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May 26, 2022

VIA ECF

Honorable Brian M. Cogan
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *SEC v. Platinum Mgmt. (NY) LLC, et al., No. 1:16-cv-06848-BMC, Dkt. No. 630*

Dear Judge Cogan:

We write on behalf of Melanie L. Cyganowski, the court-appointed Receiver (the “**Receiver**”) of the various entities (the “**Receivership Entities**”) in receivership in this matter (the “**Receivership**”) in response to the *Letter Regarding Advancement from Receiver to Cover Mr. Small’s Legal Fees* [Dkt. No. 630] (the “**Letter**”) filed by Daniel Small (“**Mr. Small**”) a defendant in both this matter and the criminal matter captioned *United States v. Nordlicht*, 16-cr-640 (E.D.N.Y.) (the “**Criminal Proceeding**”).

While the Receiver is sympathetic to Mr. Small’s need to prepare for trial, and has provided his counsel with access to the Global Relay archive of all of Platinum’s emails to aid in trial preparation, she cannot consent to his renewed request for advancement of trial costs. Consenting to this request would be contrary to, and undermine the reasons she provided to this Court in support of the *Receiver’s Omnibus Motion to Confirm Receiver’s Determinations as to (1) Claims 282-301 Filed by David Levy, (2) Claims 313-322 Filed by Wilson Sonsini Goodrich & Rosati, P.C., (3) Claims 156, 329 and 330 Filed by Ford O’Brien LLP, (4) Claims 24 and 227-232 Filed by Daniel Small, and (5) Claims 37-38 and 41-42 Filed by Richard Schmidt, as Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust* [Dkt. Nos. 597, 602], the Receiver’s Reply Memorandum in Support of the Claims Motion [Dkt. No. 617], and the Sur-Reply in Further Support of the Claims Motion [Dkt. No. 622] (collectively, the “**Claims Motion**”).

Rather than repeat the arguments against indemnification and advancement set forth in the Claims Motion, the Receiver respectfully refers the Court thereto, including, but not limited to the argument that advancement is not appropriate where no undertaking has been offered, let alone satisfactorily provided by Mr. Small. (*See* Dkt. No. 602, 47).

It is also important to note that granting the requested advancement would “lock” the Receiver into a distribution scheme that may be contrary to the one she may actually propose as part of a plan of distribution, by among other things, granting creditors a priority over investors. Requiring a distribution now to Mr. Small, based on the analysis in the Letter, would be fatal to any effort by the Receiver to propose a plan of distribution that treats creditors and investors fairly



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because Mr. Small proposes to provide unsecured creditors a 24% recovery while the investors receive *nothing*.¹ There are over 200 investors in the Receivership Entities whose net investments exceed \$300 million – they will be left without a distribution if Mr. Small’s proposed recovery of 24% to unsecured creditors, with a priority over investors, is binding on other parties-in-interest. Instead, as the Receiver requested in the Claims Motion, the Court should defer ruling on whether unsecured creditors should be paid ahead of equity holders to the plan confirmation stage, when investors will have an opportunity to be heard. (Dkt. No. 602, 47; Dkt No. 617, 15 n. 18).

Finally, granting the request in the Letter would also allow Mr. Small to “jump the line” in a manner contrary to this Court’s Memorandum Decision and Order dated November 25, 2018, Dkt. No. 417, at 1; *see also* Minute Order dated January 22, 2020.² Notably, while Mr. Small proposes that investors receive nothing, he has already received \$434,063 in insurance proceeds to pay for his defense. (Dkt. No. 602, 7-8).

For these reasons, the Receiver does not consent to Mr. Small’s request for advancement.

Respectfully submitted,

/s/ Erik B. Weinick
Erik B. Weinick

cc: Seth L. Levine, Esq.

¹ The Receiver maintains that the 24% recovery proposed in Mr. Small’s Letter is inaccurate because, among other things, the total amount of allowed unsecured claims is not yet finalized due to pending settlements with certain creditors, as well as pending motions before the Court.

² It is not entirely clear whether Mr. Small is requesting the Receiver (a) advance funds for 100% of his future costs and expenses in the Criminal Proceeding or (b) make a *pro rata* distribution on account of his disputed claims for previously incurred fees and expenses. In all events, the Receiver cannot consent to Mr. Small’s request for an immediate distribution for the reasons stated in this letter.