

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION

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

MARTIN TROTT and CHRISTOPHER SMITH,  
as Joint Official Liquidators and  
Foreign Representatives of  
PLATINUM PARTNERS VALUE ARBITRAGE  
FUND L.P. (in Official Liquidation) and  
PLATINUM PARTNERS VALUE ARBITRAGE  
FUND L.P. (in Official Liquidation),

Case No. 1:18-cv-10936-JSR

Plaintiffs,

-v-

PLATINUM MANAGEMENT (NY) LLC,  
et al.,

Defendants.

**DECLARATION OF JEFFREY C. DANIELS**

I, Jeffrey C. Daniels, declare as follows:

1. I am counsel for defendant Murray Huberfeld in the above-captioned consolidated action. Unless otherwise specified, I have personal knowledge of the facts set forth below.

2. I submit this declaration in support of Mr. Huberfeld's motion for an Order excluding from trial the November 14, 2019 report (and concomitant testimony) of Plaintiffs Martin Trott and Christopher Smith, as the Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) and Platinum Partners Value Arbitrage Fund L.P.'s (in Official Liquidation) proposed expert Bill Post.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Expert Report of Bill Post, dated November 14, 2019.

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

Dated: May 19, 2020

/s/ Jeffrey C. Daniels  
Jeffrey C. Daniels

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

PLATINUM-BEECHWOOD LITIGATION

MARTIN TROTT and CHRISTOPHER SMITH, as Joint  
Official Liquidators and Foreign Representatives of  
PLATINUM PARTNERS VALUE ARBITRAGE  
FUND L.P. (in Official Liquidation) and PLATINUM  
PARTNERS VALUE ARBITRAGE FUND L.P. (in  
Official Liquidation),

Plaintiffs,

-against -

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

Defendants.

Case No. 18-cv-6658 (JSR)

Case No. 18-cv-10936 (JSR)

November 14, 2019

**EXPERT REPORT OF**  
**BILL POST**

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## **I. Qualifications**

1. I am a Senior Managing Director in FTI Consulting's Forensic & Litigation Consulting practice and have over 29 years of experience as an investment management professional - as a chief executive officer, chief investment officer, portfolio manager, and chief compliance officer at various investment firms and trust companies. Before joining FTI, I was a Founder and Senior Managing Partner at a strategic consulting and investment banking firm focused in the investment industry. Prior to this, I held various senior investment management and advisory roles including Chief Investment Officer ("CIO") for the alternative assets business of a multi-billion dollar public investment management company. In this business, focused on private equity and hedge fund investing, I served as chairman of the investment committee and oversaw all portfolio management functions on a day-to-day basis. As the President and CIO for a multi-family office, I was responsible for investing assets in excess of \$450 million, including managing three equity strategies, fixed income investments, private placements, and investments in alternative assets including venture, private equity, hedge funds and real estate investments. I was also the CIO and managing partner at a hedge fund of funds. In this role I was responsible for determining the return objectives and the macro strategy employed by each fund, as well as the selection and monitoring of the investment activities of thirty-two different hedge fund managers using a variety of strategies to achieve the respective funds' investment objectives.

2. In my career as an investment professional I have been a portfolio manager responsible for investing equities, fixed income, and alternative assets classes such as hedge funds, private equity funds, venture capital, and real estate funds. I have extensive experience in the determination of asset allocation strategies, as well as the establishment of investment policies and procedures. Additionally, I am an expert in the due diligence process that a professional or institutional investor would employ in the investment process.

3. I have also served as the Chief Compliance Officer of an investment advisor registered with the Securities and Exchange Commission ("RIA"). In this capacity I oversaw the establishment of all compliance rules and policies and the monitoring and enforcement of all compliance matters. I have served as a fiduciary, and I am familiar with the responsibilities of a fiduciary. I was also President of a California Trust Company doing business in the Western U.S.

and subject to regulation by the Securities and Exchange Commission (“SEC”), Financial Industry Regulatory Authority (“FINRA”), and the California State Banking Authority.

4. As an active securities and corporate attorney, I have drafted private placement memoranda including subscription, disclosure, and compliance documentation which was provided to prospective investors. As General Counsel and as an investment management executive, I retained and supervised counsel in the preparation of private placement memoranda including subscription and disclosure documentation provided to prospective investors and feeder funds in an onshore/offshore structure. During my legal career, I have also advised clients on the formation of legal entities including trusts, family limited partnerships, investment management companies, hedge funds, corporations, limited partnerships, limited liability corporations, special purpose vehicles, bankruptcy remote entities, entities for private placements, and entities utilized for other complex investment transactions and investment management business purposes.

5. Serving as an expert witness, I have provided testimony related to fraudulent investment schemes (including Ponzi schemes), fiduciary duty, conflicts of interest, duty of care and loyalty, investment fund management, due diligence in the investment process, corporate and board governance and control, investment strategies, mutual funds, private placements, adequacy of investment disclosures, investment diversification, investment staff supervision, investor activism, compliance with SEC and FINRA rules, investment-related guidelines and statutes, financial industry regulations, asset management and incentive fees, hedge fund administration, and other subjects.

6. I am a member of the Chartered Financial Analyst Institute and the San Francisco Chapter of the CFA Institute, an active FINRA Series 7 General Securities Representative, a licensed and active attorney in California, and an inactive attorney in the District of Columbia. I also belong to several professional organizations including the Association of Financial Professionals and the State Bar of California (since 1984). I earned a Bachelor of Arts degree from the University of Virginia, a Juris Doctor degree from the University of San Francisco Kendrick School of Law, a postgraduate degree in financial management from the Naval Postgraduate School, and a Chartered Financial Analyst Institute Investment Management certificate from the Harvard Business School.

7. A copy of my curriculum vitae, including my testimony experience over the past ten years, is included as **Appendix A**.

## II. Scope of Assignment

8. FTI has been retained by Holland & Knight LLP on behalf of the Joint Official Liquidators of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (the “Master Fund”) in the matter: *Trott, et al. v. Platinum Management (NY) LLC, et al.*, pending in the United States District Court for the Southern District of New York, Case No. 18-cv-10936 (JSR).

9. In connection with this expert assignment, I have been asked to explain how investment fund managers implement practices, processes, and controls in order to comply with their fiduciary duties. I have also been asked to evaluate how Platinum Management (NY) LLC and individual defendants named later in this report managed the Master Fund in the 2012 to 2016 timeframe, and to opine, from an investment management industry perspective, as to whether such management was consistent with their fiduciary duties.

10. FTI staff, at my direction, have assisted in this expert assignment. However, the opinions outlined in this report are my own opinions based on: (i) my investment management and advisory expertise described in the previous section; and (ii) the review and analysis (performed or directed by me) of the documents, transcript of deposition testimony, and industry research cited in the footnotes of this report and listed in **Appendix B**. My opinions do not and are not intended to represent legal opinions regarding findings of fraud or other statutory violations.

11. I am being compensated at a rate of \$940 per hour for my time. My compensation is not contingent on the content or substance of my opinions or the outcome of this matter. I reserve the right to modify my opinions in light of the ongoing deposition testimony in this matter and in light of any additional documents the parties may produce concerning subjects in my report.

12. I understand that fact discovery is still occurring in this case, with numerous depositions yet to occur. I reserve all rights to amend this report pending receipt of additional discovery, including final deposition transcripts.



### III. Summary of Opinions

13. In my opinion, based on my knowledge and experience, laws, regulations, and industry practices concerning investment management, and the evidence available to me in this matter, Platinum Management and its principals (defined below):

- As an SEC Registered Investment Advisor, had a fiduciary duty to put the Master Fund's (defined below) interests above the interests of Platinum Management and its principals;
- Created and utilized Beechwood and BEOF entities (defined below) as alter egos to engage in fraudulent non-arms-transactions with the Master Fund that lacked statutorily required and appropriate safeguards and mechanisms to mitigate conflicts;
- Orchestrated these fraudulent transactions to inflate the Master Fund's NAV (defined below) and strip its assets for the benefit of themselves and their families and associates;
- Paid themselves millions in unearned management and incentive fees based on inflated NAV at times when the Master Fund was starved of liquidity; and
- Intentionally engaged in sham transactions and self-dealing causing harm to the Master Fund resulting in the collapse of the fund.

### IV. Background

#### A. The Master Fund

14. The investment fund Platinum Partners Value Arbitrage Fund L.P. (the "Master Fund") is an exempted limited partnership domiciled in the Cayman Islands that is currently in liquidation. Established and organized as part of a master-feeder structure, the Master Fund's sole purpose was to invest substantially all assets of its feeder funds. The first feeder fund, Platinum Partners Value Arbitrage Fund (USA) L.P. ("Onshore Feeder Fund") is a Delaware, USA limited partnership that invests directly in and is a limited partner of the Master Fund.<sup>1</sup> This onshore feeder fund was

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<sup>1</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 17. (CTRL4596511)

formed specifically to permit participation by taxable US investors.<sup>2</sup> The second feeder fund, Platinum Partners Value Arbitrage Fund (International) Limited (“Offshore Feeder Fund”) is a Cayman Islands exempted company that indirectly invests in the Master Fund through a special purpose entity and limited partner in the Master Fund called Platinum Partners Value Arbitration Fund (Intermediate) Ltd.<sup>3</sup> The Offshore Feeder Fund was designed for investors exempt from US taxes.<sup>4</sup>

15. The Master Fund was formed in 2002 “...for the purpose of investing...in an actively-managed portfolio of securities, currencies, commodity interests, derivatives and other financial instruments and investments...”<sup>5</sup>

16. According to the Private Offering Memorandum(s) (“POM”) of the Onshore Feeder Fund and Offshore Feeder Fund (collectively the “Feeder Funds”), the Master Fund is a “multi-strategy hedge fund seeking to achieve superior returns while minimizing downside risk.”<sup>6</sup> Its strategies include “long/short fundamental equity strategies, quantitative arbitrage, event-driven investing, opportunistic/macro investing, energy related arbitrage, Asia-based arbitrage, convertible arbitrage, asset-based finance, including the energy and mining sectors, and private equity investments in select industries.”<sup>7</sup> When investing in private equity, the Master Fund seeks to profit from investments in private or public companies in energy and natural resources, and in other industries. These investments may take the form of privately negotiated debt instruments,

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<sup>2</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 48. (CTRL4596511)

<sup>3</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 18 (CTRL6831302); Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 17. (CTRL4596511) *See also* Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Year Ended December 31, 2014, p. 30. (CTRL7303301)

<sup>4</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 60. (CTRL6831302)

<sup>5</sup> Fourth Amended and Restated Investment Management Agreement, December 1, 2010, p. 1. (CTRL7240349)

<sup>6</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 17 (CTRL4596511); Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 18. (CTRL6831302)

<sup>7</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 17 (CTRL4596511); Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 18. (CTRL6831302)

preferred stock, membership interests, and common stock of the companies, held either at the Master Fund level or through subsidiaries of the Master Fund.<sup>8</sup>

B. Platinum Management's Role in Managing the Master Fund

17. Platinum Management (NY) LLC, a Delaware, U.S.A. limited liability company (hereinafter Platinum Management (NY) is referred to as "PM" or "Platinum Management") and SEC Registered Investment Advisor,<sup>9</sup> was the sole investment manager of the Master Fund.<sup>10</sup> PM's roles and responsibilities were specified in the contract it had with the Master Fund, *i.e.*, the Investment Management Agreement. Per the agreement, as manager of the Master Fund, PM was responsible for all investment and operational activities of the fund and its subsidiaries. PM's duties were to invest Master Fund assets "in accordance with the trading objectives and strategies set forth in the applicable [Private Offering] Memorandum." To carry out its duties, PM had wide authority to trade, borrow, and encumber fund assets, and "to enter into any agreement and to do any and all acts and things for the preservation, protection, improvement and enhancement in value" of Master Fund assets.<sup>11</sup>

18. PM also served as the general partner of the Master Fund.<sup>12</sup> As described in the Master Fund's partnership agreement, the general partner has "the power by itself on behalf of and in name of the [Master Fund] to carry out any and all of the objects and purposes of the [Master Fund]" including the power to trade, borrow, and encumber fund assets and to "organize one or more corporations, partnerships or other subsidiary entities formed to hold record title" of fund assets.<sup>13</sup>

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<sup>8</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, pp. 21-22. (CTRL6831302).

<sup>9</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 23 (CTRL6831302); *See also* the U.S. Investment Advisers Act of 1940 codified at 15 U.S.C. § 80b.

<sup>10</sup> Second Amended and Restated Limited Partnership Agreement of Platinum Partners Value Arbitrage Fund L.P., July 2008, p. 5 (FFL0119332)

<sup>11</sup> Fourth Amended and Restated Investment Management Agreement, December 1, 2010, pp. 1-2. (CTRL7240349)

<sup>12</sup> Second Amended and Restated Limited Partnership Agreement of Platinum Partners Value Arbitrage Fund L.P., July 1, 2008, p. 1. (FFL0119332)

<sup>13</sup> Second Amended and Restated Limited Partnership Agreement of Platinum Partners Value Arbitrage Fund L.P., July 1, 2008, pp. 5-6. (FFL0119332)

19. PM was registered as an investment adviser with the SEC pursuant to the U.S. Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 *et seq.*<sup>14</sup> As an SEC Registered Investment Advisor, PM's activities and conduct with regard to the Master Fund were subject to Federal and state statutory and regulatory guidelines, as I discuss in detail later.

20. One of PM's important responsibilities concerned the Master Fund's reporting of its Net Asset Value ("NAV"), which was used for calculating investment returns, financial statements, representations to fund investors and creditors, compensation payments to PM, and various regulatory purposes. While the Master Fund retained an outside party, SS&C Technologies, Inc., to be responsible for calculating the NAV for bookkeeping purposes and performing other administrative matters,<sup>15</sup> the Master Fund's NAV and the valuation of assets under management was "subject to the ultimate direction of the General Partner,"<sup>16</sup> *i.e.*, PM.

21. For performing its duties as fund manager and general partner, PM received compensation from the Master Fund in two ways. First, PM charged each of the Feeder Funds an incentive fee, generally based on 20% of the increase in NAV for each calendar year.<sup>17</sup> PM was also paid a monthly management fee equal to 1/12<sup>th</sup> of 2% of the Master Fund's NAV.<sup>18</sup>

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<sup>14</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 13(CTRL4596511); Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 23. (CTRL6831302)

<sup>15</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 73 (CTRL4596511); Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 85. (CTRL6831302)

<sup>16</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 52 (CTRL4596511); Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 64 (CTRL6831302) Note that the Onshore Feeder Fund's Offering Memorandum is subject to the Investment Manager, who as previously stated, is also Platinum Management.

<sup>17</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 46 (CTRL4596511); Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 30. (CTRL6831302); *See also* Due Diligence Questionnaire, Platinum Management (NY) LLC, September 2015, p. 29. (BW-SHIP-00826755)

<sup>18</sup> Fourth Amended and Restated Investment Management Agreement, December 1, 2010, p. 8. (CTRL7240349)

C. Key Platinum Management Executives

22. The following individuals were publicly known to have held the most senior management roles at PM during the 2012-2016 timeframe, and in fact served in these roles in a fiduciary capacity:

- Mark Nordlicht (“Nordlicht”) - Chairman and Co-Chief Investment Officer of PM. Nordlicht was responsible for all trading, asset allocation, and risk management activity of the Master Fund.<sup>19</sup> Nordlicht was a member of PM’s valuation and risk committees.<sup>20</sup> As set forth below, Nordlicht was involved at every step and in all actions of PM, including but not limited to the overvaluation of the Master Fund’s assets and the payment of unearned fees, and fraudulent activities encompassing the Black Elk transactions, the execution of the Nordlicht Side Letter, and the sale of the Master Fund’s interests in Agera Energy LLC - all of which are analyzed below.
- Uri Landesman (“Landesman”) – President of PM. Landesman shared responsibility with Nordlicht for all trading, asset allocation and risk management.<sup>21</sup> The PM Operating Agreement lists Landesman as Managing Member.<sup>22</sup> Landesman was also a member of PM’s valuation and risk committees.<sup>23</sup>
- David Levy (“Levy”) - Co-Chief Investment Officer. Levy was responsible for overseeing the Master Fund’s investment portfolio and managing asset allocation for the

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<sup>19</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 22. (CTRL4596511) and Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, pp. 24-25. (CTRL6831302)

<sup>20</sup> Platinum Partners Valuation Committee Agenda, October 11, 2011, p. 1. (CTRL3224203); Platinum Credit Management LP Valuation Committee Meeting Minutes, July 1, 2013, p. 1. (CTRL3770927); Platinum Management LLC Risk Committee Meeting Minutes, April 29, 2011, p. 1. (CTRL8421167); Platinum Management LLC Risk Committee Meeting Minutes, March 7, 2013, p. 1. (CTRL8421174)

<sup>21</sup> Platinum Partners Value Arbitrage Fund (USA) L.P. Offering Memorandum, November 2012, p. 22. (CTRL4596511); Landesman’s Platinum Partners business card. (CTRL2201018)

<sup>22</sup> Platinum Management (NY) LLC Second Amended and Restated Operating Agreement, January 1, 2011, Schedule I (PPVA\_RH\_0144672)

<sup>23</sup> Platinum Partners Valuation Committee Agenda, October 11, 2011, p. 1. (CTRL3224203); Platinum Credit Management LP Valuation Committee Meeting Minutes, July 1, 2013, p. 1. (CTRL3770927); Platinum Management LLC Risk Committee Meeting Minutes, April 29, 2011, p. 1. (CTRL8421167); Platinum Management LLC Risk Committee Meeting Minutes, March 7, 2013, p. 1. (CTRL8421174)

Master Fund.<sup>24</sup> As discussed below, while serving dual roles at Beechwood and PM, Levy was responsible for executing the fraudulent Black Elk transactions.

23. In addition, David Bodner (“Bodner”), Murray Huberfeld (“Huberfeld”) and Bernard Fuchs (“Fuchs”), concealed owners of PM, exerted significant control and authority over PM’s management of the Master Fund, even though their names did not appear in POMs, operative documents of PM, the Master Fund or the Feeder Fund or disclosures to the SEC. Later in my report, I will describe how Bodner, Huberfeld, and Fuchs all had knowledge of and/or controlled PM and its engagement in fraudulent activities with the Master Fund.

24. These owners and executives of PM regularly met for partner dinners and at their shared offices at PM and Beechwood to discuss and direct investment and asset allocation strategy for the Master Fund and the other funds under their control.<sup>25</sup> While Landesman, Levy, and Fuchs owed a fiduciary duty to the Master Fund, it is clear from the evidence with regard to the investment management functions at PM, ultimate authority and control resided with Nordlicht, Bodner and Huberfeld, the “partners” in Platinum Partners.<sup>26</sup>

#### D. The Master Fund’s Large Energy Sector Holdings

25. From 2012 through the Master Fund’s collapse into liquidation in August 2016, PM caused the Master Fund’s reported asset allocation to be heavily weighted to illiquid investments in three private operating companies in the energy industry sector: Golden Gate Oil LLC (“GGO”), Black Elk Energy Offshore Operations, LLC (“Black Elk”), Northstar Offshore Group LLC (“Northstar”). PM’s calculation of NAV, which was used to generate fees owed and ultimately paid to its executives, reported that the combined value of debt and equity securities of these three companies comprised a large portion of the Master Fund’s total NAV in the timeframe at-issue.<sup>27</sup>

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<sup>24</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, pp. 24-25. (CTRL6831302)

<sup>25</sup> Email from A. Albanese to Nordlicht, Landesman, M. Muller, K. Lau, and Huberfeld, April 18, 2013. (CTRL3695379); Email exchange between A. Albanese and Landesman, December 3, 2012. (CTRL3349317); Email exchange between A. Albanese, S. Sweetin, M. Feuer, S. Taylor, Nordlicht, A. Baez, and Huberfeld, June 18, 2014. (CTRL5101783); Email exchange between Huberfeld and Nordlicht, April 2014. (CTRL6167797)

<sup>26</sup> M. Huberfeld Deposition, September 7, 2011, pp. 22:16-23:3. (CTRL4987199); Email exchange between B. Jedwab and Nordlicht, August 21, 2014. (CTRL4919566)

<sup>27</sup> Expert Report of Ronald G. Quintero Report, November 14, 2019 (“Quintero Report”).

These investments were categorized as Level 3 assets, meaning that their valuation was based on unobservable inputs and a high degree of subjective influence on the part of the valuator.<sup>28</sup> As discussed below and in the Expert Report of Ronald G. Quintero, PM and its executives exercised their collective position of control to substantially overvalue PPVA's interests in GGO, Black Elk and Northstar, among other investments, resulting in the payment of tens of millions of dollars in unearned fees to PM and its executives.

26. GGO was a California onshore oil and gas exploration and production company that was conducting a shale drilling program in California. As of December 31, 2012, Precious Capital LLC, a subsidiary of the Master Fund, had acquired 48% of all equity interests in GGO and was the holder GGO's working capital line of credit with approximately \$13 million outstanding at that time.<sup>29</sup> After the Master Fund acquired GGO's remaining equity, PM increased its valuation of GGO's equity from \$37 million to as high as \$181 million in 2014, even though PM was able to purchase this equity from a third party for only \$6 million.<sup>30</sup> Due to significant underperformance in well production and permit issues, GGO was unable to make interest payments from its operating income at any point in time. The company's revenue for fiscal year 2013 was only \$1 million, and by 2015 its operations had ceased due to revocation of permits.<sup>31</sup> By June 2016, PM was unable to fund payroll for the skeletal staff remaining at GGO.<sup>32</sup>

27. Black Elk was a Houston-based oil and natural gas company that explored, developed and produced oil and natural gas properties in the Outer Continental Shelf of the Gulf of Mexico.<sup>33</sup> At various times, PM caused the Master Fund or its subsidiaries to hold common equity, preferred equity and senior bonds in Black Elk, which represented a controlling interest in the company. As set forth below and in the Quintero Report, PM used its control over Black Elk to execute

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<sup>28</sup> See explanation of Level 3 in U.S. Generally Accepted Accounting Principles hierarchy for establishing fair value in Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Years Ended December 31, 2013, pp. 42-43 and 52. (PPVA\_RH\_0524016)

<sup>29</sup> Sterling Valuation Report as of December 31, 2012, pp. 143-144.

<sup>30</sup> First Amendment to Amended and Restated Operating Agreement of Golden Gate Oil, LLC, October 29, 2013.

<sup>31</sup> 2013 Golden Gate Oil Financial Statements, p. 4.; Email Exchange between Nordlicht, Levy, and Northstar, July 2015. (CTRL7042189); See also, Email from Zach Weiner, October 2015. (CTRL7534935)

<sup>32</sup> PPVA NAV Information, June 30, 2016. (CTRL8727010); Exhibit 15 to the Second Amended Complaint "SAC".

<sup>33</sup> Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Year Ended December 31, 2013, pp. 53 and 56.



fraudulent transactions, whereby PM and its executives caused Master Fund's interests in asset sale proceeds to be subordinated to the interests of an unaffiliated fund created by Nordlicht, Bodner, Huberfeld, Levy and Landesman for the benefit of family members and other insiders. At all times during the 2013-2016 period, PM overvalued the Master Fund's interest in Black Elk, resulting in the payment of unearned fees to PM and its executives.

28. Northstar was an offshore oil and gas operation in the Gulf of Mexico formed, in part, by the acquisition of the remaining assets of Black Elk in the wake of the Black Elk transactions, with PM causing the Master Fund and other funds under its control to exchange its outstanding bond interests in Black Elk for equity in Northstar.<sup>34</sup> By June 2016, PM valued the Master Fund's interests in Northstar at approximately \$200 million.<sup>35</sup> However, Northstar was forced into involuntary bankruptcy only a few months later, and Northstar's assets were sold in exchange for a \$13 million cash payment and a \$19 million working capital line of credit provided by the seller.<sup>36</sup>

29. Another of the Master Fund's large energy holdings was an indirect ownership interest in Agera Energy LLC ("Agera") which purchased electricity and natural gas from wholesale energy producers and sold it to business and residential customers. The company was formed from the assets of a Master Fund portfolio company, Glacial Energy Holdings, which filed for bankruptcy protection in 2014.<sup>37</sup> The Master Fund owned a 55% interest in Principal Growth Strategies, LLC, which in turn held a promissory note issued by Agera that could be converted into 95% of Agera's equity.<sup>38</sup> As discussed below, by June 2016, Agera was one of the only remaining valuable assets of the Master Fund, which PM and its executives then proceeded to strip from the Master Fund by way of an insider sale to Beechwood and its investor clients at a significant discount.

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<sup>34</sup> Q3 2014 Sterling Valuation Report, Appendix XXIX, February 22, 2015.

<sup>35</sup> PPVA NAV Information, June 30, 2016. (CTRL8727010)

<sup>36</sup> Northstar Asset Purchase Agreement, July 14, 2017 at p. 8.

<sup>37</sup> Agera Holdings LLC Consolidated Financial Statements for the Year Ended December 31, 2015, p. 9.; Agera Energy LLC DRAFT Summary Document, p. 2. (CTRL7831310).

<sup>38</sup> Alvarez & Marsal Valuation Report as of December 31, 2015, p. 142.



E. Other Entities Owned and Controlled by Platinum Management's Executives

30. As I will address later in my report, key PM executives including Nordlicht, Bodner, Huberfeld, Levy, Landesman and Fuchs had ownership interests in, managed, or otherwise controlled groups of entities that engaged in multiple fraudulent transactions with the Master Fund.

31. One group of entities was the Beechwood reinsurance and investment management companies (collectively "Beechwood"). Formed in 2014, Beechwood's primary business was receiving and investing funds from insurers under reinsurance or investment management agreements. Beechwood entered into reinsurance agreements or investment management agreements with, among others, subsidiaries of CNO Financial Group, Inc., Senior Health Insurance Company of Pennsylvania and Universal Life Insurance Company of Puerto Rico.<sup>39</sup> As discussed below, majority ownership and ultimate control of Beechwood was held by Nordlicht, Bodner, Huberfeld, and Levy. These PM individuals used the Beechwood enterprise as a fraudulent tool to execute various insider transactions from 2014-2016 to the detriment of the Master Fund, including, among things, acting as a temporary repository for bonds in connection with the Black Elk transactions, purchasing the loan issued to GGO and in connection with the Nordlicht Side Letter and the sale of Agera.

32. Another investment fund owned and controlled by PM executives was the Black Elk Opportunity Fund entities (collectively "BEOF"), which included both an onshore and offshore feeder fund and a management company owned by Nordlicht, Huberfeld, Bodner, Levy and Landesman. BEOF was established in 2013 for the purpose of purchasing Black Elk preferred equity units, both from the issuer and from a Master Fund subsidiary called Black Elk (Equity) LLC.<sup>40</sup> BEOF was set up outside the structure of the Master Fund, and some of its largest investors were PM executives, their family members or companies under their control, such as the Huberfeld Family Foundation.<sup>41</sup> As set forth below, the investors in BEOF were the ultimate beneficiaries of the Black Elk transactions, whereby the Master Fund's bond interests were subordinated to the

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<sup>39</sup> Beechwood Re Business Plan, May 2015, pp. 1-2. (BW-SHIP-00132055)

<sup>40</sup> Platinum Partners Black Elk Opportunities Fund LLC, Private Placement Memorandum, January 2013, p.8. (CTRL3645093)

<sup>41</sup> July 8, 2014 BEOF Investor List. (CTRL6348079)

preferred equity holdings of the BEOF investors through a fraudulent consent solicitation orchestrated by PM and its executives.

**V. As an SEC Registered Investment Advisor, PM Was Required to Comply with All Statutory and Regulatory Requirements of the Investment Advisors Act of 1940 – Including the Requirement to Act as a Fiduciary**

33. PM was registered with the SEC as an investment advisor under the U.S. Investment Advisors Act of 1940 (“Advisors Act”).<sup>42</sup> As the investment manager of the Master Fund and general partner of the Master Fund, PM was subject to federal law, which holds that an investment advisor is a fiduciary.<sup>43</sup>

A. Fiduciary Duties of Care and Loyalty

34. Because PM was a fiduciary, PM owed a duty of care and a duty of loyalty to the Master Fund.<sup>44</sup>

35. The duty of care required PM to act with reasonable care and exercise prudent judgment in the execution of its investment activities for the Master Fund.<sup>45</sup> PM was obligated to act for the benefit of the Master Fund and to place the Master Fund’s interests before the interests of PM and its executives.<sup>46</sup> The duty of care required that PM deal fairly and objectively with the Master Fund

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<sup>42</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015, p. 23, See also the U.S. Investment Advisors Act of 1940 codified at 15 U.S.C. § 80b.

<sup>43</sup> The U.S. Investment Advisors Act of 1940, codified at 15 U.S.C. § 80b. This is supported by the following: *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); Amendments to Form ADV, Investment Advisors Act Release No. 3060 (July 28, 2010).

<sup>44</sup> “[A] general partner as manager of a hedge fund owes fiduciary duties to limited partners as investors, and must act with a good faith belief that it is advancing the best interests of the fund and its investors”. See “I’ve Been Sued for What? — Fiduciary Duty Claims Against Hedge Fund Managers and How to Avoid Them” Zachary G. Newman and Jonathan M. Proman, fn iii, citing *Paige Capital Mgmt., LLC v. Lerner Master Fund, LLC*, No. 5502-CS, 2011 Del. Ch. LEXIS 116, at \*110 (Del. Ch. Aug. 8, 2011).

<sup>45</sup> Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN, 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, p. 19.

<sup>46</sup> Securities and Exchange Commission, 17 CFR Part 275, Release No. IA-2106, File No. S7-38-02, RIN: 3235-AI65, Final Rule: Proxy Voting by Investment Advisers, Effective March 10, 2003; Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN: 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, pp. 12, 21; Code of Ethics and Standards of Professional Conduct, CFA Institute, p. 2, available at <https://www.cfainstitute.org/>

when making investments, making investment recommendations, and taking investment actions.<sup>47</sup> The duty of care is both ethical and legal, and it required PM to make decisions in good faith and in a reasonably prudent manner. PM was required to exercise the utmost care in making business decisions to fulfill its fiduciary duty.

36. The duty of loyalty required PM to act responsibly with regard to the interests of the Master Fund, and for any and all of PM's actions to be in the best interests of the Master Fund.<sup>48</sup> The duty of loyalty required PM to be completely loyal to the Master Fund at all times. It also imposed on PM a responsibility to avoid possible conflicts of interest, thereby precluding any principle of PM from self-dealing or taking advantage of a corporate opportunity of the Master Fund for personal gain.<sup>49</sup>

37. PM's fiduciary duty to the Master Fund was broad and was mandatory in every aspect of the relationship. By virtue of its duties of loyalty and care, PM was required to place the interests of the Master Fund ahead of its own in the execution of PM's investment and operational activities for the Master Fund.<sup>50</sup> PM was required to subordinate its interest and the interests of its owners to the interests of the Master Fund at all times.<sup>51</sup> PM's fiduciary duty also required PM to make

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[/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx](https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx) (accessed 11/13/2019).

<sup>47</sup> The U.S. Investment Advisers Act of 1940, § 206.

<sup>48</sup> Securities and Exchange Commission, 17 CFR Part 275, Release No. IA-2106, File No. S7-38-02, RIN: 3235-AI65, Final Rule: Proxy Voting by Investment Advisers, Effective March 10, 2003; Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN: 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, pp. 12, 21; Code of Ethics and Standards of Professional Conduct, CFA Institute, p. 2, available at <https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx> (accessed 11/13/2019).

<sup>49</sup> The U.S. Investment Advisers Act of 1940 codified at 15 U.S.C. § 80b; *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963).

<sup>50</sup> Securities and Exchange Commission, 17 CFR Part 275, Release No. IA-2106, File No. S7-38-02, RIN: 3235-AI65, Final Rule: Proxy Voting by Investment Advisers, Effective March 10, 2003; Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN: 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, pp. 12, 21; Code of Ethics and Standards of Professional Conduct, CFA Institute, p. 2, available at <https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx> (accessed 11/13/2019).

<sup>51</sup> Securities and Exchange Commission, 17 CFR Part 275, Release No. IA-2106, File No. S7-38-02, RIN: 3235-AI65, Final Rule: Proxy Voting by Investment Advisers, Effective March 10, 2003; Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN: 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, pp. 12, 21; Code of

full and fair disclosures to the Master Fund that were free from misrepresentation or omission of material information.<sup>52</sup> In addition, PM was required to disclose all conflicts of interest and all material facts relating to the advisory relationship<sup>53</sup> and to resolve or take action to mitigate such conflicts. Full and fair disclosure requires that the Master Fund be provided with a sufficient level of detail regarding the facts pertaining to or associated with any potential or actual conflicts of interest that exist.<sup>54</sup>

B. Legal Prohibitions against Fraud and Deceit

38. Section 206 of the Advisers Act also prohibits PM from acts of fraud and deceit and making untrue statements - and requires PM to implement policies and procedures to prevent Adviser Act violations.<sup>55</sup> Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.”<sup>56</sup>

39. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to “make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment

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Ethics and Standards of Professional Conduct, CFA Institute, p. 2, available at <https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx> (accessed 11/13/2019).

<sup>52</sup> Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN: 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, p. 8.

<sup>53</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963).

<sup>54</sup> Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN: 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019, p. 8.

<sup>55</sup> The U.S. Investment Advisers Act of 1940, § 206.

<sup>56</sup> Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act Of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order, Administrative Proceeding File No. 3-16969, In the Matter of Cranshire Capital Advisors, LLC, pp. 4-5.

vehicle” or “engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.”<sup>57</sup>

40. Further, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review, no less frequently than annually, the adequacy of the policies and procedures and the effectiveness of their implementation.<sup>58</sup>

41. PM was required to adopt or to implement an adequate compliance program to ensure that conflicts of interest were eliminated in the execution of its duties under its contract with the Master Fund. When PM identified a conflict of interest with the Master Fund in the course of making investment decision, it was required to disclose the conflict, to take steps to eliminate the conflict, and to ensure that any investment decision made where a conflict existed placed the interests of the Master Fund ahead of PM.

### C. Practical Implementation of Investment Manager Duties

42. Based on my experience as an investment management professional and as a member of the CFA Institute, one of several ways registered investment advisors uphold their duties is by implementing an investment evaluation and approval process that is careful, diligent, comprehensive, and objectively fair, and that avoids self-dealing.

43. The CFA Institute describes appropriate conduct in its Code of Ethics and Standards of Professional Conduct, including duties to clients of loyalty, prudence, and care, and specifically states: “Members and Candidates must act for the benefit of their clients and place their clients’ interests before their employer’s or their own interests.”<sup>59</sup>

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<sup>57</sup> Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act Of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order, Administrative Proceeding File No. 3-16969, In the Matter of Cranshire Capital Advisors, LLC, pp. 4-5.

<sup>58</sup> Securities and Exchange Commission, 17 CFR Parts 270 and 275, Release Nos. IA-2204, IC-26299, File No. S7-03-03, RIN: 3235-AI77, Compliance Programs of Investment Companies and Investment Advisers, Effective February 5, 2004; The U.S. Investment Advisers Act of 1940, § 206(4).

<sup>59</sup> Code of Ethics and Standards of Professional Conduct, CFA Institute, available at <https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx> (accessed 11/13/2019).

44. As referenced previously, for the Master Fund PM used a master/feeder fund structure. PM had a direct contractual relationship with the Master Fund to manage fund assets. Additionally, PM was the general partner of the Master Fund. This inherent conflict of interest between goals of the manager and of the general partner was disclosed to investors in the POMs prepared by PM. However, the disclosure of conflicts does not absolve PM from its fiduciary duty to the Master Fund, nor does disclosure relieve PM from eliminating all conflicts and taking objective steps to mitigate conflicts in its exercise of contractual duties. Further, if those conflicts cannot be eliminated, then PM was required to engage an independent director who could protect the interests of the Master Fund.

45. Based on my experience as an investment professional, with master/feeder fund structures it is typical and commonplace for the manager to have both a fiduciary relationship with the master fund and conflicts of interest. However, my experience is that registered investment advisors that are part of such a structure adopt policies and procedures which effectively eliminate conflicts. Investment managers must put in place mechanisms to ensure all investment decisions with ethical conflicts have independent evaluation, decision making, and monitoring to ensure they are fair for all parties.

46. Further, the manager must have policies and procedures to identify potential conflicts, independent governance (e.g. outside board of directors), fairness opinions and other forms of outside professional assistance (e.g., valuation of illiquid securities or contingent liabilities), and independent legal representation for large deals. Despite the existence of conflicts and the disclosure or the imputed knowledge of the Master Fund that conflicts may exist, PM was obligated by statute, rules, regulation, ethical guidelines, and industry standards to eliminate conflicts. If a conflict was not avoided, because of the fiduciary duty owed to the Master Fund, PM was obligated to place the interests of both the Master Fund and the investors ahead of PM's owners.

47. In addition, these fiduciary standards are articulated in industry trade organizations such as the Investment Adviser Association. Founded in 1937, this organization "exclusively

represents the interests of SEC-registered investment adviser firms”<sup>60</sup> and provides a list of duties that are generally required, including the following:<sup>61</sup>

- the duty at all times to place the interests of clients first;
- the duty to treat clients fairly; and
- the duty to make full and fair disclosure to clients of all material facts about the advisory relationship, particularly regarding conflicts of interest.

## **VI. Platinum Management Engaged in Fraudulent Transactions that Irreparably Harmed the Master Fund and Caused Its Collapse**

48. Based on the documentation and testimony I have reviewed in this matter, PM and its executives engaged in fraudulent transactions involving self-dealing, conveyance, subordination, and encumbrance of fund assets, and blatant misrepresentation of asset values - all of which financially damaged the Master Fund for the person benefit of PM’s owners.

49. As I analyze below, Beechwood and BEOF, with common ownership and control by PM, were used as fraudulent tools in transactions that dissipated value from the Master Fund. PM also reported inflated valuations of the Master Fund’s oil and gas holdings to strip assets from the Master Fund in the form of unearned management and incentive fees and improper payments.

50. As the Master Fund’s insolvency deepened, PM executed additional fraudulent transactions, culminating with the sale of Agera Energy to Beechwood and certain of its investor clients, which transferred the Master Fund’s remaining valuable assets or encumbered them for the benefit of Beechwood and other PM insiders.

51. PM utilized Beechwood and BEOF as straw men and as PM’s alter egos to effectuate these non-arms-length, conflicted, and self-dealing transactions in which MF lacked independent and objective internal or external professional representation. Based on my experience as an investment professional and my review of the evidence in this matter, it is my opinion that these

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<sup>60</sup> Background and Mission, Investment Adviser Association, available at <https://www.investmentadviser.org/about/background-mission> (accessed 11/13/2019).

<sup>61</sup> IAA Standards of Practice & Fiduciary Duty, Investment Adviser Association, available at <https://www.investmentadviser.org/about/standards-practice-duty> (accessed 11/10/2019).



were sham transactions which were executed to the benefit of PM and detriment of the Master Fund.

52. PM's actions, described in detail below, caused grave and significant financial harm – including material financial loss from fraudulent investing activities and wrongful payment of management and incentive fees, which led directly to the collapse of the Master Fund (in lieu of orderly liquidation), and the Master Fund's subsequent liability for breaching statutes, rules and regulations of the SEC and the laws of the States of New York, Delaware, and the Cayman Islands, as applicable.

## **VII. To Perpetrate Fraud Against the Master Fund, Platinum Management Utilized Its Alter Egos, Beechwood and BEOF**

53. An entity is considered to be a mere alter ego when it “has been so dominated by . . . another corporation . . . and its separate identity so disregarded, that it primarily transacted the dominator's business rather than its own.”<sup>62</sup>

54. Because of the methods and/or lack of processes and procedures in which PM operated, based on my review of the evidence in this matter, Beechwood and BEOF were operated as the alter ego of PM in the execution of the described fraudulent schemes. I have been informed by Holland & Knight that the following indicia in particular are among those used for determining alter ego liability in this matter: (1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, ... (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address, and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms-length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the

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<sup>62</sup> *Trabucco v. Intesa Sanpaolo, S.p.A.*, 695 F. Supp. 2d 98, 107 (S.D.N.Y. 2010).



corporations as if it were its own. Common ownership and common control are often the most critical factors at play.<sup>63</sup>

A. Common Ownership

55. PM, Beechwood, and BEOF had a high degree of common ownership. As summarized in the following table, four of the owners of PM, Nordlicht, Huberfeld, Bodner, and Landesman, along with their families, all had ownership interests in BEOF, Beechwood, or both. In aggregate, these ownership interests comprised 95% of the BEOF management and holding entity and at least half of the voting or total interests of Beechwood holding companies.

Entity	Interests Owned by PM Members and Their Respective Families					
	Nordlicht & Family	Huberfeld & Family	Bodner & Family	Landesman & Family	Levy & Family	Total Family Ownership
<b>Platinum Management</b>	<b>25%</b>	<b>25%</b>	<b>25%</b>	<b>25%</b>	<b>See Below</b>	<b>100%</b>
<b>Beechwood Entities:</b>						
<b>Beechwood Re Holdings, Inc.</b>	<b>15%</b>	<b>15%</b>	<b>15%</b>	<b>0%</b>	<b>5%</b>	<b>50%</b>
<i>Beechwood Re Holdings, Inc. (Voting)</i>	<i>0%</i>	<i>0%</i>	<i>0%</i>	<i>0%</i>	<i>9%</i>	<i>9%</i>
<i>Beechwood Re Holdings, Inc. (Non-Voting)</i>	<i>20%</i>	<i>20%</i>	<i>20%</i>	<i>0%</i>	<i>4%</i>	<i>63%</i>
<b>Beechwood Re Investment LLC</b>	<b>43%</b>	<b>25%</b>	<b>25%</b>	<b>0%</b>	<b>0%</b>	<b>93%</b>
<b>Beechwood Bermuda Ltd.</b>	<b>16%</b>	<b>14%</b>	<b>13%</b>	<b>0%</b>	<b>5%</b>	<b>47%</b>
<i>Beechwood Bermuda Ltd. (Voting)</i>	<i>0%</i>	<i>27%</i>	<i>45%</i>	<i>0%</i>	<i>10%</i>	<i>81%</i>
<i>Beechwood Bermuda Ltd. (Non-Voting)</i>	<i>17%</i>	<i>13%</i>	<i>10%</i>	<i>0%</i>	<i>4%</i>	<i>44%</i>
<b>B Asset Manager, LP I and II - Class A</b>	<b>21%</b>	<b>21%</b>	<b>21%</b>	<b>0%</b>	<b>7%</b>	<b>69%</b>
<b>B Asset Manager, LP I and II - Class B</b>	<b>15%</b>	<b>15%</b>	<b>15%</b>	<b>0%</b>	<b>5%</b>	<b>50%</b>
<b>BEOF Entities:</b>						
<b>PPBE Holdings LLC</b>	<b>26%</b>	<b>26%</b>	<b>26%</b>	<b>17%</b>	<b>1%</b>	<b>95%</b>
<b>PPBE Management LLC</b>	<b>26%</b>	<b>26%</b>	<b>26%</b>	<b>17%</b>	<b>1%</b>	<b>95%</b>

<sup>63</sup> *Id.*

56. According to PM’s SEC filing in March 2016, both Levy and Fuchs acquired PM ownership interests in amounts ranging from 10% to 25%. Levy and Fuchs became owners in January 2015 and January 2014 respectively.<sup>64</sup> In his deposition, Fuchs said he obtained a 10% ownership interest in PM in the middle of 2014.<sup>65</sup> See **Exhibit 1** for detailed information regarding entities and ownership structures.

**B. Common Control**

57. PM was controlled by Nordlicht, Huberfeld, Bodner, Landesman, Levy, and Fuchs. All of these individuals, apart from Levy, were entitled to generous compensation based on the management and incentive fees PM charged the Master Fund and their ownership interest in PM.<sup>66</sup> Nordlicht, Landesman, and Levy publicly served in PM’s top management positions, i.e., Chairman and Co-CIO, President, and Co-CIO, respectively. While Bodner and Huberfeld did not hold formal titles at PM, each advised on and approved deals, made management decisions, and participated in the partners meetings, as in the following representative examples:

Examples of Control	Bodner	Huberfeld	Control Number
Attends partner meetings	x	x	3695379
Overrules Nordlicht for financing option	x		6351132
Reviews deal terms with Nordlicht	x	x	6191008; 7620246
Makes PM personnel and compensation decisions and has overruling power	x	x	5889601
Receives concealed MF data from PM’s CFO	x	x	7035649
Pitches PM to Investors	x	x	3692863
Holds office at PM	x	x	5717681; 7369235

Similar to Bodner and Huberfeld, Fuchs had no formal title, yet he too made key decisions and was part of the top leadership group. In his deposition, Fuchs confirmed how he attended PM

<sup>64</sup> SEC Form ADV Uniform Application for Investment Advisor Registration and report By Exempt Reporting Advisors, Platinum Management (NY) LLC, March 30, 2016, Schedule A Direct Owners and Executive Officers.

<sup>65</sup> B. Fuchs Deposition, October 2, 2019, pp. 25:9 to 26:8.

<sup>66</sup> Email from J. Edelstein to Huberfeld, April 4, 2014. (CTRL3694219); Email from J. Edelstein to M. Fox and “jkeisenbud”, April 29, 2013. (CTRL3756202); Email form N. Manel to J. SanFilippo and D. Mandelbaum, February 27, 2015. (CTRL6479029); Email from A. Albanese to Bodner, August 29, 2013. (CTRL3692889).

partner meetings,<sup>67</sup> had authority over PM employees and budgets,<sup>68</sup> and was privy to disagreements between Nordlicht and Bodner regarding the Master Fund's asset valuations during PM meetings on strategy.<sup>69</sup>

58. Beechwood was controlled by the same individuals that owned and managed PM. Four of the six PM principals, Nordlicht, Bodner, Huberfeld, and Levy, formed Beechwood<sup>70</sup> and funded its early operations.<sup>71</sup> PM and Beechwood initially shared offices, and PM paid Beechwood expenses at the outset.<sup>72</sup> PM and Beechwood had a revolving door policy with employees, with many employees shuttling back and forth between Beechwood and PM between 2013-2016 and some serving dual roles, most notably David Levy during the Black Elk transactions.<sup>73</sup> While Levy publicly served as the chief executive at Beechwood during 2014,<sup>74</sup> Nordlicht, Bodner and Huberfeld also exerted control over Beechwood, with authority over investment and staffing decisions and other matters:

Examples of Control	Bodner	Huberfeld	Nordlicht	Control Number
Reviews Beechwood deal terms	x	x	x	ALB0000304
Resided in an office at Beechwood	x	x	x	BW-SHIP-00909997; 4972792
Was onboarded at Beechwood	x	x		5714409
Reviews Beechwood investment limits	x	x	x	CNOCSL_01686133
Decides timing of staff transfer from PM to Beechwood	x	x	x	5712289
Takes meetings on behalf of Beechwood	x	x	x	ALB0000452; BW-SHIP-00917395
Advises Beechwood on deals and makes investment decisions	x	x	x	6678065;

<sup>67</sup> B. Fuchs Deposition, October 2, 2019, p. 26:17-23.

<sup>68</sup> B. Fuchs Deposition, October 2, 2019, pp. 122:17-22 and 126:17-127:5.

<sup>69</sup> B. Fuchs Deposition, October 2, 2019, p. 28:5-20.

<sup>70</sup> See Exhibit 1.7.

<sup>71</sup> Amended and Restated Demand Note, May 16, 2014. (BW-SHIP-00167424); *See also* Exhibit 1.6.

<sup>72</sup> See Exhibit 44 to the SAC where the address matches the address of Platinum Management in their Operating Agreement. See also Exhibit 39 to the SAC where Platinum Partners is named on an invoice for Beechwood.

<sup>73</sup> Email exchange between S. Adler and M. Feuer, December 2015. (BW-SHIP-00916925); Email from Platinum Compliance to PM employees, October 12, 2015 (CTRL7369235); Email from A. Northwood to Levy, September 3, 2014. (CNOCSL\_01260280)

<sup>74</sup> Exhibit 42 to the SAC.

				See below <sup>75</sup>
Had a phone number at Beechwood	x	x	x	5714409; 5104415

59. According to Fuchs, Bodner and Huberfeld were among those that ran Beechwood.<sup>76</sup> Indeed, PM's principals were so intertwined with Beechwood that investors even referred to the two entities as one.<sup>77</sup> Further, in 2014 the SEC questioned whether Beechwood should be registered as a relying adviser of Platinum because they viewed the two entities as operationally integrated.<sup>78</sup> Just a month prior to the SEC's inquiry, Levy was aware of how tangled the companies were and actively attempted to hide Nordlicht's involvement at Beechwood.<sup>79</sup>

60. PM and its executives also controlled the entities in the BEOF structure. All BEOF operations were headquartered in PM's offices.<sup>80</sup> PPBE Management LLC was the investment manager of BEOF, with ownership interests and management/incentive fees paid to Huberfeld, Bodner, Levy, Nordlicht and Landesman.<sup>81</sup> At the same time Levy was publicly working at Beechwood, SEC disclosures submitted by PM listed Levy as manager of BEOF.<sup>82</sup> Nordlicht and Levy, along with other PM portfolio managers such as Daniel Small,<sup>83</sup> were involved on a day-to-day basis with BEOF transactions.<sup>84</sup> Huberfeld, Bodner, Landesman, and Fuchs were involved in marketing the BEOF investment opportunity "outside of the funds" to friends and family of the

<sup>75</sup> Email between M. Feuer and Huberfeld in which Feuer seeks advice of Huberfeld, January 25, 2016.

<sup>76</sup> B. Fuchs Deposition, October 2, 2019, p. 56:18-22.

<sup>77</sup> Email from Kerry Propper, October 2014.

<sup>78</sup> Email exchange between Nordlicht and PM counsel, August – September 2014. (BW-SHIP-00948538)

<sup>79</sup> Email on behalf of Levy to PM employees, July 1, 2014. (CTRL5104416)

<sup>80</sup> Platinum Partners Black Elk Opportunities Fund LLC and Platinum Partners Black Elk Opportunities Fund International LTD Executive Summary. (CNOCSL\_01573955)

<sup>81</sup> See Exhibits 1.4-1.5.

<sup>82</sup> Form ADV Uniform Application for Investment Adviser Registration, Platinum Management (NY) LLC, submitted March 31, 2014. (2014 SEC Disclosure CNOCSL\_00034062)

<sup>83</sup> Amended and Restated Investment Management Agreement, p. 1. (PPVA\_RH\_0426174)

<sup>84</sup> Platinum Partners Black Elk Opportunities Fund LLC and Platinum Partners Black Elk Opportunities Fund International LTD Executive Summary. (CNOCSL\_01573955)

PM executives.<sup>85</sup> Certain of the PM executives held investor interests in the BEOF feeder funds themselves or through their friends, family, or entities.<sup>86</sup>

61. In summary, PM, Beechwood, and BEOF had substantial common ownership and control.

Key Personnel	Platinum Management		Beechwood		BEOF	
	Ownership	Control	Ownership	Control	Ownership	Control
Nordlicht	x	x	x	x	x	x
Landesman	x	x			x	x
Bodner	x	x	x	x	x	x
Huberfeld	x	x	x	x	x	x
Levy	x	x	x	x	x	x
Fuchs	x	x				x

### C. Concealment of Bodner and Huberfeld Control

62. Bodner and Huberfeld, as two out of the three decision makers at PM (the third being Nordlicht), had very significant disciplinary and regulatory findings which demonstrate unethical and fraudulent behavior. In 1990, Bodner and Huberfeld admitted to and were arrested in connection for working with frequent accomplice Aaron Elbogen to send imposters to take their FINRA Series 7 examinations. Apart from this, each were forced to make restitution payments to the SEC for improper trading activities in connection with the trading of restricted stock at Broad Capital, their previous firm.<sup>87</sup> In connection with the arrest of Charles Kushner and the investigation of NorCrown Bank (which Huberfeld and Bodner owned through their wives), Huberfeld and Bodner reached a settlement with the Federal Reserve prohibiting them for life from holding a beneficial interest in a FDIC-insured institution.<sup>88</sup>

<sup>85</sup> Exhibit 52 to the SAC; Email from A. Albanese to Bodner, March 11, 2014. (CTRL5171525); Email from A. Albanese to M. Feuer and S. Sweetin, June 19, 2014. (BW-SHIP-00909210); Email exchange between Nordlicht, Huberfeld, B. Fuchs, and K. Lau, March 30, 2015. (CTRL6603936)

<sup>86</sup> July 8, 2014 BEOF Investor List. (CTRL6348079), For example, David Levy, Nordlicht family members, and the Huberfeld Family Foundation had investments in the various BEOF feeder funds.

<sup>87</sup> “Money Machine” by Bill Alpert, Barron’s, Dow Jones & Company, Inc., October 30, 2000. (CTRL3621961)

<sup>88</sup> “Federal Reserve Board and FDIC Announce Written Agreement with Two Individuals in NorCrown Trust Matter”, The Federal Reserve Board, February 25, 2005, available at <https://www.federalreserve.gov/boarddocs/press/enforcement/2005/20050225/default.htm> (accessed 11/14/2019);

63. Based on the case record I reviewed, PM actively hid the involvement of Bodner and Huberfeld in its affairs, violating numerous federal statutes and regulatory rules and their fiduciary duty to the Master Fund. PM established an organization structure to hide both Huberfeld and Bodner from outsiders and regulators, while at the same time they were marketing to insider investors and directing investment strategy. Their emails were routed through administrative assistants employed by PM who printed them out or forwarded them to personal email addresses.<sup>89</sup> These assistants would also intercept their inbound phone calls, whether at the PM or Beechwood offices.<sup>90</sup> PM also failed to disclose Bodner's and Huberfeld's connection to or control of PM in Master Fund Due Diligence Questionnaires<sup>91</sup> and POMs<sup>92</sup> sent to investors. Lastly, Bodner and Huberfeld were omitted from Form ADV which PM was required to provide to investors and file annually with the SEC. Notably, in Part 2 of PM's 2014 Form ADV, PM completed a schedule of Direct Owners and Executive Officers. With respect to Platinum Management (NY) LLC, PM reported Mark Nordlicht's ownership percentage as greater than 75% and did not report the Mark Nordlicht Grantor Trust as a direct owner.<sup>93</sup> In fact this disclosure was a falsehood, as the Mark Nordlicht Grantor Trust actually owned 65% of PM, with Bodner's and Huberfeld's LLCs each having a 38% ownership interest in this trust. The ownership of their LLCs, in turn, was split evenly between themselves and their spouses, as follows.

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See also, "Statement of Policy for Section 19 of the FDI Act", Federal Deposit Insurance Corporation, available at <https://www.fdic.gov/regulations/laws/rules/5000-1300.html> (accessed 11/14/2019).

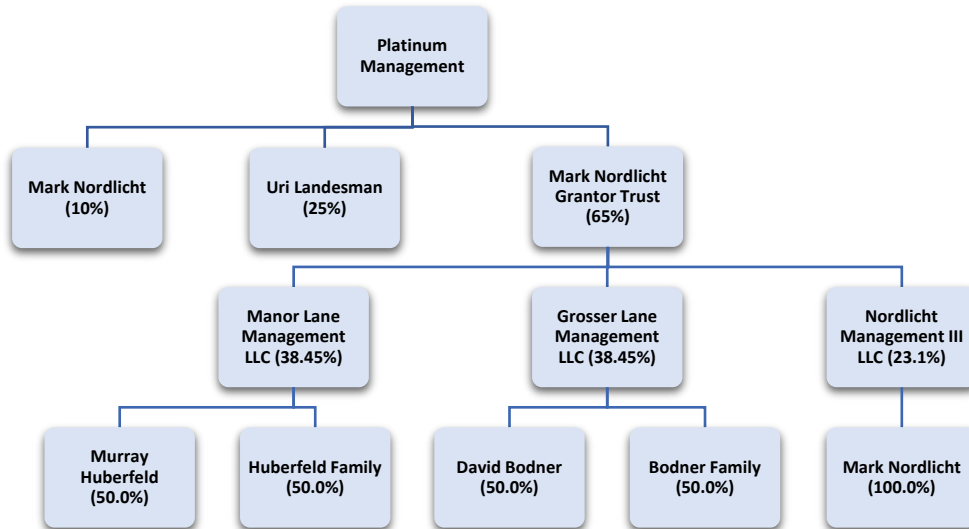
<sup>89</sup> Email from A. Northwood to A. Albanese, November 12, 2014. (ALB0000334); Email from A. Albanese to Bodner, April 13, 2015. (ALB0001068); Bodner auto reply email, August 8, 2015. (CTRL7170540); Email exchange between A. Northwood and D. Saks, March 31, 2015. (BW-SHIP-01050099)

<sup>90</sup> A. Albanese email to bodnerang@gmail.com, et al., October 22, 2014. (CTRL5721324)

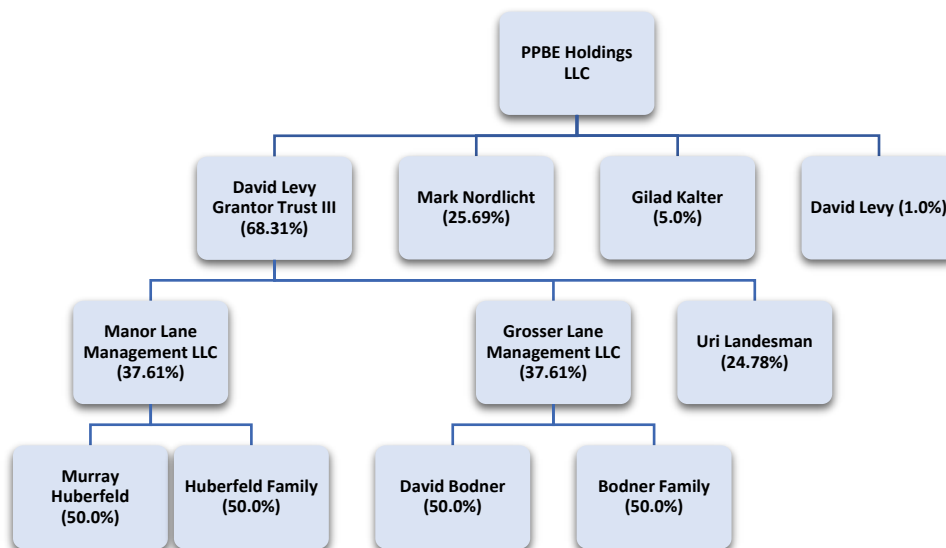
<sup>91</sup> Due Diligence Questionnaire, Platinum Management (NY) LLC, September 2015. (BW-SHIP-00826755); Due Diligence Questionnaire, Platinum Partners Value Arbitrage Fund LP, January 2014. (PPVA\_RH\_0136490); Due Diligence Questionnaire, Platinum Partners Value Arbitrage Fund LP, September 2013. (PPVA\_RH\_0445033)

<sup>92</sup> Platinum Partners Value Arbitrage Fund (International) Limited Offering Memorandum, April 2015. (CTRL6831302) (HKE-DMRJ-00021663)

<sup>93</sup> Form ADV Uniform Application for Investment Adviser Registration, Platinum Management (NY) LLC, submitted March 31, 2014, pp. 16-18. (CNOCSL\_00034062)



64. Bodner and Huberfeld had similar indirect interests in the BEOF holding company, as following diagram. The BEOF Management LLC had the exact same ownership structure.



65. These PM ownership structures fits with Bodner’s and Huberfeld’s pattern of placing ownership in the name of family members and creating a labyrinth of ownership entities, as shown in more detail in **Exhibit 1**.

66. Based on the foregoing factual analysis, Beechwood and BEOF had the indicia of being alter egos of PM, which itself was an entity controlled by Nordlicht, Landesman, Levy, Bodner, Huberfeld, and Fuchs and owned by all of the same individuals, apart from Levy.

**VIII. Platinum Management Failed to Meet Its Fiduciary Duty and Caused Harm to the Master Fund When It Conducted Fraudulent Transactions with Related Parties in Ways Specifically Proscribed by the Applicable Statutes.**

67. In PM's written code of ethics, the Statement of Principles sections states:

“The Firm is committed to conducting business in accordance with all applicable laws and regulations and in an ethical and professional manner. In addition, the Firm recognizes that it has a fiduciary duty to the investors in the private investment funds...The Firm has been entrusted with the money of investors and the Firm recognizes that its performance will not only be measured by the investment performance that the Firm delivers to investors, but also by the Firm's commitment to honesty, good faith and fair dealing with investors...”<sup>94</sup>

68. In contrast to PM's own acknowledgement of its fiduciary duty to the Master Fund and its commitment to fair dealing, three examples from the evidence demonstrates a broader pattern in which PM caused the Master Fund to enter into a series of transactions with counterparties owned and managed by PM. In each example, PM had a clear conflict of interest, and yet failed to put in place safeguards to ensure the transactions were completed at arms-length. Such safeguards should have included mechanisms of independent review on behalf of the Master Fund, e.g., fairness opinions, separate legal representation, competitive bidding, etc.

69. By avoiding these safeguards and acting in bad faith, PM caused the Master Fund to consistently receive far less than it gave away in the described transactions. Together, these examples and others in the case record demonstrate the manner in which PM put its own interests (and those of its alter egos) above those of the Master Fund, in direct contravention of its fiduciary duty, and consistently engaged in conduct that was deceptive, fraudulent, and manipulative.

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<sup>94</sup> Code of Ethics, Platinum Management (NY) LLC, June 2015, p. 2. (CTRL7477877).



A. The Black Elk Transactions

70. Black Elk was a Houston oil and natural gas company that engaged in exploration and drilling activities in the Gulf of Mexico. In the latter part of 2012, the company was heavily leveraged and in poor financial condition. Production had decreased, and the price of oil was low enough that costs of drilling and extracting oil offshore was becoming uneconomical.<sup>95</sup> At this time, the Master Fund held a significant position in Black Elk, primarily common equity, that it was valuing at approximately \$250 million. The fund also had a \$30 million position in Black Elk's Senior Secured Notes ("SSNs"). In aggregate, the fund's investment in Black Elk was its largest single holding, comprising 35% of total NAV.<sup>96</sup> While Black Elk's equity was privately held (with PM exercising ownership control over the company), its SSNs were publicly traded.<sup>97</sup>

71. According Black Elk's regulatory filings, oil exploration and drilling can be unsuccessful for a myriad of reasons including adverse weather events, cost overruns, equipment shortages and mechanical difficulties. Offshore drilling activities have an even higher degree of inherent risk due to fires, explosions, uncontrollable flows of gas, etc. that may cause loss of life, severe destruction of property, environmental damage and liability, regulatory investigations and penalties, and other adverse events for the company.<sup>98</sup> One of these risks came to fruition in November 2012, when an explosion and fire occurred on one of Black Elk's oil drilling platforms approximately 17 miles offshore from Louisiana. Several workers were injured or killed.<sup>99</sup> The following timeline summarizes key events and elements of a complex series of transactions PM orchestrated to strip assets from the Master Fund and inflate the value of the fund's NAV.

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<sup>95</sup> Black Elk's Q3 2012 10Q, pp. 1, 20, 22, 23, and 28.

<sup>96</sup> Platinum Value Arbitrage Fund, LP Investment Summary as of October 31, 2012. (Q3 2012 SS&C NAV report at VAM-AW\_PLATINUM\_AW\_InvestmentSummary\_v1.2\_PIN\_10312012.xls.)

<sup>97</sup> See "Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities" and "Corporate Governance", Black Elk Energy Offshore Operations, LLC Form 10-K for the fiscal year ended December 31, 2011, available at <https://www.sec.gov/Archives/edgar/data/1518909/000119312512132277/d287000d10k.htm> (accessed 11/14/2019).

<sup>98</sup> Black Elk Energy Offshore Operations, LLC, SEC Form 10K, for the period ended December 31, 2011, p. 13. (CTRL3357482); Platinum Partners Black Elk Opportunities Fund LLC, Private Placement Memorandum, January 2013, p. 18. (CTRL3645093)

<sup>99</sup> Platinum Partners Black Elk Opportunities Fund LLC, Private Placement Memorandum, January 2013, pp. 22-3. (CTRL3645093)

72. In November 2012, following the explosion, Standard & Poor's Ratings Services placed their Corporate Credit Rating of Black Elk (then at CCC+) on CreditWatch and described how: "The ratings on Black Elk reflect our view of its "vulnerable" business risk and "highly leveraged" financial risk, incorporating the company's small reserve and production base, high operating costs..." The Credit Watch "reflects the potential for Black Elk's liquidity to deteriorate further."<sup>100</sup>

73. In January 2013, PM set up BEOF, a separate investment fund outside of the Master Fund structure, that PM actually owned and controlled (as I discussed in a prior section). BEOF's initial purpose was to purchase up to \$40 million of equity from Black Elk and up to \$55 million of Black Elk equity from PPVA Black Elk (Equity) LLC,<sup>101</sup> a Master Fund subsidiary.<sup>102</sup>

74. In June 2013, Moody's Investors Service downgraded Black Elk's \$150 million of outstanding SSNs, prompted by "the significant deterioration in [Black Elk's] liquidity position since the third quarter of 2012." Moody's rationale included how Black Elk had limited cash on hand and no ability to add to the company's \$25 million revolving credit facility, how Black Elk was likely to breach its loan covenants within the month, and, absent additional liquidity, how the company would not be able to cover ongoing operations expenses. Moody's also described how Black Elk was contending with major operational challenges such as low natural gas prices, reduced production volumes, and hurricane-related delays.<sup>103</sup>

75. In December 2013, PM controlled Black Elk, as the company explicitly described in its SEC form 10K:

"Platinum owns approximately 85% of our outstanding voting membership interests, giving it influence and control in corporate transactions and other matters, which may conflict with noteholders' interests...As a result, and for as long as Platinum holds a membership interest in us, Platinum has the ability to...determine and control...the outcome of certain company transactions or other matters submitted to our

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<sup>100</sup> Reuters: "S&P puts Black Elk Energy Offshore rtgs on watch negative", November 21, 2012.

<sup>101</sup> Platinum Partners Black Elk Opportunities Fund LLC, Private Placement Memorandum, January 2013, pp. 12-13. (CTRL3645093)

<sup>102</sup> Sterling Valuation Report as of March 31, 2013, p. 64. (CTRL4656638)

<sup>103</sup> Moody's Investors Service: "Rating Action: Moody's downgrades Black Elk's CFR to Caaa2, outlook negative", June 7, 2013.

members for approval, including potential...asset sales and other significant corporate transactions.”<sup>104</sup>

76. In March 2014, as Black Elk’s debts mounted, PM caused the Master Fund to acquire approximately \$47 million of Black Elk SSNs from third parties, not affiliated with PM.<sup>105</sup>

77. In April 2014, PM caused the Master Fund to sell approximately \$43 million in Black Elk SSNs to BEOF in exchange for Black Elk preferred equity and a future cash payment from the Master Fund. The Master Fund also sold \$7 million Black Elk SSNs to Platinum Partners Liquid Opportunity Fund,<sup>106</sup> another fund managed by PM’s executives.<sup>107</sup> As a condition of the sale, the Master Fund was required on a quarterly basis to pay in cash to BEOF the difference between BEOF’s return on the SSNs and 20%,<sup>108</sup> which was the amount of return BEOF was receiving on the preferred equity before the sale.<sup>109</sup>

78. Around this time, PM was also selling the Master Fund’s Black Elk SSNs to Beechwood.<sup>110</sup> At the direction of PM’s executives, including David Levy, Beechwood bought more SSNs on the open market.<sup>111</sup>

79. One of the ways that Black Elk’s SSN holders were protected against default was a provision in the SSN indenture agreement that prevented Black Elk, in the event of an asset sale, from paying sale proceeds to the equity holders without first extinguishing the SSNs. While the SSN holders could consent to remove this protection, only those SSN holders who were not

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<sup>104</sup> Black Elk Energy Offshore Operations, LLC, SEC Form 10K, for the period ended December 31, 2013, p. 33. (CTRL3357482)

<sup>105</sup> Note Purchase Agreement, March 13, 2014. (CTRL5083284)

<sup>106</sup> Re: Black Elk Energy Offshore Operations LLC (“BEE”). (CTRL4934212)

<sup>107</sup> Platinum Partners Liquid Opportunity Fund Class A Information, February 2013.

<sup>108</sup> Re: Black Elk Energy Offshore Operations LLC (“BEE”). (CTRL4934212)

<sup>109</sup> Black Elk Q3 2014 10Q, p. 28.

<sup>110</sup> Email exchange between M. Nordlicht and D. Steinberg, May 13, 2014. (BW-SHIP-00518848); *See also* \$24.5 million short sale transaction with Beechwood entity BAM at Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Years Ended December 31, 2013, p. 75.

<sup>111</sup> Email from Manela to Steinberg, January 29, 2015 (CNOCSL\_01730989).

affiliated with Black Elk were permitted to vote.<sup>112</sup> Since Black Elk paid off its credit facility earlier in 2014, the holders of the SSNs were the senior debt in the Black Elk waterfall.<sup>113</sup>

80. Following a June 18, 2014 all-hands meeting between Nordlicht, Huberfeld, Bodner, and Beechwood executives Scott Taylor and Mark Feuer,<sup>114</sup> PM caused Black Elk to issue a Consent Solicitation to the holders of SSNs for an amendment to the SSN indenture that would allow preferred equity holders to receive Black Elk asset sale proceeds without first paying off the SSNs.<sup>115</sup> Notably, while the Consent Solicitation disclosed the Master Fund's \$18 million position in SSNs, it failed to disclose the much larger position that PM and its executives, including David Levy who was also serving as CIO of Beechwood at the time, also controlled through Beechwood and other non-PM parties.<sup>116</sup> The amendment passed.<sup>117</sup> Also of note, Beechwood, which held SSNs at the time and did not disclose its affiliation with PM, voted in favor of the consent solicitation in order to subordinate its bond interests to the interests of the preferred equity holders.<sup>118</sup>

81. In August 2014, Black Elk sold a large portion of its prime oil assets to Renaissance Offshore for \$125 million. After the sale, \$11 million of SSN were redeemed pursuant to Black Elk's tender offer and approximately \$96 million of the sale proceeds were distributed to preferred equity holders,<sup>119</sup> in accordance with the newly amended indenture agreement. The Master Fund was directly wired approximately \$47 million of these proceeds, of which \$36 million were paid to BEOF Investors.<sup>120</sup>

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<sup>112</sup> Exhibit 51 to the SAC.

<sup>113</sup> Black Elk Energy Q1 2014 10Q, p. 10.

<sup>114</sup> Email exchange between A. Albanese, S. Sweetin, M. Feuer, S. Taylor, Nordlicht, A. Baez, and Huberfeld, June 18, 2014. (CTRL5101783)

<sup>115</sup> Draft Black Elk Consent Solicitation, June 16, 2014. (PPVA\_RH\_0446965 )

<sup>116</sup> Draft Black Elk Consent Solicitation, June 16, 2014. (PPVA\_RH\_0446965)

<sup>117</sup> Email exchange between J. Shulse and R. Shearer, May 30, 2014. (PPVA\_RH\_0446960)

<sup>118</sup> Email exchange between Wilmington Trust and Beechwood employees, July 28, 2014. (BW-SHIP-00074415)

<sup>119</sup> Black Elk Energy Q3 2014 10Q, pp. 6, 10, and 12.

<sup>120</sup> Exhibits 60 and 61 to the SAC.

82. In December 2014, Nomura's High Yield bond desk advised PM that they would not price the SSNs any higher than 22% of par value.<sup>121</sup> As a Black Elk insider, PM was well aware of Black Elk's severely diminished capacity to repay the SSNs and therefore the very high likelihood of a default.

83. In January 2015, PM arranged for a Master Fund subsidiary, Montsant, to borrow \$37 million from a Beechwood client to purchase all of Beechwood's SSNs at 93.5% of par value.<sup>122</sup> This price was not subject to any independent review and was far above fair value at the time of this transaction, given that Black Elk's primary assets were sold off in the preceding year. As security for this loan, the Master Fund pledged securities into a Montsant collateral account.<sup>123</sup>

84. In the preceding Black Elk transactions, PM violated its fiduciary duty to the Master Fund and engaged in fraudulent conduct in three ways. First, PM used subterfuge to convert Black Elk assets into a cash distribution to equity holders (including its alter ego BEOF), and consequently, the Master Fund ended up with far less compensation than it would have otherwise received if PM had simply allowed the Master Fund's large SSN position to be paid out with the sale proceeds.<sup>124</sup> From my review of the transactions, Beechwood was nothing more than a temporary repository for the SSNs. Second, PM caused the Master Fund to enter into material transactions with its alter egos at non-market values and without any independent review. And third, PM used these non-market transactions to inflate the value of its largest portfolio holding and materially misrepresent the Master Fund's NAV, as I further describe in the next section.

#### B. The Agera Transactions

85. One of the Master Fund's portfolio investments in 2014 was in Glacial Energy Holdings LLC, a company that purchased wholesale energy and sold it to business customers in deregulated energy markets. After this company filed for bankruptcy protection, the Master Fund secured the

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<sup>121</sup> Email correspondence between A. Antigua, J. Kramer-Eisenbud, Levy, N. Manela, and Nordlicht, December 9, 2014. (BW-SHIP-00479484)

<sup>122</sup> Exhibit 64 to the SAC; Platinum Partners Transaction, January 30, 2015. (CTRL7648017)

<sup>123</sup> Email between Platinum Management and B Asset Manager, May 27, 2016. (BW-SHIP-00769244)

<sup>124</sup> See Quintero Report.

right to purchase all of the company's assets for approximately \$53 million.<sup>125</sup> After consummating the transaction and building the business into a valuable asset, PM then proceeded to execute a series of complex transactions to realize huge financial gain for Beechwood and its investor clients at the expense of the Master Fund, summarized as follows.

86. In June 2014, PM completed the acquisition through the Master Fund's designee, Agera, that was then 95% owned by Michael Nordlicht, Mark Nordlicht's nephew, and 5% owned by Beechwood. Agera funded the acquisition primarily with a \$50 million loan from Beechwood - and also entered into a \$600 thousand convertible promissory note with Principal Growth Strategies LLC ("PGS"). PGS was owned by the Master Fund and another fund managed by PM, Platinum Partners Credit Opportunities Master Fund, LP. The terms of the convertible promissory note allow PGS to, at any time, convert the note to a 95% equity interest in Agera. Upon conversion, the Master Fund's ownership of PGS would result in a 52.25% interest in Agera.<sup>126</sup>

87. After the acquisition, Agera continued the business of re-selling wholesale energy<sup>127</sup> and PM caused Agera to hire Kevin Cassidy ("Cassidy") and Michael Nordlicht as its CEO and General Counsel respectively.<sup>128</sup> A cursory review of the background of both individuals shows blatant red flags and casts serious doubt about their qualifications for senior executive positions at this Master Fund portfolio company. Cassidy had recently been released from prison in connection with his felony conviction of financial crimes in the Optionable trading scandal, a company which Mark Nordlicht served as chairman.<sup>129</sup> Cassidy assisted in the formation of Agera around the time that he was living at a halfway house in New York.<sup>130</sup> Michael Nordlicht, the nephew of Mark Nordlicht, had minimal prior legal experience and was studying for the bar exam at the time of his

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<sup>125</sup> Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Years Ended December 31, 2013, p. 56.

<sup>126</sup> Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Years Ended December 31, 2013, p. 56.

<sup>127</sup> Agera Holdings LLC Consolidated Financial Statements, December 31, 2015, p. 9. ; Agera Energy LLC DRAFT Summary Document, p. 2. (CTRL7831310)

<sup>128</sup> Disclosure Schedules to the Sale of the Agera Note from PGS to AGH Parent Agreement.

<sup>129</sup> M. Nordlicht Deposition, January 22, 2013, pp. 326:8-327:22. (CTRL4386485)

<sup>130</sup> Email from Z. Boyarsky to Huberfeld, January 8, 2014. (CTRL5174915)

hire.<sup>131</sup> In addition, Michael Nordlicht did not pay any substantial funds for his interest in Agera. All of this indicates he was simply a front man for PM. The Agera employment agreements for Cassidy and Michael Nordlicht provided them with extremely generous compensation packages for a start-up company, with large base salaries that stepped up overtime including and 5% of gross revenues of the company.<sup>132</sup>

88. In July 2015, Michael Nordlicht and Beechwood exchanged their interests in Agera for the same proportion of interests in Agera Holdings LLC, which now owned Agera.<sup>133</sup> The next month, Mark Nordlicht granted Cassidy 8% of profits earned by “Platinum Funds and any related entity” in compensation for his work overseeing Agera, even though Cassidy was not an employee of PM or any of the funds PM managed.<sup>134</sup>

89. By March 2016, Agera was a profitable company that earned over \$200 million in gross revenue in the previous year.<sup>135</sup> Based on PM’s analysis, Agera’s enterprise value was approximately \$250 million.<sup>136</sup> At this time, PM was interested in finding an insider to buy Agera rather than selling the company to unrelated strategic buyer or conducting an IPO.<sup>137</sup> In fact, PM went so far as to reject inquiries from a third-party potential buyer.<sup>138</sup> Instead, PM and its executives initiated an insider sale process to Beechwood and its investors. While PM was aware Beechwood’s interest in obtaining a fairness opinion,<sup>139</sup> to my knowledge and based on documents I have reviewed, PM completed the Agera sale without obtaining a fairness opinion and without engaging outside counsel on behalf of the Master Fund.

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<sup>131</sup> Email exchange between S. Salfati and Michael Nordlicht, December 4, 2013. (CTRL4758020)

<sup>132</sup> Disclosure Schedules to the Sale of Agera Note from PGS to AGH Parent Agreement.

<sup>133</sup> Agera Holdings LLC Consolidated Financial Statements, December 31, 2015, p. 9.; Agera Energy LLC DRAFT Summary Document, pp. 1-3. (CTRL7831310)

<sup>134</sup> Letter from Nordlicht, August 19, 2015. (KEVINCASSIDY\_0000784)

<sup>135</sup> Agera Holdings LLC Consolidated Financial Statements, December 31, 2015, p. 5.

<sup>136</sup> Email from E. Rakower to Nordlicht, May 9, 2016. (PLA\_EM10477231.pdf)

<sup>137</sup> Exhibit 82 to the SAC Email exchange between Nordlicht and M. Katz, March 13, 2015.

<sup>138</sup> Exhibit 88 to the SAC.

<sup>139</sup> Email exchange between Levy, Nordlicht, and D. Steinberg, May 30, 2016. (PLA\_EM10601039)



90. On June 8, 2016, Huberfeld was arrested in connection with bribing a New York City Correction Officer's Union official with \$60,000 of the Master Fund's cash.<sup>140</sup>

91. On June 9, 2016, the sale of the Agera convertible note was completed. PGS (a subsidiary of the Master Fund) sold the Agera convertible promissory note to AGH Parent LLC,<sup>141</sup> a Beechwood entity.<sup>142</sup> The sales price was \$170 million in aggregate, composed of \$55 million in cash, \$44 million in debt and equity securities, and \$61 million in subordinated AGH Parent equity units (\$35 million of which were subject to redemption to be paid in-kind with other securities).<sup>143</sup>

92. In addition, rather than having Agera pay Cassidy his generous executive compensation package, PM caused PGS to grant Cassidy a membership interest in PGS for no consideration, and then "repurchased" the membership interest from him in exchange for over \$13 million.<sup>144</sup>

93. While Beechwood had outside counsel, Morgan, Lewis & Bockius LLP, representing its interests and conduct due diligence on its behalf, PM decided to forgo obtaining independent representation for PGS or the Master Fund.<sup>145</sup> PM also elected not to obtain a fairness opinion regarding the \$170 million sales price (which was, in reality, much less given the sale terms), even though all parties at the time believed the Agera note to be worth far more than the purchase price.<sup>146</sup>

94. In June 2017, Beechwood sold their interest in AGH Parent to Eli Global at a marked Agera valuation price of at least \$230 million.<sup>147</sup>

95. The foregoing set of transactions demonstrate how PM flagrantly disregarded its fiduciary duty to the Master Fund and engaged in fraudulent conduct – by giving up the fund's interest in the PGS note for far less than market price in a non-arms-length sale devoid of safeguards such as

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<sup>140</sup> U.S. v. Norman Seabrook and Murray Huberfeld Indictment. (CTRL8575324)

<sup>141</sup> See Agera Purchase Agreement, June 9, 2016, p. 1 attached to SAC.

<sup>142</sup> Email from K. Cassidy to E. Pinkerton, June 15, 2015. (BW-SHIP-00772245)

<sup>143</sup> See Agera Purchase Agreement, June 9, 2016, p. 1 attached to SAC.

<sup>144</sup> Exhibit 92 to SAC.

<sup>145</sup> Email exchange between S. Horowitz, D. Steinberg, Levy, and Nordlicht, March 2016. (CTRL8298993)

<sup>146</sup> Email from D. Narain to E. Feit and S. Adler, March 12, 2016. (BW-SHIP-00992626)

<sup>147</sup> PB Investment Holdings LTD Share Purchase Agreement, June 30, 2017. (BW-SHIP-00253518)



a fairness opinion. PM's hiring of a felon as CEO and an inexperienced relative as General Counsel of one of the Master Fund's largest portfolio companies was inconsistent with PM's fiduciary duty.

C. The Nordlicht Side Letter

96. In February 2014, the Master Fund's portfolio company, GGO, was in extreme financial distress due to poor operating performance. While GGO had a promissory note with a Master Fund subsidiary, Precious Capital, that provided for advancing additional funds,<sup>148</sup> GGO still lacked funds to pay critical trade receivables. The company was urgently appealing to PM for additional capital and was within days of creditors shutting down its oil drilling operations.<sup>149</sup>

97. Later in this same month, Precious Capital sold the promissory note to Beechwood for \$28 million, which was the same amount as the outstanding principal and deferred interest at that time.<sup>150</sup> As part of this same sale agreement, the Master Fund guaranteed GGO's complete payment to Beechwood of all GGO's obligations pursuant to the note.<sup>151</sup>

98. In January 2016, GGO was late on interest payments and the Master Fund<sup>152</sup> and the Master Fund was in its own liquidity crisis. According to Nordlicht, in his appeal to Huberfeld, Bodner and Fuchs, both the Master Fund and Beechwood were 12 hours away from collapsing unless they raised more capital.<sup>153</sup>

99. In the context of all the foregoing circumstances, Nordlicht, on behalf of the Master Fund, executed a three paragraph side letter that required the Master Fund to use the proceeds it would receive from the sale of Implant Sciences Inc. to pay Beechwood for "all indebtedness owing by Golden Gate Oil Inc." and that agreed, on behalf of the Master Fund, to take additional actions deemed necessary by Beechwood to "create a perfected security interest in the obligations described above."<sup>154</sup>

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<sup>148</sup> Email from B. Furlong to A. David and A. Hirt, February 3, 2014. (PLA\_EM05803327)

<sup>149</sup> Email exchange between D. Corkran, B. Furlong, and A. Hirt, January 28, 2014 (PLA\_EM05803702); Email from A. Hirt to Nordlicht, February 3, 2014. (PLA\_EM05796312)

<sup>150</sup> Note Sale Agreement, February 26, 2014, p. 1. (CTRL6007281)

<sup>151</sup> Note Sale Agreement, February 26, 2014, p. 4. (CTRL6007281)

<sup>152</sup> Email from A. Northwood to Beechwood and Huberfeld, January 11, 2016. (BW-SHIP-01075081)

<sup>153</sup> Email from Nordlicht to Huberfeld, B. Fuchs, and Levy, January 8, 2016. (CTRL7736228)

<sup>154</sup> Exhibit 75 to the SAC, Letter from Nordlicht and witnessed by M. Feuer, January 13, 2016. Exhibit 75 to the SAC

100. PM's actions directly contravened its fiduciary duty to the Maser Fund in that the fund was not compensated for and received no discernable benefit from converting Beechwood's claim under the GGO note guarantee from an unsecured position to one secured by the assets of the Master Fund. In addition, by granting a secured interest to Beechwood at a time when the Master Fund's collapse was clearly foreseeable, PM was enabling its alter ego, Beechwood, to "jump the line" ahead of other unsecured creditors that may have claim on proceeds from the Implant Sciences Inc. sale. Shortly after the execution of the Nordlicht Side Letter, PM executive David Steinberg shared PM's internal analysis indicating that the Master Fund had no chance of survival without a significant cash infusion of more than \$100 million.<sup>155</sup>

101. These transactions factually demonstrate that PM's executives put their own interests above those of the Master Fund resulting in significant damage and the ultimate demise of the fund.

**IX. By Inflating the Net Asset Value Calculation, Platinum Management Failed to Meet Its Fiduciary Duty and Substantially Harmed the Master Fund**

102. An investment fund's NAV is a foundational metric of utmost importance to the marketplace - as it is routinely relied upon by fund investors, creditors, counterparties, and regulators, and is used as the basis of calculating a fund manager's compensation. The Master Fund produced NAV reports on a monthly basis and utilized the NAV for preparation of its annual financial statements.<sup>156</sup>

103. Notes to the Master Fund's financial statements state that the general partner, PM, values all investments at fair value, i.e., the price to sell an asset or extinguish a liability in an orderly transaction between market participants. U.S. Generally Accepted Accounting Principles (GAAP) "establishes a hierarchy for inputs used in measuring fair value. The least reliable types of valuations are Level 3 - Valuations based on inputs that are unobservable, supported by little or no

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<sup>155</sup> Email and attachments from D. Steinberg, January 14, 2016. (CTRL8011541- CTRL8011545)

<sup>156</sup> See Quintero Report.

market activity, and that are significant to the overall fair value measurement.” All of the Master Fund’s investments in private operating companies were categorized as Level 3.<sup>157</sup>

104. The Master Fund’s partnership agreement describes how it was ultimately the general partner’s responsibility to oversee the process of valuing Level 3 assets for the NAV calculation.

“The General Partner designates a Valuation Committee (the "Committee") to oversee the valuation process of the Master Fund’s Level 3 investments...The Committee is responsible for...evaluating the fairness and consistent application of the valuation policies as established by the General Partner.”<sup>158</sup>

105. PM had a valuation committee, presided over by Nordlicht. The Master Fund also had a valuation policy that described methodologies and approaches for valuing private equity and other asset classes and included provisions for handling policy exceptions and performing annual compliance reviews.<sup>159</sup> While the valuation committee was supposed to meet quarterly, PM was unable to produce meeting minutes for 2013 or the first half of 2014 to the SEC. Even more problematic was the SEC’s characterization of the meeting minutes and back up records PM produced, finding that they “fail to demonstrate whether any meaningful analysis and potential changes to investment values were contemplated or discussed at such meetings.”<sup>160</sup>

106. PM also hired third-party independent valuation specialist firms, Sterling Valuation and Alvarez and Marsal, to assist with valuations of material Level 3 holdings. However, these firms did not perform independent full valuations. Rather, they performed their work by using agreed upon procedures that were heavily reliant on inputs from PM.<sup>161</sup>

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<sup>157</sup> Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Year Ended December 31, 2014, pp. 32 and 34.

<sup>158</sup> Platinum Partners Value Arbitrage Fund L.P. and Subsidiaries Consolidated Financial Statements for the Year Ended December 31, 2014, p. 41.

<sup>159</sup> Valuation Policy, September 1, 2015. (CTRL8419480)

<sup>160</sup> Platinum Partners letter to the New York Regional Office of the U.S. Securities and Exchange Commission, November 4, 2015, p. 19. (CNOCSL\_00057838)

<sup>161</sup> See Quintero Report.

107. Due to the Master Fund's outsized positions in illiquid oil companies Black Elk, Northstar, and Golden Gate, which represented approximately 40% of total reported NAV,<sup>162</sup> the valuation of these firms had a material impact on the NAV.

108. Irrespective of the importance of selecting a reliable methodology for valuing these oil companies, PM utilized PV10, even though Nordlicht admitted that PV10 produced valuations so unreliable that they were cringeworthy.<sup>163</sup>

109. In addition to using an unreliable basis for valuation that was subject to manipulation, PM also used its alter egos to buy and sell the securities of their oil holdings at above market rates in order to justify PM's inflated valuations. As part of the Back Elk transactions described above, the Master Fund's subsidiary, Montsant, purchased from Beechwood \$35 million of Black Elk SSNs at 93.5% of par value – which supported the fiction that Black Elk was a non-distressed company. In fact, at the time of this transaction in January 2015 the company was highly distressed and the Master Fund's interests in Black Elk were massively overvalued in the fund's NAV.<sup>164</sup> As the Master Fund was in a liquidity crisis, it had no available funds to execute this sham trade. So, PM had Beechwood also provide a \$35 million loan to Montsant that required the Master Fund to put up marketable securities as collateral. Beechwood's internal documents clearly indicate that it expected to receive this collateral rather than loan repayment<sup>165</sup> – which corroborates that this Black Elk SSN trade at 93.5% of par lacked economic substance.

110. Yet another example of PM's fraudulent scheme was the transaction with occurred in February 2014, when the Master Fund sold Beechwood the GGO loan at par and simultaneously guaranteed GGO's repayment. Again, this trade occurred at the very time the Master Fund was massively inflating the value of GGO securities in its NAV.<sup>166</sup>

111. PM's inflation of the Master Fund's NAV breached its fiduciary duty in multiple ways which damaged the Master Fund. First, PM diverted assets from the Master Fund in the form of

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<sup>162</sup> Exhibit 68 to the SAC.

<sup>163</sup> Exhibit 31 to the SAC.

<sup>164</sup> See Quintero Report.

<sup>165</sup> Email from Danny Saks, January 29, 2015 (BW-SHIP-00801457) and attached Montsant Investment Memo. (BW-SHIP-00801458)

<sup>166</sup> See Quintero Report.

unearned management fees and incentive fees over the years, which PM paid itself even when the fund was starved for liquidity.<sup>167</sup> Second, by inflating the Master Fund's NAV, PM caused the fund to materially misrepresent a crucial metric it was obligated to report to investors and creditors. By hiding a substantial deterioration in the Master Fund's NAV, PM prevented what could have been an orderly liquidation or other type of wind down for the Master Fund. Rather, PM's fraudulent concealment directly led to the implosion of the fund in 2016 and the resulting (and unnecessary) legal costs and exposure. While inflating NAV significantly increased the ultimate damage to the Master Fund, it permitted PM and its executives to receive unearned fees before the fund collapsed.

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<sup>167</sup> See Quintero Report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Post", with a long, sweeping flourish extending to the right.

Bill Post

November 14, 2019

**APPENDIX A**

**Bill Post**

Senior Managing Director  
FTI Consulting  
Forensic and Litigation Consulting Practice  
50 California Street, 19<sup>th</sup> floor  
San Francisco, Ca. 94111  
**bill.post@fticonsulting.com**  
415-602 4554-M  
415-2834256-O

**EXPERT WITNESS EXPERIENCE**

**TESTIMONY**

- *Jean Peterson and Robert Peterson v. Paul Hitchcock, Heffernan Investment Advisors, Inc., Heffernan Insurance Brokers, Atlin Capital Partners, et al.*; In the Superior Court of California for the County of San Francisco (Case No. CGC-15-545964)
- *Justin Albert v. Legion Partners Asset Management, LLC, Raymond T. White, Christopher Kiper, and Does 1 Through 100*; In the Superior Court of California for the County of Los Angeles (Case No. BC706304)
- *Gil A. Miller as the Trustee of the Randall Victims Private Actions Trust v. Union Central Life Insurance Company, Ameritas Life Insurance Corp., Ameritas Life Insurance Corp. of New York, and Acacia Life Insurance Company*; In the United States District Court for the District of Utah (Case No. 2:14-CV-00575-JNP-PMW) (Expert Report: August 10, 2017)
- *Ralph S. Janvey as Receiver for the Stanford International Bank, LTD., et al., v. GMAG LLC, Magness Securities LLC, and Gary D. Magness as an individual and as trustee of the Gary D. Magness Irrevocable Trust*; In the United States District Court for the Northern District of Texas (Case No. 3:15-CV-401-N-BG) (Expert Report: May 20, 2016)
- *Louis C. Bechtle, as Receiver for Acorn II, L.P., Acorn Capital Management, LLC et al. v. Diana Wister and William Wister, et al.*; In the United States District Court for the Eastern District of Pennsylvania (Case No. 13 3798) (Expert Report: June 2014)
- *Jane A. Bartelme, trustee of the Jane A. Bartelme Trust, et al. v. Myxolidian, LLC, CMR CAPITAL, LLC formerly known as CMR DEVELOPMENT GROUP, LLC*; In the Superior Court of Arizona for the County of Maricopa (Case No. 1100077240), (Expert Report: August 25, 2014)
- *Robert Kadoch and Kathleen Kadoch v. Donna Grant, David C. Gilbert, Tiburon Land Company, and Does 1 through 50, inclusive*; In the Superior Court of California for the County of Marin (Case No. CIV1504439)
- *William Rosario Alessi and Sonia Alessi v. Bobby Haulk as a Sergeant of the Waxhaw Police Department, Michael T. Eiss as the Chief of Police of the Waxhaw Police Department, the town of Waxhaw*; In the United States District Court for the Western District of North Carolina-Charlotte Division (Case No.3:14-cv-00482) (Expert Report: September 11, 2015)

#### **ADDITIONAL EXPERT CONSULTING \*\*\*\* NON LITIGATION**

- I have provided advice and consulting services relating to investment principals holding the CFA credential in relation to an investigation regarding the disclosure of material non-public information and an inquiry of the CFA Institute regarding a potential breach of ethics (2019).
- I have advised a \$15 billion-dollar hedge fund regarding a review of all investment and administrative procedures and controls and the replacement and hiring of a fund's administrator (2016).
- I have advised a Sovereign Wealth Fund and led an investigation on the placement of \$800 million in investable assets with a European Investment Manager to determine whether the investment management company was a sham or front for a kickback scheme involving sub-advisors (2016).

#### **EMPLOYMENT**

##### **SENIOR MANAGING DIRECTOR-FTI CONSULTING (FCN) 2019 to Present**

As an Investment management professional with over 29 years of experience as a chief executive, portfolio manager, CIO, and chief compliance officer, I am an expert in the management of equity, fixed income and alternative assets, including hedge funds, venture and private equity. I provide expert witness testimony related to fiduciary duty, investment methodologies, compliance (SEC and FINRA and the banking industry), fees, performance compliance, hedge fund administration, private placements and the documentation associated with fund raising, corporate governance, board of director duties and responsibilities, transactions related to the sale or purchase of business. I am a member of the CFA, series 7 financial representative and practiced as a securities attorney prior to entering the investment industry.

##### **FOUNDER and SENIOR MANAGING PARTNER – Cary Burke Capital – 2016 to 2019**

Cary Burke Capital provided strategic consulting and operational/business operations advice to the investment industry relating to high net worth platforms, private equity, venture and hedge funds, including marketing and private placement documentation, sales and marketing and institutional and high net worth client servicing. I have provided consulting services to the financial services industry, private equity, venture and law firms including expert witness services regarding SEC/FINRA and industry compliance, fiduciary and suitable products standards.

##### **NATIONAL PRACTICE LEADER - MANAGING DIRECTOR | 2013 - 2016**

##### **ALVAREZ & MARSAL INVESTMENT MANAGEMENT LLC, ALVAREZ & MARSAL LLC**

A&M, founded in 1983, with over 2,700 professionals and revenues in excess of \$1 billion, is a global consulting firm and leading advisor on business strategy working for 90% of the Fortune 1000 corporations.

**Managing Director, National Practice Leader of A&M Investment business (AMIM)**, an SEC registered RIA (managed assets in excess of \$100mm) and served as Chief Investment Officer and Chief Compliance Office. AMIM provided fixed income management services to large institutional clients including corporations, state and local government and large foundations and endowments. Was responsible for all investment management activities, marketing, compliance and administrative requirements.

**Managing Director, Alavarez & Marsal, Forensics/Consulting/Expert Witness** services relating to the Investment Industry with a specific focus on alternative investment vehicles such as Hedge Funds, Private Equity and Venture Funds. Expert witness work relates to compliance and fiduciary standards for SEC and FINRA registered investment advisors. Consulting work was focused on third party administrative and investment services (onshore-offshore) relating to alternative asset class investment managers, including marketing and private placement documentation, sales and marketing, institutional client servicing.



**SENIOR VICE PRESIDENT | 2009 - 2013**

**STONE & YOUNGBERG-STIFEL NICOLAUS & COMPANY, INC.**

Senior portfolio manager of equities and fixed income. Managed the liquid assets of the Alan Stanford/Stanford International for the court appointed receivership. Stifel Nicolaus, acquired S&Y and is a full-service national brokerage and investment banking firm established in 1890. Responsible for building and implementing a national Family Office - equity and fixed income advisory fee business. S&Y was the largest public finance company in the Western US.

**PRESIDENT AND MANAGING DIRECTOR | 2004 - 2009**

**BHP INVESTMENTS (multi-family office with \$650mm in investable assets)**

Founded by Mr. Post and two families in January 2004 as multifamily office investment management business with a focus on long public market equity, alternative assets including hedge funds, direct early round venture and private equity investments with portfolio companies of Silicon Valley venture firms of Kleiner Perkins, NEA and other Silicon Valley based investment funds such as Silver Lake, TPG, Fortress and KKR.

BHP allocated assets as well as the selection, due diligence and monitoring of asset in alternative investments including hedge funds, venture, private equity and real estate investments.

Mr. Post was the CIO and Portfolio Manager for separate accounts investing in global equity and fixed income. Mr. Post managed three large-cap strategies, concentrated (15 positions), value (25 positions) and S&P (80 positions).

**VICE CHAIRMAN & CEO | 2001-2004**

**FIDUCIARY TRUST INTERNATIONAL OF CALIFORNIA**

FTI is a multi-billion-dollar investment management business providing Global Equity and Fixed Income and Alternative Asset (hedge funds/private equity) management services to institutional and HNW clients. Mr. Post was responsible for all investment and management of the business which operated in the 22 Western States and was an equity portfolio manager. Responsible for the Franklin Templeton acquisition and integration and re-branding of Fiduciary Trust International. Mr. Post was a member of the management committee for Fiduciary Trust International, New York City.

**PRESIDENT & SENIOR MANAGING DIRECTOR | 2000 - 2004**

**FRANKLIN TEMPLETON ALTERNATIVE ASSETS**

**PRESIDENT & FOUNDER**

**FRANKLIN TEMPLETON WEALTH MANAGEMENT | 2000 - 2004**

Founder, senior portfolio manager and CIO of FT Alternative Assets and FT Wealth Management. FTAA managed two Hedge Fund of Funds with approximately 16 external hedge fund managers for each strategy. FWM managed global equity and fixed income separate accounts for ultra-high net worth clients, foundations and endowments. Responsible for all investment and management functions for both businesses.

**SENIOR VICE PRESIDENT | 1995-2000**

**CAPITAL GROUP COMPANIES, CAPITAL GUARDIAN TRUST COMPANY, CAPITAL RESEARCH (AMERICAN FUNDS)**

Responsible for developing Capital's HNW private asset management business in the Western United States including San Francisco, Seattle, Salt Lake City, Denver, San Diego and Houston. Responsibilities included Global Equity Portfolio management and client acquisition.

**VICE PRESIDENT | 1994-1995**

**WELLS FARGO SECURITIES, INC.**

Series 7 equity portfolio manager and assisted in the integration of Wells Fargo Securities with Wells Fargo Bank. Assisted in developing marketing and distribution strategies of investment products to high net worth clients.

### **ADDITIONAL LEGAL & FINANCIAL EXPERIENCE**

- Attorney in private practice with a focus on corporate, securities, transactional law, private placements for real estate, startups, private equity, venture investing, limited partnerships and limited liability companies.
- Staff member, tax section, United States Senate Finance Committee, Office of Chief Legal Counsel.
- Staff member, Tax department, Touche Ross & Co (now Delotte & Touche).
- Teaching assistant, University of San Francisco School of Law
- Adjunct Professor, UC Berkeley, Haas School of Business, Master of Financial Engineering

### **LIEUTENANT, SUPPLY CORPS, UNITED STATES NAVY**

- CFO and Controller, NARU, NAS Alameda, NARU NAS Moffet Field.
- Graduated from Navy Supply Corps School, Athens, Ga.
- Financial Management, Naval Postgraduate School, Monterey, Ca.

### **PROFESSIONAL ASSOCIATIONS**

Member of the: Chartered Financial Analyst Institute (**CFA Institute**)  
**CFA** Society of San Francisco  
Association of Financial Professionals (AFP)

### **PROFESSIONAL LICENSES**

State Bar of California (active) and District of Columbia (inactive)  
FINRA series 7 (current), 63, 65, formerly series 3

### **EDUCATION**

**UNIVERSITY OF VIRGINIA**, Charlottesville, Virginia - 1976  
BA, NROTC Scholarship recipient

**UNIVERSITY OF SAN FRANCISCO-KENDRICK SCHOOL OF LAW**, San Francisco, California - 1983  
Juris Doctor Degree

**NAVAL POSTGRADUATE SCHOOL**, Monterey, California - 1979  
Financial Management

**HARVARD BUSINESS SCHOOL** – 2016  
CFA Institute Investment Management

## Materials Considered by Bill Post

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### Legal Filings

Second Amended Complaint and Exhibits

### Expert Reports

Expert Report of Ronald G. Quintero dated November 14, 2019

### Depositions

Deposition of Bernard Fuchs dated October 2, 2019

### Control Numbered Documents

ALB0000304  
ALB0000334  
ALB0000452  
ALB0001068  
BW-SHIP-00018432  
BW-SHIP-00074415  
BW-SHIP-00132055  
BW-SHIP-00167424  
BW-SHIP-00253518  
BW-SHIP-00479484  
BW-SHIP-00518848  
BW-SHIP-00759653  
BW-SHIP-00772245  
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BW-SHIP-00914622  
BW-SHIP-00916925  
BW-SHIP-00917395  
BW-SHIP-00948538  
BW-SHIP-00992626  
BW-SHIP-01050099  
BW-SHIP-01075081  
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CNOCSL\_00057838  
CNOCSL\_01260280

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CNOCSL\_01573955  
CNOCSL\_01686133  
CNOCSL\_01730989  
CTRL2201018  
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KEVINCASSIDY\_0000784  
PLA\_EM05803327  
PLA\_EM05803702  
PLA\_EM05796312  
PLA\_EM10477231  
PLA\_EM10601039  
PPVA\_RH\_0136490  
PPVA\_RH\_0144672  
PPVA\_RH\_0426174  
PPVA\_RH\_0445033  
PPVA\_RH\_0446960  
PPVA\_RH\_0446965  
PPVA\_RH\_0524016  
PPVA\_RH\_0524026

**Materials Considered by Bill Post**

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## Materials Considered by Bill Post

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### Public Research

“Federal Reserve Board and FDIC Announce Written Agreement with Two Individuals in NorCrown Trust Matter”, The Federal Reserve Board, February 25, 2005

*Accessed at*

*<https://www.federalreserve.gov/boarddocs/press/enforcement/2005/20050225/default.htm>*

to Avoid Them” Zachary G. Newman and Jonathan M. Proman, fn iii, citing Paige Capital Mgmt., LLC v. Lerner Master Fund, LLC, No. 5502-CS, 2011 Del. Ch. LEXIS 116, at \*110 (Del. Ch. Aug. 8, 2011)

Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010)

*Accessed at <https://www.sec.gov/rules/final/2010/ia-3060.pdf>*

Background and Mission, Investment Adviser Association

*Accessed at <https://www.investmentadviser.org/about/background-mission>*

Code of Ethics and Standards of Professional Conduct, CFA Institute

*Accessed at <https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/code-of-ethics-standards-professional-conduct.ashx>*

IAA Standards of Practice & Fiduciary Duty, Investment Adviser Association

*Accessed at <https://www.investmentadviser.org/about/standards-practice-duty>*

Moody’s Investors Service: “Rating Action: Moody’s downgrades Black Elk’s CFR to Caaa2, outlook negative”, June 7, 2013

Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act Of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order, Administrative Proceeding File No. 3-16969, In the Matter of Cranshire Capital Advisors, LLC

*Accessed at <https://www.sec.gov/litigation/admin/2015/ia-4277.pdf>*

Reuters: “S&P puts Black Elk Energy Offshore rtgs on watch negative”, November 21, 2012

SEC Form ADV Uniform Application for Investment Advisor Registration and report By Exempt Reporting Advisers, Platinum Management (NY) LLC, March 30, 2016, Schedule A Direct Owners and Executive Officers

*SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963)

02, RIN: 3235-AI65, Final Rule: Proxy Voting by Investment Advisers, Effective March 10, 2003

*Accessed at <https://www.sec.gov/rules/final/ia-2106.htm>*

Securities and Exchange Commission, 17 CFR Part 276, Release No. IA-5248, File No. S7-07-18, RIN, 3235-AM36, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Effective July 12, 2019

*Accessed at <https://www.sec.gov/rules/interp/2019/ia-5248.pdf>*

Securities and Exchange Commission, 17 CFR Parts 270 and 275, Release Nos. IA-2204, IC-26299, File No. S7-03-03, RIN: 3235-AI77, Compliance Programs of Investment Companies and Investment Advisers, Effective February 5, 2004

*Accessed at <https://www.sec.gov/rules/final/ia-2204.htm>*

**Materials Considered by Bill Post**

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“Statement of Policy for Section 19 of the FDI Act”, Federal Deposit Insurance Corporation

*Accessed at <https://www.fdic.gov/regulations/laws/rules/5000-1300.html>*

*Trabucco v. Intesa Sanpaolo*, S.p.A, 695 F. Supp. 2d 98, 107 (S.D.N.Y. 2010)

U.S. Investment Advisers Act of 1940 codified at 15 U.S.C. § 80b

*Accessed at*

*<https://legcounsel.house.gov/Comps/Investment%20Advisers%20Act%20Of%201940.pdf>*



**Exhibit 1****Summary of Individual and Family Ownership Interests in PM, Beechwood, and BEOF**

	Entity	Interests Owned by PM Members and Their Respective Families					Total Family Ownership
		Nordlicht & Family	Huberfeld & Family	Bodner & Family	Landesman & Family	Levy & Family	
[3]	<b>Platinum Management [1]</b>	25%	25%	25%	25%	0%	100%
	<b>Beechwood</b>						
[4]	<b>Beechwood Re Holdings, Inc.</b>	15%	15%	15%	0%	5%	50%
[4]	<i>Beechwood Re Holdings, Inc. - Voting</i>	0%	0%	0%	0%	9%	9%
[4]	<i>Beechwood Re Holdings, Inc. - Non-Voting</i>	20%	20%	20%	0%	4%	63%
[5]	<b>Beechwood Re Investment LLC [1]</b>	43%	25%	25%	0%	0%	93%
[6]	<b>Beechwood Bermuda Ltd.</b>	16%	14%	13%	0%	5%	47%
[6]	<i>Beechwood Bermuda Ltd. - Voting</i>	0%	27%	45%	0%	10%	81%
[6]	<i>Beechwood Bermuda Ltd. - Non-Voting</i>	17%	13%	10%	0%	4%	44%
[7]	<b>B Asset Manager, LP I and II - Class A</b>	21%	21%	21%	0%	7%	69%
[7]	<b>B Asset Manager, LP I and II - Class B</b>	15%	15%	15%	0%	5%	50%
	<b>BEOF</b>						
[8]	<b>PPBE Holdings LLC [2]</b>	26%	26%	26%	17%	1%	95%
[9]	<b>PPBE Management LLC [2]</b>	26%	26%	26%	17%	1%	95%

**Notes:**

[1] The amount for Nordlicht & Family is the sum of 10% ownership of Platinum Management and 15.02% interest in the Mark Nordlicht Grantor Trust. The Amounts for Huberfeld & Family and Bodner & Family are derived from their interests in the Mark Nordlicht Grantor Trust as detailed on Exhibit 1.2.

[2] The amounts for Huberfeld & Family, Bodner & Family, and Landesman & Family are derived from their interests in the David Levy Grantor Trust III as detailed on Exhibit 1.5.

[3] See Exhibits 1.1 and 1.2.

[4] See Exhibit 1.6.

[5] See Exhibit 1.7.

[6] See Exhibit 1.8.

[7] See Exhibits 1.9 and 1.10.

[8] See Exhibits 1.3 and 1.5.

[9] See Exhibits 1.4 and 1.5.

**Exhibit 1.1**

**Platinum Management (NY) LLC -- Ownership Interest Data**

Member Name	Member Status/Role	Ownership Interest	Voting/Non-Voting	Source
Mark Nordlicht	Passive Member; Chief Investment Officer	10%	Voting	[1]
Uri Landesman	Manager; Member	25%	Voting	[1]
Mark Nordlicht Grantor Trust	Passive Member	65%	Voting	[1],[2]
		<b>100.00%</b>		

**Sources/Notes:**

[1] Second Amended and Restated Operating Agreement of Platinum Management (NY) LLC (the "PM Operating Agreement") at PPVA\_RH\_0144672, Schedule 1.

[2] See Exhibit 1.2 for detail on the Mark Nordlicht Grantor Trust.

**Exhibit 1.2**

**Mark Nordlicht Grantor Trust -- Ownership Interest Data**

Member Name	Affiliated Member	Ownership Interest in Platinum Management	Voting/Non-Voting	Passive Membership Interest in Mark Nordlicht Grantor Trust	Source
Manor Lane Management LLC	Murray Huberfeld	25%	Voting	38%	[1], [3]
	Huberfeld	12%		19%	
	Huberfeld Family	12%		19%	
Grosser Lane Management LLC	David Bodner	25%	Voting	38%	[2], [3]
	Bodner	12%		19%	
	Bodner Family	12%		19%	
Nordlicht Management III LLC	Mark Nordlicht	15%	Voting	23%	[3]
		<b>65%</b>		<b>100%</b>	

<b>Nordlicht &amp; Family Total</b>	15%		23%
<b>Huberfeld &amp; Family Total</b>	25%		38%
<b>Bodner &amp; Family Total</b>	25%		38%
<b>Landesman &amp; Family Total</b>	0%		0%
<b>Levy &amp; Family Total</b>	0%		0%
	<b>65%</b>		<b>100%</b>

**Sources/Notes:**

[1] See Manor Lane Operating Agreement at CTRL0726406. Murray and Laura Huberfeld each owned a 50% stake in Manor Lane Management LLC.

[2] See Grosser Lane Operating Agreement at CTRL0719034. David and Naomi Bodner each owned a 50% stake in Grosser Lane Management LLC.

[3] Mark Nordlicht Grantor Trust Agreement at CTRL0726431.

**Exhibit 1.3**

**PPBE Holdings LLC -- Ownership Interest Data**

Member Name	Member Status/Role	Ownership Interest	Source
David Levy Grantor Trust III	Member	68%	[1], [2]
Mark Nordlicht	Member	26%	[2]
Gilad Kalter	Chief Operating Officer; Member	5%	[2]
David Levy	Chairman, Chief Investment Officer; Managing Member	1%	[2]
		<b>100%</b>	

**Sources/Notes:**

[1] See Exhibit 1.5 for detail on the David Levy Grantor Trust III.

[2] PPBE Holdings Operating Agreement at CTRL3680224.

**Exhibit 1.4**

**PPBE Management LLC -- Ownership Interest Data**

<b>Member Name</b>	<b>Member Status/Role</b>	<b>Ownership Interest</b>	<b>Source</b>
<b>David Levy Grantor Trust III</b>	<b>Member</b>	68%	[1], [2]
<b>Mark Nordlicht</b>	<b>Member</b>	26%	[2]
<b>Gilad Kalter</b>	<b>Chief Operating Officer; Member</b>	5%	[2]
<b>David Levy</b>	<b>Chairman, Chief Investment Officer; Managing Member</b>	1%	[2]
		<b>100%</b>	

**Sources/Notes:**

[1] See Exhibit 1.5 for detail on the David Levy Grantor Trust III.

[2] PPBE Management Operating Agreement.

## Exhibit 1.5

## David Levy Grantor Trust III -- Ownership Interest Data

Member Name	Affiliated Member	Ownership Interest in PPBE Holdings and PPBE Management	Voting Status	Passive Membership Interest in David Levy Grantor Trust III	Source
Manor Lane Management LLC	Murray Huberfeld	26%	Passive Membership Interest in both PPBE Management LLC and PPBE Holdings LLC	38%	[1], [3]
	Huberfeld	13%		19%	
	Huberfeld Family	13%		19%	
Grosser Lane Management LLC	David Bodner	26%	Passive Membership Interest in both PPBE Management LLC and PPBE Holdings LLC	38%	[2], [3]
	Bodner	13%		19%	
	Bodner Family	13%		19%	
Uri Landesman	Uri Landesman	17%	Passive Membership Interest in both PPBE Management LLC and PPBE Holdings LLC	25%	[3]
		<b>68%</b>		<b>100%</b>	

Nordlicht & Family Total	0%		0%
Huberfeld & Family Total	26%		38%
Bodner & Family Total	26%		38%
Landesman & Family Total	17%		25%
Levy & Family Total	0%		0%
	<b>68%</b>		<b>100%</b>

**Sources/Notes:**

[1] See Manor Lane Operating Agreement at CTRL0726406. Murray and Laura Huberfeld each owned a 50% stake in Manor Lane Management LLC.

[2] See Grosser Lane Operating Agreement at CTRL0719034. David and Naomi Bodner each owned a 50% stake in Grosser Lane Management LLC.

[3] David Levy Grantor Trust III Agreement.



Exhibit 1.7

Beechwood Re Investments LLC -- Ownership Interest Data

	Member Name	Status	Ultimate Beneficiary	Ownership Interest	Capital Contribution	Average Ownership Interest (Calculated by FTI)	Source
[1]	N Management LLC	Company	Nordlicht	100%	\$10,000	0%	[4]
[1]	Road Holdings, LLC	Series A	Nordlicht	100%	\$12,506,207	12%	[5]
	Lawrence Partners, LLC	Series B	Huberfeld Family	100%	\$12,506,207	12%	[2], [4]
	Monsey Equities, LLC	Series C	Bodner Family	100%	\$12,506,207	12%	[3], [4]
[1]	Dahlia Kalter	Series D	Nordlicht Family	100%	\$30,044,920	29%	[4]
[1]	Mark Nordlicht Grantor Trust	Series E	Nordlicht, Huberfeld, Bodner	100%	\$9,506,027		[4]
			Nordlicht	23%	\$2,195,892	2%	[6]
			Bodner	38%	\$3,655,067	4%	[6]
			Huberfeld	38%	\$3,655,067	4%	[6]
[1]	Whitestar LLC	Series F	Huberfeld, Bodner	100%	\$17,460,714		[4]
			Huberfeld Family	50%	\$8,730,357	8%	[7]
			Bodner Family	50%	\$8,730,357	8%	[7]
[1]	Whitestar LLC II	Series G	Huberfeld, Bodner	100%	\$246,865		[4]
			Huberfeld Family	50%	\$123,433	0%	[7]
			Bodner Family	50%	\$123,433	0%	[7]
[1]	Whitestar LLC III	Series H	Huberfeld, Bodner	100%	\$2,109,660		[4]
			Huberfeld Family	50%	\$1,054,830	1%	[7]
			Bodner Family	50%	\$1,054,830	1%	[7]
[1]	Platinum Credit Holdings, LLC	Series I		100%	\$7,314,153	7%	[4]
						<b>100%</b>	

<b>Nordlicht &amp; Family Total</b>		44,757,019	43%
<b>Huberfeld &amp; Family Total</b>		26,069,894	25%
<b>Bodner &amp; Family Total</b>		26,069,894	25%
<b>Landesman &amp; Family Total</b>		-	0%
<b>Levy &amp; Family Total</b>		-	0%
		<b>96,896,807</b>	<b>93%</b>

Sources/Notes:

- [1] The Manager of Beechwood Re Insurance (the "Company") and each Series except for B and C is N Management LLC.
- [2] The Manager of Series B is Lawrence Partners, LLC. See Amended and Restated LLC Agreement for Beechwood Re Investments, LLC at BW-SHIP-00759653 and Lawrence Partners Operating Agreement at BW-SHIP-01125530.
- [3] The Manager of Series C is Monsey Equities, LLC. See Amended and Restated LLC Agreement for Beechwood Re Investments, LLC at BW-SHIP-00759653 and Monsey Equities Operating Agreement at BW-SHIP-01125585.
- [4] Amended and Restated LLC Agreement for Beechwood Re Investments, LLC at BW-SHIP-00759653.
- [5] Road Holdings Operatign Agreement at CTRL3413571.
- [6] See Exhibit 1.2.
- [7] Whitestar Operating Agreement at BW-SHIP-01125545.



Exhibit 1.8  
Beechwood Bermuda Ltd. -- Ownership Interest Data

Member Name	Individual Beneficiary of Family Trust	Ultimate Beneficiary [1]	Common Shares (Voting)	Common Shares (Voting and Non-Voting)	Common Shares (Non-Voting)	Warrants for Common Shares	Voting Percentage	Non-Voting Percentage	Economic Percentage (Fully Diluted)	Source
David I Levy Beechwood Trust	David I. Levy	Levy	950	5,878	4,928	-	10%	4%	5%	[2]
Taylor-Lau Family Trust	Scott Taylor	Taylor	950	9,291	8,341	12,519	10%	18%	17%	[2]
Feuer Family Trust	Mark Feuer	Feuer	950	19,533	18,583	25,037	10%	37%	35%	[2]
Beechwood Trust No. 1	Rachel Goldie Nordlicht	Nordlicht Family	-	3,413	3,413	-	0%	3%	3%	[2]
Beechwood Trust No. 2	Noah Morris Nordlicht	Nordlicht Family	-	3,414	3,414	-	0%	3%	3%	[2]
Beechwood Trust No. 3	Emma Bailey Nordlicht	Nordlicht Family	-	3,414	3,414	-	0%	3%	3%	[2]
Beechwood Trust No. 4	Sarah Paulina Nordlicht	Nordlicht Family	-	3,414	3,414	-	0%	3%	3%	[2]
Beechwood Trust No. 5	Jack Henry Nordlicht	Nordlicht Family	-	3,414	3,414	-	0%	3%	3%	[2]
Beechwood Trust No. 6	Ava Ruth Nordlicht	Nordlicht Family	-	3,414	3,414	-	0%	3%	3%	[2]
Beechwood Trust No. 7	Moshe Bodner	Bodner Family	559	2,001	1,442	-	6%	1%	2%	[2]
Beechwood Trust No. 8	Aaron Bodner	Bodner Family	559	2,001	1,442	-	6%	1%	2%	[2]
Beechwood Trust No. 9	Eliezer Bodner	Bodner Family	559	2,001	1,442	-	6%	1%	2%	[2]
Beechwood Trust No. 10	Tzipporah Rottenberg	Bodner Family	559	2,001	1,442	-	6%	1%	2%	[2]
Beechwood Trust No. 11	Rochel Fromowitz	Bodner Family	559	2,001	1,442	-	6%	1%	2%	[2]
Beechwood Trust No. 12	Yissochar Bodner	Bodner Family	559	2,001	1,442	-	6%	1%	2%	[2]
Beechwood Trust No. 13	Yaakov Bodner	Bodner Family	558	2,002	1,444	-	6%	1%	2%	[2]
Beechwood Trust No. 14	Mordechai Bodner	Bodner Family	558	2,002	1,444	-	6%	1%	2%	[2]
Beechwood Trust No. 15	Jessica G. Beren	Huberfeld Family	893	3,204	2,311	-	9%	2%	3%	[2]
Beechwood Trust No. 16	Rachel M. Jacobs	Huberfeld Family	893	3,204	2,311	-	9%	2%	3%	[2]
Beechwood Trust No. 17	Alexander J. Huberfeld	Huberfeld Family	894	3,203	2,309	-	9%	2%	3%	[2]
Beechwood Trust No. 18	Ariella D. Huberfeld	Huberfeld Family	-	4,097	4,097	-	0%	3%	3%	[2]
Beechwood Trust No. 19	Jacob E. Huberfeld	Huberfeld Family	-	4,097	4,097	-	0%	3%	3%	[2]
Kerry Propper	N/A		-	1,000	1,000	383	0%	1%	1%	[2]
			<b>10,000</b>	<b>90,000</b>	<b>80,000</b>	<b>37,939</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	
		<b>Nordlicht &amp; Family Total</b>	-	20,483	20,483	-	0%	17%	16%	
		<b>Huberfeld &amp; Family Total</b>	2,680	17,805	15,125	-	27%	13%	14%	
		<b>Bodner &amp; Family Total</b>	4,470	16,010	11,540	-	45%	10%	13%	
		<b>Landesman &amp; Family Total</b>	-	-	-	-	0%	0%	0%	
		<b>Levy &amp; Family Total</b>	950	5,878	4,928	-	10%	4%	5%	
			<b>8,100</b>	<b>60,176</b>	<b>52,076</b>	<b>-</b>	<b>81%</b>	<b>44%</b>	<b>47%</b>	

Sources/Notes:

[1] Email from David Levy dated December 16, 2013 at BW-SHIP-00967256.

[2] Beechwood Ownership Structure at BW-SHIP-00000801.

## Exhibit 1.9

## B Asset Manager, LP -- Ownership Interest Data

Beneficiary	Ultimate Beneficiary [2]	Class A Interests (Held Within Beechwood Asset Management Trust I)	Class B Interests (Held Within Beechwood Asset Management Trust II)	Source
[1] Scott Taylor	Taylor	10%	17%	[3]
Mark Feuer	Feuer	21%	33%	[3]
Dahlia Kalter	Nordlicht Family	5%	5%	[3]
Rachel Goldie Nordlicht	Nordlicht Family	3%	2%	[3]
Noah Morris Nordlicht	Nordlicht Family	3%	2%	[3]
Emma Bailey Nordlicht	Nordlicht Family	3%	2%	[3]
Sarah Paulina Nordlicht	Nordlicht Family	3%	2%	[3]
Jack Henry Nordlicht	Nordlicht Family	3%	2%	[3]
Ava Ruth Nordlicht	Nordlicht Family	3%	2%	[3]
Moshe Bodner	Bodner Family	3%	2%	[3]
Aaron Bodner	Bodner Family	3%	2%	[3]
Eliezer Bodner	Bodner Family	3%	2%	[3]
Tzipporah Rottenberg	Bodner Family	3%	2%	[3]
Rochel Fromowitz	Bodner Family	3%	2%	[3]
Yissochar Bodner	Bodner Family	3%	2%	[3]
Yaakov Bodner	Bodner Family	3%	2%	[3]
Mordechai Bodner	Bodner Family	3%	2%	[3]
Jessica G. Beren	Huberfeld Family	4%	3%	[3]
Rachel M. Jacobs	Huberfeld Family	4%	3%	[3]
Alexander J. Huberfeld	Huberfeld Family	4%	3%	[3]
Ariella D. Huberfeld	Huberfeld Family	4%	3%	[3]
Jacob E. Huberfeld	Huberfeld Family	4%	3%	[3]
David I. Levy	Levy	7%	5%	[3]
		<b>100%</b>	<b>100%</b>	
	<b>Nordlicht &amp; Family Total</b>	21%	15%	
	<b>Huberfeld &amp; Family Total</b>	21%	15%	
	<b>Bodner &amp; Family Total</b>	21%	15%	
	<b>Landesman &amp; Family Total</b>	0%	0%	
	<b>Levy &amp; Family Total</b>	7%	5%	
		<b>69%</b>	<b>50%</b>	

**Sources/Notes:**

[1] 0.1% of Class A and Class B Interests are held by B Asset Manager GP LLC, which is wholly owned by Mark Feuer.

[2] Email from David Levy dated December 16, 2013 at BW-SHIP-00967256.

[3] Beechwood Ownership Structure at BW-SHIP-00000801.

## Exhibit 1.10

## B Asset Manager II, LP -- Ownership Interest Data

Beneficiary	Ultimate Beneficiary [2]	Class A Interests (Held Within Beechwood Asset Management Trust I)	Class B Interests (Held Within Beechwood Asset Management Trust II)	Source
[1] Scott Taylor	Taylor	10%	17%	[3]
Mark Feuer	Feuer	21%	33%	[3]
Dahlia Kalter	Nordlicht Family	5%	5%	[3]
Rachel Goldie Nordlicht	Nordlicht Family	3%	2%	[3]
Noah Morris Nordlicht	Nordlicht Family	3%	2%	[3]
Emma Bailey Nordlicht	Nordlicht Family	3%	2%	[3]
Sarah Paulina Nordlicht	Nordlicht Family	3%	2%	[3]
Jack Henry Nordlicht	Nordlicht Family	3%	2%	[3]
Ava Ruth Nordlicht	Nordlicht Family	3%	2%	[3]
Moshe Bodner	Bodner Family	3%	2%	[3]
Aaron Bodner	Bodner Family	3%	2%	[3]
Eliezer Bodner	Bodner Family	3%	2%	[3]
Tzipporah Rottenberg	Bodner Family	3%	2%	[3]
Rochel Fromowitz	Bodner Family	3%	2%	[3]
Yissochar Bodner	Bodner Family	3%	2%	[3]
Yaakov Bodner	Bodner Family	3%	2%	[3]
Mordechai Bodner	Bodner Family	3%	2%	[3]
Jessica G. Beren	Huberfeld Family	4%	3%	[3]
Rachel M. Jacobs	Huberfeld Family	4%	3%	[3]
Alexander J. Huberfeld	Huberfeld Family	4%	3%	[3]
Ariella D. Huberfeld	Huberfeld Family	4%	3%	[3]
Jacob E. Huberfeld	Huberfeld Family	4%	3%	[3]
David I. Levy	Levy	7%	5%	[3]
		<b>100%</b>	<b>100%</b>	

<b>Nordlicht &amp; Family Total</b>	21%	15%
<b>Huberfeld &amp; Family Total</b>	21%	15%
<b>Bodner &amp; Family Total</b>	21%	15%
<b>Landesman &amp; Family Total</b>	0%	0%
<b>Levy &amp; Family Total</b>	7%	5%
	<b>69%</b>	<b>50%</b>

**Sources/Notes:**

[1] 0.1% of Class A and Class B Interests are held by B Asset Manager GP LLC, which is wholly owned by Mark Feuer.

[2] Email from David Levy dated December 16, 2013 at BW-SHIP-00967256.

[3] Beechwood Ownership Structure at BW-SHIP-00000801.