

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),

Civil Action No. 18-cv-10936 (JSR)

Plaintiffs,

- against -

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

Defendants.

**JOLS' SUPPLEMENTAL STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 56.1**

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 “**Joint Official Liquidators**”) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (“**PPVA**,” and collectively with the Joint Official Liquidators, the “**JOLs**”) respectfully submit this supplemental statement of material facts pursuant to Local Rule 56.1, and the Court’s March 27, 2020 correspondence, in opposition to Defendants’ Motions for Summary Judgment.

SUMMARY OF THE MARCH 26, 2020 DEPOSITION OF MARK NORDLICHT

1. On March 2, 2020, the Court permitted the parties to depose Defendant Mark Nordlicht (“**Nordlicht**”). (Supplemental Declaration of Richard A. Bixter Jr., dated March 31, 2020 (the “**Supp. Bixter Decl.**”), Ex. 1).¹

2. On March 26, 2020, the parties took Nordlicht’s deposition (the “**Nordlicht Deposition**”). *See* (Supp. Bixter Decl., Ex. 2 (hereinafter “**Nordlicht Tr.**”).

3. During his deposition, Nordlicht declined to testify and invoked his right against self-incrimination under the Fifth Amendment of the United States Constitution (the “**Fifth Amendment**”) roughly 550 times. *See (id., passim)*.

4. Nordlicht invoked the Fifth Amendment in response to nearly all questions, with the exception of questions concerning the Affirmation submitted by Nordlicht on February 14, 2020 (the “**Nordlicht Affirmation**”) in support of Defendant Ezra Beren’s Motion for Summary

¹ Although the Court initially ordered Nordlicht’s deposition to be held on March 11, 2020, unforeseen circumstances required the parties to mutually reschedule the deposition on March 26, 2020.

Judgment. *In re Platinum-Beechwood Litig.*, No. 1:18-cv-6658 (S.D.N.Y.) (the “**Consolidated Action**”) (ECF Nos. 736, 739). *See* (Supp. Bixter Decl., Ex. 3).²

5. As set forth in detail below, Nordlicht invoked the Fifth Amendment in response to the JOLs’ questions concerning, *inter alia*, the myriad individuals, entities, and transactions forming many, if not all, of the disputed issues between the parties as set forth in their respective Motions for Summary Judgment, Oppositions, and Replies.

6. These facts were set forth in the JOLs’ Amended Statement of Material Facts Pursuant to Local Rule 56.1, dated March 11, 2020 (the “**SOMF**”).³ *See* (Consolidated Action at ECF No. 817).

7. As a broad, non-exclusive summary, Nordlicht invoked the Fifth Amendment in response to questions concerning:

- i. Bodner’s, Huberfeld’s, and/or Fuchs’ ownership interests in Platinum Management and resulting payments (Nordlicht Tr. 19:9-20:4, 22:24-2:7, 35:3-7);
- ii. PPVA’s NAV, including but not limited to, Bodner’s, Huberfeld’s and Fuchs’ knowledge of the overvaluation of PPVA in 2015 as evidenced by the January 2015 Partner Meeting (*id.* 72:15-73:2);
- iii. The relationship between Bodner, Huberfeld, Rechnitz, and COBA, the liability of Huberfeld and Bodner to PPVA in connection with the receipt of \$1.8 million each by Huberfeld and Bodner immediately after COBA’s initial investment in PPVA in 2014, and the resulting government investigation (*id.* 24:13-25:14, 26:6-28:25, 29:3-25, 33:22-34:10);
- iv. The March 2016 Release (*id.* 34:13-35:21, 44:23-45:22, 53:14-57:8, 64:18-69:22);

² Nordlicht confirmed, among other things, that: (1) he submitted the Nordlicht Affidavit at the request of Beren; (2) someone else authored the Nordlicht Affidavit; and (3) he did not alter the text of the Nordlicht Affidavit. *See* (Nordlicht Tr. 15:16-16:20).

³ Capitalized terms not otherwise defined herein shall have the meaning set forth in the SOMF. In addition, the exhibits attached to the Amended Declaration of Richard A. Bixter, Jr. in Opposition to Defendants’ Motions for Summary Judgment (the “**Bixter Decl.**”), dated March 11, 2020 (S.D.N.Y.) (Consolidated Action at ECF No. 818), are incorporated by reference.

- v. Bodner’s, Huberfeld’s, and Fuchs’ management and control over Platinum Management, PPVA, and Beechwood (*id.* 21:3-22:4, 73:4-80:5, 84:23-85:22, 89:25-90:9, 99:5-17, 101:22-104:19, 118:19-24, 156:6-10, 279:6-12);
- vi. The purported “Chinese Wall” between Platinum Management and Beechwood (*id.* 104:21-106:4);
- vii. A redemption payment from PPVA to Fuchs disguised as a loan from HFF to Fuchs which was never repaid in full by Fuchs (*id.* 80:7-81:12);
- viii. The loans concerning Nordlicht, HFF, and Hutton Ventures (*id.* 156:25-159:25);
- ix. Huberfeld’s and Bodner’s use of Beren, their relative, to exert control over PPVA and Beechwood (*id.* 81:16-82:14, 84:23-85:22, 121:14-122:19);
- x. The Alpha Re negotiations and aborted transaction, and contemporaneous formation of Beechwood, including Huberfeld determining the terms of Beechwood (*id.* 96:24-102:15);
- xi. Platinum Management hiring Feuer and Taylor to perform due diligence on Alpha Re, their working out of the offices of Platinum Management, and subsequent installation of them as the public-facing ownership of Beechwood (*id.* 99:5-104:13);
- xii. Nordlicht’s understanding that Platinum Management and Beechwood have the same management and are [REDACTED]”⁴ (*id.* 107:15-22, 112:4-114:2);
- xiii. The July 30, 2015 email from Bodner to Harvey Werblowsky (“**Werblowsky**”) wherein Bodner expressed concern about, among other things, that CNO would find out “we invested beechwoods money into platinum with its illiquid investments (since it didn’t exactly fit their investment objective)” and that “We weren’t exactly honest with [CNO] about the original invstment or that beechwood and platinum really are integrated” (*id.* 106:5-107-14, 119:3-9, 164:2-9; *see also* Bixter Decl. Ex. 131 [CTRL7128044]);
- xiv. The Consent Solicitation, Renaissance Sale, and Black Elk Bond Buyback (*id.* 306:6-308:7, 309:4-310:6, 316:14-321:22; *see also* Bixter Supp. Decl. Ex. 12, [CTRL6323129]);
- xv. PPVA paying interest on debt owed to Beechwood (*id.* 163:6-25, 191:13-193:3, 246:23-247:8);
- xvi. The Rachmanus Email, which presented the narrative to Huberfeld and Bodner that a liquidator or trustee such as the JOLs would not consider the purported debt held

⁴ All direct quotations are [*sic*].

by Beechwood in PPVA to be valid, and thus, would have no mercy on BAM (*id.* 47:2-149:5; *see also* Bixter Decl., Ex. 50 [CTRL8011541])⁵; and

- xvii. The Agera Transactions, including Narain’s acknowledgment that on June 9, 2016, the day after the arrest of Huberfeld, the Agera Transactions needed to be completed “[REDACTED]” (*id.* 161:13-163:4; *see* Bixter Decl., Ex. 533 [BW-SHIP-00165960]).

8. In addition, Nordlicht, as the managing member of Platinum Management, repeatedly invoked the attorney-client privilege. *See* (Nordlicht Tr. 25:15-27:11, 57:11-60:17, 301:8-305:6, 306:7-314:15).⁶

9. Specifically, Nordlicht repeatedly invoked the attorney-client privilege when presented with an email concerning the March 2016 Release, which he sent only to Platinum Management co-Chief Investment Officer David Levy, and Gabriel Hertzberg (“**Hertzberg**”), an attorney at Curtis, Mallet-Prevost, Colt & Mosle (“**Curtis Mallet**”). *See* (Nordlicht Tr. 57:11-60:16; *see* Bixter Decl., Ex. 42 [CTRL7749843]).

10. Curtis Mallet represented Platinum Management, a party to the March 2016 Release, while at the same represented Bodner and Huberfeld, some of the other parties to the

⁵ *Rachmanus* is a Yiddish word that means “mercy.” *See* (SOMF ¶ 629).

⁶ The JOLs vigorously object to Nordlicht’s designation of privilege to certain emails raised in the Nordlicht Deposition. Nordlicht habitually labeled the subject line of emails to ascribe attorney-client privilege, when the email was unequivocally not privileged. For instance, in a May 20, 2014 email — involving Black Elk employees, but no counsel for Platinum Management — Nordlicht admonished a Black Elk executive for failing to invoke privilege. (*See* Bixter Supp. Decl., Ex. 9 [CTRL6179802]). The Black Elk executive who received the email responded to Nordlicht: “Nor am I sure why a business issue such as cash flow would need to be covered by attorney client privilege?” (*Id.*; *see also* Nordlicht Tr. 51:25-53-9).

However, in an abundance of caution, the JOLs have redacted the portions of this Supplemental Rule 56.1 Statement that Nordlicht has erroneously labeled as privileged. Nordlicht conceded in his deposition that, if the documents were adjudicated to be non-privileged, he would alternatively invoke the Fifth Amendment. *See* (Nordlicht Tr. 301:8-305:6, 313:14-314:14).

March 2016 Release. *See* (Nordlicht Tr. 67:15-68:19, 96:6-13; Bixter Decl., Ex. 117 [BODNER0000011]).

NORDLICHT INVOKES THE FIFTH AMENDMENT IN RESPONSE TO QUESTIONS CONCERNING MANY OF THE MOVING DEFENDANTS

11. During the Nordlicht Deposition, Nordlicht invoked the Fifth Amendment in response to questions concerning many of the moving defendants (the “**Moving Defendants**”), including Bodner, Huberfeld, Fuchs, Feuer, Taylor, Narain, HFF, and the Beechwood Entities.⁷

A. David Bodner

12. Nordlicht repeatedly invoked the Fifth Amendment in response to deposition questions concerning Bodner.

13. After defining Bodner, Huberfeld, Nordlicht, and Fuchs as the four partners of Platinum Management, the JOLs’ counsel asked Nordlicht:

Q. And all four of you had the same authority over the funds including PPVA that were managed by Platinum Management, correct?

A. Fifth.⁸

Q. And all four of you had the same duty to the fund including PPVA that were managed by Platinum Management, correct?

A. Fifth.

(Nordlicht Tr. 35:17-36:4)

⁷ The “Moving Defendants” are defined herein as Bodner, Huberfeld, Fuchs, Feuer, Taylor, Narain, HFF, and the Beechwood Entities. The “Beechwood Entities” are defined herein as B Asset Manager L.P., B Asset Manager II L.P., BAM Administrative Services LLC, Beechwood Re Investments LLC, Beechwood Re Holdings, Inc., and Beechwood Bermuda International Ltd.

⁸ During the Nordlicht Deposition, counsel agreed that for the sake of time, when invoking the Fifth Amendment, Nordlicht could respond with the short-hand “Fifth.” *See* (Nordlicht Tr. 18:4-14).

14. Likewise, Nordlicht invoked the Fifth Amendment when asked about Bodner's: (1) participation in strategy meetings and personnel decisions both at Platinum Management and Beechwood; (2) approval of PPVA and Beechwood investments; (3) overtures to PPVA investors both to solicit capital and to prevent redemptions; (4) oversight of Beren; (5) organization of meetings among Huberfeld, Nordlicht, Taylor, and Feuer during the days prior to the Consent Solicitation; and (6) motivation to complete the Agera Transactions the day following Huberfeld's arrest. *See* (Nordlicht Tr. 21:15-22:4, 75:14-80:5, 81:16-82:16, 84:23-85:22, 89:25-90:9, 102:17-104:19, 118:19-24, 121:14-122:19, 156:6-10, 161:25-163:4, 307:8-308:7, 316:14-321:22).

15. On March 10, 2016, Nordlicht described the March 2016 Release to Landesman. *See* (Bixter Decl., Ex. 472 [CTRL8323807]). Nordlicht observes that "[REDACTED]
[REDACTED]
[REDACTED]" (*Id.*).

16. The JOLs' counsel asked Nordlicht about this email:

Q. So I guess my question to you is, you knew in March of 2016, when this release was being negotiated that what [Bodner and Huberfeld] were giving up, which was their interest in Platinum Management, had no value; isn't that right?

(Nordlicht Tr. 50:21).

17. Nordlicht refused to answer this question on grounds of attorney-client privilege. *See (id. 51:7-20)*.⁹

18. On March 15, 2016, Michael Katz emailed Nordlicht to relay Bodner's demands concerning the March 2016 Release, which Katz was negotiating on behalf of his grandfather, Marcos Katz. *See* (Bixter Supp. Decl., Ex. 4 [CTRL8335477]).

⁹ As noted above, Nordlicht confirmed he would invoke the Fifth Amendment in the event the documents were deemed non-privileged.

19. According to Michael Katz, Bodner wanted a released from the Mark Nordlicht Grantor Trust “for a specific liability.” (*Id.*).

20. A few hours later, Nordlicht told Michael Katz that he called Bodner about the “specific liability” and that “I made agreement with him, doesn’t make sense to address in the [March 2016 Release] though.” (*Id.*).

21. The JOLs’ counsel asked Nordlicht about this email:

Q. Did you have some sort of agreement with Bodner about some liability even though it wasn’t in this document?

A. Fifth.

Q. And was that specific liability – have to do with the COBA fraud and that Bodner was part of it and he wanted protection in case it was investigated further; is that right?

A. Fifth.

(Nordlicht Tr. 53:14-54:18).

22. On March 17, 2016, when discussing a tax indemnity requested by Bodner in the March 2016 Release, Nordlicht told Levy: “[t]hat’s the most moronic thing I’ve ever heard ... even for them. There is no value right now to mgmt. co anyhow as evidenced by fact shares are being given away for just investment, no considerastion[.]” (Bixter Decl., Ex. 638 [CTRL8339805]).

23. The JOLs’ counsel asked Nordlicht about this email:

Q. So this is another confirmation, is it not, from you, that whatever Bodner and Huberfeld claimed to be giving up is completely valueless, has no value, is that right?

A. Fifth.

(Nordlicht Tr. 57:3-8).

24. That same day, on March 17, 2016, Nordlicht emailed Huberfeld, copying Bodner’s administrative assistant, claiming that the March 2016 Release is “not complicated

document ... I need your word that it is resolved tomorrow. I dont evem care whats in it, intrust you and will sign whatever is needed[.]” *See* (Bixter Supp. Decl., Ex. 5 [CTRL8338328]).

25. The JOLs’ counsel asked Nordlicht about this email:

Q. My question is, isn’t this true, sir, that this was not an agreement for which there was an adversarial process. You guys were all sitting on the same side. You all had the same lawyers. And that this was not done at arm’s length. This was just cooked up between you guys because there was a federal investigation going on, isn’t that right?

A. Fifth.

(Nordlicht Tr. 55:17-56:3)

26. The JOLs’ counsel asked Nordlicht about a March 18, 2016 email from Isaac Neuberger (“**Neuberger**”), counsel for Marcos Katz, with respect to the March 2016 Release, in asking Werblowsky and Levy: “ARE U SURE U WANT TO DO THIS AND CAN DO IT? HOW CAN THE FUNDS AGREE TO THIS?” *See* (Bixter Supp. Decl. Ex. 6 [CTRL7749421]).

Q. Right. What he was pointing out here is the funds couldn’t be released, but the funds were part of an agreement, nobody had any authority to do anything on the fund’s behalf; isn’t that right? And you knew that, right?

A. Fifth.

(Nordlicht Tr. 61:23-62:5).

27. On March 20, 2016, Levy sent an email to Nordlicht discussing the negotiations of the March 2016 Release: “Gabe [Hertzberg] changed his mind after Neuberger was obnoxious on his comments. Now he wants the funds to release David and Murray again. Neuberger keeps writing emails that it’s self-dealing. [Hertzberg] agreed to take it out last night. But after Neuberger was difficult he wants ot back in. I think he agreed to take it back out the whole thing is just to much.” (Bixter Supp. Decl., Ex. 29 [CTRL7752383]).

28. The JOLs counsel asked Nordlicht about the email:

Q. So let me ask you a couple of things. First of all, you knew at this point Mr. Levy here is that with regard to this release that this was just all one-sided and in fact was self-dealing and Mr. Neuberger wasn't telling you guys that; isn't that right?

A. Fifth.

Q. And also, Levy told you that, when he says I think he, being Mr. Hertzberg, agreed to take it back out, but in fact the funds were not a party to this at all, because of that self-dealing and the funds, particularly PPVA, didn't release anybody from anything; isn't that right?

A. Fifth.

(Nordlicht Tr. 65:6-24).

29. The JOLs' counsel asked Nordlicht about the July 30, 2015 email which Bodner forwarded to Werblowsky that expressed concerns that "if Ed Bonach from CNO Financial Group Finds out we invested beechwoods money into platinum with its illiquid investments ... [w]e weren't exactly honest with Ed about the original investment or that beechwood and platinum really are integrated." *See* (Bixter Decl., Ex. 131 [CTRL7128044]).

30. When asked if Nordlicht agreed that this email was consistent with Nordlicht's conduct at Beechwood, which is to "try and hide his involvement at Beechwood," Nordlicht invoked the Fifth Amendment. *See* (Nordlicht Tr. 106:20-107:14).

31. Finally, Nordlicht invoked the Fifth Amendment when asked about a January 2015 meeting attended by himself, Bodner, Huberfeld, and Fuchs, wherein Bodner characterized PPVA as overvalued:

Q. And isn't it true, sir, that in January of 2015, that at a dinner where you were present, Mr. Huberfeld was present, Mr. Bodner was present, and Mr. Fuchs was present, that Mr. Bodner challenged you and told you that in his view, the value of PPVA assets was overvalued and he was concerned that the marks were too high. Isn't it true that he told you that?

A. Fifth.

(Nordlicht Tr. 72:15-73:2).

B. Murray Huberfeld

32. Many of the questions concerning Bodner (for which Nordlicht invoked the Fifth Amendment) apply equally to Huberfeld, including but not limited to, the above questions concerning the March 2016 Release, the January 2015 meeting discussing PPVA's overvaluation, and Huberfeld's fiduciary duty to Platinum Management and PPVA, and are incorporated by reference as if set forth herein. *See supra* at pp. 5-9.

33. In addition, Nordlicht invoked the Fifth Amendment when asked about Huberfeld's: (1) participation in strategy meetings and personnel decisions both at Platinum Management and Beechwood; (2) approval of PPVA and Beechwood investments; (3) overtures to PPVA investors both to solicit capital and prevent redemptions; (4) oversight of Beren, and setting the terms of, and executing, the National Events transaction; (5) orchestration of the Renaissance Sale; (6) solicitation and management of BEOF Funds; (7) payments to Rechnitz in conjunction with the COBA investment in PPVA; and (8) instruction to Nordlicht to deposit what appears to be a \$2 million personal loan from Hutton Ventures into the account of Platinum Management. *See* (Nordlicht Tr. 21:3-14, 24:13-28:3, 73:4-75:12, 82:9-16, 84:23-85:22, 99:5-17, 101:22-104:19, 118:19-119:9, 156:6-10, 159:13-25, 296:19-301:1, 307:14-308:7, 309:5-310:6).¹⁰

34. The JOLs' counsel asked Nordlicht about the formation of Beechwood, including the [REDACTED] email sent in March 2013 by Huberfeld to Feuer and forwarded to Taylor. *See* (Bixter Decl., Ex. 300 [CNOCSL_00474299]).

Q. It says [REDACTED]
[REDACTED] This is really the structure of Beechwood. Mr. Huberfeld providing the base

¹⁰ When asked about the specifics of Huberfeld's role in the National Events transaction, Nordlicht did not take the Fifth Amendment, but disclaimed any knowledge of whether the National Events transaction constituted a "million dollar investment taken out of Beechwood off the books for this investment[.]" *See* (Nordlicht Tr. 130:17-133:13).

term for Beechwood. My question is do you have any recollection of any conversations you had with Mr. Huberfeld about setting up Beechwood?

A. Fifth.

(Nordlicht Tr. 99:8-17).

35. Concerning Huberfeld's control of Beechwood, when asked about a July 15, 2014 email to Feuer in which an executive from Senior Health Insurance Company of Pennsylvania ("SHIP") inquires: "also, in regard to the initial investment [in Beechwood], we have identified what we think [SHIP's] accounting and statutory reporting approach will be we would like to outline our thinking and see if you would agree with [SHIP's] approach. Can you tell me who I should direct that to?" *See* (Bixter Supp. Decl., Ex. 7 [CTRL4907423]).

36. Feuer forwarded this email to Huberfeld and Nordlicht with "FYI." (*Id.*).

37. Nordlicht was asked about this email by counsel for the Receiver of PPCO:

Q. And, because Feuer is sending this to you and he relied the money is going to Platinum, right?

A. Fifth.

Q. Or is he telling you this because you and Mr. Huberfeld are in charge of running Beechwood?

A. Fifth.

(Nordlicht Tr. 244:21-245:7).

38. Nordlicht also invoked the Fifth Amendment when asked about a handwritten note attached to the checks that were given to Rechnitz by Huberfeld as part of the COBA bribery scheme.

Q. My question is: did you authorize the checks to Mr. Rechnitz that were part of the criminal case and conviction of Mr. Huberfeld?

A. Fifth.

(Nordlicht Tr. 27:21-28:3)

39. Nordlicht also invoked the Fifth Amendment when asked about the diversion of \$1.8 million of the COBA investment in PPVA to Huberfeld and Bodner (among others). *See* (Bixter Decl., Exs. 437 and 440 [CTRL6311389, CTRL8126284]).

Q. So when did you learn that Mr. Bodner and Mr. Huberfeld had taken this money or received this money that was invested by COBA?

A. Fifth.

Q. Okay. Did you receive any of the money that was invested by COBA?

A. Fifth.

Q. And if these funds were treated as legitimate distributions, you would have received some of the monies, correct?

A. Fifth.

(Nordlicht Tr. 33:22-34:10).

C. Bernard Fuchs

40. Nordlicht repeatedly invoked the Fifth Amendment in response to questions during his deposition about Fuchs.

41. As noted above, Nordlicht invoked the Fifth Amendment when asked about Fuchs' duty to PPVA, as a partner of Platinum Management, and the January 2015 Partner Meeting in which Fuchs testified that Bodner claimed, during a heated argument with Nordlicht, that PPVA was overvalued, and this invocation is incorporated by reference as if set forth herein. *See supra* at pp. 5-9.

42. Concerning Fuchs' evaluation and management of assets under his control, including his membership on the board of directors of China Horizon, Nordlicht invoked the Fifth Amendment. *See* (Nordlicht Tr. 79:5-10).

43. Nordlicht invoked the Fifth Amendment when asked about Fuchs': (1) participation in strategy meetings and personnel decisions at Platinum Management; (2) supervision of PPVA's

investor relations operations in Asia; (3) overtures to PPVA investors both to solicit capital and to prevent redemptions; and (4) investment in and solicitation of investors in the BEOF Funds. *See* (Nordlicht Tr. 78:22-80:5, 279:6-12, 300:10-14).

44. In particular, Nordlicht invoked the Fifth Amendment when he was asked about a redemption from PPVA that was disguised as a loan from the HFF, a loan that remains unpaid to this day.

Q. Isn't it accurate that in 2015, Mr. Fuchs came to you and Mr. Bodner and Mr. Huberfeld and requested money from his investments in Platinum so that he could make certain charitable donations and that you guys refused to provide him money from Platinum, but what you did is you decided to give him money from the Huberfeld Family Foundation and the Bodner Family Foundation instead of giving him his money back from Platinum, isn't that correct?

A. Fifth.

Q. And this money was given to him from the foundation was disguised as loans and that as we sit here today, he still never repaid those, quote/unquote loans; is that correct?

A. Fifth.

Q. And that you and Mr. Huberfeld and Mr. Bodner used the Huberfeld Family Foundation ... [as] just another Platinum fund and to pay investors like Fuchs, make loans and do other things, but it was essentially an extension and arm or another fund of Platinum Management, isn't that right?

A. Fifth.

(Nordlicht Tr. 80:7-81:12).

45. Finally, when asked about Fuchs' management or evaluation of any PPVA assets:

Q. Did Bernard Fuchs have anything to do with the evaluating any assets under any control of Platinum partners or any of its affiliates and subsidiaries?

A. On the advice of counsel, I invoke my fifth.

(Nordlicht Tr. 279:7-12).

D. Mark Feuer, Scott Taylor, and Dhruv Narain

46. With respect to Feuer and Taylor, Nordlicht invoked the Fifth Amendment with respect to all questions from the JOLs' counsel concerning the formation of Beechwood, as epitomized by the terms of Beechwood dictated by Huberfeld to Feuer. *See* (Nordlicht Tr. 99:5-102:16).

47. In particular, Nordlicht invoked the Fifth Amendment on multiple occasions when asked about the Alpha Re negotiations, term sheets, and diligence involving Feuer and Taylor.

Q. And Mr. Feuer and Mr. Taylor, is it true, were actually working for Platinum with regard to doing due diligence on Alpha Re and the reinsurance arm you were looking to establish, isn't that right?

A. Fifth.

Q. And Mr. Feuer and Mr. Taylor actually became Platinum's reinsurance arm, isn't that right?

A. Fifth.

Q. And when Mr. Feuer and Mr. Taylor were setting up this reinsurance arm, they were working out of Platinum's offices ... correct?

A. Fifth.

...

Q. And isn't it accurate that Platinum compensated Mr. Taylor and Mr. Feuer for their work on the diligence by giving them shares in Beechwood, correct?

A. Fifth.

(Nordlicht Tr. 100:6-101:13).¹¹

48. On April 8, 2013, Nordlicht asked Levy "has Feuer started?" (Bixter Decl., Ex. 302 [CTRL4537542]). The same day, Levy confirmed that "I spoke to him Friday they meet lawyers

¹¹ Nordlicht also invoked the Fifth Amendment when asked whether Propper received an ownership interest in certain of the Beechwood Entities as a result of formulating the reinsurance idea. *See* (Nordlicht Tr. 101:15-19).

and brokers on Friday. They want to have a call this week to get set up and decide on structures.”

(*Id.*). Nordlicht instructed that “we shdnt need to do all that fixed income, graham doesn’t do it.”

(*Id.*). Graham intended to participate in the Alpha Re transaction. (*Id.*).

49. The JOLs’ counsel asked Nordlicht about this email:

Q. So this is evidence of Feuer and Taylor working at Platinum to help set up Beechwood pursuant to Huberfeld’s prior instructions?

A. Fifth. (Nordlicht Tr. 102:9-15).

50. Next, Nordlicht took the Fifth Amendment when asked about an email in which

Feuer wrote to Huberfeld [REDACTED]

[REDACTED].”

See (Bixter Decl., Ex. 363 [CNOCSL_01578961]). Feuer also says: [REDACTED]

[REDACTED]

[REDACTED]” (*Id.*).

Q. So it’s almost a year after Mr. Huberfeld wrote his email outlining how Beechwood would be set up and how these guys would be paid. [REDACTED]

[REDACTED]

[REDACTED]

A. Fifth.

Q. It’s true, Mr. Huberfeld and Mr. Bodner were running Beechwood just like they were running Platinum, correct?

A. Fifth.

(Nordlicht Tr. 103:21-104:19).

51. Nordlicht also took the Fifth Amendment when asked about a handwritten, undated agreement requiring that any payments from Beechwood to PPVA or any other fund managed by Platinum Management first repay investor redemptions. See (Nordlicht Tr. 102:23-103:20; Bixter Decl., Ex. 318 [CNOCSL_01191461]).

52. Nordlicht took the Fifth Amendment when asked by counsel for the PPCO receiver about an email in which he told Taylor and Feuer that he did not want a stranger on the Beechwood investment committee. *See* (Nordlicht Tr. 225:5-226:3; Bixter Decl., Ex. 357 [CTRL4844810]).

53. Finally, Nordlicht took the Fifth Amendment when asked about Feuer and Taylor: (1) holding meetings with Huberfeld and Bodner, including a meeting within weeks of the Consent Solicitation and Renaissance Sale; (2) knowing that PPVA made interest payments to Beechwood for Beechwood's investments and loans; (3) "taking Murray and Mr. Bodner through the CNO limits now in Feuer's office.. He just asked for the private deal summary as well;" and (4) the March 2016 Restructuring *See* (Nordlicht Tr. 114:5-116:2, 163:6-25, 191:13-193:3, 246:23-248:2, 307:14-308:7; Bixter Decl., Ex. 314 [BW-SHIP-00975449]).

54. Nordlicht took the Fifth Amendment when asked about Narain's involvement in the Agera Transactions, including emails sent by Narain on June 9, 2016, the day after Huberfeld's arrest and the day the Agera Transactions closed.

Q. June 9th, 2016, do you recall anything happening on that day or the day before, excuse me?

A. Fifth.

Q. All right. And this is titled [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A. Fifth.

Q. And this was done the day after Mr. Huberfeld was arrested, correct?

A. Fifth.

Q. And it was done because you and others, Mr. Bodner and Mr. Huberfeld to a certain extent recognized that at this point the ... walls [were] closing in on Platinum and you had to get this asset over to Beechwood and that's why [REDACTED]
[REDACTED]?

A. Fifth.

(Nordlicht Tr. 162:4-163:4).

55. Nordlicht also repeatedly invoked the Fifth Amendment when asked about the value of debt interests in PEDEVCO and PPCO, which were assigned to PGS pursuant to the Assignment Agreement. *See* (Nordlicht Tr. 121:14-122:19, 202:6-204:22; *see also* Bixter Decl., Ex. 548 [BW-SHIP-00832197]).

56. On February 4, 2015, Beren and Steinberg discussed issues with PEDEVCO paying its debt obligations to Beechwood. *See* (Bixter Decl. Ex. 558 [CTRL7661163]). Steinberg told Beren: “I ran this part by Murray and he told me ‘as long as you get me something back it will be ok’ and so I got them a cash payment [from PEDEVCO].” (*Id.*)

57. When read excerpts of this email, Nordlicht invoked the Fifth Amendment. *See* (Nordlicht Tr. 121:14-122:19).

58. With respect to PPCO, Nordlicht invoked the Fifth Amendment when asked about an email from Feuer, copying Taylor, stating that [REDACTED]. *See* (Nordlicht Tr. 204:18-22; Bixter Decl., Ex. 548; [BW-SHIP-00832197]).

E. The Beechwood Entities

59. Nordlicht invoked the Fifth Amendment when asked whether the Beechwood Entities, Platinum Management, and PPVA are affiliates. *See* (Bixter Decl., Ex. 355 [CTRL5104415]). Concerning Levy’s directive that there was a “Chinese Wall” between Platinum Management and the Beechwood Entities (*id.*):

Q. And it’s true, is it not, that you all gave the perception that these were two distinct entities that being Platinum and Beechwood, but in reality they were affiliated companies and that you and Mr. Bodner and Mr. Huberfeld ran both of them, correct?

A. Fifth.

Q. And Mr. Levy had asked that people not – that these secretaries not let folks know that you’re at Beechwood because if that were – that got out, then people would get upset, isn’t that right?

A. Fifth.

Q. And in fact, there was an email sent to Mr. Bodner a year after this, in July [2015], where the author says I’m really concerned if Ed [Bonach] from CNO Financial finds out we invested Beechwood money into Platinum with its illiquid investments, he won’t trust us, and he will take all of the approximate \$500 million in Beechwood out. That’s a concern, correct, that you had, right?

A. Fifth.

(Nordlicht Tr. 105:14-106:15)

60. Likewise, during a discussion about the overlap between the Beechwood Entities and Platinum Management in which Nordlicht told Levy, Ottensoser, and others that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” (see Bixter Decl., Ex. 336 [CTRL6214675]),

Nordlicht invoked the Fifth Amendment:

Q. Isn’t it true, sir, that at least in August of 2014, that Platinum and Beechwood were essentially that same entity with same ownership and they were affiliates?

A. Fifth.

Q. And isn’t it true, sir, that with regard to your investors, that you [were] ... not honest with them that Beechwood and Platinum are in fact integrated?

A. Fifth.

(Nordlicht Tr. 113:14-114:2).

61. On August 27, 2015, Beren emailed a third-party, attaching marketing materials, and explained that: “[s]ome of the principals of PMNY are also shareholders of a second investment company named B Asset Manager/Beechwood Re, which provides asset management

for insurance companies ... The compensation terms for [portfolio managers] are the same for investments taken by PPVA, PPCO, and Beechwood. So in essence Steinberg and Beren are [portfolio manager's] for PPVA, PPCO and Beechwood. Same principals, just different sources of capital." *See* (Bixter Decl., Ex. 355 [CTRL8802198]).

62. The JOLs' counsel asked Nordlicht about this email:

Q. That's correct, right? These two entities, Beechwood and Platinum, and the fund of PPVA, are affiliates, right? They're essentially the same, run by the same people, managed by the same people, just different sources of capital?

A. I'm going to plead the fifth on that.

(Nordlicht Tr. 120:11-20).

63. Nordlicht also invoked the Fifth Amendment when asked about a Proper email in which he described Nordlicht as "Mark runs a hedge fund called Platinum Partners, as well as a re-insurance company called Beechwood Re" *See* (Nordlicht Tr. 230:9-232:4; Bixter Supp. Decl., Ex. 8 [CTRL6338808]).

64. Nordlicht also invoked the Fifth Amendment when asked about various transactions involving the Beechwood Entities and PPVA, including the Black Elk Scheme and the Black Elk Bond Buyback:

Q. Is it safe to assume that you would invoke your Fifth Amendment right with respect to any questions that I might ask you about Black Elk?

A. Yes.¹²

...

Q. And then at the top, Mr. Huberfeld writes, checkout the Black Elk deal I sent you. Great interest rate plus shares is upside. We are moving ahead on the deal. If you want to speak to David Levy, he can take you through the deal. I'll ask you again, were you aware that Mr. Huberfeld in 2013 was out soliciting investors for Black Elk?

¹² Counsel for SHIP asked this question.

A. Fifth.

Q. Were you aware that he was marketing the Black Elk deal, I'm quoting here, quote, outside the regular funds, end quote?

A. Fifth.

Q. Do you know why this Black Elk investment, this particular one, was outside of Platinum and just [a] regular investment?

A. Fifth.

...

Q. So this was now the Black Elk bonds being sold back to PPVA from Beechwood after the consent solicitation, correct?

A. Fifth.

Q. All right. And you're buying them back now at par, right?

A. Fifth.

Q. Even though you know at this point that Black Elk is in deep, deep financial trouble and eventually goes under just a few months later, correct?

A. Fifth.

Q. This is how you were transferring money from PPVA to the benefit of Beechwood, correct?

A. Fifth.

(Nordlicht Tr. 275:5-9, 297:22-299:3, 320:7-321:6); *see also* Supp. Bixter Decl., Exs. 11, 13 & 14 [CTRL3783238, CTRL6129363, CTRL5970061]).

65. In addition to his response about Narain's June 9, 2016 email imploring the parties to fund the Agera Transactions "[REDACTED]" Nordlicht invoked the Fifth Amendment when responding to other questions concerning the Agera Transactions. *See* (Bixter Decl., Ex. 511 [CTRL7889136]).

Q. This has to do with an email exchange between you and Mr. Steinberg, and you ask, did we put in EBIDTA multiple on Agera or was it a set price. And he responds fixed price. 208 minus debt plus cash. Do you remember working with Mr. Steinberg on the pricing of the Agera transaction?

A. Fifth.

(Nordlicht Tr. 161:13-24).

F. Huberfeld Family Foundation

66. As explained in detail above, Nordlicht invoked the Fifth Amendment when pressed about: (1) the March 2016 Release; and (2) the unsatisfied “loan” to Fuchs from HFF and the Bodner Family Foundation, and this invocation is incorporated by reference as if set forth herein. *See supra* at pp. 5-9, 13.

67. In addition, Nordlicht invoked the Fifth Amendment when asked about the HFF investment into the BEOF Funds, which HFF had rolled over in early 2014:

Q. Do you have an independent recollection that Mr. Fuchs had invested a million dollars into this Black Elk investment?

A. Fifth.

Q. Okay. Is it the same for the Huberfeld Family Foundation?

A. Fifth.

Q. Do you have any reason why Mr. Huberfeld only invested from the foundation and not from his own individual assets?

A. Fifth.

(Nordlicht Tr. 300:10-22).

68. Nordlicht also repeatedly invoked the Fifth Amendment when asked about a loan he received from Hutton Ventures:

Q. Now, you got loans, you as Mark Nordlicht in your individual capacity, got loans from Hutton Ventures, is that correct?

A. Fifth.

Q. These loans that you got were backed by the Huberfeld Family Foundation; is that correct?

A. Fifth.

Q. And the interest payments for the loans that you got were made by PPVA; is that correct?

A. Fifth.

Q. So, in essence, PPVA was paying the loan expenses to the Huberfeld Family Foundation for a loan you received, right?

A. Fifth.

...

Q. So the question I have is why didn't PPVA just get a loan from the Foundation? Why did you have to have it done in such a way?

A. Fifth.

Q. Did you conduct the loan in this way so as to disguise the PPVA payments to the Huberfeld Family Foundation?

A. Fifth.

(Nordlicht Tr. 157:16-159:3); *see also* (Bixter Supp. Decl., Ex. 10 [CTRL7593402]).

NORDLICHT INVOKES THE ATTORNEY-CLIENT PRIVILEGE OVER PLATINUM MANAGEMENT'S OUTSIDE COUNSEL ABOUT THE MARCH 2016 RELEASE

69. Curtis Mallet claimed it only represented Huberfeld and Bodner, and not Platinum Management, for purposes of the March 2016 Release, even though “[h]istorically ... we have been and continue to be counsel to Platinum Management.” *See* (Bixter Decl., Ex. 117 [BODNER0000011]).

70. To that end, Curtis Mallet prepared a memorandum to Platinum Management's in-house counsel Suzanne Horowitz and Werblowsky, dated March 20, 2016, claiming that Curtis Mallet “received conflict waivers from all parties involved [in the March 2016 Release].” (*Id.*).

71. On March 18, 2016, when discussing the March 2016 Release, Nordlicht emailed Levy and Hertzberg: “I do not personally guarantee the indemnity. I don't know why anyone would think I would. I obviously cant be responsible for David and Murray's misconduct. Please remove that section” (the “**Curtis Mallet Email**”). *See* (Bixter Decl., Ex. 42 [CTRL7749843]).

72. Levy, Nordlicht, and Hertzberg are the only parties to the Curtis Mallet Email. (*Id.*)

73. When asked about the Curtis Mallet Email, Nordlicht repeatedly invoked attorney client privilege, purportedly in his capacity as Managing Member of Platinum Management. *See* (Nordlicht Tr. 57:11-60:16).

74. This exchange typified Nordlicht's assertion of privilege over the Curtis Mallet Email:

Q. Can you tell me what misconduct you were referring to [in the Curtis Mallet Email] that was committed by Mr. Bodner and Mr. Huberfeld?

A. I will not answer questions of privileged communications on the advice of counsel.

Q. So you're taking the Fifth Amendment on that?

A. No. I'm not. I'm not answering the question based on it being privileged.

Q. Okay. Isn't it true that the misconduct you were referring to here is – well, let me ask you this: [y]ou're asserting privilege over that communication; is that correct?

A. Yes.

...

Q. I want to make sure I understand why you're asserting privilege. Isn't it because – there's only one lawyer on that communication. That's Mr. Hertzberg. And you're communicating to him. And you refuse to answer my question because you claim it's privileged. ... I want to make sure I understand that it's privileged because at this time, Mr. Hertzberg was representing Platinum Management, is that what you're saying? Is that your position?

A. I'm asserting privilege.

(Nordlicht Tr. 58:5-22, 59:18-60:5).

75. After multiple breaks in the Nordlicht Deposition, Nordlicht asked to "correct" his previous privilege assertions in response to the Curtis Mallet Email, purportedly because "I now recall that they did not represent me on [the March 2016 Release], therefore I'm invoking the fifth and releasing my objection to privilege on that particular matter." (Nordlicht Tr. 93:6-24).

76. Nordlicht repeated his invocation of the Fifth Amendment in response to the Curtis

Mallet Email:

Q. Okay. And so you had previously responded that you refused to answer because you had a privilege with Mr. Hertzberg at that time and so now you're claiming that that's not a privileged communication there; is that correct?

A. I'm not objecting based on privilege. I'm invoking the Fifth.

(Nordlicht Tr. 95:2-10).

77. Nordlicht admitted that Curtis Mallet represented Platinum Management for "different matters." *See* (Nordlicht Tr. 96:6-13).

Dated: Chicago, Illinois
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