

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION

Master Docket No. 1:18-cv-06658-JSR

MARTIN TROTT and CHRISTOPER 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),

Case No. 1:18-cv-10936-JSR

Plaintiffs,

-v-

PLATINUM MANAGEMENT (NY) LLC,  
et al.,

Defendants.

**REPLY DECLARATION OF DONALD H. CHASE IN FURTHER SUPPORT OF THE  
HUBERFELD FAMILY FOUNDATION, INC.'S MOTION TO DISMISS  
THE FIRST AMENDED COMPLAINT**

I, Donald H. Chase, declare as follows:

1. I am a member of Morrison Cohen LLP, counsel for defendant Huberfeld Family Foundation, Inc. (the "Foundation") in the above-captioned consolidated action. Unless otherwise specified, I have personal knowledge of the facts set forth below.

2. I submit this declaration in further support of the Foundation's motion, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), to dismiss the First Amended Complaint in the action styled *Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) v. Platinum Management (NY) LLC, et al.*, Case No. 18-cv-10936 (JSR).

3. Attached hereto as Exhibit 1 is a true and correct copy of the Order of Dismissal with Prejudice of Huberfeld Family Foundation Inc., filed in the action styled, *Richard Schmidt, Litigation Trustee vs. The Huberfeld Family Foundation Inc. and Twosons Corporation*, Case No. 18-03386 (Bankr. S.D. Tex.) (the “Order of Dismissal”). The Order of Dismissal is also publicly available through the Official Court Electronic Document Filing System for the U.S. Bankruptcy Court, Southern District of Texas.

4. In relevant part, the Order of Dismissal “dismiss[es] with prejudice all claims against Defendant Huberfeld Family Foundation Inc. . . . Accordingly, the Court orders that all of the Trustee’s claims against Defendant Huberfeld Family Foundation Inc. are dismissed with prejudice.” (*See* Exhibit 1.)

5. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff’s Supplement to Motion for Entry of Default Judgment against, *inter alia*, PPVA (with exhibits), filed in the action styled *Richard Schmidt, Litigation Trustee v. Platinum Partners Value Arbitrage Fund LP, et al.*, Case No. 16-AP-3237 (Bankr. S.D. Tex.) (the “Motion For Default Judgment Against PPVA”). Exhibit 2 is also publicly available through the Official Court Electronic Document Filing System for the U.S. Bankruptcy Court, Southern District of Texas.

6. Exhibit A to the Motion For Default Judgment Against PPVA contains a “Settlement Agreement” by and among Richard Schmidt, Trustee of the Black Elk Energy Offshore Operations, LLC Litigation Trust, on the one hand, and PPVA, on the other hand. *See* Exhibit 2 at 6. In relevant part, as part of the Settlement Agreement, Black Elk contended that “PPVA was the recipient of fraudulently transferred funds of Black Elk totaling US\$15,332,672.97” (*see* Settlement Agreement, Recital ¶ 10), and PPVA agreed not to oppose

Black Elk's Motion for Default Judgment Against PPVA for that amount (Settlement Agreement ¶¶ 1.1-1.2).

7. As set forth in the minute entry, filed under docket entry 120 on the docket for Case No. 16-AP-3237, the Court granted the Motion For Default Judgment Against PPVA on September 20, 2018.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 15, 2019

  
Donald H. Chase

# **Exhibit 1**



ENTERED  
02/06/2019

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	
BLACK ELK ENERGY OFFSHORE	§	CASE NO. 15-34287 (MI)
OPERATIONS, LLC	§	
	§	
DEBTOR.	§	CHAPTER 11
	§	
RICHARD SCHMIDT, LITIGATION TRUSTEE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	ADVERSARY NO. 4:18-AP-03386
	§	
HUBERFELD FAMILY FOUNDATION INC. AND	§	
TWOSONS CORPORATION,	§	
	§	
DEFENDANTS.	§	

**ORDER OF DISMISSAL WITH PREJUDICE OF  
HUBERFELD FAMILY FOUNDATION INC.**

Pending before the Court is the Motion of Plaintiff Richard Schmidt, Trustee for the Black Elk Litigation Trust (the "Trustee") to dismiss with prejudice all claims against Defendant Huberfeld Family Foundation Inc. The Court finds and holds that the Motion should be granted. Accordingly, the Court orders that all of the Trustee's claims against Defendant Huberfeld Family Foundation Inc. are dismissed with prejudice. The parties will bear their own attorney fees, costs and expenses. Trustee's claims against all other Defendants remain pending.

SIGNED on 2-6, 2019.

  
\_\_\_\_\_  
U.S. BANKRUPTCY JUDGE MARVIN ISGUR

## **Exhibit 2**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE:	§	
	§	
BLACK ELK ENERGY OFFSHORE	§	CASE No. 15-34287 (MI)
OPERATIONS, LLC	§	
	§	
DEBTOR.	§	CHAPTER 11
	§	
RICHARD SCHMIDT, LITIGATION TRUSTEE,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	
	§	ADVERSARY No. 4:16-AP-3237
PLATINUM PARTNERS VALUE ARBITRAGE	§	
FUND LP, PLATINUM PARTNERS CREDIT	§	
OPPORTUNITIES MASTER FUND LP, PLATINUM	§	
PARTNERS LIQUID OPPORTUNITIES MASTER	§	
FUND LP, AND PPVA BLACK ELK (EQUITY)	§	
LLC,	§	
	§	
DEFENDANTS.	§	

**PLAINTIFF’S SUPPLEMENT TO MOTION FOR ENTRY OF DEFAULT JUDGMENT**

Pursuant to FRCP 55(b)(2), made applicable to this adversary proceeding by Rule 7055 of the Federal Rules of Bankruptcy Procedure, Plaintiff Richard Schmidt, Trustee (“Trustee”), files this Supplement to his Motion for Entry of Default and Default Judgment (Dkt. No. 94) against Defendants Platinum Partners Value Arbitrage Fund LP (“PPVA”) and PPVA Black Elk (Equity) LLC (“PPVABE”).

**General Statement of Relief Sought**

The Trustee seeks to modify his Motion for Entry of Default Judgment against only one of the two remaining Defendants in this adversary proceeding: PPVA. The Motion is based on the approval by the Grand Court of Cayman Islands of a settlement between PPVA and the

Trustee in which the Trustee agreed to limit the amount he sought by default judgment against PPVA to \$15,332,672.97, while preserving his right to litigate the Trustee's remaining claims against PPVA at a later date. The Trustee maintains his remaining claims against PPVA for the full amount set forth in the Trustee's Original Complaint and does not seek any modification over the motion for default judgment against PPVABE.

### **Procedural Background**

1. On December 12, 2017, the Trustee filed his original Motion for Default and for Judgment against PPVA and PPVABE, seeking entry of a default judgment against each of them, jointly and severally, for, among other things, recovery of \$97,959,854.79 fraudulently transferred from Debtor Black Elk Energy Offshore, LLC ("Black Elk").

2. PPVA is in official liquidation in a proceeding styled *In re Platinum Partners Value Arbitrage Fund L.P.* (In Official Liquidation), Cause No. FSD 131 of 2016, In the Financial Services Division of the Grand Court of the Cayman Islands (the "Cayman Liquidation Proceeding").

3. Effective March 13, 2018, the Trustee and the Joint Official Liquidators of PPVA appointed by the Court in the Cayman Liquidation Proceeding (the "JOLs") entered into a settlement agreement (the "Settlement Agreement"), pursuant to which, among other things, (i) the Trustee agreed to limit the relief he seeks through his Motion for Default Judgment against PPVA to a request for entry of a money judgment in the amount of \$15,332,672.97, (ii) the Trustee retained his right to seek a default judgment against PPVABE for all relief asserted against it, as originally requested in the Trustee's Motion, (iii) the Trustee reserved his right to litigate his claims for additional relief against PPVA asserted in this adversary proceeding at a later date, and (iv) the JOLs agreed not to cause PPVA or PPVABE to oppose entry of a default



judgment consistent with the Trustee's Motion as herein modified. A copy of the Settlement Agreement is attached hereto as Exhibit A.

4. The Settlement Agreement was subject in its entirety to approval of the Court in the Cayman Liquidation proceeding, which was granted on July 5, 2018. A copy of the Cayman Court's approval order is attached as Exhibit B.

#### **Modified Request for Entry of Default Judgment**

5. Based on the foregoing, the Trustee hereby modifies his request for entry of a default judgment as to PPVA such that the Trustee seeks entry of a default judgment against PPVA in the amount of \$15,332,672.97. The Trustee's request for entry of a default judgment against PPVABE is in no way modified by this Supplement, and the Trustee expressly reserves his right to seek additional relief against PPVA on his remaining claims.

#### **Conclusion**

For the foregoing reasons, the Trustee respectfully requests that the this Court enter default judgment against PPVA as re requested herein and against PPVABE as requested in the Trustee's original Motion, and grant the Trustee such other and further relief to which he may be justly entitled.

Dated: September 17, 2018

Respectfully submitted,

By: /s/ Craig Smyser

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dcurry@okinadams.com

**ATTORNEYS FOR TRUSTEE**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing motion was served on counsel for Defendants in accordance with Rule 7005 of the Federal Rules of Bankruptcy Procedure on the 17th day of September, 2018.

/s/ Craig Smyser

Craig Smyser

# **EXHIBIT A**

### Settlement Agreement

This Settlement Agreement (the "Agreement") is entered into by and among the following individuals and entities (each individually a "Party" and collectively the "Parties"), effective as of March 13, 2018 (the "Effective Date"):

Richard Schmidt, Trustee (the "Trustee") of the Black Elk Energy Offshore Operations, LLC Litigation Trust (the "Trust"),

and

Christopher Barnett Kennedy and Martin Nicholas John Trott, Joint Official Liquidators (the "JOLs") for Platinum Partners Value Arbitrage Fund, L.P. (now in official liquidation) ("PPVA").

### Recitals

1. On August 11, 2015, three petitioning creditors filed an involuntary bankruptcy petition against Black Elk Energy Offshore Operations, LLC ("Black Elk") under Chapter 7 of Title 11 of the United States Code in an action styled *In re Black Elk Energy Offshore Operations, LLC*, Case No. 15-34287, in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Case").
2. On September 1, 2015, the court entered an order on Black Elk's motion converting the Bankruptcy Case into a voluntary case under Chapter 11 of the Bankruptcy Code.
3. On January 15, 2016, PPVA filed a proof of claim in the Bankruptcy Case based upon its ownership of 13.75% Black Elk Second Lien Notes in an aggregate principal amount of US\$22,622,000.00 (the "Senior Secured Notes").
4. On June 20, 2016, Black Elk filed its Third Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code (the "Plan") in the Bankruptcy Case.
5. On July 14, 2016, the court entered an order in the Bankruptcy Case confirming the Plan under Chapter 11 of the Bankruptcy Code (the "Confirmation Order").
6. Among other things, the Plan provided for the establishment of the Trust, to which Black Elk's claims against PPVA and other entities operating under the umbrella Platinum Partners were transferred.
7. Pursuant to the Plan, Richard Schmidt was duly appointed as Trustee of the Trust.
8. On October 26, 2016 the Trustee filed an Original Complaint and Application for Emergency Relief in an adversary proceeding in the Bankruptcy Case assigned Case No. 16-3737 (the "Adversary Proceeding").
9. The Defendants in the Adversary Proceeding included PPVA and PPVA Black Elk (Equity) LLC ("PPVABE"), and two other Platinum-affiliated entities.

10. The Trustee asserts claims against PPVA and PPVABE in the Adversary Proceeding for, among other things, recovery of fraudulent conveyances, avoidance of preferential payments, equitable subordination of claims these entities have made in the Bankruptcy Case, and alter ego, whereby the Trustee claims PPVA, PPVABE and the other Defendants are jointly and severally liable for all of Black Elk's outstanding, unpaid claims, which, based on proofs of claim filed in the Bankruptcy Case, presently exceed \$100 million. The Trustee also contends, among other things, (i) PPVA was the recipient of fraudulently transferred funds of Black Elk totaling US\$15,332,672.97 (the "Direct PPVA Transfer"), (ii) PPVABE was the recipient of fraudulently transferred funds of Black Elk totaling US\$32,563,819.73, (iii) New Mountain Finance Corp. was the recipient of US\$20,462,777.78 in fraudulently transferred funds of Black Elk, in satisfaction of a financial obligation of PPVA and PPVABE, and (iv) other Platinum-affiliated entities were the recipients of fraudulently transferred funds of Black Elk totaling US\$29,600,584.31. PPVA disputes the Trustee's claims.
11. On August 23, 2016, PPVA filed a voluntary petition for the winding up of its business in the Grand Court of the Cayman Islands, which commenced an action styled *In re Platinum Partners Value Arbitrage Fund L.P. (In Official Liquidation)*, Cause No. FSD 131 of 2016, in the Financial Services Division of the Grand Court of the Cayman Islands (the "Cayman Liquidation Proceeding").
12. The court in the Cayman Liquidation Proceeding initially appointed Christopher Barnett Kennedy and Matthew James Wright as joint official liquidators of PPVA. Matthew James Wright subsequently resigned his position as joint official liquidator of PPVA and was replaced by further court order in the Cayman Liquidation Proceeding by Martin Nicholas John Trott.
13. On October 18, 2016, the PPVA filed a petition for recognition of a foreign proceeding under Chapter 15 of the U.S. Bankruptcy Code, commencing an action styled *Platinum Partners Value Arbitrage Fund L.P.*, Case Number: 16-12925-scc, in the United States Bankruptcy Court for the Southern District of New York (the "Chapter 15 Proceeding").
14. On November 11, 2016, the Trustee and the original JOLs entered into a letter agreement providing, among other things, that (i) the Trustee would not oppose PPVA's petition in the Chapter 15 proceeding and (ii) the JOLs agreed to litigation of the Trustee's claims in the Adversary Proceeding before the U.S. Bankruptcy Court for the Southern District of Texas, (iii) the JOLs agreed to support admission of a claim by the Trustee in the Cayman Liquidation Proceeding in an amount equal to whatever money judgment was entered in the Adversary Proceeding, and (iv) the Trustee agreed not to execute on any judgment entered in the Adversary Proceeding absent leave of court in the Chapter 15 Proceeding and the Cayman Liquidation Proceeding.
15. On November 23, 2016, the court in the Chapter 15 Proceeding entered an order granting PPVA's petition for recognition of the Cayman Liquidation Proceeding as a foreign main proceeding (the "Recognition Order"). The Recognition Order stayed litigation against PPVA, including the Adversary Proceeding.

16. On March 15, 2017, the court in the Chapter 15 Proceeding entered an order partially lifting the stay imposed by the Recognition Order for the limited purpose of permitting the Trustee to proceed with reducing his claims against PPVA in the Adversary Proceeding to judgment, but prohibiting the Trustee's execution on any such judgment absent leave of court in the Chapter 15 Proceeding and the Cayman Liquidation Proceeding.
17. On July 21, 2017, the court in the Cayman Liquidation Proceeding entered an order permitting the Trustee to proceed with his claims against PPVA in the Adversary Proceeding.
18. On December 12, 2017, the Trustee filed a Motion for Default Judgment (the "Default Motion") against PPVA and PPVABE in the Adversary Proceeding. The Trustee has agreed to extend PPVA's deadline to respond to the Default Motion to January 30, 2018.

In order to avoid the cost, expense, and uncertainty of litigation, the Parties hereby agree as follows:

#### **Agreement of the Parties**

In consideration of the agreements and actions set forth in the recitals and the mutual covenants set forth herein, the receipt and sufficiency of which the Parties each hereby acknowledge, the Parties agree as follows:

**1. Modification of, and Non-Opposition to, Default Motion.**

1.1. Within five (5) days of the Cayman Court Approval Date (as hereinafter defined), the Trustee shall file a supplement to the Default Motion stating that the Trustee amends and restates the Default Motion insofar as it seeks judgment against PPVA to limit the amount of the judgment sought against PPVA to US \$15,332,672.97 (the "Agreed Judgment Amount"), based on the Trustee's claim for recovery of the Direct PPVA Transfer (the "Modified Default Motion"). The Modified Default Motion will continue to seek a judgment against PPVABE for the full amount of the Trustee's claims against PPVABE as set forth in the Trustee's Original Complaint in the Adversary Proceeding, and will be without prejudice to the Trustee's right to pursue additional claims in excess of the Agreed Judgment Amount.

1.2. The JOLs and PPVA agree not to oppose, and not to cause or induce PPVABE or any other party to oppose, (i) the Modified Default Motion or (ii) the entry and severance by the court in the Adversary Proceeding of a judgment that is consistent with the relief requested in the Modified Default Motion and that awards monetary relief against PPVA in an amount no greater than the Agreed Judgment Amount.

1.3. The JOLs and PPVA agree not to appeal, collaterally attack, or otherwise seek to set aside on any basis, and not to cause or induce PPVABE or any other party to appeal, collaterally attack, or otherwise seek to set aside on any basis, in any jurisdiction, any default judgment entered by the court in the Adversary Proceeding that is consistent with the relief requested in the Modified Default Motion and that does not award monetary relief against PPVA in excess of the Agreed Judgment Amount, provided, however, that PPVA reserves for itself and

any relevant subsidiaries aside from PPVABE the right to defend against the claims other than the Agreed Judgment Amount that is the subject of the Modified Default Motion on any bases other than those expressly precluded by Paragraph 2.1 hereof.

**2. Preservation of the Trustee's Remaining Claims and PPVA's Defenses Thereto.**

2.1. The JOLs and PPVA agree that, in the event the court in the Adversary Proceeding enters a partial default judgment as requested in the Modified Default Motion, (i) the Trustee shall be free to pursue any and all claims asserted against PPVA in the Trustee's Original Complaint in the Adversary Proceeding other than the claim for recovery of the Direct PPVA Transfer (the "Retained Trustee Claims"), and (ii) the JOLs and PPVA shall not argue, or cause or induce any other party to argue, in any future proceedings, whether in the Adversary Proceeding or otherwise, in any jurisdiction, that the entry of a partial default judgment on less than all of the Trustee's claims against PPVA precludes the Trustee's continued assertion of the Retained Trustee Claims for any reason, including but not limited to on the basis of claim or issue preclusion or any similar doctrine.

2.2. Except as expressly provided in Section 2.1 hereof, PPVA reserves and retains for itself and any subsidiary entity other than PPVABE any and all defenses to any Retained Trustee Claims.

**3. Litigation of Retained Trustee Claims.**

3.1. The JOLs agree to cause PPVA to file an answer to or motion to dismiss the Retained Trustee Claims in the Adversary Proceeding on or before the earlier of (i) February 1, 2019 and (ii) thirty (30) days following the JOLs' first material dollar recovery for the benefit of PPVA unsecured creditors (the Parties understand and agree that, as used in this paragraph, the phrase "material dollar recovery" shall mean any recovery in excess of \$500,000). The JOLs will inform the Trustee within three (3) business days of the first such material dollar recovery. The Trustee shall not seek a default judgment on the Retained Trustee Claims so long as the JOLs cause PPVA to file an answer to or motion to dismiss those claims on or before the deadline specified in this paragraph.

3.2. The Trustee agrees that he will seek no discovery from PPVA in the Adversary Proceeding on or before the date the court in the Adversary Proceeding enters an order disposing of the Modified Default Motion. In the event that the court in the Adversary Proceeding enters a default judgment consistent with the Modified Default Motion, all matters relating to the Retained Claims, including discovery, shall be stayed from the date of entry of such default judgment until PPVA's deadline to file an answer or motion to dismiss concerning the Retained Claims specified in Paragraph 3.1 hereof. Nothing herein shall preclude the Trustee from seeking discovery in the Adversary Proceeding from any person or entity relating to (i) any claims presently or hereafter asserted in the Adversary Proceeding against any party other than PPVA, (ii) any intervention in the Adversary Proceeding filed by Credit Suisse or any other party, or (iii) the Trustee's pursuit of relief permitted under Paragraph 4.1 hereof. In the event that the Trustee pursues any discovery in the Adversary Proceeding at any time, PPVA shall have the right to participate in any such discovery, including any depositions the Trustee may take prior to PPVA's answer date in the Adversary Proceeding. PPVA reserves the right to

object to the admissibility of any documentary or testimonial evidence discovered before PPVA's answer date in the Adversary Proceeding on any basis, provided however, that PPVA shall not object to the admissibility of deposition testimony on the ground that it was obtained prior to PPVA's answer date in the Adversary Proceeding if further testimony of the deponent is unavailable (including but not limited to the deponent's refusal to testify on Fifth Amendment grounds) following PPVA's answer date in the Adversary Proceeding. PPVA reserves the right to seek to redepose any witness deposed by the Trustee prior to PPVA's answer date in the Adversary Proceeding, and the Trustee shall not oppose any effort by PPVA to redepose any such witness after the answer date.

3.3 Nothing herein is intended to modify the rights and defenses or objection of the Trustee, the JOLs, or PPVA, including but not limited to PPVA's defenses to discovery based upon the automatic stay in effect in the United States and in Cayman, in respect of discovery in connection with any legal proceeding other than the Adversary Proceeding or any other action in which any of the Retained Claims are asserted.

3.4 Nothing herein waives, relinquishes, or prejudices the Trustee's right to challenge on any basis any lien, possessory or ownership interest, or any other rights claimed by any party, including but not limited to Credit Suisse, relating to the Senior Secured Notes.

**4. Non-Objection to Relief Concerning Senior Secured Notes and Black Elk Litigation Trust Assets.**

4.1. The JOLs and PPVA agree not to oppose, or to cause or induce any other person to oppose, any relief the Trustee may hereafter seek in any court and/or against any person relating to the Senior Secured Notes in the possession and control of Credit Suisse, including but not limited to injunctive relief against Depository Trust Company and/or Delaware Trust Company, so as to prevent the distribution of funds from the Trust directly or indirectly to or for the benefit of PPVA, Credit Suisse, any successor-in-interest to Credit Suisse, any other Platinum entity, or any person asserting any interest in any Senior Secured Notes by, through or on account of Senior Secured Notes currently or previously held by PPVA or any other Platinum entity that are in the possession and control of Credit Suisse or any successor-in-interest to Credit Suisse. The JOLs and PPVA represent that to the best of their knowledge, all Senior Secured Notes are in the possession and control of Credit Suisse. The JOLs and PPVA agree that the pursuit of any action by the Trustee to prevent distributions as described in this paragraph shall not constitute execution or attachment of assets of PPVA.

4.2. With the sole exception of the Senior Secured Notes described in paragraph 4.1 and the prospective actions by the Trustee described in paragraph 4.1 concerning distributions from the Trust on account of Senior Secured Notes, and/or any claim the holder of the Senior Secured Notes may have upon any portion of the assets of the Trust, nothing herein constitutes or should be construed to constitute a waiver of the Chapter 15 Proceeding stay, the Cayman Liquidation Proceeding stay or a consent by PPVA or the JOLs to the Trustee's execution upon or attachment of any assets or property of PPVA or any of its affiliates or subsidiaries other than PPVABE, regardless of where such assets or property may be located and regardless of who may presently have possession of such assets or property, and the stays against execution or



attachment imposed in the Cayman Liquidation Proceedings and Chapter 15 Proceedings shall otherwise be in full effect.

4.3. Apart from the relief specified in Sections 4.1 hereof, the Trustee shall not seek any emergency injunctive relief or other provisional relief against PPVA or otherwise seek to execute on or seize assets of PPVA or any PPVA subsidiary (other than PPVABE) other than on motion to the court in the Chapter 15 Proceeding or the court in the Cayman Liquidation Proceeding.

**5. Claims Allowance.**

5.1. The JOLs stipulate and agree that the Trustee shall have an admitted unsecured creditor claim in the amount of the Agreed Judgment Amount in the Cayman Liquidation Proceeding in connection with the Modified Default Motion, and such admitted claim of the Trustee shall be treated *pari passu* with the claims of similarly situated unsecured creditors under Cayman Islands law.

5.2. The JOLs and PPVA agree that, in the event that a final judgment in the Trustee's favor on the Retained Trustee Claims is issued in the Adversary Proceeding and is no longer subject to further appeal, the JOLs shall immediately admit the full amount of that final judgment as an unsecured creditor claim of the Trustee in the Cayman Liquidation Proceeding, and any such admitted claim of the Trustee shall be treated *pari passu* with the claims of similarly situated unsecured creditors under Cayman Islands law.

5.3. The Trustee may seek post-liquidation interest on the claims specified in Sections 5.1 and 5.2 hereof to the extent permitted under Cayman law.

6. **Court Approval.** Apart from the parties' obligations specified in the remainder of this Section 6, this Agreement is conditional in its entirety upon the court in the Cayman Liquidation Proceeding granting an order sanctioning the JOLs' power to enter into this Agreement (the "Sanction Order"). The JOLs and PPVA agree to make an application to the court in the Cayman Liquidation Proceeding for the Sanction Order not later than ten (10) business days after the Effective Date and to take all such actions as are reasonably practicable to maximize the likelihood that the Sanction Order is granted. Without limitation of the foregoing, the JOLs, PPVA, and the Trustee agree not to object to, or to cause or induce any other party to object to, the application for the Sanction Order. The date on which the court in the Cayman Liquidation Proceeding seals the Sanction Order is referenced herein as the Cayman Court Approval Date.

7. **Counterparts.** This Agreement may be executed in multiple counterparts, and an electronic or facsimile copy of a signature hereto shall have the same force and effect as an original signature.

8. **Merger and Waiver of Reliance.** The parties acknowledge and agree that this Agreement contains the entire agreement between the Trustee, the JOLs on behalf of themselves and PPVA, and that this Agreement supersedes all prior representations, warranties and agreements, whether written or oral, regarding the subject matter of, or relating to this Agreement. The Parties have entered into this Agreement freely and without duress after having consulted with professionals of their choice. Each Party expressly warrants and represents that

no promise or agreement that is not expressed in this Agreement has been made to such Party as an inducement to execute this Agreement and that such Party is not relying upon any such statement or representation of any person other than those expressly stated in this Agreement. In entering into this Agreement, the Parties each expressly disclaim and waive any reliance on any written or oral representations, other than those expressly stated herein. The Parties further represent that their respective counsel have read and explained to each of them the entire contents of this Agreement as well as its legal consequences. This Merger and Waiver of Reliance clause is not a boilerplate provision and has been specifically negotiated by the Parties.

9. **Further Acts.** Each Party shall do and perform, or shall cause to be done and performed, all such further acts and deeds, and shall execute, deliver, file, and record all such other agreements, certificates, instruments and documents, as another Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated herein.

10. **Notices.** All notices, requests, claims, demands and other communications permitted or required hereunder shall be in writing and sent by email and either personal delivery, regular mail, or registered or certified mail, first class postage prepaid, return receipt requested, to the address specified below for such Party or such other future address as may be specified by any Party by notice to the other Parties. Any such notice shall be deemed to have been given three (3) days after mailing if sent by registered or certified mail or upon actual receipt for any other method of delivery:

The Trustee, c/o Craig Smyser, Jeff Potts, and Justin Waggoner, Smyser Kaplan and Veselka, LLP, 700 Louisiana Street, Suite 2300, Houston, Texas 77002, 713-221-2300, csmyser@skv.com, jpotts@skv.com, jwaggoner@skv.com.

The JOLs and/or PPVA, c/o/ Warren Gluck, Holland & Knight, LLP, 31 West 52nd Street, 12th Floor, New York, NY 10019 212-513-3200, Warren.Gluck@hklaw.com.

11. **No Admission.** Neither this Agreement nor anything contained in it shall be treated in any respect as an admission by any Party hereto of any liability or wrongdoing by the Party or any entity.

12. **Construction.** The plural shall include the singular and vice versa.

13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unlawful or unenforceable, then such provision shall be severed from this Agreement, and the remainder of the Agreement shall remain in full force and effect and shall be enforced as closely in accordance with the Parties' intent as expressed in the language of this Agreement as permitted by law.

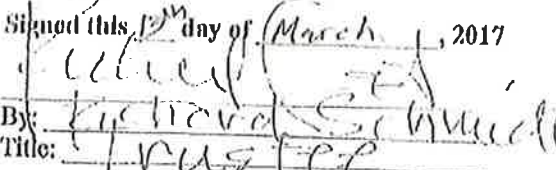
14. **No Waiver.** No provision of this Agreement may be waived, modified, or amended except by a written agreement executed by all Parties hereto. No breach of any provision hereof can be waived unless done in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions hereof.

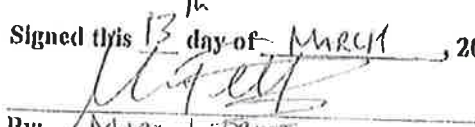
**15. Headings.** The headings on paragraphs of this Agreement are for convenience only, and shall have no effect on the terms of this Agreement; the text of the paragraphs alone states those terms.

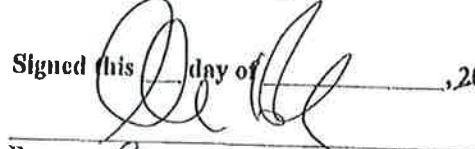
**16. Authority.** Each of the undersigned individuals executing this Agreement on behalf of a Party to this Agreement represents and warrants that such individual is authorized to enter into and execute this Agreement on behalf of such Party and that this Agreement shall be binding on and enforceable against the Parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

AGREED:

Signed this 12<sup>th</sup> day of March, 2017  
  
By: Richard Schmidt  
Title: Trustee  
FOR: RICHARD SCHMIDT, TRUSTEE

Signed this 13<sup>th</sup> day of MARCH, 2017  
  
By: Martin Trott  
Title: JOINT OFFICIAL LIQUIDATOR  
FOR: MARTIN NICHOLAS JOHN TROTT,  
JOINT OFFICIAL LIQUIDATOR OF  
PLATINUM PARTNERS VALUE  
ARBITRAGE FUND, L.P.

Signed this 28 day of March, 2017 28 March 2018  
  
By: CHRISTOPHER KENNEDY  
Title: Joint Official Liquidator  
FOR: CHRISTOPHER ~~A.~~ KENNEDY, JOINT  
OFFICIAL LIQUIDATOR OF PLATINUM  
PARTNERS VALUE ARBITRAGE FUND,  
L.P.

# **EXHIBIT B**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 131 of 2016 (NAS)**

**IN CHAMBERS**

**BEFORE THE HONOURABLE MR. JUSTICE NICHOLAS A. SEGAL**

**IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)**

**AND IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2014 REVISION)**

**AND IN THE MATTER OF PLATINUM PARTNERS VALUE ARBITRAGE FUND L.P. (IN OFFICIAL LIQUIDATION)**

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**ORDER**

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**UPON** reading the application of Mr. Martin Trott and Mr. Christopher Kennedy both of RHSW (Cayman) Limited, Windward 1, Regatta Office Park, P.O. Box 897, Grand Cayman, KY1-1103, Cayman Islands, the joint official liquidators (the "JOLs") of Platinum Partners Value Arbitrage Fund L.P. (the "**Master Fund**") made by letter dated 27 March 2018 (the "**Application**")

**AND UPON** reading the Application and its enclosures

**AND UPON** the Liquidation Committee of the Master Fund consenting to the Application

**AND UPON** the application having been dealt with on the papers



**IT IS ORDERED THAT:**

1. The JOLs shall have the power to enter into the Settlement Agreement dated 13 March 2018 referred to in the Application.
2. The costs of and incidental to this application shall be paid out of the assets of the Master Fund as an expense of the official liquidation.

3. The Application and the supporting documents enclosed with it shall be sealed for a period of twelve months from the date of this order.

DATED this 5 day of July 2018

FILED this 9<sup>th</sup> day of July 2018



**The Honourable Mr. Nicholas A. Segal**  
Judge of the Grand Court

