

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

-----	X
SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----	X

No. 16-CV-6848 (BMC)

**NOTICE OF RECEIVER’S MOTION FOR ENTRY OF AN ORDER
APPROVING SETTLEMENT AGREEMENT BETWEEN THE RECEIVER AND
THE TRUSTEE OF THE BLACK ELK ENERGY OFFSHORE
OPERATIONS, LLC LITIGATION TRUST**

PLEASE TAKE NOTICE that upon the accompanying declaration and memorandum of law in support of the motion (the “*Motion*”) by Melanie L. Cyganowski, the court-appointed receiver (the “*Receiver*”) of the Receivership Entities¹, by and through her undersigned counsel, will move before the Honorable Brian M. Cogan, United States District Judge for the United States District Court for the Eastern District of New York (the “*Court*”), located at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York 11201, for the entry of an Order (a) approving a settlement agreement (the “*Settlement Agreement*”) between the Receiver, on behalf

¹ The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

of the Receivership Entities, and Richard Schmidt, in his capacity as Trustee (the “*Black Elk Trustee*”) of the Black Elk Energy Offshore Operations, LLC Litigation Trust (“*Black Elk Litigation Trust*”); (b) authorizing the Receiver to take any such necessary steps to enter into, effectuate the terms of, and fulfill her obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be: (i) made in writing; (ii) if by a party named in the above-captioned case, electronically filed with the Court; or (iii) if by a non-party, electronically mailed to the Receiver at her email address, platinumreceiver@otterbourg.com, so as to be actually received no later than **April 26, 2024**.

PLEASE TAKE FURTHER NOTICE that in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion without further hearing or notice.

Dated: April 12, 2024
New York, New York

OTTERBOURG P.C.

By: /s/ Erik B. Weinick

Erik B. Weinick

230 Park Avenue

New York, New York 10169

(212) 661-9100

eweinick@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

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

----- X
SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: -v- :
PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
: Defendants. :
----- X

No. 16-CV-6848 (BMC)

**DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER,
IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT AGREEMENT BETWEEN THE RECEIVER AND
THE TRUSTEE OF THE BLACK ELK ENERGY OFFSHORE
OPERATIONS, LLC LITIGATION TRUST**

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the court-appointed receiver (the “*Receiver*”) of the Receivership Entities¹ in support of my motion (the “*Motion*”) for entry of an Order (a) approving the settlement agreement (the “*Settlement Agreement*”)² between me, on behalf of the Receivership Entities, and Richard Schmidt, in his capacity as Trustee (the “*Black*

¹ The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund L.P. (“*PPCOMF*”), (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P. (“*PPLOMF*”).

² A copy of the Settlement Agreement is attached hereto as Exhibit A.

Elk Trustee”) of the Black Elk Energy Offshore Operations, LLC Litigation Trust (“*Black Elk Litigation Trust*”) (the Black Elk Trustee and I, collectively referred to herein as, the “*Parties*,” and each a “*Party*”); (b) authorizing me to take any such necessary steps to enter into, effectuate the terms of, and fulfill my obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

I.

PRELIMINARY STATEMENT

2. I have determined, based on my business judgment, to enter into a settlement with the Black Elk Trustee that I believe provides significant benefits for the receivership estate (the “*Receivership Estate*”). The Settlement Agreement, which memorializes the terms and conditions of the Parties’ agreement, fully resolves a substantial claim asserted in the Receivership (defined below). Specifically, the Black Elk Trustee, on behalf of the Black Elk Litigation Trust, has agreed to greatly reduce its total claim asserted in the Receivership by nearly 95% from an originally claimed amount of \$29,600,584.31 down to \$1,500,000.00, with the remaining balance dismissed with prejudice.

3. Other creditors and investors in the Receivership will benefit from the effect of the Settlement Agreement. If the Black Elk Trustee were afforded priority in the magnitude originally sought in the claim, other creditors and investors would unlikely receive any distribution at all in this Receivership. This is because the payment of such claim, absent the heavy discount under the Settlement Agreement, would overwhelm the Receivership Estate and leave little if anything remaining for any other distribution in this Receivership.

4. Accordingly, I believe the Settlement Agreement is beneficial to the Receivership Estate, and have agreed to pay the settlement amount within five (5) business days of the date an Order of the Court approving the Settlement Agreement becomes final and non-appealable.

5. The Parties have agreed to resolve their disputes after considerable arms' length negotiations, and based on terms that I believe are fair and reasonable. The Settlement Agreement brings to conclusion the litigation over the Black Elk Claims (defined below) in the Receivership, helping to bring this Receivership closer to conclusion.

6. For these reasons, and those more fully set forth herein and in the contemporaneously filed memorandum of law, I respectfully request that the Court grant the Motion and enter an Order approving the Settlement Agreement.

II.

FACTS

A. The Receivership

7. On December 19, 2016 (the "**Receivership Date**"), the Securities and Exchange Commission (the "**SEC**") commenced the above-captioned action (the "**Receivership Case**") in the United States District Court for the Eastern District of New York (the "**Court**") alleging certain individuals and entities of fraud and violations of securities law, among other claims.

8. In connection with the Receivership Case, the Court entered its *Order Appointing Receiver* (the "**Initial Receivership Order**") through which all but three of the Receivership Entities were placed into receivership (the "**Receivership**"), and in connection therewith, Bart M. Schwartz was appointed as receiver (the "**Prior Receiver**"). [Dkt. No. 6]³.

³ Unless otherwise indicated, citations to "Dkt. No. ___" are in reference to the case docket of *SEC v. Platinum Management (NY) LLC, et al.*, Case No. 16-06848 (BMC).

9. Following Mr. Schwartz’s resignation as the initial receiver, on July 6, 2017, the Court appointed me to succeed the Prior Receiver, with all of the rights, duties, obligations and powers of the Receiver, as later and more specifically set forth in the October 16, 2017 *Second Amended Order Appointing Receiver* [Dkt. No. 276], as thereafter amended to encompass each of the Receivership Entities and certain other entities [Dkt. No. 297] (collectively, the “*Receivership Order*”).

B. The Black Elk Bankruptcy Case

10. On August 11, 2015, an involuntary Chapter 7 bankruptcy petition was filed against Black Elk Energy Offshore Operations LLC (“*Black Elk*”) in the United States Bankruptcy Court for the Southern District of Texas, thereby commencing the case styled *In re Black Elk Energy Offshore Operations, LLC*, assigned Case No. 15-34287 (the “*Black Elk Bankruptcy Case*”).

11. On September 1, 2015, an Order was entered in the Black Elk Bankruptcy Case converting that case from one under Chapter 7 to a case under Chapter 11 of title 11 of the United States Code [Case No. 15-34287, Dkt. No. 75].

12. On July 14, 2016, an Order was entered in the Black Elk Bankruptcy Case confirming Black Elk’s Third Amended Plan of Liquidation (“*Black Elk Plan*”) [Case No. 15-34287, Dkt. No. 1204].

13. Pursuant to the Black Elk Plan, Black Elk’s alleged claims against PPCOMF as well as other “Platinum Partners” entities were transferred to the Black Elk Litigation Trust, which was established pursuant to the Black Elk Plan [Case No. 15-34287, Dkt. No. 1204].

14. On October 26, 2016, a complaint was filed by the Black Elk Trustee asserting various claims against Platinum Partners Value Arbitrage Fund L.P., PPVA Black Elk (Equity) LLC, PPCOMF, and PPLOMF in the United States Bankruptcy Court for the Southern District of

Texas, thereby commencing the adversary proceeding styled *Schmidt v. Platinum Partners Value Arbitrage Fund LP, et al.*, assigned Adv. Pro. No. 16-03237 (the “**Black Elk Adversary Proceeding**”).

15. Also on October 26, 2016, a *Temporary Restraining Order* was entered in the Black Elk Adversary Proceeding that, among other things, barred PPCOMF from transferring funds from its financial accounts, if after giving effect to any such transfer, the total unencumbered funds held by PPCOMF would be less than \$24,600,584.31 and barred PPLOMF from transferring funds from its financial accounts, if after giving effect to any such transfer, the total unencumbered funds held by PPLOMF would be less than \$5,000,000.00 [Adv. Pro. No. 16-03237, Dkt. No. 7].

16. The Initial Receivership Order, provided for a stay of litigation involving the Receivership Entities, but excluded, among other exceptions, “all pending bankruptcy cases in which the Receivership Entities are involved” [Initial Receivership Order, ¶ 25].

17. On January 9, 2017, the SEC and the Prior Receiver filed a *Joint Emergency Motion for an Order to Show Cause and Temporary Restraining Order* (the “**Emergency TRO Motion**”) to modify the Initial Receivership Order to expand the litigation stay to include pending bankruptcy proceedings [Dkt. No. 21].

18. The Prior Receiver, the SEC, and the Black Elk Trustee thereafter reached an agreement in principle to terms memorialized in that certain settlement agreement (the “**Black Elk 2017 Settlement Agreement**”) [Dkt. No. 598-47], which was fully executed as of May 17, 2017, and which resulted in the withdrawal of the Black Elk Trustee’s opposition to the Emergency TRO Motion.

19. The Black Elk 2017 Settlement Agreement provided, among other things, that the Prior Receiver agreed that the Black Elk Trustee is entitled to an allowed claim in the Receivership

Case in the amount of \$24,600,584.31, and that in the event PPLOMF was later identified as a Receivership Entity pursuant to an Order of the Court, then the Black Elk Trustee would be entitled to an additional allowed claim in the Receivership Case in the amount of \$5,000,000.00.

C. The Black Elk Claims

20. Four filed proofs of claim in the Receivership Case relate to the Black Elk Litigation Trust and the Black Elk Trustee (collectively, the “***Black Elk Claims***”): (i) one proof of claim against PPCOMF filed on March 21, 2019 and identified as Claim Number 41 (“***Claim 41***”); (ii) one proof of claim against PPLOMF filed on March 21, 2019 and identified as Claim Number 42 (“***Claim 42***”); (iii) one proof of claim against PPCOMF filed on March 22, 2019 and identified as Claim Number 37 (“***Claim 37***”); and (iv) one proof of claim against PPLOMF filed on March 22, 2019 and identified as Claim Number 38 (“***Claim 38***”). Each of the Black Elk Claims asserted the total amount of \$29,600,584.31, consisting of \$24,600,584.31 as against PPCOMF and \$5,000,000.00 as against PPLOMF.

D. Claims Reconciliation Process

21. On December 1, 2020, the Court entered an Order that approved my motion to establish procedures to reconcile and verify the claims and interests asserted in this Receivership (the “***Claims Verification Order***”). [Dkt. No. 554].

22. In accordance with the Claims Verification Order, I filed my *Notice of Claims Analysis Report* on March 9, 2021. [Dkt. No. 564]. The Claims Analysis Report set forth my finalized determinations as to whether a claim filed against a Receivership Entity may become an “Approved Claim” (as defined in the Claims Verification Order), including my determinations with respect to the Black Elk Claims. Pursuant to the Claims Verification Order, if a party failed to timely submit an objection to my determinations as to their claim(s) as set forth in the Claims

Analysis Report, then my determinations set forth in the Claims Analysis Report would be final and binding. *See* Claims Verification Order, I.C.ii.

23. With respect to the Black Elk Claims, I determined that such claims were previously settled pursuant to the Black Elk 2017 Settlement Agreement, and more specifically I determined as follows: (i) Claim 37 was allowed as an unsecured claim as against PPCOMF in the amount of \$24,600,584.31; (ii) Claim 38 was allowed as an unsecured claim as against PPLOMF in the amount of \$5,000,000.00; (iii) Claim 41 was not allowed in any amount as duplicative of Claim 37; and (iv) Claim 42 was not allowed in any amount as duplicative of Claim 38. [Dkt. No. 564]. Said differently, although I recognize the Black Elk 2017 Settlement Agreement, I disallowed the Black Elk Trustee's claim to priority for the payments required in that agreement.

24. On November 13, 2021, the Black Elk Trustee filed the *Black Elk Litigation Trust Claim Confirmation and Priority Distribution Request* [Dkt. No. 598-54] wherein the Black Elk Trustee confirmed the claim amounts for Claim 37 and Claim 38 as set forth in the Claims Analysis Report.

25. On November 12, 2021, I filed an omnibus motion to confirm my determinations as to the Black Elk Claims and certain other claims submitted by other claimants in the Receivership (the "***Omnibus Motion***"). [Dkt. Nos. 597, 598, 599, 602].

26. The Black Elk Trustee filed a response to the Omnibus Motion (the "***Black Elk Response***") [Dkt. No. 612], wherein the Black Elk Trustee asserted that his claims (on behalf of the Black Elk Litigation Trust) should be paid ahead of any equity holders.

27. On December 28, 2021, I filed a reply in support of the Omnibus Motion. [Dkt. No. 617]. I also filed a sur-reply in further support of the Omnibus Motion on January 28, 2022. [Dkt. No. 622].

28. The Court heard oral argument on the Omnibus Motion on March 13, 2024. The Court reserved its decision.

III.

THE SETTLEMENT AGREEMENT

29. The material terms of the Settlement Agreement, all of which are subject to the conditions to the Effective Date (as defined in the Settlement Agreement), are summarized as follows:

- a. As of the Effective Date (as defined below), the Black Elk Trustee (on behalf of the Black Elk Litigation Trust) shall have an “*Allowed Claim*” in the total amount of \$1,500,000.00, which amount shall consist of and be calculated as follows:
 - i. Claim 37 shall be fixed and finalized as an allowed claim against PPCOMF in the amount of \$1,246,500.00; and
 - ii. Claim 38 shall be fixed and finalized as an allowed claim against PPLOMF in the amount of \$253,500.00.
- b. Within five (5) business days of the Effective Date, and provided that the Black Elk Trustee shall have previously delivered to the Receiver a properly completed and signed Form W-9, the Receiver shall pay the Black Elk Trustee, solely from Receivership Property (as defined in the Receivership Order), the amount of \$1,500,000.00 (the “*Settlement Amount*”) on account of the Allowed Claim, by wire transfer pursuant to the wire transfer instructions that the Black Elk Trustee provides to the Receiver, in writing and confirmed by telephone call, contemporaneously with its execution of this Agreement (the “*Wire Transfer*”).
- c. Upon the Receiver’s payment of the Settlement Amount by the Wire Transfer (the “*Payment*”), and without any further act or notice by any person or entity:
 - i. Each of Claim 37, Claim 38, Claim 41, and Claim 42 shall be deemed to be satisfied in full of any amount demanded or otherwise claimed.
 - ii. The Black Elk Trustee shall be deemed to have dismissed the Black Elk Claims *with prejudice*.
 - iii. The Black Elk Trustee agrees not to object to any terms of a plan of distribution proposed by the Receiver that are consistent with this Agreement.

- iv. The Black Elk Trustee agrees that any equity or ownership interest the Black Elk Trustee and the Black Elk Litigation Trust may have held, or hold, either directly or indirectly, in any Receivership Entity shall be deemed waived *with prejudice*, and that the Black Elk Trustee and the Black Elk Litigation Trust *shall not be entitled to a distribution, apart from the Settlement Amount*, in the Receivership Case.

30. The Parties shall exchange general releases of one another except that the releases will not release any rights or obligations of any Party under the Settlement Agreement and/or a plan of distribution that I propose, as approved by the Court or any document, instrument or agreement executed to implement the plan of distribution or the Settlement Agreement. The Settlement Agreement does not release any person or entity not a party to the Settlement Agreement.

31. The above is intended to be only a summary of the Settlement Agreement. I respectfully refer the Court and all parties to the Settlement Agreement attached hereto as **Exhibit A** for its complete terms and conditions.

32. The terms of the Settlement Agreement provide that a condition precedent to the Effective Date of the Settlement Agreement is the entry of a final, non-appealable Order from the Court approving the Settlement Agreement.

33. In my business judgment, and in accordance with the Receivership Order, I believe the Settlement Agreement is fair, reasonable and beneficial to the Receivership Estate. The Settlement Agreement was the product of arms' length negotiations. The Settlement Agreement resolves all litigation involving the Parties regarding the Black Elk Claims, in an efficient, fair, and practical manner. I believe that approval of the Settlement Agreement greatly outweighs the motion practice, the litigation, and the attendant cost, delay, and inconvenience to the Receivership Estate, as well as the Court, that would result if the Settlement Agreement is not approved, including most notably delay of a plan of distribution.

34. In my business judgment, the Settlement Agreement provides several benefits to the Receivership Estate. Most importantly, the Settlement Agreement fixes the allowed amount of Claim 37 and Claim 38 for significantly lesser amounts than originally asserted in Claim 37 and Claim 38, respectively. Specifically, Claim 37 will be drastically reduced from \$24,600,584.31 as against PPCOMF down to only \$1,246,500.00. Similarly, Claim 38 will be drastically reduced from \$5,000,000.00 as against PPLOMF down to only \$253,500.00. In total, the allowed claim against the Receivership Estate will be \$1,500,000.00 under the Settlement Agreement, reflecting a nearly 95% reduction from the originally requested amount asserted by the Black Elk Trustee.

35. Notably, the issue of priority of the Black Elk Claims was not addressed under the Black Elk 2017 Settlement Agreement, and has not been decided by the Court to date. Instead, that issue was reserved for later agreement or adjudication. I believe the original amount of the Black Elk Claims and the possibility that such claims could be afforded priority status over other unsecured creditors and investors could substantially impact any distributions to other unsecured creditors and investors in this Receivership. This Settlement Agreement would preserve the prospect of distributions to a wider pool of unsecured creditors and investors.

36. For the above reasons, I believe in my business judgment that the allowed amounts that have I now negotiated with the Black Elk Trustee and agreed to under the Settlement Agreement result in highly discounted claims against the Receivership Estate, thereby benefitting other creditors and investors in the Receivership. Without such agreement, and if the Black Elk Trustee were afforded priority in the magnitude sought in the claim, such a payment would overwhelm the Receivership Estate such that other unsecured creditors and investors would be unlikely to receive any distribution at all.

37. Consistent with the allocation percentages that were utilized for the originally requested \$29,600,584.31 under the Black Elk 2017 Settlement Agreement (i.e., 83.1% attributable to PPCOMF and 16.9% attributable to PPLOMF), I determined to allocate the \$1,500,000.00 total reduced claim by the same allocation percentages. As such, the \$1,246,500.00 reflects 83.1% of the \$1,500,000.00 Settlement Amount and the \$253,500.00 reflects 16.9% of the \$1,500,000.00 Settlement Amount.

38. Overall, the significant discount on the claim and the benefits to the Receivership Estate resulting therefrom makes an immediate payment (as opposed to waiting for a more general distribution) fair and appropriate. Said differently, the reduction is so great that it would be imprudent to dismiss the benefit of the reduced claim amount to the Receivership Estate.

IV.

CONCLUSION

39. For the reasons set forth herein and in the memorandum of law in support of the Motion, I respectfully request entry of an Order, substantially in the form attached hereto as **Exhibit B** (a) approving the Settlement Agreement; (b) authorizing me to take any such necessary steps to enter into, effectuate the terms of, and fulfill my obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

Executed this 12th day of April 2024, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski, as Receiver

EXHIBIT A

SETTLEMENT AGREEMENT

EXECUTION COPY

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement (this “**Agreement**”) is hereby entered into this 12th day of April, 2024, by and between (1) Melanie L. Cyganowski, in her capacity as the court appointed receiver(solely in such capacity, the “**Receiver**”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund L.P. (“**PPCOMF**”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Partners Credit Opportunities Fund International Ltd.,Platinum Partners Credit Opportunities Fund International (A) Ltd., Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P. (“**PPLOMF**”), (collectively, the “**Receivership Entities**,”), and (2) Richard Schmidt, in his capacity as Trustee (the “**Black Elk Trustee**”) of the Black Elk Energy Offshore Operations, LLC Litigation Trust (“**Black Elk Litigation Trust**”) (The Receiver and the Black Elk Trustee are collectively referred to herein as the “**Parties**” and each as a “**Party**”).

WHEREAS, on August 11, 2015, an involuntary Chapter 7 bankruptcy petition was filed against Black Elk Energy Offshore Operations LLC (“**Black Elk**”) in the United States Bankruptcy Court for the Southern District of Texas, thereby commencing the case styled *In re Black Elk Energy Offshore Operations, LLC*, assigned Case No. 15-34287 (the “**Black Elk Bankruptcy Case**”); and

WHEREAS, on September 1, 2015, an Order was entered in the Black Elk Bankruptcy Case converting the case from one under Chapter 7 to a case under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) [Case No. 15-34287, Dkt. No. 75]; and

WHEREAS, on July 14, 2016, an Order was entered in the Black Elk Bankruptcy Case confirming Black Elk’s Third Amended Plan of Liquidation (“**Black Elk Plan**”) [Case No. 15-34287, Dkt. No. 1204]; and

WHEREAS, pursuant to the Black Elk Plan, Black Elk’s alleged claims against PPCOMF, as well as other “Platinum Partners” entities were transferred to the Black Elk Litigation Trust, which was established pursuant to the Black Elk Plan [Case No. 15-34287, Dkt. No. 1204]; and

WHEREAS, on October 26, 2016, a complaint was filed by the Black Elk Trustee asserting various claims against Platinum Partners Value Arbitrage Fund L.P., PPVA Black Elk (Equity) LLC, PPCOMF, and PPLOMF in the United States Bankruptcy Court for the Southern District of Texas, thereby commencing the adversary proceeding captioned *Schmidt v. Platinum Partners Value Arbitrage Fund LP, et al.*, assigned Adv. Pro. No. 16-03237 (the “**Black Elk Adversary Proceeding**”); and

WHEREAS, on October 26, 2016, a *Temporary Restraining Order* was entered in the Black Elk Adversary Proceeding that, among other things, barred PPCOMF from transferring funds from its financial accounts, if after giving effect to any such transfer, the total unencumbered funds held by PPCOMF would be less than \$24,600,584.31 and barred PPLOMF from transferring funds from its financial accounts, if after giving effect to any such transfer, the total unencumbered

EXECUTION COPY

funds held by PLOMF would be less than \$5,000,000.00 [Adv. Pro. No. 16-03237, Dkt. No. 7]; and

WHEREAS, on December 19, 2016, the Securities and Exchange Commission (the “**SEC**”) commenced the action in the United States District Court for the Eastern District of New York (the “**Court**”) styled *SEC v. Platinum Management (NY) LLC, et al.*, assigned Case No. 16-06848 (BMC) (the “**Receivership Case**”); and

WHEREAS, in connection with the Receivership Case, the Court entered its *Order Appointing Receiver* (the “**Initial Receivership Order**”) through which certain of the Receivership Entities were placed under receivership, and in connection therewith, Bart M. Schwartz was appointed as receiver (the “**Prior Receiver**”) [Dkt. No. 6]¹; and

WHEREAS, the Initial Receivership Order provided for a stay of litigation involving the Receivership Entities, excluding, among other exceptions, “all pending bankruptcy cases in which the Receivership Entities are involved” [Initial Receivership Order, ¶ 25]; and

WHEREAS, on January 9, 2017, the SEC and the Prior Receiver filed a *Joint Emergency Motion for an Order to Show Cause and Temporary Restraining Order* (the “**Emergency TRO Motion**”) to modify the Initial Receivership Order to expand the litigation stay to include pending bankruptcy proceedings [Dkt. No. 21]; and

WHEREAS, the Prior Receiver, the SEC, and the Black Elk Trustee reached an agreement in principle to terms memorialized in that certain settlement agreement (the “**Black Elk 2017 Settlement Agreement**”) [Dkt. No. 598-47], which was fully executed as of May 17, 2017, and which resulted in the withdrawal of the Black Elk Trustee’s opposition to the Emergency TRO Motion; and

WHEREAS, the Black Elk 2017 Settlement Agreement provided, among other things, that the Prior Receiver agreed that the Black Elk Trustee is entitled to an allowed claim in the Receivership Case in the amount of \$24,600,584.31, and that in the event PLOMF was later identified as a Receivership Entity pursuant to an Order of the Court, then the Black Elk Trustee would be entitled to an additional allowed claim in the Receivership Case in the amount of \$5,000,000.00; and

WHEREAS, on July 6, 2017, Melanie L. Cyganowski replaced Bart M. Schwartz as receiver pursuant to an Order of the Court, and the Receiver is now administering the receivership estate pursuant to the October 16, 2017 [Dkt. No. 276] and the December 29, 2017 [Dkt. No. 297] Orders of the Court (collectively, the “**Receivership Order**”); and

WHEREAS, there are four filed proofs of claim in the Receivership Case related to the Black Elk Litigation Trust and the Black Elk Trustee (collectively, the “**Black Elk Claims**”): (i) one proof of claim against PPCOMF filed on March 21, 2019 and identified as Claim Number 41 (“**Claim 41**”); (ii) one proof of claim against PLOMF filed on March 21, 2019 and identified as Claim Number 42 (“**Claim 42**”); (iii) one proof of claim against PPCOMF filed on March 22, 2019

¹ Unless otherwise indicated, citations to “Dkt. No. ___” are in reference to the case docket of *SEC v. Platinum Management (NY) LLC, et al.*, Case No. 16-06848 (BMC).

EXECUTION COPY

and identified as Claim Number 37 (“**Claim 37**”); (iv) one proof of claim against PPLOMF filed on March 22, 2019 and identified as Claim Number 38 (“**Claim 38**”); and

WHEREAS, each of the Black Elk Claims asserted the total amount of \$29,600,584.31, consisting of \$24,600,584.31 as against PPCOMF and \$5,000,000.00 as against PPLOMF; and

WHEREAS, on December 1, 2020, the Court entered in the Receivership Case its *Order Establishing Claims and Interests Reconciliation and Verification Procedures* (the “**Claims Verification Order**”) [Dkt. No. 554]; and

WHEREAS, on March 9, 2021, in accordance with the Claims Verification Order, the Receiver filed her *Notice of Claims Analysis Report* (the “**Claims Analysis Report**”) [Dkt. No. 564]; and

WHEREAS, in the Claims Analysis Report, the Receiver published her determinations that the Black Elk Claims were previously settled, and as such, the Receiver determined that with respect to: (i) Claim 37, such claim was allowed as an unsecured claim as against PPCOMF in the amount of \$24,600,584.31; (ii) Claim 41, such claim was not allowed in any amount as duplicative of Claim 37; (iii) Claim 38, such claim was allowed as an unsecured claim as against PPLOMF in the amount of \$5,000,000.00; and (iv) Claim 42, such claim was not allowed in any amount as duplicative of Claim 38; and

WHEREAS, on November 13, 2021, the Black Elk Trustee filed the *Black Elk Litigation Trust Claim Confirmation and Priority Distribution Request* [Dkt. No. 598-54] wherein the Black Elk Trustee confirmed the claim amounts for Claim 37 and Claim 38 as set forth by the Receiver in the Claims Analysis Report; and

WHEREAS, the Receiver filed an omnibus motion to confirm her determinations set forth in the Claims Analysis Report (the “**Omnibus Motion**”) [Dkt. Nos. 597-599, 602]; and

WHEREAS, the Black Elk Trustee filed a response to the Omnibus Motion (the “**Black Elk Response**”) [Dkt. No. 612], wherein the Black Elk Trustee asserted that his claims (on behalf of the Black Elk Litigation Trust) should be paid ahead of any equity holders; and

WHEREAS, the Receiver also filed a reply and sur-reply in support of the Omnibus Motion [Dkt. Nos. 617, 622]; and

WHEREAS, the Court heard oral argument on the Omnibus Motion on March 13, 2024 and thereafter reserved its decision with respect to the relief requested therein; and

WHEREAS, the Parties have engaged in correspondence and motion practice before the Court regarding the Black Elk Claims; and

WHEREAS, solely to avoid further litigation and expense, and after good-faith arms’ length negotiations and discussions, the Parties have agreed to resolve all disputes and claims by and between the Parties, including, but not limited to, the validity, amount, and classification of the Black Elk Claims, but in doing so, do not concede any factual or legal allegations or assertions with respect to the Black Elk Claims.

EXECUTION COPY

NOW, THEREFORE, the Parties, each intending to be legally bound, and in exchange for the mutual covenants and promises set forth herein, agree as follows:

1. **Incorporation of WHEREAS Clauses**. The “WHEREAS” clauses set forth above are agreed to by the Parties and are expressly incorporated in and form part of the terms of this Agreement.

2. **The Allowance and Payment of the Allowed Claim**.

a. As of the Effective Date (as defined below), the Black Elk Trustee (on behalf of the Black Elk Litigation Trust) shall have an “*Allowed Claim*” in the total amount of \$1,500,000.00, which amount shall consist of and be calculated as follows:

- i. Claim 37 shall be fixed and finalized as an allowed claim against PPCOMF in the amount of \$1,246,500.00; and
- ii. Claim 38 shall be fixed and finalized as an allowed claim against PPLOMF in the amount of \$253,500.00.

b. Within five (5) business days of the Effective Date, and provided that the Black Elk Trustee shall have previously delivered to the Receiver a properly completed and signed Form W-9, the Receiver shall pay the Black Elk Trustee, solely from Receivership Property (as defined in the Receivership Order), the amount of \$1,500,000.00 (the “*Settlement Amount*”) on account of the Allowed Claim, by wire transfer pursuant to the wire transfer instructions that the Black Elk Trustee provides to the Receiver, in writing and confirmed by telephone call, contemporaneously with its execution of this Agreement (the “*Wire Transfer*”).

c. Upon the Receiver’s payment of the Settlement Amount by the Wire Transfer (the “*Payment*”), and without any further act or notice by any person or entity:

- i. Each of Claim 37, Claim 38, Claim 41, and Claim 42 shall be deemed to be satisfied in full of any amount demanded or otherwise claimed.
- ii. The Black Elk Trustee shall be deemed to have dismissed the Black Elk Claims with prejudice.
- iii. The Black Elk Trustee agrees not to object to any terms of a plan of distribution proposed by the Receiver that are consistent with this Agreement.
- iv. The Black Elk Trustee agrees that any equity or ownership interest the Black Elk Trustee and the Black Elk Litigation Trust may have held, or hold, either directly or indirectly, in any Receivership Entity shall be deemed waived with prejudice, and that the Black Elk Trustee and the Black Elk Litigation Trust shall not be entitled to a distribution, apart from the Settlement Amount, in the Receivership Case.

EXECUTION COPY

3. **Releases.** Upon the occurrence of the Payment in accordance with the terms of this Agreement:

a. The Black Elk Trustee, for the Black Elk Litigation Trust and himself, and on behalf of their agents, representatives, employees, attorneys, successors and assigns (collectively, the “***Black Elk Releasors***”), release, acquit, and forever discharge each of (i) the Receivership Entities, their current agents, current representatives, current officers, current directors, current employees, current attorneys and/or other professionals, successors and assigns; and (ii) the Receiver, her current or former agents, representatives, employees, attorneys and/or other professionals, successors and assigns (collectively, the “***Receivership Releasees***”) from any and all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, which the Black Elk Releasors could have had, claim to have had or could ever have, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, arising from the beginning of time through and including the Effective Date of this Agreement against the Receivership Releasees.

b. The Receiver on behalf of the Receivership Entities (collectively, the “***Receivership Releasors***”) releases, acquits, and forever discharges the Black Elk Trustee and the Black Elk Litigation Trust, their agents, representatives, employees, attorneys, successors and assigns, solely in their capacity as such (collectively, the “***Black Elk Releasees***”), from any and all claims, demands, debts, liabilities, causes of action, obligations, and liabilities of any kind, which the Receivership Entities could have had, claim to have had or could ever have, whether at law or in equity, whether known or unknown, whether anticipated or unanticipated, arising from the beginning of time through and including the Effective Date of this Agreement against the Black Elk Releasees.

c. The foregoing releases do not release any rights or obligations of any Party under this Agreement and/or a plan of distribution proposed by the Receiver, as approved by the Court, or any document, instrument or agreement executed to implement the plan or this Agreement. Nothing herein shall be deemed a release of any person or entity not a party to this Agreement.

4. **Representations and Warranties.**

a. As of the Effective Date of this Agreement, the Black Elk Trustee represents and warrants that except for the Black Elk Claims, the Black Elk Trustee has not filed, asserted, or held any other claims against, or interests in, the Receivership Entities in the Receivership Case. To the extent any such other claims or interests have been asserted or exist in the Receivership Case, regardless of whether the Black Elk Trustee filed a proof of claim, the same are hereby waived in their entirety, with prejudice.

b. Each Party represents and warrants that: (i) such Party has been represented by counsel in connection with this Agreement and is executing this Agreement voluntarily and with full knowledge and understanding of its terms; (ii) such Party or such Party’s signatory has full authority to execute the Agreement on behalf of the Party and to bind such Party to this Agreement by execution hereof; (iii) each Party has obtained all necessary legal approvals to enter into this Agreement; (iv) the execution and delivery of this Agreement will not violate any

EXECUTION COPY

agreement, court order, administrative order of any governmental entity, or any law or governmental regulation; and (v) such Party has not sold, assigned or otherwise transferred to any third party any of such party's rights with respect to the claims or interests released in this Agreement.

5. Approval.

a. Within five (5) business days of the execution of this Agreement by all Parties, the Receiver shall file a motion with the Court seeking approval of this Agreement.

b. This Agreement shall become effective on the date on which an Order of the Court approving this Agreement becomes final and non-appealable (the "***Effective Date***").

c. If the Court declines to enter an Order approving this Agreement, or an Order of the Court approving this Agreement does not become final and non-appealable, then: (i) this Agreement shall be deemed null and void and without legal effect; (ii) none of the Parties shall be deemed to have waived any right or defense, or to have settled any controversy or dispute that existed immediately before the execution of this Agreement; and (iii) each Party shall be restored to their respective positions as of immediately before the execution of this Agreement, including, for example and without limitation, the Black Elk Trustee's right to seek the original amount of \$24,600,584.31 as against PPCOMF as set forth in Claim 37 and the original amount of \$5,000,000.00 as against PPLOMF as set forth in Claim 38, and the Receiver's right to object in any respect to the allowance of Claim 37 and Claim 38.

6. Miscellaneous.

a. **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, or (b) when sent by confirmed electronic mail if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day.

If to the Receiver

Otterbourg P.C.
Attn: Erik B. Weinick, Esq.
230 Park Avenue
New York, NY 10169
eweinick@otterbourg.com

If to the Black Elk Trustee

Steptoe L.L.P.
Attn: Jeff Potts, Esq.
717 Texas Avenue, Suite 2800
Houston, TX 77002
jpotts@steptoe.com

b. **Venue and Choice of Law.** The Parties consent and submit to the exclusive jurisdiction of the Court over any actions or proceedings relating to the enforcement or interpretation of this Agreement, and any Party bringing such action or proceeding shall do so in the Court. This Agreement and all claims and disputes arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent federal law applies, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of New York.

EXECUTION COPY

c. **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, AND AGREES THAT ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

d. **Entire Agreement.** This Agreement constitutes the entire and only agreement of the Parties concerning the subject matter hereof. This Agreement supersedes and replaces any and all prior or contemporaneous verbal or written agreements between the Parties concerning the subject matter hereof. The Parties acknowledge that this Agreement is not being executed in reliance on any verbal or written agreement, promise or representation not contained herein.

e. **No Oral Modifications.** This Agreement may not be modified or amended orally. This Agreement may be modified or amended only by a writing signed by a duly authorized representative of each of the Parties and approved by the Court. No waiver of any breach of any term of this Agreement shall be construed as a waiver of any subsequent breach.

f. **Construction.** This Agreement constitutes a fully negotiated agreement among commercially sophisticated parties and therefore shall not be construed or interpreted for or against any Party, and any rule or maxim of construction to such effect shall not apply to this Agreement.

g. **Headings.** The heading of any section of this Agreement is intended only for convenience and shall not be construed to be or interpreted as a part, or limitation on the scope, of any such section.

h. **Binding Effect; Successor and Assigns.** This Agreement shall inure solely to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No Party may assign its rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment not in accordance with the terms hereof shall be null and void *ab initio*.

i. **Costs.** Each Party shall bear its own costs in connection with the negotiation, execution and implementation of this Agreement.

j. **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to conflict with any federal, state or local law, and as a result such part is declared to be invalid and of no force or effect in such jurisdiction, all remaining terms of this Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions has not been included herein, except as provided in section 5 of this Agreement.

k. **Further Assurances.** The Parties each agree to execute such further and additional documents, instruments and writings as may be necessary, proper, required, desirable or convenient for the purpose of fully effectuating, including obtaining Court approval of, the terms of this Agreement.

EXECUTION COPY

l. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart.

m. **PDFs as Originals.** This Agreement may be executed using PDF signatures, with the same effect as if the signatures were original. Electronic copies of this Agreement shall be deemed for all purposes to have the same force and effect of the original thereof.

n. **No Third Party Beneficiaries.** Neither this Agreement, nor any negotiations or proceedings in connection herewith, may be used and shall not be admissible in any proceeding against any Party to this Agreement for any purpose, except to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MELANIE L. CYGANOWSKI, in her capacity as the court-appointed receiver for the Receivership Entities

RICHARD SCHMIDT, in his capacity as Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust

By: Melanie Cyganowski as Receiver
Melanie L. Cyganowski as Receiver

By: _____
Richard Schmidt as Trustee

EXECUTION COPY

l. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart.

m. **PDFs as Originals.** This Agreement may be executed using PDF signatures, with the same effect as if the signatures were original. Electronic copies of this Agreement shall be deemed for all purposes to have the same force and effect of the original thereof.

n. **No Third Party Beneficiaries.** Neither this Agreement, nor any negotiations or proceedings in connection herewith, may be used and shall not be admissible in any proceeding against any Party to this Agreement for any purpose, except to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

MELANIE L. CYGANOWSKI, in her capacity as the court-appointed receiver for the Receivership Entities

By:

Melanie L. Cyganowski as Receiver

RICHARD SCHMIDT, in his capacity as Trustee of the Black Elk Energy Offshore Operations, LEC Litigation Trust

By:

Richard Schmidt as Trustee

EXHIBIT B

PROPOSED ORDER

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

----- X
SECURITIES AND EXCHANGE COMMISSION, :
 :
Plaintiff, :
 :
-v- :
 :
PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
 :
Defendants. :
----- X

No. 16-CV-6848 (BMC)

**ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN THE
RECEIVER AND THE TRUSTEE OF THE BLACK ELK ENERGY
OFFSHORE OPERATIONS, LLC LITIGATION TRUST**

On _____, 2024, Melanie L. Cyganowski, the court-appointed receiver (the “*Receiver*”)¹ of the Receivership Entities² filed a motion [Dkt. Nos. ____] (the “*Motion*”) for the entry of an Order (a) approving the settlement agreement (the “*Settlement Agreement*”) between the Receiver, on behalf of the Receivership Entities, and Richard Schmidt, in his capacity as Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust; (b) authorizing the Receiver to take any such necessary steps to enter into, effectuate the terms of, and fulfill her

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the *Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order Approving Settlement Agreement Between the Receiver and the Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust* (the “*Receiver Decl.*”).

² The “*Receivership Entities*” are: (i) Platinum Partners Credit Opportunities Master Fund LP, (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P.

obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just; and

In support of the Motion, the Receiver filed a Notice of Motion [Dkt. No. ____], the Receiver Decl. [Dkt. No. ____], and a Memorandum of Law [Dkt. No. ____]; and

The Court finding that notice of the Motion was good and sufficient under the particular circumstances and that no other further notice need be given; and

The Court having jurisdiction to consider the relief requested in the Motion pursuant to, *inter alia*, the *Second Amended Order Appointing Receiver* entered on October 16, 2017 [Dkt. No. 276], as thereafter amended to encompass each of the Receivership Entities and certain other entities [Dkt. No. 297] (collectively, the “*Receivership Order*”); and

The Court finding that (a) the Receiver’s entry into the Settlement Agreement is consistent with the Receiver’s authority under the Receivership Order and is a reasonable and proper exercise of the Receiver’s discretion; (b) approval of the Settlement Agreement is in the best interests of the Receivership Entities, their estates and stakeholders; and (c) based upon the record herein and after due deliberation and for good and sufficient cause shown, it is hereby

ORDERED THAT:

1. The Motion is GRANTED in all respects.
2. All objections, if any, to the relief provided for herein that have not been withdrawn, waived or settled, and all reservation of rights included therein, are hereby overruled in all respects.
3. The Settlement Agreement is hereby approved and the Receiver is authorized to take any such necessary steps to enter into, effectuate the terms of, and fulfill the Receiver’s obligations under, the Settlement Agreement.

4. This Order shall be effective and enforceable immediately upon entry.
5. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2024
Brooklyn, New York

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

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

----- X

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

PLATINUM MANAGEMENT (NY) LLC; :
 PLATINUM CREDIT MANAGEMENT, L.P.; :
 MARK NORDLICHT; :
 DAVID LEVY; :
 DANIEL SMALL; :
 URI LANDESMAN; :
 JOSEPH MANN; :
 JOSEPH SANFILIPPO; and :
 JEFFREY SHULSE, :

Defendants. :

----- X

No. 16-CV-6848 (BMC)

**MEMORANDUM OF LAW IN SUPPORT OF THE RECEIVER’S MOTION FOR
ENTRY OF AN ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN THE
RECEIVER AND THE TRUSTEE OF THE BLACK ELK ENERGY OFFSHORE
OPERATIONS, LLC LITIGATION TRUST**

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

Of Counsel:

Erik B. Weinick

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
FACTS	2
THE SETTLEMENT AGREEMENT	2
ARGUMENT	4
A. A Receiver Has Authority to Settle Claims	4
B. The Settlement Agreement Should be Approved	5
CONCLUSION.....	7

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Gordon v. Dadante</i> , 336 Fed. Appx. 540 (6th Cir. 2009).....	4
<i>Lyondell Chem. Co. v. Occidental Chem. Corp.</i> , 608 F.3d 284 (5th Cir. 2010)	5
<i>S.E.C. v. Credit Bancorp, Ltd.</i> , No. 99-CIV-10 1395, 2002 WL 1792053 (S.D.N.Y. Aug. 2, 2002).....	4
<i>S.E.C. v. Parish</i> , No. 07-CV-00919, 2010 WL 8347143 (D.S.C. Feb. 10, 2010).....	4
<i>S.E.C. v. Princeton Economic Int’l, Inc.</i> , 99-CIV-9667, 2002 WL 206990 (S.D.N.Y. Feb. 8, 2002)	4
<i>Sterling v. Stewart</i> , 158 F.3d 1199 (11th Cir. 1998)	4
Other Authorities	
3 Clark, Ralph Ewing, A Treatise on the Law and Practice of Receivers, § 770, p. 1424 (3d ed. 1992)	5

Melanie L. Cyganowski, the court-appointed receiver (the “**Receiver**”)¹ of the Receivership Entities², through her counsel, respectfully submits this memorandum of law in support of her motion (the “**Motion**”) for the entry of an Order (a) approving the settlement agreement (the “**Settlement Agreement**”)³ between the Receiver, on behalf of the Receivership Entities, and Richard Schmidt, in his capacity as Trustee (the “**Black Elk Trustee**”) of the Black Elk Energy Offshore Operations, LLC Litigation Trust (“**Black Elk Litigation Trust**”) (the Receiver and the Black Elk Trustee, collectively referred to herein as, the “**Parties**,” and each a “**Party**”); (b) authorizing the Receiver to take any such necessary steps to enter into, effectuate the terms of, and fulfill her obligations under, the Settlement Agreement; and (c) granting such other and further relief as the Court deems just.

PRELIMINARY STATEMENT

The Receiver has determined in her business judgment to enter into the Settlement Agreement with the Black Elk Trustee because the Settlement Agreement provides significant benefits to the receivership estate (the “**Receivership Estate**”). Chiefly, and most importantly, under the settlement, the Black Elk Trustee has agreed to reduce its total claim asserted in the Receivership by nearly 95% from an originally claimed amount of \$29,600,584.31 down to

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the *Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order Approving Settlement Agreement Between the Receiver and the Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust* (the “**Receiver Decl.**”).

² The “**Receivership Entities**” are: (i) Platinum Partners Credit Opportunities Master Fund L.P. (“**PPCOMF**”), (ii) Platinum Partners Credit Opportunities Fund (TE) LLC, (iii) Platinum Partners Credit Opportunities Fund LLC, (iv) Platinum Partners Credit Opportunities Fund International Ltd., (v) Platinum Partners Credit Opportunities Fund International (A) Ltd., (vi) Platinum Partners Credit Opportunities Fund (BL) LLC, (vii) Platinum Credit Management, L.P., (viii) Platinum Liquid Opportunity Management (NY) LLC, (ix) Platinum Partners Liquid Opportunity Fund (USA) L.P., and (x) Platinum Partners Liquid Opportunity Master Fund L.P. (“**PPLOMF**”).

³ A copy of the Settlement Agreement is attached as **Exhibit A** to the Receiver Decl.

\$1,500,000.00 with the remaining balance *dismissed with prejudice*. The Receiver believes the allowance of the substantially discounted claim is in the best interest of the Receivership because it will result in finality, minimize Receivership Estate costs attendant with prolonged litigation, and will help preserve the assets of the Receivership Estate, which, in turn, would be used to the extent possible for distributions to applicable creditors and investors. Without this settlement, it is possible that other unsecured creditors and investors would not receive any distribution if a nearly \$30,000,000.00 claim were afforded any measure of priority such as that sought by the Black Elk Trustee. The Receiver thus considers the settlement, which was the result of considerable arms' length negotiations, to be beneficial to the Receivership Estate, and has agreed to pay the Black Elk Trustee on behalf of the Black Elk Litigation Trust promptly (within 5 business days) after an Order of the Court approving the settlement becomes final and unappealable.

The Receiver respectfully requests that the Court approve the settlement.

FACTS

The salient facts are set forth in the accompanying declaration of Melanie L. Cyganowski.

THE SETTLEMENT AGREEMENT

The material terms of the Settlement Agreement, all of which are subject to the occurrence of the Effective Date (as defined in the Settlement Agreement), are summarized as follows⁴:

- a. As of the Effective Date (as defined below), the Black Elk Trustee (on behalf of the Black Elk Litigation Trust) shall have an "*Allowed Claim*" in the total amount of \$1,500,000.00, which amount shall consist of and be calculated as follows:

⁴ For the complete terms and conditions of the Settlement Agreement, the Court and all parties to the Settlement Agreement are respectfully directed to the Settlement Agreement, which is attached to the Receiver Decl. as **Exhibit A**.

- i. Claim 37 shall be fixed and finalized as an allowed claim against PPCOMF in the amount of \$1,246,500.00; and
 - ii. Claim 38 shall be fixed and finalized as an allowed claim against PPLOMF in the amount of \$253,500.00.
- b. Within five (5) business days of the Effective Date, and provided that the Black Elk Trustee shall have previously delivered to the Receiver a properly completed and signed Form W-9, the Receiver shall pay the Black Elk Trustee, solely from Receivership Property (as defined in the Receivership Order), the amount of \$1,500,000.00 (the “*Settlement Amount*”) on account of the Allowed Claim, by wire transfer pursuant to the wire transfer instructions that the Black Elk Trustee provides to the Receiver, in writing and confirmed by telephone call, contemporaneously with its execution of this Agreement (the “*Wire Transfer*”).
- c. Upon the Receiver’s payment of the Settlement Amount by the Wire Transfer (the “*Payment*”), and without any further act or notice by any person or entity:
 - i. Each of Claim 37, Claim 38, Claim 41, and Claim 42 shall be deemed to be satisfied in full of any amount demanded or otherwise claimed.
 - ii. The Black Elk Trustee shall be deemed to have dismissed the Black Elk Claims with prejudice.
 - iii. The Black Elk Trustee agrees not to object to any terms of a plan of distribution proposed by me that are consistent with this Agreement.
 - iv. The Black Elk Trustee agrees that any equity or ownership interest the Black Elk Trustee and the Black Elk Litigation Trust may have held, or hold, either directly or indirectly, in any Receivership Entity shall be deemed waived with prejudice, and that the Black Elk Trustee and the Black Elk Litigation Trust shall not be entitled to a distribution, apart from the Settlement Amount, in the Receivership Case.

The Parties shall exchange general releases of one another except that the releases will not release any rights or obligations of any Party under the Settlement Agreement and/or a plan of distribution proposed by the Receiver, as approved by the Court or any document, instrument or agreement executed to implement the plan of distribution or the Settlement Agreement. The Settlement Agreement does not release any person or entity not a party to the Settlement Agreement.

The terms of the Settlement Agreement also provide that a condition precedent to the Effective Date of the Settlement Agreement is the entry of a final, non-appealable Order from the Court approving the Settlement Agreement.

ARGUMENT

A. A Receiver Has Authority to Settle Claims

Pursuant to the Receivership Order and the Claims Verification Order, the Receiver has the authority to compromise Receivership Property on terms in the manner she deems most beneficial to the Receivership Estate. Receivership Order, ¶¶ 6, 28, 34; *see also* Claims Verification Order, III.A. (“Without modify [sic] any prior agreements entered into by the Receiver or orders entered by this Court unless specifically stated, the Receiver may, in her sole discretion, settle and compromise any Disputed Claim or Disputed Interest on terms and for reasons that she deems, in her business judgment, to be appropriate[.]”)

A receiver’s settlement of claims furthers the purposes of a receivership to marshal the estate’s assets for the benefit of injured creditors. *S.E.C. v. Parish*, No. 07-CV-00919, 2010 WL 8347143, at *6 (D.S.C. Feb. 10, 2010) (receiver’s proposed settlement approved by the court, finding the settlement was “consistent with and furthers the purposes of the receivership”). Thus, it is well-settled that a settlement by a receiver in a federal receivership is within the receiver’s broad discretion and should be approved if it is fair. *See, e.g., Gordon v. Dadante*, 336 Fed. Appx. 540, 546 (6th Cir. 2009); *S.E.C. v. Credit Bancorp, Ltd.*, No. 99-CIV-11395, 2002 WL 1792053, at *4-5 (S.D.N.Y. Aug. 2, 2002); *S.E.C. v. Princeton Economic Int’l, Inc.*, No. 99-CIV-9667, 2002 WL 206990, at *1 (S.D.N.Y. Feb. 8, 2002). “[R]eceivers benefit from the general presumption that district courts favor settlement.” *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th

Cir. 1998). Indeed, courts long have emphasized that public policy favors settlement. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 297 n.43 (5th Cir. 2010).⁵

B. The Settlement Agreement Should Be Approved

In the exercise of the Receiver's business judgment, the Receiver concluded that the Settlement Agreement is fair, reasonable and beneficial to the Receivership Estate. The Settlement Agreement, which was the product of considerable arms' length negotiations, resolves all litigation involving the Parties regarding the Black Elk Claims efficiently, fairly, and in a practical manner. Receiver Decl. ¶ 33.

Moreover, in the Receiver's business judgment, the Settlement Agreement provides several benefits to the Receivership Estate. Most importantly, the Settlement Agreement fixes the allowed amount of Claim 37 and Claim 38 for significantly lesser amounts than originally asserted in Claim 37 and Claim 38, respectively. Claim 37 will be drastically reduced from the original claimed amount of \$24,600,584.31 as against PPCOMF down to only \$1,246,500.00. Similarly, Claim 38 will be drastically reduced from the original claimed amount of \$5,000,000.00 as against PPLOMF down to only \$253,500.00. In total, the allowed claim against the Receivership Estate will be \$1,500,000.00 under the Settlement Agreement, which is a reduction of nearly 95% of the original claimed total of \$29,600,584.31. Receiver Decl. ¶¶ 2, 34.

Notably, the issue of priority of the Black Elk Claims was not addressed under the Black Elk 2017 Settlement Agreement, and has not been decided by the Court to date. Instead, that

⁵ See also 3 Clark, Ralph Ewing, *A Treatise on the Law and Practice of Receivers*, § 770, p. 1424 (3d ed. 1992) (cited with approval in *Credit Bancorp, Ltd.*, 2002 WL 1792053, at *4) ("Since the Court has authority to authorize a receiver to collect assets of a corporation, it has the further authority to authorize the receiver to sue to collect the assets of the corporation. It naturally follows, as a necessary corollary of the foregoing, that the receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit.").

issue was reserved for later agreement or adjudication. The Receiver has considered the original amount of the Black Elk Claims and the possibility that such claims could be afforded priority status over other unsecured creditors and investors and that the original amount of the Black Elk Claims could substantially impact any distributions to other unsecured creditors and investors as a result. Based on her business judgment, the Receiver believes the allowed amounts under the Settlement Agreement are highly discounted and preserves the prospect of distributions to a wider pool of unsecured creditors and investors, thereby providing significant benefits for the Receivership Estate. Receiver Decl. ¶¶ 35-36.

Consistent with the allocation percentages that were utilized for the originally requested \$29,600,584.31 under the Black Elk 2017 Settlement Agreement (i.e., 83.1% attributable to PPCOMF and 16.9% attributable to PPLOMF), the Receiver determined to allocate the \$1,500,000.00 total reduced claim by the same allocation percentages. Accordingly, the \$1,246,500.00 reflects 83.1% of the \$1,500,000.00 Settlement Amount and the \$253,500.00 reflects 16.9% of the \$1,500,000.00 Settlement Amount. Receiver Decl. ¶ 37.

The proposed Settlement Amount of \$1,500,000.00 reflects a reduction in the Black Elk Trustee's total claims by nearly 95% from the originally requested amount of \$29,686,426.31. Receiver Decl. ¶¶ 2, 34. Accordingly, the Receiver believes it would be imprudent to dismiss the benefit of the reduced claim amount to the Receivership Estate. Receiver Decl. ¶ 38.

The Receiver has also determined in her business judgment that the immediate payment (as opposed to waiting for a more general distribution) is fair and appropriate because of the significant discount on the claim and because, under the circumstances, payment of the Settlement Amount would still permit distributions under a plan of distribution to other general unsecured creditors and investors in the Receivership. Receiver Decl. ¶¶ 36, 38.

CONCLUSION

For the reasons set forth above and in the Receiver Decl., the Motion should be granted.

Dated: April 12, 2024
New York, New York

OTTERBOURG P.C.

By: /s/ Erik B. Weinick

Erik B. Weinick

230 Park Avenue

New York, New York 10169

(212) 661-9100

eweinick@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver