UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	No. 18 Civ. 6658 (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), Plaintiffs, v. PLATINUM MANAGEMENT (NY) LLC, *et al.*, Defendants.	No. 18 Civ. 10936 (JSR)

OMNIBUS REPLY MEMORANDUM OF LAW OF DAVID BODNER IN SUPPORT OF HIS THREE INITIAL MOTIONS *IN LIMINE* (ECF NOS. 667, 669, 671)

TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
REPLY POINTS 1
I. The First Motion (2013 Incentive Fees and Post-September 2014 Withdrawals) 1
II. The Second Motion (Consolidation) 6
III. The Third Motion (Punitive Damages) 10
CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Aldrich v. Thomson McKinnon Sec., 756 F.2d 243, 249 (2d Cir. 1985) 11

Chiarella v United States, 445 U.S. 222, 248 (1980) 6

Huang v. iTV Media, Inc., 79 F. Supp. 3d 458, 465 (E.D.N.Y. 2015) 11

Icebox-Scoops, Inc. v. Finanz St. Honore, B.V., 715 Fed. Appx. 54, 56 (2d Cir. 2017) 10

In re LIBOR-Based Fin. Instrs. Antitrust Litig., No. 11 MDL 2262 (NRB), 2015 U.S. Dist. LEXIS 107225 (S.D.N.Y. Aug. 4, 2015) 9

Jana L. v. W. 129th St. Realty Corp., 22 A.D.3d 274, 277 (1st Dep't 2005) 6

P.T. Bank Cent. Asia v. ABN AMRO Bank N.V., 301 A.D.2d 373, 378 (1st Dep't 2003) 6

Rocanova v. Equitable Life Assur. Soc'y of the U.S., 83 N.Y.2d 603, 613 (1994) 10

Rolf v. Blyth, 570 F.2d 38, 49 (2d Cir. 1978) 9

Stichting Pensioenfonds ABP v. Credit Suisse Group AG, 38 Misc. 3d 1214[A], 2012 N.Y. Misc. LEXIS 5996, at *40 (Sup. Ct. N.Y. Cnty. Nov. 30, 2012) 11

Treatises

Restat. 2d of Torts, § 551 7

Defendant David Bodner respectfully submits this omnibus Reply Memorandum of Law in support of his three initial motions *in limine*: (i) the first motion *in limine* (ECF No. 667) (the "First Motion"), which (a) addresses the $18.3 million in incentive fee payments paid in 2013 but based on 2012 net asset value ("NAV") and (b) seeks to bar the Joint Official Liquidators (the "JOLs") from making any statement to the jury that Bodner made withdrawals from Platinum Partners Value Arbitrage Fund L.P. ("PPVA") after September 2014; (ii) the second motion *in limine* (ECF No. 669) (the "Second Motion"), which seeks to exclude from the Court's instructions to the jury seven of the eight claims asserted by the JOLs as duplicative; and (iii) the third motion *in limine* (ECF No. 671) (the "Third Motion" and collectively with the First Motion and the Second Motion, the "Motions"), which seeks to preclude references at trial to punitive damages and to exclude references to punitive damages in the Court's instructions to the jury, both as they relate solely to Bodner.[1]

REPLY POINTS

I. The First Motion (2013 Incentive Fees and Post-September 2014 Withdrawals)

Bodner brought the First Motion to address two specific matters. *First,* the JOLs' damages expert, Ronald Quintero, opines in his report that there was no inflation in the value of any PPVA position as of December 31, 2012. At the same time, however, Quintero includes in his calculation of damages the entire amount of incentive fees paid to the General Partner or its members in 2013 ($18.3 million). Because there is no dispute that the 2013 payment of incentive fees was calculated based on 2012 NAV, and because the December 31, 2012 NAV is unchallenged by Quintero, the 2013 payments are not inflated and cannot constitute damages as

[1] ECF citations refer to the *Trott* docket, 18 Civ. 10936. Capitalized terms not defined herein shall have the meanings ascribed to them in the Motions. The JOLs' opposition memoranda are located at ECF Nos. 678, 679 and 680. Emphasis is supplied throughout this memorandum unless otherwise noted.

inflated incentive fees. Quintero and the JOLs should not be permitted to reference them as such.

Second, Bodner sought to exclude from trial any assertion that he or his family took out any PPVA money after the September 2014 withdrawal of $15,806, which Quintero's report demonstrates was Bodner's last cash withdrawal of any kind—incentive fees or otherwise. (ECF No. 667-1 at 30). In that section of the First Motion, Bodner sought to address the JOLs' false assertion at summary judgment that Bodner, after "rais[ing] his concerns about the overvalued fund to his Platinum Management partners" in a January 2015 dinner meeting, "accept[ed] millions of dollars in fees and distributions based on the overvalued fund." (ECF No. 573 at 16). The Court appeared to accept the JOLs' false representation in holding that a genuine issue existed as to whether Bodner, after the January 2015 meeting, "may have withdrawn fees" with "knowledge of the overvaluation." (April 21 Decision at 27). There is no dispute that Bodner did not take out any money after that meeting and the JOLs should not be permitted to suggest otherwise to the jury.

<u>2013 Incentive Fees</u>. With respect to the incentive fee point, the JOLs do not dispute that the $18.3 million in 2013 incentive fee payments was paid on the basis of 2012 NAV. But they claim now, for the first time, that 2012 NAV *is* challenged with Platinum Management's valuation of its Black Elk securities as of December 31, 2012. (ECF No. 678 at 2). The JOLs cannot, however, contradict their damages expert's stated opinion: that there was *no* overvaluation in the Black Elk position as of December 31, 2012. (Quintero Ex. 23.2). Quintero opined that the NAV inflation as of that date was <u>zero</u> ("Reported Over Adjusted: 0"). Bodner deposed Quintero on the basis of that opinion, and Bodner elected not to offer a rebuttal opinion as to the Black Elk valuation as of that date in reliance on Quintero's position.

Furthermore, had Quintero and the JOLs taken the position that Black Elk was overvalued as of November 30 or December 31, 2012, and offered an opinion as to the *amount* of overvaluation and a *methodology* for that opinion, Bodner could then have included that challenge in his *Daubert* motion. He was unable to do that because there was no such opinion rendered.

Now the JOLs state that "Quintero will offer his opinion at trial that PPVA's NAV should not have increased for year 2012" because of an explosion at a Black Elk drilling site in the Gulf of Mexico. (ECF No. 678 at 6). He cannot offer any such opinion because that opinion is not in his report and is contrary to his report. The JOLs argue that Quintero preserved the issue by including a bullet-point reference to the November 2012 explosion in his report (Quintero Ex. 23 at 2), but that is precisely Bodner's point: Quintero knew of the explosion and relied on it as a basis for his opinion that Black Elk was overvalued as of January 2013, and not before. To be absolutely clear, Quintero, with full knowledge of the explosion and taking it into account, concluded that damages for inflated incentive fees and management fees as of December 31, 2012 was zero (Quintero Ex. 23.1) because there was no inflation in NAV as of that date. (Quintero Ex. 23.2).[2]

[2] The JOLs write that their other expert, Bill Post, preserved the issue by making generic observations in his report about the explosion and downgraded credit ratings on Black Elk's publicly-traded notes. (ECF No. 678 at 7-8). These publicly-known facts, drawn from Black Elk's contemporaneous SEC filings, are not professional opinions of fair value and are not opinions that Platinum Management's valuations were incorrect in any specific amount that would cause any specific amount of damages. The fact that Black Elk was a distressed business, and that an accident occurred at one of its drilling sites in November 2012, was well known at the time. (*See* Tab A, Sterling Valuation Report as of 12/31/2012) (in relevant part) (noting "an explosion and fire on one of the Company's oil pumping platforms in the Gulf of Mexico (shut in and not in production since August 2012)"); *see also* ECF No. 681-1 at 8 & 32; *Two Missing In Gulf Fire*, The Wall Street Journal, Nov. 16, 2012, available at https://on.wsj.com/2ToFcnT. Post (like Quintero) is free to discuss the November explosion and its implications for value but the JOLs are not free to contradict Quintero's explicit opinion that with full knowledge of the November explosion he concluded that Platinum Management's assessment of fair value as of December 31, 2012 was not inflated.

Quintero offered the opinion that Platinum Management overstated fair value of its Black Elk position beginning in January 2013, and in specific amounts on a monthly basis which he determined by drawing a straight line devaluation from January 1, 2013 to March 2016. In resolving Bodner's *Daubert* motion, which tested that novel methodology, the Court held that he can present that valuation "as long as he tells the jury that his method is unconventional and explains why he had to proceed in this alternative manner." (Daubert Decision at 4). Thus, he and the JOLs can explain how his opinion supports incentive fee damage with respect to fees paid in 2014 or later on account of such 2013 overvaluation. But 2013 incentive fees based on 2012 performance are not in this case.

The JOLs argue in the alternative that, even if the 2013 incentive fees were legitimately earned as a result of unchallenged 2012 performance, Bodner should have to disgorge the portion he received under New York's "faithless servant" doctrine, whereby an employee or agent is forced to disgorge moneys obtained by acting adverse to his employer's or principal's interests. (ECF No. 678 at 9-10). This unpleaded, entirely new theory of recovery is beyond the scope of the First Motion. The Court can—and respectfully, should—grant the First Motion to bar the JOLs from arguing that Bodner can be held liable for the $18.3 million in 2013 incentive fees paid to the General Partner and/or the GP Members, and leave for trial (or another motion *in limine*) whether the JOLs should be permitted to argue that Bodner can be forced to disgorge the much smaller amounts that he personally withdrew in 2013 or later. One has nothing to do with the other. As Quintero opines, the total fees paid by PPVA to Bodner over the entire Damages Period is $321,318. (ECF No. 916-1 at 29) (summing Quintero's purple-

shaded entries from May 2013 to September 2014, where purple shading means Quintero claims the payment originated in a PPVA bank account).[3]

Post-September 2014 withdrawals. With respect to the second prong of the First Motion, which seeks an Order precluding the JOLs from suggesting that Bodner withdrew fees after September 2014, the JOLs' sole rebuttal is that Bodner received "non-cash transfers of PPVA Limited Partnership Interests to [his] investor accounts with PPVA's onshore feeder fund," and that such transfers of "limited partnership interests in PPVA are ill-gotten gains subject to disgorgement." (ECF No. 678 at 13) (cleaned up). That response, however, fails to join issue with the motion. The JOLs are free to show the jury that Bodner received limited partnership interests at any time. What they must not do—and this was the narrow purpose of the motion—is represent to the jury, contrary to the evidence, that Bodner made cash withdrawals after September 2014. They know that he did not.[4]

---

[3] The JOLs state in a footnote, with no record citation and with no reference to time period, that they will demonstrate through "testimony of Quintero" and others, and "bank statements and fund records," that Bodner and his family "received cash incentive fee payments" in an amount of $9.8 million. (ECF No. 678 at 14 n.5). While the JOLs are welcome to offer any admissible evidence they wish, Quintero, for his part, is bound to what is contained in his report. (Daubert Decision at 37 n.33). And given that the JOLs have offered no record citation or evidence as to the time period of such alleged payments, their statement fails to join issue with the First Motion, which only addresses (a) incentive fee payments paid by PPVA in 2013; and (b) Bodner's cash withdrawals after September 2014.

[4] Bodner never received "limited partnership interests in PPVA" (ECF No. 678 at 13); that is simply a factual misstatement. It is undisputed that Bodner has never held a limited partnership interest in PPVA at any time, as PPVA only has two limited partners: its onshore and offshore feeder funds, which are separate and distinct entities from PPVA. (Daubert Decision n.29). What the JOLs seem to be referring to are distributions of limited partnership interests in the onshore fund, a Delaware partnership called Platinum Value Arbitrage Fund (USA) LP (the "Onshore Fund"). (*See, e.g.*, ECF No. 667-1 at 17) (showing re-distributions of partnership interests in January 2013 from the General Partner to the GP Members). Whether Bodner's receipt of unredeemed limited partnership interests in the Onshore Fund is a damage recoverable by PPVA is beyond the scope of the First Motion. The Onshore Fund partnership interests, however, were never PPVA's to begin with, and are not the JOLs to recover.

II. The Second Motion (Consolidation)

The Court's summary judgment decision left the JOLs with one factual claim against Bodner: that Bodner, if deemed a fiduciary, could have violated his fiduciary duties to PPVA had he learned of the fraudulent overvaluation of PPVA's NAV and failed to disclose his knowledge. (ECF No. 634 at 2, 25-27). Thus, he should face one count of breach of fiduciary duty, which cures the risk of a compromise verdict and causes no prejudice to the JOLs' case.

The JOLs agree that the Court can consolidate claims premised on the same conduct and which seek the same relief (ECF No. 679 at 2) and ask the Court to consolidate the eight counts asserted against Bodner in the SAC into four, leaving one count of fiduciary breach of loyalty, one count of fiduciary breach of care, one count of fraud, and one count of aiding and abetting Platinum Management's breach of fiduciary duty through fraudulent overvaluation. (*Id.* at 13).

The JOLs' arguments against further consolidation into one fiduciary duty count, however, lack merit.

Collapsing fraud and breach of fiduciary duty. First, the JOLs argue that the fraud and fiduciary duty counts are not factually identical because Bodner could be found liable for fraud under the "special facts" doctrine even if he is not a fiduciary. That is not so. The special facts doctrine applies to claims of fraud between parties engaged in a transactional context, "where one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair." *Jana L. v. W. 129th St. Realty Corp.*, 22 A.D.3d 274, 277 (1st Dep't 2005); *P.T. Bank Cent. Asia v. ABN AMRO Bank N.V.*, 301 A.D.2d 373, 378 (1st Dep't 2003) (same) (citing *Chiarella v. United States*, 445 U.S. 222, 248 (1980) (same) (citing Restat. 2d of Torts, § 551 (duty to disclose facts arises only in a specific "business transaction"). Bodner and PPVA were not engaged in any transaction. If the jury finds that Bodner was not a fiduciary to PPVA,

he is merely an investor and owes no duty to disclose any facts to PPVA under the special facts doctrine. As such, the special facts doctrine has no application here. The only way the JOLs can establish fraud is by proving that Bodner was a fiduciary and failed to disclose his actual knowledge of Platinum Management's overvaluation. This is exactly the breach of fiduciary duty claim.[5]

The JOLs also argue that the fraud and fiduciary duty counts are not duplicative because a jury could conclude that Bodner failed in some unalleged fiduciary "duty to investigate" which would give rise to a breach of a "duty of care" but would not constitute fraud. (ECF No. 679 at 5). There is no duty to investigate in this case. No such duty was alleged in the Second Amended Complaint. And, after Bodner moved for summary judgment on the entire Second Amended Complaint, only one factual claim survived: that Bodner, if deemed a fiduciary solely by virtue of his alleged "control" or "influence" over Platinum Management, failed to disclose his actual knowledge that NAV was fraudulently overstated. (April 21 Decision at 2, 24).

Nor is there merit to the JOLs' claim that the fraud and fiduciary duty counts have different measures of damage because a fiduciary claim includes lost profits whereas a fraud

---

[5] The JOLs (ECF No. 679 at 4) point to the Court's reference to the special facts doctrine in the April 21 Decision, but the Court was merely citing the general standard for fraud based on omission. (April 21 Decision at 30). The Court did not rely upon the special facts doctrine in allowing the fraud claim to survive summary judgment, and relied solely upon Bodner's fiduciary relationship with PPVA: "pure omission may here be actionable, because Bodner might have had the obligation, as a fiduciary, to disclose the fraudulent nature of such valuations to PPVA, from which he was receiving excessive management fees and distributions." (*Id.*). Likewise, when referring to Fuchs, the Court held: "for substantially the same reason as discussed in the context of Bodner, his [Fuchs'] inaction may be actionable under the claims for fraud, constructive fraud, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty, if he is found to have owed a fiduciary duty to PPVA." (*Id.* at 43). Other than the one reference to the special facts doctrine when reciting the standard, the Court never referred to it again.

claim is limited to the plaintiff's economic loss. (ECF No. 679 at 6). There are no lost profits at issue in this case. And, in event, the fiduciary duty count provides the broader set of remedies and renders the fraud count subsumed within it, as the JOLs rightfully acknowledge ("the scope of remedies available for the breach of fiduciary claims against Bodner is broader"). (*Id.*).

Collapsing Duty of Loyalty and Duty of Care. The JOLs argue that the duty of care and duty of loyalty counts are not duplicative because, again they aver, the duty of care count includes a duty to "stay reasonably informed of the performance of the subject company and conduct reasonable diligence." (ECF No. 679 at 7). No such claim was pleaded in this case and none survived summary judgment. (April 21 Decision at 2). Those two counts can be consolidated into a single count of breach of fiduciary duty based on Bodner's alleged failure to disclose his knowledge that PPVA's NAV was overstated.[6]

Collapsing aiding and abetting with breach of fiduciary/fraud. The JOLs agree that only one count of aiding and abetting is appropriate. They seek a single charge for aiding and abetting Platinum Management's breach of fiduciary duty. (ECF No. 679 at 12). But, they argue that that claim should be separately charged to the jury from Bodner's own breach of fiduciary duty or fraud because the "aiding and abetting claims are specifically not predicated on Bodner's own fraud or breach of fiduciary duties." This is simply incorrect. In this case, Bodner's silence or failure to act is the one basis for all claims against him. The one triable claim against Bodner is that he failed to disclose Platinum Management's alleged overstatement of NAV while a fiduciary. That claim is identical whether framed as a breach of fiduciary duty, fraud by omission, or aiding and abetting a breach of fiduciary duty by Platinum Management.

[6] The JOLs argue that Bodner could have fiduciary liability for his "involvement in the creation of Beechwood," "the formation of BEOF and failure to stop the Black Elk sale Renaissance" and "shepherding the COBA bribe." (ECF No. 679 at 8-9). None of that is in the case with respect to Bodner. All of it was dismissed at summary judgment. (April 21 Decision at 2).

The JOLs' claim that damages vary between primary and secondary liability on these facts also lacks merit. The JOLs offer the astounding assertion that Bodner could have greater liability as a secondary actor than as a primary actor where the underlying conduct is precisely the same: a failure to disclose with knowledge of fraud. No case stands for that proposition. The JOLs cite *In re LIBOR-Based Fin. Instrs. Antitrust Litig.*, No. 11 MDL 2262 (NRB), 2015 U.S. Dist. LEXIS 107225 (S.D.N.Y. Aug. 4, 2015) ("*Libor*") for the proposition that "the jury may hold Bodner jointly and severally liable for all damages arising from Platinum Management's primary violation if it determines that Bodner persistently and substantially assisted Platinum Management's primary violations" (ECF No. 679 at 11), but that case has no application here. Judge Buchwald was addressing joint and several liability in a massive conspiracy among banks to suppress Libor rates, and held that "to the extent that plaintiffs can prove their theory that each panel bank's persistent suppression [of rates] substantially assisted each other panel bank's persistent suppression, each panel bank may be jointly liable for harm caused by any other panel bank." *Id*. at *374. For that inapposite proposition, Judge Buchwald expressly stated that she was relying on non-New York law. *Id.* (citing federal and Illinois law).

The other case cited by the JOLs is *Rolf v. Blyth*, 570 F.2d 38, 49 (2d Cir. 1978), where the Second Circuit undertook to determine the proper measure of damages against a defendant broker who aided and abetted 10b-5 violations by the adviser he retained to manage a discretionary portfolio account. The Second Circuit instructed the district court to utilize a measure of damages particular to "churning" claims against a broker, where damages begin to run on the date that the aiding and abetting began and should be formulaically adjusted to reflect changes in broader market indices.

Neither case supports the JOLs' contention that the measure of damages would be different depending on whether the jury finds that Bodner aided and abetted Platinum Management through his silence, or breached a fiduciary duty with his silence. The measure of damages here is the economic loss to PPVA as a result of Bodner's silence, which the JOLs (through Quintero) have contended are inflated management and incentive fees paid by PPVA.[7] To the extent the jury finds that Bodner breached his fiduciary duties by failing to act, the inflated management and incentive fees from that point forward are the sole measure of damage regardless of how the claim is charged. Accordingly, the aiding and abetting claim is duplicative of the fiduciary breach claim and should be dismissed.

III. The Third Motion (Punitive Damages)

Where, as here, tort claims have their "genesis in" a contractual relationship, punitive damages are not available under New York law absent evidence of "public harm." *Icebox-Scoops, Inc. v. Finanz St. Honore, B.V.*, 715 Fed. Appx. 54, 56 (2d Cir. 2017); *Rocanova v. Equitable Life Assur. Soc'y of the U.S.*, 83 N.Y.2d 603, 613 (1994). There can be no serious disagreement that the sole remaining claim against Bodner has its "genesis in" contract. The basis for Bodner's alleged fiduciary obligation is his alleged control of Platinum Management (April 21 Decision at 24), which was contractually obligated to PPVA under the IMA and LPA to determine NAV by making good faith, fair value measurements of Level 3 assets. Likewise, the harm allegedly caused by Bodner's failure to alert PPVA to Platinum Management's

[7] The JOLs seek a second bite at summary judgment when they contend that damage against Bodner for breach of fiduciary duty can include consequential damages like "Platinum Management's waste of corporate assets" (ECF No. 679 at 11; *see also* ECF No. 680 at n.2). This is an effort to hold Bodner financially responsible for transactions like Agera, Montsant and the Black Elk scheme, which the Court already dismissed because the JOLs failed to raise a triable issue with respect to Bodner's involvement in those transactions. (April 21 Decision at 27-28). The Court, however, does not need to address this here because, if the JOLs are correct that such consequential damages are available to them for breach of fiduciary duty, they lose nothing by having that be the sole count charged to the jury.

inflation of NAV—overpayment of incentive and management fees—is a harm that only exists because of contractual terms that dictate when and under what circumstances such fees can be properly earned and charged. Accordingly, punitive damages are not available as a matter of law because the JOLs cannot meet the "public harm" standard.

This is not a close case with respect to that standard. There is no claim that Bodner's inaction as an alleged fiduciary to PPVA was targeted at the public. *See Huang v. iTV Media, Inc.*, 79 F. Supp. 3d 458, 465 (E.D.N.Y. 2015) ("[A] fraudulent scheme that allegedly affects the general public in some way is not the equivalent of a fraud that targets the public"). The claim is that he failed to disclose facts to PPVA, a single entity to which he was allegedly a fiduciary. The JOLs suggest that the Court should look through PPVA and take into consideration the numerous PPVA investors (ECF No. 680 at 9), but they are not "the public" for these purposes, but a small group of high net worth, qualified investors who are more than capable of asserting their rights. *Compare Stichting Pensioenfonds ABP v. Credit Suisse Group AG*, 38 Misc. 3d 1214[A], 2012 N.Y. Misc. LEXIS 5996, at *40 (Sup. Ct. N.Y. Cnty. Nov. 30, 2012) (public harm element not satisfied where defendant made fraudulent misrepresentations in widely-distributed securities offering documents "to a relatively small set of sophisticated investors") *with Aldrich v. Thomson McKinnon Sec.*, 756 F.2d 243, 249 (2d Cir. 1985) (public harm standard could be satisfied where a brokerage company defendant was "a seller of securities on national exchanges and over the counter, a member of the New York Stock Exchange and other leading exchanges, [and was] a large, highly regulated, and socially significant institution"). No conduct alleged in the sole remaining claim against Bodner was targeted or aimed at the public generally. The JOLs are not entitled to punitive damages against Bodner and should not be permitted to refer to punitive damages at trial.

CONCLUSION

Bodner respectfully requests that the Motions be granted.

Dated: October 26, 2020
New York, NY

CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP

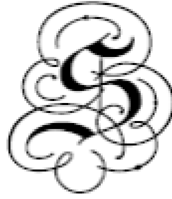
By: */s/ Eliot Lauer*

Eliot Lauer
Gabriel Hertzberg
Abigail Johnston
101 Park Avenue
New York, New York 10178
Tel.: (212) 696-6000
Fax: (212) 697-1559
Email: elauer@curtis.com
ghertzberg@curtis.com
ajohnston@curtis.com

Attorneys for Defendant David Bodner

38657355

TAB A



STERLING VALUATION GROUP, INC.

February 21, 2013

Mr. Joseph SanFilippo
Platinum Management (NY) LLC
152 West 57th Street, 4th Floor
New York, New York 10019

Dear Mr. SanFilippo:

At your request, we have analyzed certain financial information regarding assets held by Platinum Partners Value Arbitrage Fund LP, and/or its affiliates (the "Fund"), as set forth herein, and submit this letter on our findings.

The purpose of this analysis is to express an opinion (the "Opinion") on the fair value, as of December 31, 2012, of the Fund's interest in the investments (the "Investments") described herein. We understand that the Fund intends to use our Opinion solely for internal management planning and management's determination of net asset value, profit and loss calculations, and financial reporting, and that the Fund may provide an informational copy of the Opinion in its entirety to shareholders, and prospective shareholders, of the Fund.

The term "fair value," as used herein, is defined as the amounts at which the Fund's interests in the Investments would change hands between a willing buyer and a willing seller (that are not affiliated with one another), each having reasonable knowledge of all relevant facts, neither being under any compulsion to act.

Nothing contained herein is intended to be construed or relied on by any person as a legal opinion as to any matter, including without limitation relating to the underlying borrower, the enforceability of the underlying transaction, or the perfection of any security interest. In connection with this Opinion, we have made such reviews, analyses, and inquiries as we have deemed necessary and appropriate under the circumstances. No opinion or representation as to matters relating to the perfection of any security interest is hereby given, and no independent examination of any public records in connection therewith has been made.

In connection with this Opinion, we have relied solely on such information as described in Appendices I through XXX attached hereto and incorporated herein by this reference. We have not independently verified and have assumed the accuracy and completeness of the information supplied to us by the Fund with respect to the borrowers, issuers or Investments described herein, and the Fund, and do not assume any responsibility with respect to it. We have not made any physical inspection, or independent appraisal, of any of the common stock, equity, properties, or assets of the borrowers, issuers, or the Fund.

590 Madison Avenue, 5th Floor New York, New York 10022
T· 212 207 6860 F· 212 207 6863
www.sterlingvaluationgroup.com

For the purposes of this analysis, we have assumed that the Fund acquired its interest in each Investment described herein on such Investment's issuance date and/or thereafter in good faith arms length transactions.

This Opinion is based on the Fund's representation and warranty made as of the date of this Opinion that: (i) except as otherwise set forth herein, the Fund is not aware of any material adverse change in the financial condition or business operations of the obligors underlying the Investments; (ii) except as otherwise set forth herein, to the Fund's knowledge and belief there has been no material default or material Event of Default under the terms of the Investments; and (iii) except as otherwise set forth herein, the Fund has not received any oral or written notification under the documents evidencing the Investments indicating any circumstances that may become a material default or material Event of Default under the Investments.

All valuation methodologies that estimate the worth of secured loans, unsecured loans, convertible securities and equity securities are predicated on numerous assumptions pertaining to prospective economic conditions. Our opinion is necessarily based on business, economic, market, and other conditions as they exist, and can be evaluated by us as of December 31, 2012. Unanticipated events and circumstances may occur and actual results may vary from those assumed. The variations may be material.

Based upon the investigation, premises, provisos, and analyses outlined above, and subject to the attached "Limiting Factors and Other Assumptions," it is our opinion that, as of December 31, 2012 the fair value of the Fund's interest in the loans, is reasonably stated in the amounts as set forth in Exhibit A.

In accordance with recognized professional ethics, our fees for this service are not contingent upon the opinion expressed herein, and neither Sterling Valuation Group, Inc., nor any of its employees have a present or intended financial interest in the borrowers or issuers of the investments described herein.

STERLING VALUATION GROUP, INC.
Sterling Valuation Group, Inc.

Attachment

Appendix XIV - Black Elk Energy

Black Elk Energy, LLC ("BEE") is an independent oil and gas company headquartered in Houston, Texas. BEE acquires distressed properties at deep discounts, improves production and decline rates, reduces operating costs, and then sells assets at a premium. BEE focuses its interests within the Mid-West and Southern Gulf Coast states. BEE was formed as the holding company for Black Elk Energy Offshore Operations, LLC ("BEEOP") and holds 47 percent of the Class B Interests in BEEOP. BEEOP owns all of the interest in Black Elk Energy Land Operations, LLC and Black Elk Energy Finance Corp. The Fund (through PPVA Black Elk (Equity) LLC)[1] owns 136.13 Class A Interests (common equity units) in BEEOP, in consideration of a capital contribution of $123,750. On September 28, 2011, the Fund purchased 507.02 Class B Interests (common equity units) in BEEOP from a third party. Following this and two subsequent transactions, the Fund's total Class B Interests in BEEOP is 9,144.09. At December 31, 2012, the Fund owns a total of 9,280.22 common equity units in BEEOP (the "BEEOP Equity Interest"), equivalent to a 75.61 percent ownership interest.[2] The Fund also received 30,000,000 Class D Preferred units in BEEOP in May 2011 in the transaction described below.

On July 13, 2009, the Fund entered into various financing arrangements with BEE to provide financing to BEE and its subsidiaries, including a commitment to fund loans to BEEOP up to an aggregate $40,000,000 pursuant to an Amended and Restated Credit Agreement, and to make an equity investment in BEEOP. We understand that this Credit Agreement was revised by four amendments and the maximum loan amount was increased up to $75,000,000. The loan was fully repaid in December 2010 with the proceeds of the private placement described below.

In November of 2010, BEEOP and Black Elk Energy Finance Corp. raised $150,000,000 through a private placement of 13.75% Senior Secured Notes due December 1, 2015. On May 16, 2011, BEEOP and Black Elk Energy Finance Corp. filed its Registration Statement on Form S-4, as amended by Amendment No. 1 on June 29, 2011, which was declared effective on July 18, 2011, regarding an offer to exchange up to $150,000,000 of the Senior Secured Notes, none of which were registered under the Securities Act of 1933, for an equal principal amount of new notes with substantially identical terms, except the new notes will be registered under the Securities Act and will not contain restrictions on transfer, registration rights, or provisions for additional interest. The proceeds from the original issuance of Senior Secured Notes were used to repay all of the outstanding indebtedness under the revolving credit facility, to fund the bond requirement with respect to the obligations from the Nippon Properties, and to fund planned capital expenditures. Accordingly, the Fund received repayment of principal and interest in full in December 2010. The exchange offer was intended to satisfy the registration rights under the terms of the original Senior Secured Notes and did not result in new proceeds for BEEOP or Black Elk Energy Finance Corp. All of the old Senior Secured Notes were exchanged for the new Senior Secured Notes as of August 19, 2011.

On December 24, 2010, BEEOP entered into an aggregate $110,000,000 credit facility with Capital One, N.A., as administrative agent and a lender. The credit facility comprises (i) a $35,000,000 senior secured revolver, and (ii) a $75,000,000 secured letter of credit facility, which is to be used exclusively for issuance of letters of credit in support of BEEOP's plugging and abandonment ("P&A") obligations related to its oil and gas properties. BEEOP's obligations under the credit facility are guaranteed by its existing subsidiaries and are secured on a first-priority basis by all of its assets and the assets of its subsidiaries, in the case of the revolver, and by cash collateral, in the case of the letter of credit facility. The credit facility has a maturity date of December 31, 2013.

On May 31, 2011, BEEOP acquired from certain private sellers interests in various properties across approximately 250,126 gross (127,894 net) acres in the Gulf of Mexico for a purchase price of $39,000,000, plus the assumption of approximately $168,400,000 of undiscounted asset retirement obligations related to P&A obligations associated with the acquired properties, subject to customary

[1] PPVA Black Elk (Investor) LLC owns 2,191.91 Class B Units in BEEOP, which are not subject to this valuation.
[2] The total number of issued and outstanding common equity units of BEEOP is 12,273.84.

effective-date and closing adjustments (the "Merit Acquisition"). At closing, BEEOP paid $33,000,000 in surety bonds and established an escrow account to secure performance of its P&A and indemnification obligations. BEEOP is required to deposit into the escrow account an aggregate principal amount of $60,000,000, payable in 30 equal monthly installments.

Concurrent with the execution of the purchase agreement for the Merit Acquisition, BEEOP paid the sellers an earnest money deposit of $6,000,000, which was applied against the purchase price at closing. The remainder of the purchase price was financed with existing available cash, borrowings of approximately $35,000,000 under BEEOP's credit facility, with the consent of the Senior Secured Note holders, and the equity financing from the Fund described below.

On May 31, 2011, the Fund entered into a Contribution Agreement with BEEOP pursuant to which the Fund made a capital contribution of $15,000,000 in cash and $15,000,000 of financial instruments deemed by BEEOP to be a cash equivalent, collateralized by healthcare accounts receivable as described below, in exchange for 30,000,000 of BEEOP's Class D Preferred Units (the "Class D Units"). The financial instruments contributed by the Fund to BEEOP comprise certain healthcare receivables, representing 1,009,449 healthcare accounts with an aggregate current balance of $627,593,585, for a stated value of $15,000,000, for which the Fund received 15,000,000 Class D Preferred.[3] BEEOP may put the uncollected portion of the healthcare receivables to the Fund until such time as the collections reach $15,000,000. The put purchase price is an amount equal to the principal amount of the receivables being put multiplied by $15,000,000, divided by $627,593,585 (the original balance). The Fund has the right to call the uncollected portion of the healthcare receivables at any time. The call purchase price is an amount equal to the principal amount of the receivables being called multiplied by $15,000,000, divided by $627,593,585 (the original balance). Notwithstanding the foregoing, the purchase price for the put and call, together with actual collections on the accounts, shall not exceed $15,000,000. As stated below, the Fund deducted the maximum put purchase price of $15,000,000 for the healthcare receivables in determining the equity value, and therefore, for purposes of the valuation the healthcare receivables are valued at nil.

Under the Second Amendment to Second Amended and Restated Operating Agreement of BEEOP, BEEOP is required to make distributions: (i) first, to Class D Members until the accrued and unpaid Class D Preferred Return (24 percent per annum on the balance of the Unreturned Class D Capital, compounded annually to the extent not distributed annually and payable-in-kind) attributable to each Class D Unit held by the Member has been paid in full; (ii) second, to Class D members in proportion to the Unreturned Class D Capital (defined below) balance attributable to each Class D Unit held by the member, until all Unreturned Class D Capital has been reduced to zero; (iii) third, among Class A Members and Class B Members in proportion to their relative Unreturned Capital Distributions, until all Unreturned Capital Distributions have been reduced to zero; and (iv) thereafter, to the Class A Members, Class B Members and Class C Members in accordance with their Sharing Ratios. The "Unreturned Class D Capital" means an amount equal to the capital contribution contributed in exchange for the issuance of the Class D Unit (equal to $30,000,000 in the aggregate for all Class D Units), reduced by distributions of capital with respect to the Class D Unit.

At any time, BEEOP may redeem, without penalty, all or a portion of the Class D Units at a price per Unit in cash equal to Class D Preferred Liquidation Value. At any time following the repayment of the Senior Secured Notes (presumably, including the new notes issued if the exchange offer is consummated), each holder of Class D Units has the right to cause BEEOP to redeem any and all of its Class D Units for the Class D Preferred Liquidation Value. "Class D Preferred Liquidation Value'

[3] The Contribution Agreement refers to healthcare receivables contributed with a stated value of $20,000,000 for 20,000,000 Class D Preferred Units. We understand, however, that the actual contribution was for healthcare receivables with a stated value of $15,000,000 (with the cash portion of the investment increased by $5,000,000) and accordingly all references in the put and call formulas to $20,000,000 have been adjusted to $15,000,000.

means, with respect to each Class D Unit, the amount distributable with respect to the Class D Unit under clauses (i) and (ii) described above, i.e. an aggregate liquidation preference of $30,000,000 plus accrued and unpaid dividends.

Class D Units do not carry the right to vote.

Between July and August 2011, each of Deutsche Bank, Stephens, UBS and Credit Suisse presented their proposals to BEE for strategic financing alternatives including a potential initial public offering, raising private equity capital, and refinancing existing debt, described in further detail below.

The purpose of this analysis is to value the Fund's equity interest in BEEOP, which we understand as of December 31, 2012, represents a 75.61 percent equity interest in BEE (comprising its interest in 136.13 Class A Units and 9,144.09 Class B Units), and 30,000,000 Class D Units of BEEOP.

Documents Reviewed:

1. Black Elk Energy Offshore Operations Amended and Restated Credit Agreement, dated July 13, 2009;

2. Black Elk Energy Offshore Operations, LLC Letter Agreement, dated July 13, 2009;

3. Black Elk Energy Offshore Operations LLC Amended and Restated Promissory Note, dated July 13, 2009;

4. Black Elk Energy Offshore Operations, LLC Second Amended and Restated Limited Liability Company Operating Agreement, dated July 13, 2009;

5. Draft Preliminary Offering Circular, dated October 20, 2010;

6. Black Elk Energy Consolidated Financial Statements for the years ending December 31, 2009, December 31, 2010, and December 31, 2011;

7. Estimate of Reserves and Future Revenue report for Black Elk Energy Offshore Operations, LLC, as of December 31, 2011, prepared by Netherland, Sewell & Associates, Inc. dated February 2, 2012;

8. Fund's investment valuation at December 31, 2012;

9. Contribution Agreement dated as of May 31, 2011;

10. Second Amendment to Second Amended and Restated Operating Agreement of Black Elk Energy Offshore Operations, LLC, dated as of May 31, 2011;

11. Summary of Projection of Reserves and Revenue as of August 1, 2012, dated August 27, 2012;

12. Black Elk Performance Management Report, for the period ended November 30, 2012;

13. Resolutions Adopted by the Board of Managers of Black Elk Energy Offshore Operations, LLC;

14. Discussion Materials presented by Stephens, dated July 12, 2011, Deutsche Bank, dated July 13, 2011, UBS dated July 20, 2011, and Credit Suisse, dated September 13, 2011;

15. Black Elk Energy Offshore Operations LLC's Current Report on Form 8-K, dated May 11, 2012, and filed with the Securities and Exchange Commission (the "SEC") on May 11, 2012;

16. Black Elk Energy Offshore Operations LLC's Quarterly Report on Form 10-Q for the period ended September 30, 2012, filed with the SEC on November 13, 2012;

17. Black Elk Energy Offshore Operations LLC 2013 Budget; and

18. Certain information in the public domain from independent sources, without undertaking an exhaustive search or review of such information or independently verifying the accuracy or completeness thereof.

BEE acquired undercapitalized conventional North American gas properties and by mid-2010 had acquired more than 360,000 acres offshore, more than 500 wells, mostly in state and federal waters in the Gulf of Mexico, and an onshore asset in Oklahoma. BEE focuses on properties where the remaining value substantially exceeds the "plugging and abandonment" ("P&A") costs, and where the assumption of the P&A obligation comprises a substantial portion of the purchase price.[4]

In October 2009, BEE, through its subsidiary BEEOP, acquired from W & T Offshore, Inc. multiple properties in the Gulf of Mexico for a purchase price of $30,000,000, subject to closing adjustments. The purchase includes over 35 fields and 350 wells in water depths ranging up to 1850 feet. The acquisition encompasses an estimated 320,000 gross acres in the Gulf of Mexico. Black Elk estimates that the fields hold an estimated 25 Bcfe of proven reserves with 3P potential of 80 Bcfe, 43 percent of which are liquids. During the first quarter of 2010, BEE acquired additional properties in the Gulf of Mexico, primarily located within Texas in state waters, consisting of six fields with an estimated 1.2 MMBoe of proved reserves. This latter acquisition also added interest in an additional 40 wells and approximately 7,784 net acres. On September 30, 2010, BEE closed a transaction with Nippon, acquiring 27 properties across approximately 103,130 net acres in the Gulf of Mexico (the "Nippon Properties"), including producing wells, 198 wellbores, 41 platforms and 10 producing fields with an estimated 15 MMBoe of proved reserves. The Nippon Properties are expected to increase the production of BEE from approximately 6,000 Boepd to over 11,891 Boepd. On May 31, 2011, BEEOP acquired from certain private sellers interests in various properties across approximately 250,126 gross (127,894 net) acres in the Gulf of Mexico (the "Merit Assets") for a purchase price of $39,000,000, plus the assumption of approximately $168,400,000 of undiscounted asset retirement obligations related to P&A obligations associated with the acquired properties. The Merit Assets include 40 fields with a current production of 8,200 net BOEPD, and 399 wells, with an estimated 20 net million barrel equivalent of proven reserves.

At December 31, 2011, the BEEOP's leasehold interests encompassed approximately 293,400 net (654,500 gross) acres, 1,182 net (1,222 gross) wells and 241 production platforms. As of December 31, 2011, estimated total proved oil, natural gas, and NGL reserves were 45.2 MMBoe (40 percent oil, 60 percent natural gas) with a PV-10 value of $1,061,408,200 based on a reserve report prepared by Netherland, Sewell & Associates, Inc., independent petroleum engineers, further discussed below. For the year 2011, the net daily production of BEEOP averaged approximately 14,559 Boepd. As of June 30, 2012, BEEOP held an aggregate net interest in approximately 587,354 gross (273,209 net) acres under lease and had an interest in 1,209 gross wells, 351 of which are producing.

---

[4] For example, of the $88,800,000 purchase price paid for the W&T Offshore assets, $62,900,000 was contributed in the form of assumed P&A liability. BEE will also be required to obtain surety bonds in favor of BOEMRE and Nippon for future P&A liability for the Nippon property; BEE currently has in place surety bonds for $95,500,000, and an additional $19,100,000 of the private placement proceeds is allocated to obtaining an additional surety bond for such purpose.

In valuing the BEEOP's equity interest at December 31, 2012, we considered the company's financial statements as of November 30, 2012. As reported on BEEOP's balance sheet as of November 30, 2012, total assets were $568,009,872[5]. Table 1 below presents BEEOP's consolidated balance sheet at November 30, 2012.

Table 1: Balance Sheet Information			
As of 11/30/2012			
Cash and Equivalents	$ 2,000,561	Accounts Payable & Accrued Expenses	$ 102,407,297
Accounts Receivable	38,329,879	Asset Retirement Oblig.	296,261,259
Prepaid Expenses	32,463,515	Dividends Payable	11,664,000
Property & Equipment	226,919,241	Notes Payable	5,323,436
Escrow for Abandonment Costs	226,148,320	Long-term Debt	203,097,032
Other Assets	42,148,356	Other Liabilities	1,885,745
		Total Liabilities	$ 620,638,769
		Shareholder's Deficit	(52,628,897)
Total Assets	$568,009,872	**Total Liabilities and Shareholder's Deficit**	$ 568,009,872

Total oil, natural gas and plant product production was 5,314 MBoe during the year ended December 31, 2011. Total revenues for the year ended December 31, 2011 were $339,944,000 and excluding hedges, the company realized average oil prices of $108.09 per barrel and gas prices of $4.18 per Mcf.

For the eleven months ending November 30, 2012 revenues and EBITDA were $286,998,000 and $70,604,000, respectively, compared to budget values revenues and EBITDA for the period of $333,464,000 and $129,761,000, For the eleven months ending November 30, 2012, production total was 4,912 MBoe, comprising 1,832 MBbl of oil production, 16,641 MMcf of gas production, and 12,874 MGal of plant-product production. The average realized sales price for oil was $106.93 per barrel and the average realized sales price for natural gas was $2.77 per Mcf. Production volumes were approximately 32 percent oil and natural gas liquids and 68 percent natural gas. ..

For the year ending December 31, 2013, management is projecting total production of 5,635 MBoe, comprising 2,508 MBbl of oil production, 16.997 MMcf of gas production, and 294 MBbl of plant-product production. Total revenues and EBITDA for 2013 are projected to be $337,287,863 and $120,789,882, respectively, using sales prices for oil averaging $103.63 per barrel, sales prices for natural gas averaging $3.77 per Mcf, and sales prices for natural gas liquids averaging $1.15 per gallon.

On September 17, 2012, Standard & Poor's Ratings Services ("S&P") lowered its long-term corporate credit ratings on BEEOP to 'CCC+' from 'B-' with negative outlook, reflecting the "vulnerable" business risk and "highly-leveraged" financial risk. S&P considered BEEOP's small reserve and production base, high operating costs, acquisitive growth strategy, concentration in the Gulf of

[5] FASB ASC 410-20-15 requires companies to recognize a liability for the present value of all legal obligations associated with the retirement of tangible long-lived assets and to capitalize an equal amount as part of the cost of the related oil and natural gas properties. Accordingly, BEE recognizes the legal obligation of the dismantlement, restoration, and abandonment costs associated with its oil and natural gas properties with its asset retirement obligation.

Mexico, and the cyclical, capital-intensive, and competitive nature of the industry. Based on assumptions of $85 per barrel of oil in 2012, $80 in 2013, $2.50 per thousand cubic feet (Mcf) natural gas in 2012 and $3.00 per Mcf in 2013, S&P forecast that BEEOP would generate $75 million to $100 million EBITDA in the next 12-month period, and have debt of approximately $270 million, resulting in leverage of approximately 3 times EBITDA. Funds from operations of approximately $50 million will not be adequate to fund projected capital expenditures of $40 million over the next 12 months and escrow funding of approximately $30 million. Expected sources of liquidity are projected to cover uses of liquidity by less than 1.2 times over the next 12 months, and as of August 7, 2012, BEEOP had $7 million available under the revolver and $17 million in cash. The negative outlook reflects the potential for BEEOP's liquidity to deteriorate further. S&P would consider a further negative rating action if the company faces additional weakening of its liquidity resulting from failure to curtail capital spending, operational problems that reduce production or materially lower crude oil prices. It would consider a positive rating action if the company is able to improve liquidity to approximately $40 million while maintaining production. S&P indicated that, given its low current level, the company's leverage is not an impediment to a positive rating action. Following an explosion and fire on one of the Company's oil ** pumping platforms in the Gulf of Mexico (shut in and not in production since August 2012), on November 21, 2012 S&P placed BEEOP on Watch Negative reflecting the potential for further weakening of the Company's credit profile and liquidity.

In formulating our Opinion, we also took into account the value of the oil and gas assets of BEE. According to a third party reserve report prepared by Netherland, Sewell & Associates, Inc., as of December 31, 2011, and the updated mid-year report as of August 1, 2012 (based on inputs provided by BEEOP[6]), the total proved oil reserves (which include crude oil and condensate) of BEEOP equal 20,679,200 barrels and the total proved gas reserves are 166,259,900 MCF. The PV-10 value of these proved oil and gas reserves, according to the Netherland, Sewell & Associates, Inc. report, including proved developed producing, proved developed non-producing, and proved undeveloped and proved abandonment costs, was $1,061,408,200[7] at December 31, 2011 and $1,168,010,900 at August 1, 2012.

We also considered that BEE contacted various investment banks to consider an initial public offering or sale. The investment bank presentations in July 2011 provided various preliminary indications of value for BEE. Deutsche Bank provided a range of enterprise values and equity values based on various metrics noted below. The TEV and equity value, respectively, for BEE range from $800,000,000 and $1,300,000,000 based on 2011 estimated EBITDA of $200,000,000 and multiples of 4.0 to 6.5 times. The median TEV/2011E EBITDA multiple of the comparable companies examined by Deutsche Bank, Energy Partners, Energy XXI, McMorRan Exploration, Stone Energy, and W&T Offshore, was 5.7. To estimate the equity value Deutsche Bank deducted net debt of $173,000,000 and the present value of estimated asset retirement obligations of $228,000,000, resulting in a range of equity values from $399,000,000 to $899,000,000.

Stephens developed an enterprise value for BEE of $900,000,000 to $1.1 billion, based on a PV-10 multiple of 1.1 to 1.4 times, compared to public trading comparables of 1.5 to 2.0 times, and daily production multiples of $47,000 to $57,000, compared to $55,000 to $65,000 for the public trading multiples.

---

[6] Commodity price inputs used over the period 2012 to 2026 were : Oil $102.641 to $104.948 per barrel; Natural Gas Liquids $45.553 to $51.657 per barrel; and Natural Gas $3.265 to $5.076 per MCF

[7] The estimates in the report have been prepared in accordance with the definitions and regulations of the SEC and conform to the FASB Accounting Standards Codification Topic 932, Extractive Activities – Oil and Gas, except that per-well overhead expenses for operated properties and the future income taxes are excluded for all properties. For the proved reserves, the average adjusted product prices weighted by production over the remaining lives of the properties are $103.99 per barrel of oil, $53.28 per barrel of NGL and $4.338 per MCF of gas.

UBS examined precedent M&A transactions and developed an enterprise value of $500,000,000 to $700,000,000, taking into account transactions since the beginning of 2010 of over $50,000,000. Credit Suisse used multiples of 10 to 15 times proved reserves (MMBoe), compared to the precedent transaction median of 17.95, and $20,000 to $25,000 production (Boepd), compared to the precedent transaction median of $47,690. UBS also performed a market analysis, and developed enterprise values of $600,000,000 and $800,000,000, respectively, based on a multiple of 3 times and 4 times 2012E EBITDA of $200,000,000, and then deducted debt of $173,000,000 to develop equity values of $427,000,000 to $627,000,000. UBS also noted the average of the comparables' ratio of enterprise value to PV-10 of 1.6 times. Credit Suisse used the same comparable companies as Deutsche Bank, but also added ATP Oil & Gas and Contango Oil & Gas.

Without giving a preliminary valuation indication for BEE, Credit Suisse provided a transaction analysis in September 2011 and also examined the same comparable companies as the other banks. Credit Suisse noted for the comparable companies a mean of 3.8 times 2011 EBITDA, and a mean of 3 times 2012 EBITDA. Credit Suisse also benchmarked the EV/proved reserve, EV/pre-tax PV-10, and EV/2012E daily production of the comparable companies.

The foregoing investment bank proposals considered an initial public offering floating around 30 percent of the equity value, in line with recent precedent IPO's.

In our independent analysis, we updated the EV/EBITDA multiples for certain of the comparable companies used by Credit Suisse[8] to December 31, 2012 (Energy Partners, Energy XXI, Stone Energy, , Contango Oil & Gas). We also included PetroQuest Energy, Inc., Gulfport Energy Corp. and Swift Energy Co, as shown in Table 2 below. At December 31, 2012, the mean and median trailing twelve months EV/EBITDA for the comparable companies were 4.57 and 4.30, respectively, and the mean and median forward EV/EBITDA multiples were 4.84 and 4.10, respectively, indicating that valuations in the sector have increased since September 2011.

Table 2: Comparables Analysis at 12/31/2012

Trailing 12-Months Revenues and EBITDA

Company Name	TEV	EBITDA - TTM	Revenue - TTM (in millions)	TEV/TTM EBITDA	TEV/TTM Revenue	PV 10	TEV/PV 10
Contango Oil & Gas Company	505.9	89.3	160.7	5.66	3.15	1,102	0.46
Energy XXI (Bermuda) Limited	3,571.4	841.0	1,288.7	4.25	2.77	1,103	3.24
EPL Oil & Gas, Inc.	2,338.8	511.7	388.1	5.35	6.03	1,104	2.12
PetroQuest Energy Inc.	496.4	79.2	141.5	6.27	3.51	1,107	0.45
Stone Energy Corp.	1,650.6	628.7	908.3	2.63	1.82	1,108	1.49
Swift Energy Co.	1,481.7	344.8	551.9	4.30	2.68	1,109	1.34
W&T Offshore Inc.	1,903.5	541.1	899.2	3.52	2.12	1,110	1.71
Average				4.57	3.15	1,106	1.54
Median				4.30	2.77	1,107	1.49

[8] On August 17, 2012, ATP Oil & Gas filed a voluntary petition for protection under Chapter 11 of the Bankruptcy Code, in the U.S. Bankruptcy Court in the Southern District of Texas, Houston Division and accordingly we have excluded this comparable company in our analysis at December 31, 2012.

2012/2013 Forecast Revenues and EBITDA							
Company Name	**TEV**	**FYR+1 EBITDA**	**FYR+1 Revenue**	**TEV/FYR +1 EBITDA**	**TEV/FYR +1 Revenue**	**PV 10**	**TEV/PV 10**
Contango Oil & Gas Company	505.9	NA	154.9	NA	3.26	1,102	0.46
Energy XXI (Bermuda) Limited	3,571.4	920.3	1,475.2	3.88	2.42	1,103	3.24
EPL Oil & Gas, Inc.	2,338.8	277.6	420.6	8.43	5.56	1,104	2.12
PetroQuest Energy Inc.	496.4	81.0	142.6	6.13	3.48	1,107	0.45
Stone Energy Corp.	1,650.6	625.5	938.3	2.64	1.76	1,108	1.49
Swift Energy Co.	1,481.7	342.7	557.0	4.32	2.66	1,109	1.34
W&T Offshore Inc.	1,903.5	526.0	873.3	3.62	2.18	1,110	1.71
Average				4.84	3.05	1,106	1.54
Median				4.10	2.66	1,107	1.49

In valuing the Fund's 75.61 percent equity interest in BEEOP (the Class A Interests and the Class B Interests), we considered that the Fund valued its common equity interest at $215,000,000.

In assessing the collateral coverage of the 30,000,000 Class D Preferred Shares held by the Fund, we used a market approach to determine a range of enterprise values of BEE using enterprise value/EBITDA and enterprise value/PV-10 multiples. After due consideration of the market analysis of the comparable companies and based on our experience in valuing similar companies, taking into consideration the enterprise value/EBITDA multiples of the foregoing sector trading comparable companies, we used an enterprise value/EBITDA multiple of7 times[9] annualized 11-month November 2012 EBITDA of $70,604,354 resulting in an estimated 2012 EBITDA of $77,022,932, which is at the lower end of the range of forward 12-month EBITDA estimated by S&P in August 2012 of $75,000,000 to $100,000,000, and an enterprise value/PV-10 multiple of 0.55 times[10] applied to the August 1, 2012 PV-10 reserve value of $1,168,010,900, resulting in a range of enterprise values of $539,160,521 to $642,405,995. To determine the equity value, we then deducted debt of $208,420,468, the retirement obligation of $296,261,259 and the preferred equity valued at $42,408,000, then added cash and cash held in escrow at November 30, 2012 of $228,148,881, resulting in a range of equity values from $220,219,675 to $323,465,149, and a range of equity values for the Fund's 75.61 percent equity interest of $166,508,097 to $244,571,999.

We also considered the liquidity constraints noted by S&P, described above. In management's view, BEEOP's working capital requirements, contractual obligations, and expected capital expenditures, as well as liquidity needs, can be met from cash flows from operations and availability under the revolver. For 2013, management expects total capital expenditures of $118.9 million, of which $71.6 million is planned for the first six months of 2013, and the remaining $47 million will be used for drilling and development during the remainder of the year. The capital expenditures for 2012 were funded from cash flows from operations and availability under the revolver, and in 2013 a further capital infusion of $50,000,000 from the Fund together with cash flow from operations and availability under the revolver should be sufficient to fund 2013 capital expenditures. In addition, BEEOP's commodity derivative positions should help BEEOP stabilize a portion of cash flows from operations despite potential declines in the price of oil and natural gas. Taking into account management's ability to fund working capital and capital expenditure requirements in 2012, that management projects being able to continue to fund these requirements for 2013, and BEEOP's historic success in raising debt and equity, in our view, BEEOP will

[9] In using a multiple at the higher end of the public comparable companies we took into account that EBITDA is budget at $120,789,00 for 2013 which represents a higher growth rate than for the public comparable companies
[10] Representing a discount of approximately 60 percent to the median PV-10 multiples of the trading sector comparable companies.

have sufficient liquidity for its near term requirements. We also took into account the oil and natural gas pricing assumptions used by S&P, which are lower than the forward oil and natural gas prices used by Netherland in its model,[11] updated as of August 2012.

Based on the foregoing, we valued the Fund's BEEOP Equity Interest, representing a 75.61 percent equity interest in BEEOP at December 31, 2012 in the range of $166,508,097 to $244,571,999. Taking into consideration the enterprise value of BEE, and liquidation priority of the Class D Units, which in our view provides adequate collateral coverage for the 30,000,000 Class D Preferred Shares, at December 31, 2012 we valued the Class D Units at cost in the amount of $30,000,000, plus the $12,408,000 accrued dividend.

[11] Netherland used forward oil prices of $102.691 to $104.948 per barrel, compared to S&P's assumption of $80 to $85 per barrel, and gas prices of $3.265 to $3.729 MCF, compared to S&P's assumption of $2.50 to $3.00 Mcf.