

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
IN RE PLATINUM-BEECHWOOD LITIGATION : No. 18 Civ. 6658 (JSR)
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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 : No. 18 Civ. 10936 (JSR)
PARTNERS VALUE ARBITRAGE FUND L.P. (in :
OFFICIAL LIQUIDATION), :
:

Plaintiffs, :

v. :

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

Defendants. :
:
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DEFENDANT DAVID BODNER'S PROPOSED SPECIAL VERDICT FORM

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Defendant David Bodner, pursuant to Fed. R. Civ. P. 49(a), respectfully requests that the Court submit the following special verdict form to the jury. Bracketed footnotes are communications to the Court and are not intended to be submitted to the jury.

SPECIAL VERDICT FORM

1. Release

Did plaintiffs establish through clear and convincing evidence that the Release Agreement of March 20, 2016 lacked any genuine business purpose?

NO

YES

If you checked the first answer, stop here.

If you checked the second answer, go to question 2.

2. Fiduciary Duty

Did plaintiffs establish through clear and convincing evidence that David Bodner controlled the affairs of PPVA, by having actual control of Platinum Management?

NO

YES

If the answer is no, stop here.

If the answer is yes, go to question 3.

3. Breach of Duty

Did plaintiffs establish through clear and convincing evidence that Platinum Management intentionally overvalued at one or more points in time between January 1, 2013 and March 31, 2016 any of the following PPVA positions: Black Elk, Golden Gate, Northstar, Pedevco, Desert Hawk, or the Michael Goldberg Receivable?

NO

YES

If the answer is no, stop here.

If the answer is yes, go to the next question.

Did plaintiffs establish through clear and convincing evidence that Platinum Management acted with intent to defraud through arbitrary, inflated valuations—*i.e.*, had no good-faith belief in the reasonableness of its valuations—when it overvalued one or more of the six positions referenced in question 3.1?

___ NO

___ YES

If the answer is no, stop here.

If the answer is yes, go to the next question.

Plaintiffs, through their expert Ronald G. Quintero, contend that Platinum Management overvalued the six positions at issue in this case in varying amounts at particular points in time. The overvaluations as alleged by plaintiffs and Mr. Quintero are listed below. It was plaintiffs' burden to establish through clear and convincing evidence that the six positions were overvalued.

In the table below, please insert the amount of overvaluation, if any, that you determined plaintiffs to have proven by clear and convincing evidence in this trial. You can choose the amounts offered by Mr. Quintero in his opinion, or you can choose a lesser amount. You should only write in a number if you determine that the evidence clearly and convincingly supports that determination.¹

	Black Elk			Your determination of overvaluation (if any)
	Net asset value (NAV) as reported ²	NAV as alleged by plaintiffs	Overvaluation as alleged by plaintiffs	
3/31/2013	297,247,248	246,202,000	66,146,000	
6/30/2013	257,460,814	206,852,000	50,609,000	
9/30/2013	291,491,179	168,459,000	123,032,000	
12/31/2013	319,738,574	129,140,000	190,598,000	
3/31/2014	220,760,139	113,025,000	107,735,000	
6/30/2014	173,288,626	7,846,000	165,443,000	
9/30/2014	84,101,055	15,613,000	68,488,000	
12/31/2014	27,690,487	18,587,000	9,103,000	
3/31/2015	30,923,548	21,612,000	9,312,000	
6/30/2015	29,981,784	3,778,000	26,203,000	
9/30/2015	26,115,334	5,793,000	20,322,000	
12/31/2015	21,448,800	1,453,000	19,995,000	
3/31/2016	21,448,800	567,000	20,882,000	

¹ [Plaintiffs' claim for compensatory damages in the form of inflated management fees can be determined by multiplying any amount of monthly overvaluations by 0.167%, which is equal to 1/12 of the 2% charged on an annual basis. Defendants accept that the jury's determination of monthly overvaluation, if any, is determinative of compensatory damages for management fees. The parties and Court can do this simple math post-verdict without the involvement of the jury. Bodner has submitted a memorandum on this topic, as Exhibit D to the Proposed Joint Pre-Trial Consent Order.]

² [Figures reprinted from Quintero Report Ex. 23.2, with necessary corrections for NAV as reported. Quintero listed an incorrect NAV as reported for March 2013 of \$312,348,000; we use the correct figure from PPVA's third-party administrator, SS&C. Plaintiffs' alleged overvaluation figures are left uncorrected.]

	Golden Gate			
	Net asset value (NAV) as reported ³	NAV as alleged by plaintiffs	Overvaluation as alleged by plaintiffs	Your determination of overvaluation (if any)
3/31/2013	53,000,000	46,863,000	6,137,000	
6/30/2013	62,811,000	40,020,000	18,714,000	
9/30/2013	64,356,000	41,565,000	22,791,000	
12/31/2013	66,437,500	39,569,000	26,868,000	
3/31/2014	179,194,000	20,249,000	158,945,000	
6/30/2014	182,322,000	19,300,000	163,023,000	
9/30/2014	192,133,517	20,034,000	172,100,000	
12/31/2014	169,552,560	15,349,000	154,204,000	
3/31/2015	163,488,185	13,977,000	149,511,000	
6/30/2015	165,159,070	12,339,000	152,820,000	
9/30/2015	157,474,155	9,740,000	147,735,000	
12/31/2015	156,676,955	7,030,000	149,647,000	
3/31/2016	140,660,955	1,485,000	139,176,000	

	Northstar			
	Net asset value (NAV) as reported ⁴	NAV as alleged by plaintiffs	Overvaluation as alleged by plaintiffs	Your determination of overvaluation (if any)
12/31/2014	114,580,363	108,574,363	6,006,000	
3/31/2015	140,216,720	111,154,720	29,062,000	
6/30/2015	149,256,884	75,439,884	73,817,000	
9/30/2015	149,844,524	47,797,524	102,047,000	
12/31/2015	156,813,710	24,007,710	132,806,000	
3/31/2016	192,920,230	172,230	192,748,000	

	Pedevco			
	Net asset value (NAV) as reported ⁵	NAV as alleged by plaintiffs	Overvaluation as alleged by plaintiffs	Your determination of overvaluation (if any)
6/30/2015	46,749,431	36,549,431	10,200,000	
9/30/2015	32,017,779	18,067,779	13,950,000	
12/31/2015	35,333,223	12,709,223	22,624,000	
3/31/2016	28,147,994	5,658,994	22,489,000	

³ [Figures reprinted from Quintero Report Ex. 24.2.]

⁴ [Figures reprinted from Quintero Report Ex. 25.2.]

⁵ [Figures reprinted from Quintero Report Ex. 27.2.]

Desert Hawk				
	Net asset value (NAV) as reported ⁶	NAV as alleged by plaintiffs	Overvaluation as alleged by plaintiffs	Your determination of overvaluation (if any)
6/30/2013	26,030,814	19,267,000	1,733,000	
9/30/2013	26,000,000	17,535,000	3,465,000	
12/31/2013	24,243,906	15,802,000	<i>(13,313,000)</i> ⁷	[Ignore this line]
3/31/2014	26,920,924	14,069,000	3,562,000	
6/30/2014	28,020,924	12,337,000	5,295,000	
9/30/2014	29,420,924	10,604,000	7,027,000	
12/31/2014	29,420,924	8,872,000	8,760,000	
3/31/2015	29,420,924	7,139,000	10,493,000	
6/30/2015	17,881,432	5,406,000	12,225,000	
9/30/2015	18,556,432	3,674,000	13,958,000	
12/31/2015	17,631,432	1,941,000	15,690,000	
3/31/2016	23,838,713	208,000	23,630,000	

Michael Goldberg Receivable				
	Net asset value (NAV) as reported ⁸	NAV as alleged by plaintiffs	Overvaluation as alleged by plaintiffs	Your determination of overvaluation (if any)
3/31/2014	16,142,504	0	16,143,000	
6/30/2014	16,142,504	0	16,143,000	
9/30/2014	16,142,504	0	16,143,000	
12/31/2014	16,142,504	0	16,143,000	
3/31/2015	16,142,504	0	16,143,000	
6/30/2015	16,142,504	0	16,143,000	
9/30/2015	16,142,504	0	16,143,000	
12/31/2015	16,142,504	0	16,143,000	
3/31/2016	16,142,504	0	16,143,000	

Please go the next question.

Did plaintiffs establish through clear and convincing evidence that David Bodner at some point in time came to have actual knowledge that Platinum Management had fraudulently misstated the value of one or more of the six assets?

⁶ [Plaintiffs' alleged NAV and overvaluation reprinted from Quintero Report Ex. 28.2. Quintero listed an incorrect NAV as reported for each of the above months except December 2015 and March 2016; we use the correct figures from SS&C. Plaintiffs' alleged overvaluation figures are left uncorrected.]

⁷ Numbers italicized and in parentheses are negative damages, meaning that plaintiffs claim they benefitted from the Desert Hawk valuations in December 2013.

⁸ [Figures reprinted from Quintero Report Ex. 30.1]

NO

YES

If the answer is no, stop here.

If the answer is yes, go to the next question.

On what date do you find that Mr. Bodner acquired actual knowledge that Platinum Management had fraudulently misstated the value of one or more of the six assets?

Date: _____

Please go to the next question.

Did plaintiffs establish through clear and convincing evidence that David Bodner intentionally failed to disclose, or intentionally failed to cause Platinum Management to disclose, his knowledge that the value of one or more of the six assets was fraudulently misstated?

NO

YES

If the answer is no, stop here.

If the answer is yes, go to the next question.

4. Apportionment/GOL 15-108

Plaintiffs have given releases of liability to various persons and entities that Plaintiffs claim caused some or all of the losses that plaintiffs seek to recover from Defendants (*i.e.*, the alleged overpayment of management and incentive fees). You are to determine what percentage of the injury allegedly caused by Defendants, if any, was caused by the following persons:⁹

⁹ [Note for the Court: Bodner adds the following released, dismissed, or settled persons and entities that should be included in a GOL 15-108 instruction if this Court permits the JOLs' request for consequential damages, which is the subject of a motion *in limine* by Mr. Bodner, ECF No. 746: Kevin Cassidy; Moshe Feuer; Illumin Capital Management LP; Dhruv Narain; Michael Nordlicht; Daniel Saks; Scott Taylor.]

Person/Entity ¹⁰	Percentage Responsibility
David Bodner	
Ezra Beren	
CohnReznick LLP	
Moshe Feuer	
Bernard Fuchs	
Seth Gerszberg	
Murray Huberfeld	
Uri Landesman / Estate of Uri Landesman	
David Ottensoser	
Joseph SanFilippo	
David Steinberg	
TOTAL LIABILITY	100%

Dated: November 23, 2022
New York, NY

CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP

By: /s/ Eliot Lauer

Eliot Lauer
Gabriel Hertzberg
Julia Mosse
Nathaniel Ament-Stone
101 Park Avenue
New York, New York 10178
Tel.: (212) 696-6000
Fax: (212) 697-1559
Email: elauer@curtis.com
ghertzberg@curtis.com
jmosse@curtis.com
nament-stone@curtis.com

Attorneys for Defendant David Bodner

¹⁰ [Bodner is not aware presently of all parties that have been released by Plaintiffs. Bodner will conform this table to the evidence at the conclusion of Plaintiffs' case-in-chief.]