAINING CLAIMS
BRe	aiding and abetting breach of fiduciary duty, aiding and abetting fraud
BBIL	aiding and abetting breach of fiduciary duty, aiding and abetting fraud
BBL	aiding and abetting breach of fiduciary duty, aiding and abetting fraud
BAM Admin	aiding and abetting breach of fiduciary duty, aiding and abetting fraud, NYDCL (as agent), declaratory judgment (as agent)
BCLIC	NYDCL, unjust enrichment, declaratory judgment
WNIC	NYDCL, unjust enrichment, declaratory judgment
SHIP	NYDCL, unjust enrichment, declaratory judgment
the Accounts	RICO, securities fraud, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, NYDCL, unjust enrichment, declaratory judgment

PB Investment Holdings Ltd. (“ <i>PBIHL</i> ”)	aiding and abetting breach of fiduciary duty, aiding and abetting fraud
------------------------------------------------	-------------------------------------------------------------------------

The Bottom-Line Order and the Opinion and Order did not dismiss any of the Receiver’s claims under the NYDCL, which remain pending against BCLIC, WNIC, SHIP and BAM Admin, as agent for all Noteholders. After the issuance of the Bottom-Line Order and the commencement of discovery, the Receiver began extensive good-faith, arm’s-length negotiations with the CNO Parties. Those efforts led to an agreement in principle with the CNO Parties on November 1, 2019, and execution of the CNO Settlement Agreement on July 1, 2020.

After the close of discovery, which included the production of millions of documents and dozens of depositions, on February 14 and 15, 2020, SHIP, PBIHL, BAM Admin, BBIL and BBL filed Motions for Summary Judgment seeking dismissal of all claims against them in the FAC. On February 14, 2020, the Receiver filed a motion for partial summary judgment against SHIP seeking a ruling that certain of the Beechwood Parties were agents for SHIP and any knowledge of those Beechwood Parties should be imputed to SHIP. Those Motions were fully briefed. Oral argument was held on PBIHL’s Motion for Summary Judgment on April 7, 2020. On April 15, 2018 (SDNY Action ECF No. 528), the SDNY Court granted PBIHL’s Motion for Summary Judgment.

On April 6, 2020, on the eve of oral argument on the other motions for summary judgment, the Receiver and SHIP’s special deputy rehabilitator executed a term sheet for a settlement between the Receiver and SHIP. In addition to the direct agreements between the Receiver and SHIP, SHIP was required to “deliver” certain agreements from the Beechwood Parties, including, for example, a release by Beechwood of certain liens, claims and debt against PPCO. The SDNY Court adjourned the hearing on the motions for summary judgment filed by SHIP, BAM Admin, BBIL and BBL to June 18, 2020. At the parties’ request, the SDNY Court thereafter cancelled that oral argument, but stated by minute order that, if the parties did not fully settle by July 1, 2020,

at 5:00 p.m., then the SDNY Court would render its decisions on the pending motions.

H. The Settlement Agreements

The proposed Settlement Agreements are the culmination of years and, collectively, thousands of hours of analysis, litigation and negotiation by the Receiver and her team. Each was negotiated and entered into as a result of arm's-length and hard-fought negotiation. Below are summaries of the provisions of both agreements. Both summaries are qualified by reference to the specific terms in the Settlement Agreements. (*See Exhibits A and B to the Receiver Decl.*). Capitalized terms not defined herein have the meanings give to them in the Settlement Agreements.

1. The CNO Settlement Agreement

The CNO Settlement Agreement includes the following terms, among others:

Issue	Terms
Prior Approval of this Court	The Agreement is subject to, and will not become effective unless and until a final, non-appealable order is entered by this Court approving it.
Mutual Releases	The Agreement provides for mutual releases between (i) the Platinum Plaintiffs and their subsidiaries, and (ii) the CNO Parties, with limited exceptions. As part of these releases, BCLIC and WNIC will release PPCO and the Subsidiaries from the BCLIC Secured Debt and the WNIC Secured Debt (\$7,721,846.45 of principal and \$1,944,256.61 of accrued interest as of September 30, 2019).
Allowance of General Unsecured Claim	The Receivership Entities will allow the CNO Defendants a general unsecured, non-priority claim against the Receivership Estate in the total amount of \$1,000,000 (the " <i>Allowed Claim</i> ").
Withdrawal of Proofs of Claim	The BCLIC Proofs of Claim and the WNIC Proofs of Claim will be disallowed and expunged except as to the Allowed Claim. BCLIC and WNIC will instruct BAM Admin to withdraw the BAM-BCLIC Proof of Claim and the BAM-WNIC Proof of Claim with prejudice.
Stipulation of Dismissal with Prejudice	The parties will execute a stipulation of dismissal with prejudice in which the Receiver will dismiss her claims against the CNO Parties with prejudice and without costs against any party.
Release of Claims to Remaining Escrow Proceeds	BCLIC and WNIC will release any and all right, title, claim and interest that they assert with respect to the Remaining Escrow Proceeds (approximately \$6.3 million) and execute related documents reasonably requested by the Receiver and/or the ALS Escrow Agent.
Venue and Choice	The Parties consent and submit to the exclusive jurisdiction of this Court

of Law	in actions or proceedings relating to the Agreement and that New York law will govern disputes arising from the Agreement.
---------------	----------------------------------------------------------------------------------------------------------------------------

2. The SHIP Settlement Agreement

The SHIP Settlement Agreement includes the following terms, among others:

Issue	Terms
Conditions Precedent	The Agreement and the settlement provided for therein are conditioned upon the occurrence of each of the following events: (a) the execution of the SHIP-Beechwood Agreement (as defined below) granting SHIP each of the Beechwood Deliverables (as defined below); and (b) this Court shall have entered an order (in a form and substance mutually acceptable to the Parties) approving the Agreement (the “ <i>Approval Order</i> ”). The “Beechwood Deliverables” consist of the following interests and/or deliverables to be acquired by SHIP by one or more separate agreement(s) with the Beechwood Parties (the “ <i>SHIP-Beechwood Agreement</i> ”): (i) acquisition by SHIP of the Beechwood Parties’ rights, title and interests of in, to and under the NPA, PPCO Notes, MSA, Ratification Agreement, A&R MSA, Subsidiary Guaranty, A&R Subsidiary Guaranty, UCC-1s and Proofs of Claim, including, but not limited to, the BBIL Secured Debt and except for any rights, title or interest in, to and under the Loan Documents held by BAM Admin, solely in its capacity as agent (collectively, the “ <i>SHIP Acquired Interests</i> ”), which will then be covered by the SHIP Parties’ releases and covenants to sue described below; (ii) general releases executed by the Beechwood Parties of any and all claims or equity interests against the Receivership Entities or the Subsidiaries (other than held by BAM Admin, as agent); (iii) documentation executed by BBIL and delivered to the Receiver effecting BBIL’s release of any entitlement to any of the Remaining ALS Escrow Proceeds, and to the release from escrow of the Remaining ALS Escrow Proceeds in accordance with the Receiver’s directions; (iv) documentation executed by BAM Admin to secure the release of the ALS Escrow Proceeds; (v) the Beechwood Parties’ signatures on a stipulation of dismissal (A) dismissing the Receiver’s claims against BAM, as agent without prejudice or costs against any party and with a waiver of costs under Fed. R. Civ. P. 41(d), and (B) dismissing with prejudice the Receiver’s claims against BAM Admin in its own right and the other Beechwood Parties, without costs or attorneys’ fees against any party. ⁶
Mutual Releases between the Receiver and the SHIP Parties	The Agreement provides that the Receiver, on behalf of the Receivership Entities and the Subsidiaries other than PGS, on one hand, and SHIP, on the other hand, will exchange general releases of all secured and unsecured claims (including equity interests). In particular, (a) SHIP will release

⁶ Because the Receiver will not be entering into a direct agreement with the Beechwood Parties, the SHIP Settlement Agreement requires SHIP to secure the Beechwood Deliverables from the Beechwood Parties.

	PPCO and the PPCO Subsidiaries (which do not include PGS) from the SHIP Secured Debt (\$27,355,042.17 in principal and \$6,772,942.93 of interest as of September 30, 2019); and (b) SHIP will either (i) purchase from BBIL and then release and discharge the BBIL Secured Debt (\$9,532,669.40 in principal and \$1,407,568.40 of interest as of September 30, 2019), as to PPCO and the Subsidiaries other than PGS, or (ii) cause BBIL to release and discharge the BBIL Secured Debt.
Withdrawal of Proofs of Claim	SHIP and Fuzion will withdraw, with prejudice, the ten SHIP Proofs of Claim and the ten Fuzion Proofs of Claim and SHIP and Fuzion will instruct BAM Admin to withdraw the BAM-SHIP Proof of Claim and the BAM-BBIL Proof of Claim with prejudice.
Payment of \$14 Million by PPCO	The Receiver will pay the \$14 million Settlement Amount as follows: (a) \$9,469,844.32 to SHIP; and (b) \$4,530,155.68 (the “ <i>Indemnity Escrow Amount</i> ”) to the “Indemnity Escrow Agent.”
Indemnification of Claims Based on Secured Debt Owned by PBLA ULICO 2017, BBIL ULICO 2014 and OMNIA	SHIP will indemnify and hold the PPCO Parties harmless against all expenses, losses, claims, proofs of claim, damages, suits, proceedings and liabilities, including, without limitation, reasonable attorneys’ fees and expenses, arising from the PBLA ULICO 2017 Secured Debt, the BBIL ULICO 2014 Secured Debt and/or the OMNIA Secured Debt, up to a maximum of the Indemnity Escrow Amount of \$4,530,155.68, which is the total alleged outstanding principal on that Secured Debt.
Release of Funds in ALS Escrow Account	SHIP will release, and obtain releases from BBIL for, any claims to the funds in the ALS Escrow Account. SHIP will deliver, and cause BBIL and BAM Admin to deliver, appropriate documentation designed to allow the release of the Remaining Escrow Proceeds.
Stipulation of Dismissal with Prejudice in Favor of SHIP	The Receiver will enter into a stipulation of dismissal with prejudice with SHIP dismissing her claims against SHIP in the SDNY Action with prejudice, without costs or attorneys’ fees as to any party.
Delaware Litigation	On June 7, 2019, PGS filed a complaint in the Delaware Chancery Court (Case No. 2019-0431) against numerous defendants, including SHIP, certain Beechwood Parties, and others asserting certain claims relating to PGS’ ownership of a promissory note convertible into 95% of the common equity of energy reseller Agera Energy (the “ <i>DE Action</i> ”). The DE Action is unaffected by the releases in the Agreement, except that the PPCO Party Releasers shall not directly assert claims against the SHIP Party Releasees, and the SHIP Party Releasers shall not directly assert claims against the PPCO Party Releasees (who do not include PGS) in the DE Action. The Agreement does not bar the SHIP Party Releasers from asserting claims or defenses against any party to the DE Action.
Stipulation of Dismissal with Prejudice in Favor of BBIL, BBL and BRe	The Receiver will enter into a stipulation dismissal with prejudice with BBIL, BBL and BRe of her claims against those parties with prejudice.

Stipulation of Dismissal without Prejudice in favor of BAM Admin, as agent	Subject to approval of the SDNY Court, the Receiver will enter into a stipulation of dismissal without prejudice with BAM Admin dismissing her claims against BAM Admin, as agent, without prejudice, without costs against any party, and BAM Admin will waive any right to recover costs under Fed. R. Civ. P. 41(d) if such claims are re-filed.
Venue and Choice of Law	The Parties consent and submit to the exclusive jurisdiction of this Court over any actions or proceedings relating to the enforcement or interpretation of the Settlement Agreement and agree that New York law will govern claims and disputes arising from the Agreement.

I. The Receiver’s Plan for Resolving Secured Debt Held by Other Noteholders

All of the Secured Debt, other than the PGS Secured Debt (principal amount \$30,650,512.27), the PBLA ULICO 2017 Secured Debt (principal amount \$339,261.21), the BBIL ULICO 2014 Secured Debt (principal amount \$1,530,543.58) and the OMNIA Secured Debt (principal amount \$2,660,350.89), will be discharged by the Settlement Agreements. The Receiver plans to seek to eliminate the remaining Secured Debt in the manner described below.

The PGS Secured Debt: Prior to the Receivership Date, PPCO and PPVA entered into numerous transactions with each other. They hold a joint investment in PGS, approximately 55% of which is owned by PPVA and 45% of which is owned by PPCO. PGS is “Lender of Record” for Secured Debt with outstanding principal of \$30,650,512.27. The Receiver is currently in advanced negotiations with the JOLs to disentangle PPVA’s and PPCO’s interests and resolve the claims between them.

The PBLA ULICO 2017, BBIL ULICO 2014 and OMNIA Secured Debt: The remaining Secured Debt is allegedly owned by PBLA ULICO 2017, BBIL ULICO 2014 and OMNIA Ltd, which collectively are listed as holders of “Lender of Record” Secured Debt with outstanding principal of \$4,530,155.68 on the Debt Registry provided by BAM Admin. The SHIP Settlement Agreement provides that the SHIP Parties will indemnify the Receiver for up to that amount, with the funds for the indemnity obligation to be paid into escrow as part of the Settlement

Amount. The Receiver anticipates that this should be sufficient to discharge the Secured Debt owned by these entities. The Receiver expects to work with SHIP to develop a strategy for resolving the remaining Secured Debt in the Receivership.

J. The Receiver's Authority to Enter into the Settlement Agreements

The Receivership Order grants the Receiver broad authority, including the authority to compromise or adjust actions or proceedings such as the SDNY Action and proofs of claim.

Paragraph 34 of the Receivership Order provides:

Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, *compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in the Receiver's discretion, be advisable or proper to recover and/or conserve Receivership Property*. [Emphasis added.]

Because the SHIP Settlement Agreement and the CNO Settlement Agreement involve the compromise and adjustment of actions and proceedings, paragraph 34 grants the Receiver discretion to compromise the SDNY Action and to compromise and adjust the BCLIC Claims, the WNIC Claims, the SHIP Claims, the Fuzion Claims and the BAM Admin Claim.

Paragraph 28 of the Receivership Order provides:

The Receiver may, *without further Order of this Court, transfer, compromise, or otherwise dispose of Receivership Property* in the ordinary course of business of the Receivership Entities' orderly wind down, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate. [Emphasis added.]

The Secured Debt is one of the primary obstacles to the successful completion of the Receivership and formulation of a plan of liquidation. Because the Settlement Agreements are the first step in the Receiver's plan to eliminate all Secured Debt of the Receivership Entities, so that funds can be available for a distribution to unsecured creditors and investors, they will further an orderly wind down of the Receivership Estate on terms most beneficial to the Receivership Estate. Consequently, paragraph 28 also gives the Receiver the right to enter into the Settlement

Agreements, and transfer property and compromise claims in connection therewith, “without further Order of this Court.”

The Receivership Order defines “Receivership Property” to include “all property interests of the Receivership Entities, including, but not limited to, monies ... securities, ... goods, chattels, ... claims, rights and other assets, together with all rents, profits, dividends, interest or other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly.” Receivership Order, ECF No. 276, ¶ 6(A). Thus, Receivership Property includes not only assets of PPCO, but also of the Subsidiaries.

In the SDNY Action, Judge Rakoff ruled, under this definition, that the assets of any of the Subsidiaries that are majority owned indirectly by PPCO are “Receivership Property”:

Pursuant to the Receivership Order, the Receiver has the “right to sue for and collect ... from third parties all Receivership Property,” which includes the guarantee interests granted by the PPCO Subsidiaries.... This is because “[e]ach of the [PPCO Subsidiaries] is majority owned by PPCO, with ultimate corporate authority belonging to PPCO,” and the “Receivership Property” is defined as “all property interests of the Receivership Entities, including, but not limited to, monies ... claims, rights and other assets, together with all ... other income attributable thereto, of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly.”

In re Platinum-Beechwood Litig., 427 F. Supp. 3d 395, 455 (S.D.N.Y. 2019).

Consequently, the Receiver is permitted to compromise claims and transfer property of PPCO and of the Subsidiaries that are majority owned by PPCO. In particular, both ALS and ALS Life, which are funding part of the Settlement Amount, are majority-owned by PPCO, and PPCO has the power to cause them to act, because:

- PPCO is the sole member of Credit Strategies. *See* Amended and Restated Limited Liability Company Agreement of Credit Strategies, LLC (the “*CS LLC Agreement*”), **Exhibit D** to the Receiver Decl., § 3. As such, PPCO “manage[s] the Company” and has “the sole power and authority to take any and all actions necessary or convenient to or for the furtherance of the purposes of the Company set forth in [the CS LLC] Agreement” (CS LLC Agreement, Exhibit D to the Receiver Decl., § 4).

- The Receivership’s books and records indicate that Credit Strategies, in turn, owns 65% of the membership interests in, and at all times since August 19, 2014 has been the sole “Manager” of ALS. (ALS Capital Ventures LLC Operating Agreement (the “*ALS OA*”), **Exhibit E** to the Receiver Decl., § 5.01; First Amendment to Operating Agreement of ALS Capital Ventures LLC, **Exhibit F** to the Receiver Decl., § 6; ALS Capital Ventures, LLC Written Consent of the Manager to Action Taken Without a Meeting, **Exhibit G** to the Receiver Decl., at 1.) The ALS OA provides that “[t]he powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Manager,” and authorizes the manager “to act for or on behalf of the Company, to do any act that would be binding on the Company or incur any expenditures on behalf of the Company.” (ALS OA, Exhibit E to the Receiver Decl., § 5.01.)
- ALS, in turn, is the “Sole Member” and “Operating Manager[]” of ALS Life, in which “Management of the Company [is] vested,” who “solely and exclusively” control the conduct of its business, and “have and may exercise on behalf of the Company all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes, business and objectives of the Company....” (Operating Agreement of ALS Life, **Exhibit H** to the Receiver Decl., §§ 5.1, 5.4, p. 15 & Schedule 1.)
- In recognition of these powers on the part of PPCO, this Court has approved sales of insurance policies held by ALS and ALS Life during the Receivership.

Because the assets and claims of PPCO and the Subsidiaries which it majority owns are all “Receivership Property,” the Receiver has the authority to compromise claims and transfers. This includes the Receiver’s use of up to approximately \$1.8 million of ALS funds (approximately 11.8%, of the Settlement Amount) and at least \$12,353,437.38 (or 88.2% of the Settlement Amount) of PPCO funds for the Settlement Amount.

The Receiver is also permitted to take these actions under paragraph 6(G) of the Receivership Order, which permits her to “take such action as necessary and appropriate for the preservation of Receivership Property” If the Receiver is unsuccessful in avoiding the BCLIC Secured Debt, the WNIC Secured Debt, the SHIP Secured Debt, and the BBIL Secured Debt in the SDNY Action, then all of the assets of the Receivership Estate, which are worth less than the \$44 million of outstanding principal amount of the Secured Debt owned by those creditors, will

likely be consumed by the Secured Debt, leaving nothing for unsecured creditors and investors. Consequently, the Settlement Agreements further the interest of “preservation of Receivership Property” and are authorized on that ground as well.⁷

ARGUMENT

THE COURT SHOULD APPROVE THE SETTLEMENT AGREEMENTS.

An equity receiver’s authority to settle claims is inherent in the charge to collect assets:

Since the court has authority to authorize the receiver to collect assets of a corporation, it has the further authority to authorize the receiver to sue to collect the assets of the corporation. It naturally follows, as a necessary corollary of the foregoing, that the receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.

3 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers*, § 770, p. 1424 (3d ed. 1992) (cited with approval in *S.E.C. v. Credit Bancorp, Ltd.*, 2002 WL 1792053, at *4 (S.D.N.Y. August 2, 2002)).

Settlement of claims by a receiver furthers the purposes of an equity receivership to marshal the estate’s assets for the benefit of injured creditors. *S.E.C. v. Parish*, 2010 WL 8347143, at *6 (D.S.C. Feb. 10, 2010) (receiver’s proposed settlement approved by the court, finding the settlement was “consistent with and furthers the purposes of the receivership”). Thus, it is settled that a settlement by a receiver in a federal equity receivership is within the receiver’s broad discretion and should be approved if it is fair. *See, e.g., Gordon v. Dadante*, 336 Fed. Appx. 540, 546 (6th Cir. 2009); *S.E.C. v. Credit Bancorp, Ltd.*, 2002 WL 1792053, at *4-5 (S.D.N.Y. August 2, 2002); *S.E.C. v. Princeton Economic International, Inc.*, 2002 WL 206990, at *1 (S.D.N.Y. Feb. 8, 2002).

⁷ The Receiver is also authorized to “take any action which, prior to entry of this Order, could have been taken by the officers, directors, managers, managing members, and general and limited partners, and agents of the Receivership Entities.” (Receivership Order, ¶ 6(E).) For the reasons set forth above, PPCO, and therefore the officers, directors, managers, managing members, general and limited partners, and agents of PPCO and of its “Portfolio Manager,” PPCO Portfolio Manager (also in Receivership), who together control PPCO, could have caused PPCO and the Subsidiaries it majority owns to enter into the Settlement Agreements. Consequently, the Receiver is also authorized to enter into and fund the Settlement Agreements under paragraph 6(E) of the Receivership Order.

“[R]eceptors benefit from the general presumption that district courts favor settlements.” *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). Courts long have emphasized that public policy favors settlement. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 298 n.43 (5th Cir. 2010).

Paragraphs 6, 28 and 34 of the Receivership Order confirm the Receiver’s broad discretion to enter into and fund the Settlement Agreements. While the Receiver believes that those provisions grant her the authority to enter into and fund the Settlement Agreements without this Court’s approval, in the interest of transparency, in an abundance of caution, and to provide all potential stakeholders with an opportunity to be heard on an important matter that may affect their interests, the Receiver seeks Court approval of the Settlement Agreements.

Taking into consideration the merits of the claims and the risks, uncertainties, and expenses associated with the SDNY Action, and the potential amount that might or might not be recovered from a judgment, the Receiver’s decision to enter into the Settlement Agreements and to utilize funds of PPCO and ALS for the Settlements is fair and reasonable and a sound exercise of the Receiver’s discretion and business judgment for the Receivership Entities and the Subsidiaries.

The benefits of the Settlement Agreements to the Receivership Estate and the Subsidiaries greatly outweigh the risks and costs of continued litigation. **First**, the Settlement Agreements provide several critical benefits to the Receivership Estate:

- They eliminate approximately \$44.6 million (principal amount) of the approximately \$79.8 million (principal amount) of Secured Debt purportedly outstanding against PPCO and its majority-owned Subsidiaries as of September 30, 2019, thereby eliminating a primary obstacle to the successful completion of the Receivership with an orderly wind down in which unsecured creditors and/or investors will receive some payment on their interests.
- The Settlement Agreements are a necessary and crucial step toward the Receiver’s goal of eliminating the remaining impediments to a distribution to creditors or investors. The Receiver expects to obtain the release of the PGS Secured Debt (principal amount \$30,650,512.27) in a separate agreement that, if consummated,

will result in no use of Receivership funds. While the Settlement Agreements do not eliminate the purported all-asset lien allegedly held by the remaining Noteholders (PBLA ULICO 2017 (principal amount \$339,261.21), BBIL ULICO 2014 (principal amount \$1,530,543.58) and OMNIA (principal amount \$2,660,350.89)), \$4.5 million of the Settlement Amount will be held in escrow to indemnify the Receiver for any future claims by them, should it be determined that those parties are entitled to such claims notwithstanding that they did not file proofs of claim.

- The Settlement Agreements will resolve 38 Proofs of Claim filed by BCLIC, WNIC, SHIP and Fuzion and a portion of the BAM Proof of Claim.
- The Settlement Agreements will also enable the Receiver to obtain release of the \$6.3 million ALS Escrow Account.

Second, following the Opinion and Order, the only surviving claims against BCLIC, WNIC and SHIP in the SDNY Action are avoidance claims under the NYDCL, unjust enrichment claims, and declaratory judgment claims, which, if successful, would yield a result no better than avoidance of the BCLIC Secured Debt, the WNIC Secured Debt and the SHIP Secured Debt. The upside of proceeding with the SDNY Action against those parties is therefore limited.

Third, the SDNY Action involves a challenge to a facially valid lien asserted by sophisticated and well-funded adversaries who have aggressively defended their positions, and presents significant risks on the merits. The following issues affecting the Receiver's claims under the NYDCL, among others, are vigorously contested and involve uncertain outcomes:

- whether the Receiver has standing to assert claims under the NYDCL;
- whether PPCO received fair consideration in the subject transactions;
- whether those transactions exhibit the requisite badges of fraud from which a court could find the transactions were entered into with actual fraudulent intent;
- whether PPCO and the Subsidiaries were insolvent;
- whether the defendants acted in "good faith"; and
- whether the Receiver's claims are barred by defenses under NYDCL § 278.

Each of these issues presents a serious risk that (a) that the SDNY Court could grant the defendant summary judgment on the Receiver's NYDCL claims, or (b) the defendants could defeat those claims at trial or on appeal. Success by SHIP alone could mean the entire Receivership Estate is consumed by the SHIP Secured Debt, leaving no distribution to unsecured creditors or investors. A defeat would also involve a collateral estoppel risk that could benefit all Noteholders.

Fourth, a decision on the summary judgment motions filed by SHIP and BAM Admin involving many of these issues, with an uncertain outcome, was imminent when the Settlement Agreements were executed, with the SDNY Court having stated by minute order that, if the parties did not fully settle by July 1, 2020, at 5:00 p.m., then it would render its decision shortly thereafter. If the action proceeded to trial, then fees and out-of-pocket costs in connection with trial, trial preparation, review of voluminous records, emails and other electronically stored information, *in limine* motions, *Daubert* motions, expert witness costs and preparation, trial and post-trial motions, trial and/or appeals would likely consume millions of dollars, to the detriment of the investors and creditors of the Receivership Entities, with an uncertain outcome.

Fifth, the important benefits that the Receivership Estate will realize from the Settlement Agreements outweigh the risks and costs of continuing to pursue the litigation. Importantly, the CNO Settlement Agreement makes no present distribution to the CNO Defendants but grants them an allowed general unsecured claim totaling \$1,000,000. Moreover, the \$14,000,000 payment under the SHIP Settlement, in order to avoid the risk that the SDNY Court would grant summary judgment dismissing the Receiver's fraudulent conveyance claims, or that the defendants would prevail at trial or on appeal is also eminently reasonable. For these reasons, based upon the Receiver's business judgment, her team's years long investigation, and consideration of the range of possible outcomes and expenses remaining to be incurred in the SDNY Action, the Settlement Agreements represent a fair compromise and a reasonable exercise of her discretion.

Finally, the Receiver's decision to use up to approximately \$1.8 million (approximately 11.8% of the \$14 million Settlement Amount) of funds of ALS and at least \$12,353,437.88 of funds of PPCO to fund the Settlement Amount is also a reasonable exercise of her business judgment. There are two available sources of payment of the Settlement Amount – PPCO and ALS. As of March 31, 2020, PPCO had cash on hand of \$19,467,591.62 and ALS had cash on hand of \$13,641,732.49 (including funds held in the ALS Escrow Account and the ALS Operating Account).

It is appropriate to use funds of both PPCO and ALS for the Settlement Amount because the Settlement Agreements benefit both of them. SHIP's purported lien under the MSA extends to both PPCO and ALS, and ALS guaranteed the Secured Debt. Consequently, if SHIP and/or BBIL prevailed in the SDNY Action, they could recover from either PPCO or ALS. Therefore, the Settlement Agreements benefit not only PPCO, but also ALS and, by extension, ALS' wholly owned subsidiary, ALS Life.

As of the Receivership Date, ALS had \$19.5 million of encumbered assets (or approximately 11.8% of the total encumbered assets of ALS and PPCO), and PPCO had \$146,300,000 of encumbered assets (approximately 88.2% of the total encumbered assets). Because the percentage of the Settlement Amount that ALS will be contributing is proportionate to the benefit (relative to the Receivership's) that ALS will be receiving in the settlements, the Receiver's decision to use up to approximately \$1.8 million, or approximately 11.8%, of the Settlement Amount, of ALS' funds to pay the Settlement Amount is a sound exercise of her business judgment.

CONCLUSION

For the reasons set forth above and in the Receiver Decl., the Motion should be granted.

Dated: New York, New York
July 1, 2020

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein
Adam C. Silverstein
Erik. B Weinick
Andrew S. Halpern
230 Park Avenue
New York, New York 10169
(212) 661-9100
asilverstein@otterbourg.com
eweinick@otterbourg.com
ahalpern@otterbourg.com
*Attorneys for Melanie L. Cyganowski, as
Receiver*