

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

IN RE PLATINUM BEECHWOOD
LITIGATION

Master Docket No.
1:18-cv-06658-JSR

MARTIN TROTT *et al.*,

plaintiffs

against

PLATINUM MANAGEMENT (NY) LLC, *et
al.*,

defendants.

No. 1:18-cv-10936-JSR

DECLARATION OF S. CHRISTOPHER PROVENZANO

I, S. Christopher Provenzano, attorney for Defendant Ezra Beren and an attorney admitted to practice in this court, state:

1. On March 26, 2020, I attended the remote video deposition of Mark Nordlicht. I was present electronically for the entirety of the deposition.

2. I attach to this declaration true copies of excerpts from the transcript of Mr. Nordlicht's deposition (the "**Transcript**"). Based on my personal knowledge and recollection, these excerpts are a substantially accurate recording of Mr. Nordlicht's testimony under oath. The only corrections I would make based on my knowledge and recollection are that some objections are not ascribed to the correct attorney, likely because of the difficulty of identifying

speakers on the video platform used. I have included somewhat more of each excerpt than is relied on in the memorandum of law to provide context and ensure that the quotations are not misleading.

3. Attached hereto as **Exhibit A** is a true copy of pages 291 – 292 of the Transcript.

4. Attached Hereto as **Exhibit B** is a true copy of pages 136 – 143 of the Transcript.

5. Attached Hereto as **Exhibit C** is a true copy of pages 150 – 154 of the Transcript.

6. Attached Hereto as **Exhibit D** is a true copy of pages 126 – 128 of the Transcript.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 3, 2020
New York, New York



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Exhibit A

1 MARK A. NORDLICHT

2 form.

3 BY MS. BUCKEL:

4 Q. So isn't it fair to say that any
5 decisions about whether or not the trust would
6 invest money in any Agera securities of any
7 kind would have been solely the decision of
8 BAM?

9 MR. KOFFMAN: Objection to form.

10 THE WITNESS: Fifth.

11 BY MS. BUCKEL:

12 Q. And no one from CNO ever told anyone
13 from Beechwood or BAM to purchase or sell any
14 asset or securities?

15 MR. KOFFMAN: Objection to form.

16 THE WITNESS: Fifth.

17 MS. BUCKEL: Thank you,
18 Mr. Nordlicht. That is all I have.

19 THE WITNESS: Thank you.

20 MR. PROVENZANO: Hi. This is
21 Chris. Is it my turn, or is there
22 somebody else who would like to go first?

23 - - -

24 E X A M I N A T I O N

25 - - -

1 MARK A. NORDLICHT

2 BY MR. PROVENZANO:

3 Q. Okay. Mr. Nordlicht, can you hear
4 me?

5 A. Yes.

6 Q. Okay. First, thank you very much for
7 your patience today. I guess you're going to
8 have to file this one under no good deed goes
9 unpunished.

10 I really only have two
11 questions. The first is, you've been asked a
12 lot of questions today about the -- first is,
13 you have been asked a lot of questions today
14 about the affirmation that you submitted on
15 behalf of Mr. Beren in support for his motion
16 for summary judgment.

17 In light of everything you've
18 been asked and shown today, do you stand by
19 what you said in that affidavit?

20 A. I do, yes.

21 Q. Thank you. And now the second
22 question is a little bit -- requires a little
23 bit more background.

24 We talked about PEDEVCO. My
25 understanding of your testimony was that

Exhibit B

1 MARK A. NORDLICHT

2 THE WITNESS: Fifth.

3 BY MR. BROWNLEE:

4 Q. You're aware that Mr. Beren in
5 December of 2015 left Platinum and went to
6 Beechwood; is that correct?

7 A. I am now.

8 Q. If you look at tab 87. This is his
9 kind of farewell email to his colleagues there
10 at Platinum; is that right?

11 A. I mean, I don't know who he sends
12 this out to.

13 Q. Well, one of them is Bodner office.
14 He blind copied David Bodner's contact email,
15 correct; do you see that?

16 A. Okay, yes.

17 Q. Okay. Did you receive this? Do you
18 remember receiving it?

19 A. I have no recollection one way or the
20 other.

21 Q. Okay. Let me move on.

22 In paragraph four of your
23 affidavit, you write that during my tenure at
24 PPVA, Mr. Beren was at no time a member of the
25 valuation committee of PPVA or any related

1 MARK A. NORDLICHT

2 entity. But is it true, sir, that Mr. Beren
3 did attend valuation committee meetings; is
4 that correct?

5 A. To the extent we brought in outside
6 managers to present the positions that they had
7 in their portfolio.

8 Q. Okay. And so he would come to the
9 valuation committee meeting and present it; is
10 that correct?

11 You don't dispute that he did
12 that, right?

13 MR. KOFFMAN: Objection.

14 Assumes facts not in evidence. You asked
15 two questions there. Also, compound.

16 BY MR. BROWNLEE:

17 Q. Let me reask my question.

18 You confirm that Mr. Beren did
19 attend the valuation committee meetings,
20 correct?

21 MR. KOFFMAN: Objection.

22 BY MR. BROWNLEE:

23 Q. Go ahead, you can answer.

24 A. I'm sorry. Yeah, I don't
25 specifically recall it. But if we ever

1 MARK A. NORDLICHT
2 presented PEDEVCO, then either him or David
3 Steinberg may have joined to make that
4 presentation.

5 Q. Okay. Let's take a look at 89, tab
6 89.

7 And this is an email from Will
8 Slota at Platinum dated August of 2014. And
9 the attached to this email PPVA, PPLO valuation
10 meeting minutes. And if you look at those
11 meeting minutes for the July 2014 meeting, it
12 has Ezra Beren as portfolio managing attending;
13 do you see that and to the roll call.

14 A. I'm looking for it.

15 I do see that, yes.

16 Q. He certainly attended this meeting,
17 right?

18 MR. KOFFMAN: Objection.

19 Foundation. Can you clarify what you mean
20 by "attended"?

21 BY MR. BROWNLEE:

22 Q. Well, they conducted a roll call.
23 And it says portfolio managers were present.
24 Below, it says Ezra Beren portfolio manager.
25 According to the minutes of the meeting

1 MARK A. NORDLICHT

2 Mr. Beren attended this valuation meeting,
3 right, Mr. Nordlicht?

4 A. According to the minutes, correct.

5 Q. And then if you look under section
6 three, under status update, number two, it has
7 Mr. Beren speaking, or at least providing,
8 information on RJ Credit Resources LLC and RJ
9 Resources Corp; do you see that?

10 A. Correct.

11 Q. So if the meeting minutes are
12 accurate, not only did he attend, but he also
13 spoke at the meeting; is that correct?

14 MR. KOFFMAN: Objection.

15 THE WITNESS: This isn't clear.

16 The way the meetings worked was, we would
17 call in the valuation. We would call in
18 the portfolio manager to present his --
19 any position that he was familiar with.
20 So he would have present -- he would have
21 been called in to present the PEDEVCO
22 transaction.

23 BY MR. BROWNLEE:

24 Q. Okay. So he would have been at this
25 meeting and had access to all this information,

1 MARK A. NORDLICHT

2 correct?

3 MR. KOFFMAN: Objection.

4 Assumes facts not in evidence. That's not
5 what he just said.

6 MR. BROWNLEE: Quit doing
7 speaking objections. He can answer that.
8 It's a legitimate question.

9 BY MR. BROWNLEE:

10 Q. The question is, did Mr. Beren attend
11 this meeting and did he have access to
12 everything that was discussed at this valuation
13 committee meeting?

14 A. So the answer is the way it generally
15 worked and, again, I'm not going to remember
16 every single meeting, but he would have -- he
17 would have just come in to present the position
18 that he was familiar with.

19 I don't think he would have
20 acted as to any of the other positions or
21 information or been privy to anything else
22 presented at the meeting.

23 Q. So what did these meeting minutes --
24 show me where it says that certain portfolio
25 managers left the meeting.

1 MARK A. NORDLICHT

2 MR. KOFFMAN: Objection.

3 Foundation.

4 THE WITNESS: Obviously, I
5 didn't write up the minutes. But that's
6 how the meeting is ran.

7 BY MR. BROWNLEE:

8 Q. Right. So your testimony is you have
9 a specific recollection of Mr. Beren leaving
10 the meeting after he gave his report?

11 MR. KOFFMAN: Objection.

12 THE WITNESS: Not just
13 Mr. Beren, Mr. Hertz, Mr. Lackin,
14 Mr. Wiener. You know, I don't know what
15 Mr. Small's status was, whether he was
16 actually on the committee. But any
17 portfolio manager who's presenting, they
18 came in to present their positions and
19 then they left.

20 BY MR. BROWNLEE:

21 Q. And that's your recollection that
22 Mr. -- is it your testimony Mr. Beren was not
23 there for the whole meeting? Do you have a
24 specific recollection as to that?

25 A. I have a recollection that every

1 MARK A. NORDLICHT
2 valuation meeting that we had, the portfolio
3 managers came in just for their specific
4 position.

5 Q. Wow. So you now have a specific
6 recollection of every valuation committee
7 meeting and who was in the room and who wasn't
8 at particular times, is that your testimony?

9 MR. KOFFMAN: Objection.

10 THE WITNESS: No. You don't --
11 no, that's not my testimony.

12 BY MR. BROWNLEE:

13 Q. Okay. So do you know if Mr. Beren
14 sat on this entire meeting or not?

15 A. Yes.

16 MR. KOFFMAN: Objection.

17 THE WITNESS: Mr. Beren did not
18 sit in on the entire meeting.

19 BY MR. BROWNLEE:

20 Q. And you remember that specifically
21 him coming in, giving his report and then
22 leaving, that's your testimony?

23 A. I remember every valuation committee
24 meeting. Every portfolio manager who presented
25 a position came in just to present their

1 MARK A. NORDLICHT
2 position. And then they left. And only the
3 members of the valuation committee remained in
4 the meeting.

5 Q. Okay. Why don't we take a look at
6 the next one, tab 90. And this is -- it's
7 control number 5762440-1 -- from Joe SanFilippo
8 October 2014 to George Duch. Subject valuation
9 meeting lifting request.

10 If you turn to the next page, it
11 has please provide the listing of participants
12 of the valuation committee meetings. It says
13 participants include the portfolio managers and
14 valuation committee members. If you look for
15 Q1 2014 and Q2 2014, Ezra Beren is on both of
16 those; is that correct?

17 A. On this question, yes.

18 Q. Right. And it doesn't give any
19 indication on this request that Mr. Beren or
20 anyone else is supposed to leave at a
21 particular time, right, the document doesn't
22 say that, right?

23 A. The document does not, no.

24 Q. All right. So let me have you take a
25 look at number 91. This is an email -- excuse

Exhibit C

1 MARK A. NORDLICHT

2 Q. Yes, sir. Paragraph six of the
3 affidavit is what I read. Now, I'm asking a
4 question about this US Talc and Minerals loan.
5 I think it was a \$12 million loan.

6 My question was -- let me ask my
7 question: Do you have any recollection of this
8 Talc and minerals loan?

9 MR. KOFFMAN: Objection.

10 THE WITNESS: I don't have any
11 recollection right now. I'd have to study
12 it more in depth and try to recall, but I
13 don't have any recollection here, no.

14 BY MR. BROWNLEE:

15 Q. Okay. Does it surprise you that
16 Mr. Beren was writing emails like this to
17 potential investors about certain deals, loans
18 and the like?

19 MR. KOFFMAN: Objection. Form.
20 John, could you remind me what exhibit
21 we're looking at?

22 MR. BROWNLEE: I'm sorry, 92,
23 BW-SHIP-010554309.

24 The email from Mr. Beren on
25 April of 2015, copying Mr. Saks, it has to

1 MARK A. NORDLICHT

2 do with this \$12 million loan to US Talc
3 and Minerals, Inc. And my first question
4 is do you have any recollection. I think
5 his answer was no.

6 BY MR. BROWNLEE:

7 Q. And so my second question was, does
8 it surprise you, in light of you saying that he
9 had no discretion on investments, that he would
10 be writing an email like this with this level
11 of detail about a deal?

12 A. The answer is no.

13 MR. KOFFMAN: I object to form.

14 BY MR. BROWNLEE:

15 Q. Okay. So it wouldn't surprise you?

16 MR. KOFFMAN: Objection.

17 BY MR. BROWNLEE:

18 Q. Okay. So is it fair to say that's
19 making Mr. Beren is in fact making investment
20 decisions on behalf of -- I think this would be
21 Beechwood in 2015?

22 MR. KOFFMAN: Objection.

23 Mischaracterizing.

24 THE WITNESS: So despite the
25 fact that I have the plug in, the video

1 MARK A. NORDLICHT

2 went off, so I'm not sure how to handle
3 that part.

4 MR. BROWNLEE: Mr. Videographer,
5 can we see the witness?

6 - - -

7 (Whereupon, an off-the-record
8 discussion was held.)

9 - - -

10 MR. BROWNLEE: Why don't we stop
11 here. It's 2:14. Why don't we dial back
12 in at 2:20. Why don't you try to get it
13 fixed so it's plugged in and getting power
14 to your computer. Okay. Why don't we
15 dial back in five minutes.

16 - - -

17 (Whereupon, a short recess
18 was taken.)

19 - - -

20 BY MR. BROWNLEE:

21 Q. Just to go back to 92, tab 92. We
22 were discussing before the break, were you
23 aware that Mr. Beren was involved in this loan
24 to US Talc and Minerals, Inc.

25 MR. KOFFMAN: Object to form.

1 MARK A. NORDLICHT

2 THE WITNESS: Again, I don't
3 recall Talc, but it's not inconsistent for
4 Mr. Beren in his role of sourcing
5 investments to have discussions with our
6 partners that's what we can offer. That's
7 very consistent. That doesn't -- that
8 doesn't mean he had any kind of investment
9 authority. That's very consistent with
10 his role.

11 BY MR. BROWNLEE:

12 Q. But he certainly had discretion,
13 right, with regard to PPVA's investment
14 decisions?

15 I mean, here he is interacting
16 with potential investor and talking about the
17 loan terms, correct?

18 MR. KOFFMAN: Objection.

19 THE WITNESS: He had no
20 discretion. That's not accurate.

21 BY MR. BROWNLEE:

22 Q. So you would send someone out then to
23 interact with an investor and yet that person
24 would have no discretion; is that your
25 testimony?

1 MARK A. NORDLICHT

2 MR. KOFFMAN: Object to form.

3 SPEAKER: Objection.

4 THE WITNESS: Okay. Let's refer
5 back to the affidavit.

6 BY MR. BROWNLEE:

7 Q. Okay.

8 A. I just want to make sure the
9 affidavit is accurate so -- and I know you're
10 not trying to mislead me because that is what
11 you led with.

12 So let's see, point six says
13 during my tenure at PPVA, Mr. Beren never had
14 any discretion with respect to PPVA's
15 investment decision. That doesn't mean no
16 discretion in terms of how you call somebody --
17 what time you call them. He had discretion
18 whether to call him at three o'clock or four
19 o'clock.

20 I spoke to the guy with
21 discretion with respect to people investment
22 decisions. You know, that is -- that's one
23 hundred percent accurate, and that's consistent
24 with what he put out here.

25 Q. Okay. And so when he writes after

Exhibit D

1 MARK A. NORDLICHT

2 transactions that never got to the point where
3 I saw it.

4 But in terms of the affidavit, I
5 feel, you know, pretty comfortable right now
6 that -- that the only matter that was in his
7 portfolio was PEDEVCO.

8 Q. Okay. So if he was working on
9 something other than PEDEVCO, you just didn't
10 know about it, right?

11 A. I may have known; I may not have. It
12 would probably depend on how advanced it got.
13 I don't recall sitting here today six years
14 later Refundo.

15 Q. Okay. And fair to say that the
16 affidavit that was sent to you as you
17 previously testified, you didn't edit that at
18 all, you just signed it, so you didn't review
19 any records to confirm that that affidavit was
20 accurate, right?

21 A. Right, I mean, I did look at it and I
22 reviewed it.

23 Q. Right.

24 A. And it certainly was consistent with
25 my recollections.

1 MARK A. NORDLICHT

2 Q. Right. If your recollection is now
3 refreshed through other emails, then this
4 Affidavit may not be accurate, correct?

5 A. Well, I'm 51 years old, so it has
6 happened to me where emails were shown to me
7 and it turned out, you know, I didn't have a
8 hundred percent recollection. However, that's
9 not the case right now.

10 Q. Okay. Let's take a look at number
11 77.

12 This is actually a notice for a
13 meeting at Agera on February 9th, 2015. Excuse
14 me, the email was February 6th, 2015 for a
15 meeting, and it's sent to Mr. Bodner,
16 Mr. Cassidy, Mr. Huberfeld, Mr. Beren, you.

17 Do you remember this meeting?

18 MR. KOFFMAN: Objection.

19 SPEAKER: Objection.

20 Foundation. Assumes facts.

21 THE WITNESS: I don't remember
22 the meeting.

23 BY MR. BROWNLEE:

24 Q. Okay. Any reason why Mr. Beren would
25 be invited to a meeting at Agera if his

1 MARK A. NORDLICHT

2 portfolio was limited to PEDEVCO?

3 A. The meeting was at the address of
4 Agera; I just don't remember what it was.

5 Q. Any reason why Mr. Beren would have
6 been included on that?

7 A. I don't know.

8 Q. Could he have been actively involved
9 in some Agera deal?

10 A. No.

11 Q. Why is that you just said you don't
12 know why he was there?

13 A. I don't remember what the meeting
14 was. Ezra Beren was not involved with Agera.

15 Q. Who was involved with Agera?

16 MR. KOFFMAN: Objection.

17 THE WITNESS: Fifth.

18 BY MR. BROWNLEE:

19 Q. Who was involved with Agera?

20 A. Fifth.

21 Q. Was Mr. Bodner involved with Agera?

22 A. Fifth.

23 Q. Was Mr. Huberfeld involved with
24 Agera?

25 A. Fifth.