

John D. Penn, Esq.
Jeffrey D. Vanacore, Esq.
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, New York 10112-0085
Telephone: 212.262.6900
Facsimile: 212.977.1642
Email: jpenn@perkinscoie.com
jvanacore@perkinscoie.com

Attorneys for GRD Estates Ltd.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA,

Plaintiff,

v.

BEECHWOOD RE LTD., *et al.*,

Defendants.

Civ. 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,

v.

PLATINUM MANAGEMENT NY LLC, *et al.*,

Defendants.

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

**RESPONSE OF DEFENDANT GRD ESTATES LTD. TO PLAINTIFFS' SUPPLEMENT
TO THEIR OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

Defendant GRD Estates Ltd. (“**GRD**”) respectfully submits this Response to Plaintiffs’ Supplement to their Opposition to Defendants’ Motions to Dismiss filed on March 11, 2019, and in support thereof would show as follows:

The true significance of Plaintiffs’ Supplement to their Opposition to Moving Defendants’ Motions to Dismiss (the “**Supplement**”) is not what it says, but what it is missing.

The Plaintiffs have now had three opportunities to support an argument for punitive damages in their unjust enrichment claims. (See First Amended Complaint, paragraph 943 and the request for relief on p. 179, section (o).) Authorities to support the request were missing from their initial response, their presentation at the March 6, 2019 hearing, and from their Supplement. After requesting leave to support the request during the hearing, they wholly failed to provide any legal authority or to acknowledge that they were abandoning that request.

The Supplement is also missing factual support for the statement in paragraph 460 of the Complaint that “[o]n information and belief, at least certain of the investors in the BEOF Funds raised concerns as to the **status of their investment by the beginning of 2014**” (emphasis supplied). The email thread in Exhibit 3 to the Supplement is from January 31 and **February 1 of 2013** – from before GRD’s investment February 2013 and at a time frame where the Plaintiffs admitted in their First Amended Complaint that “[t]he first round of BEOF Fund investment in Black Elk occurred during the first quarter of 2013, **before the full extent of Black Elk’s financial difficulties arising out of the Black Elk Explosion was fully known.**” See First Amended Complaint ¶ 444 (emphasis added). Exhibit 3 is missing any information regarding “concerns as to the status” of investments that had yet to be made and cannot support an inference that concerns about investments existed in 2014.

The Supplement is also missing support for the statements in paragraph 163 of the First Amended Complaint. Exhibits 1 and 2 to the Supplement are missing any evidence of any other investments by GRD from among the 13 million documents from the Platinum servers. Also, the sparse messages contained in Exhibits 1 and 2 (spanning a number of years) do not support an allegation that Gordon Diamond and Murray Huberfeld are “close personal friends.” There are very few between them. These do not allow the Plaintiffs to use “group pleading” when “outsiders” Gordon Diamond and GRD did not have insider relationships like the ones described in Anwar v. Fairfield Greenwich Ltd., 728 F. Supp. 2d 372, 405–06 (S.D.N.Y. 2010) or the truly close personal relationships that Stanley Chaise enjoyed with Bernard Madoff for many decades. Bernard L. Madoff Inv. Secs. LLC, 445 B.R. 206, 216 and 222 (Bankr. S.D.N.Y. 2011).

There is no legal basis for a punitive damages request for an unjust enrichment claim. Likewise, the Supplement and Exhibits thereto do not support the Plaintiffs’ argument that the allegations in the First Amended Complaint are well-founded, properly asserted, or satisfy Rules 8(a) or 9(b).

Dated: March 13, 2019
New York, New York

Respectfully submitted,

/s/ John D. Penn

John D. Penn, Esq.
Jeffrey D. Vanacore, Esq.
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, New York 10112-0085
Telephone: (212) 262-6900
Facsimile: (212) 977-1642
jpenn@perkinscoie.com
jvanacore@perkinscoie.com

*Attorneys for Defendant GRD Estates
Ltd.*