UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PLATINUM-BEECHWOOD LITIGATION.	Civil Action No. 18-cv-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, - against - PLATINUM MANAGEMENT (NY) LLC, *et al.,* Defendants.	Civil Action No. 18-cv-10936 (JSR)

PLAINTIFFS' MOTION *IN LIMINE* FOR A RULING AS TO IMPUTATION OF KNOWLEDGE HELD BY CURTIS, MALLET-PREVOST, COLT & MOSLE LLP TO DEFENDANT DAVID BODNER

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Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (the "**JOLs**"), and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) ("**PPVA**") (collectively, the "**Plaintiffs**") hereby move the Court *in limine* for a ruling that all knowledge obtained by Curtis, Mallet-Prevost, Colt & Mosle LLP ("**Curtis**") during the course of its representations of Platinum Management (NY) LLC ("**PMNY**") and related individuals or entities is imputed to David Bodner ("**Bodner**") for purposes of the upcoming trial. This Motion is supported by the November 16, 2022 Declaration of Warren E. Gluck ("**Gluck Decl.**"), and the exhibits thereto, filed contemporaneously herewith.

PRELIMINARY STATEMENT

As admitted in sworn declarations filed in this action, Curtis has continuously represented Bodner for the past 23 years. There was a standing policy among Curtis, Bodner and PMNY that Bodner would be regularly updated with the information obtained by Curtis through its representation of PMNY and related parties in connection with the increasingly serious government investigations that began in 2013 and expanded into a direct inquiry into the Platinum/Beechwood relationship in March 2016. At trial, a Curtis representative will likely be called to testify as to Curtis' direct knowledge of the government's investigation into PMNY's valuation practices in 2013, as well as the government's March 2016 expanding investigation into the Platinum/Beechwood relationship, and the use of Beechwood to falsely inflate the value of PPVA's investments. Given Curtis' admission that the knowledge it obtained through its representation of PMNY was regularly shared with Bodner, such knowledge should be imputed to Bodner for purposes of the upcoming trial.

FACTUAL BACKGROUND

David Bodner has been a client of Curtis since 2000. *See* Declaration of Jacques Semmelman, dated January 2, 2019, submitted *in Trott v. Platinum Management (NY) LLC, et al*., No. 1:18-cv-10936-JSR, ECF No. 51 ("**Semmelman Decl.**") at ¶ 4.[1] As admitted by Curtis, the firm has represented Bodner and his family in an array of business transactions and litigation matters. *Id*. For example, in the early 2000's, Curtis assisted with the formation of PMNY for the benefit of Bodner, Mark Nordlicht ("**Nordlicht**") and Murray Huberfeld ("**Huberfeld**"). Semmelman Decl. at ¶ 5. Curtis also admits that it represented PMNY throughout the years in a variety of litigation, regulatory and business matters, including investigations by the SEC and other governmental authorities that occurred during 2012-2016. Semmelman Decl. at ¶ 10.

Due to Bodner's beneficial interest in PMNY, and because his family-owned entities held limited partnership interests in PPVA, Bodner would regularly inquire of Curtis about litigation matters (including government investigations) that Curtis was handling on behalf of PMNY, PPVA or both. Semmelman Decl. ¶ 13. As admitted in the Curtis Opposition,

> Curtis would respond openly and without restriction. Any information known to Curtis about these litigation matters was available to Mr. Bodner. This sharing of information was known to, and approved by, a Platinum Management in-house counsel, Harvey Werblowsky, and by senior persons at Platinum Management, including Mr. Nordlicht. (Semmelman Decl. ¶ 13; Werblowsky Decl. ¶ 9).

Curtis Opposition at p. 7.

[1] The Semmelman Decl. was submitted in support of Curtis' Opposition to Plaintiffs' Motion to Disqualify Curtis as counsel to Bodner in the above-captioned case (the "**Curtis Opposition**"). *See* ECF Nos. 47, 50. Curtis' Opposition was also supported by the January 1, 2019 Declaration of Harvey Z. Werblowsky, ECF No. 53 ("**Werblowsky Decl.**"). In order to avoid disqualification in this case as counsel to Bodner, Curtis submitted these sworn declarations to evidence Curtis' 20 years' representation of Bodner, its concurrent representations of PMNY and related entities in connection with various government investigations, and Curtis' general practice of sharing all information learned through these representations with Bodner. Curtis Opposition at pp. 3-11.

Neither Werblowsky, nor anyone else at PMNY, imposed any restrictions on Curtis' ability to keep Bodner as informed as he wished to be with respect to the government investigations or any other litigation matters. *See* Werblowsky Decl. ¶ 9.

Curtis was primary counsel to PMNY and others in connection with the governmental investigations that began in 2013 and continued throughout 2016. Curtis represented PMNY in connection with the Securities and Exchange Commission ("**SEC**") Section 204 investigation that occurred during 2013-2015, which involved a full audit of the books and records maintained by PMNY in connection with PPVA. During this SEC audit, Curtis assisted PMNY in responding to the SEC's audit examination requests concerning, *inter alia*: (i) the role of Bodner and Huberfeld with PMNY; and (ii) the method of valuation for certain PPVA investments, such as its investments in Black Elk Energy Offshore Operations, LLC and Golden Gate Oil, LLC. The result of the SEC's audit was a September 22, 2015 Deficiency Letter from the SEC criticizing PMNY's valuation procedures, including the lack of a consistent methodology as to PPVA's oil and gas investments.

In 2015, Curtis was retained by PMNY and Huberfeld in connection with the U.S. Attorney's Office for the Southern District of New York's investigation of bribery payments made to the Corrections Officers Benevolent Association (the "**SDNY Investigation**"). Semmelman Decl. ¶ 16. In March 2016, Curtis learned that the SDNY Investigation had expanded into an inquiry of the relationship between Platinum and Beechwood, and the series of insider transactions effectuated between the parties. Curtis provided the investigators a summary of historical transactions between Beechwood and entities advised by PMNY, including PPVA. Semmelman Decl. ¶ 16.

[redacted]

Also, in March 2016, Curtis represented Bodner and Huberfeld in connection with the negotiation, drafting and execution of the March 20, 2016 Release Agreement (the "**Release**") executed by, among others, PMNY, Nordlicht (on behalf of PMNY and other entities), Huberfeld, and Bodner.

ARGUMENT

I. All Knowledge Obtained by Curtis in Connection with Its Representations of PMNY and Related Parties Should Be Imputed to Bodner

"Normally, the conduct of an attorney is imputed to his client, for allowing a party to 'evade the consequences of the acts or omissions of [] his freely selected agent,' 'would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent.'" *Secs. & Exch. Comm'n v. McNulty*, 137 F.3d 732, 739 (2d Cir. 1998) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962)); *see Veal v. Geraci*, 23

F.3d 722, 725 (2d Cir. 1994) ("The relationship between an attorney and the client he or she represents in a lawsuit is one of agent and principal.") (citation omitted); *see also In re Linzer*, 264 B.R. 243, 248 (Bankr. E.D.N.Y. 2001) (citing 6A N.Y. Jur. 2d Attorneys at Law § 101 (1997)) ("The general rule in agency law is that adequate notice to or actual knowledge acquired by an agent is imputed to the principal. This rule also applies to the relation of attorney and client.").

Similarly, it is "well-settled that a lawyer's knowledge is imputed to his or her client." *Eastman Kodak Co. v. Apple Inc. (In re Eastman Kodak Co.)*, 479 B.R. 280, 300 (Bankr. S.D.N.Y. 2012) (citing *Veal*, 23 F.3d at 725); *see also Chira v. Lockheed Aircraft Corp.*, 634 F.2d 664, 666 (2d Cir. 1980) (a party cannot "avoid the consequences of the actions or omissions of his chosen representatives, absent a truly extraordinary situation, as [a]ny other notion would be wholly inconsistent with our system of representative litigation") (internal quotations omitted).

Indeed, "the law presumes that an attorney communicates notice of any matter within the scope of representation to the client." *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 303 (4th Cir. 2017) (citation omitted). The attorney's knowledge is "imputed at the time their counsel receives said information--regardless as to when counsel reads such information or makes any decision based on [the] same." *L.I. Head Start Child Dev. Servs., Inc. v. Econ. Opportunity Comm'n of Nassau Cnty.*, 558 F. Supp. 2d 378, 394 (E.D.N.Y. 2008) (citation omitted).

This Court has described the attorney imputation doctrine as "black letter law." *Bailey v. Pataki*, 952 F. Supp. 2d 626, 628 (S.D.N.Y. 2013) (citing *Link*, 370 U.S. at 634) (Rakoff, J.). According to this Court, the "legal process could hardly function" if the attorney imputation principle was "not true." *Id.*; *see also N.Y. Univ. v. Autodesk, Inc.*, 495 F. Supp. 2d 369, 374 n. 4

(S.D.N.Y. 2007) (imputing attorney's knowledge to plaintiff that a trademark application had been abandoned) (Rakoff, J.)

An attorney's knowledge of a related matter can be imputed to the client in the proceeding at issue. *See, e.g., Linzer*, 264 B.R. at 248-249 (receipt of letter by creditors' securities litigation counsel concerning related bankruptcy proceeding warranted imputation of knowledge of bankruptcy proceeding to creditors); *Long v. Bd. of Governors of the Fed. Rsrv. Sys.*, 117 F.3d 1145, 1152-53 (10th Cir. 1997) (finding that an attorney's knowledge of the result of a governmental investigation is imputed to the attorney's client).

Here, one of the central issues in this case is Bodner's knowledge of the inflated value of PPVA's oil and gas investments, and the use of Beechwood to effectuate the overvaluation. Curtis had firsthand knowledge of the government's investigation of PMNY's valuation procedures as well as its investigation of the Platinum/Beechwood relationship, as well as the implications regarding PPVA's valuations attendant to the COBA fraud. Given the standing policy for Bodner to be fully briefed by Curtis concerning these investigations, any knowledge obtained by Curtis in connection with its representation of PMNY or related parties should be imputed to Bodner at trial.

WHEREFORE, Plaintiffs respectfully request that this Court issue an order granting their motion *in limine* for a ruling that all knowledge obtained by Curtis during the course of its representations of PMNY and related individuals or entities is imputed to David Bodner for purposes of the upcoming trial.

Dated: New York, New York
November 16, 2022

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