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*Attorneys for Plaintiffs Martin Trott and Christopher Smith,
as Joint Official Liquidators and Foreign Representatives of
Platinum Partners Value Arbitrage Fund L.P. (in Official
Liquidation), and for Platinum Partners Value Arbitrage Fund
L.P. (in Official Liquidation)*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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.

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REPLY TO COUNTERCLAIM OF DEFENDANT DAVID OTTENSOSER

Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives (the “JOLs”) of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (“PPVA”) for their Reply to the Counterclaim against PPVA filed by defendant David Ottensoser (“Ottensoser”) in his Answer, dated April 22, 2019, to the Second Amended complaint, allege as follows:

1. The JOLs, on behalf of PPVA, admit that the PPVA Limited Partnership Agreement (a copy of which is attached as Exhibit 4 to the Second Amended Complaint (the “PPVA LPA”)) contains an indemnification provision at section 2.07, refer the Court to the PPVA LPA for a complete and accurate statement of its terms, and otherwise deny the allegations in Ottensoser’s Counterclaim for Indemnification.

AFFIRMATIVE DEFENSES TO COUNTERCLAIM FOR INDEMNIFICATION

The JOLs allege and assert the following defenses in response to the Ottensoser’s Counterclaim for Indemnification, undertaking the burden of proof only as to those defenses deemed affirmative defenses as a matter of law, regardless of how such defenses are denominated herein. The JOLs reserve the right to amend their Reply, and to assert additional or different defenses, based upon information or evidence developed in discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE

Ottensoser’s Counterclaim for Indemnification fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Ottensoser's Counterclaim for Indemnification should be dismissed because it violates the automatic stay imposed pursuant to the Bankruptcy Court's chapter 15 Order and the stay imposed by the Grand Court of the Cayman Islands to the extent that it asserts an affirmative claim for relief against PPVA in a court outside the Cayman Liquidation.

THIRD AFFIRMATIVE DEFENSE

Ottensoser's Counterclaim for Indemnification should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) on the grounds that all claims against PPVA must be asserted in the Cayman Liquidation.

FOURTH AFFIRMATIVE DEFENSE

Ottensoser's Counterclaim for Indemnification is barred, in whole or in part, because all claims asserted against Ottensoser in the Second Amended Complaint assert that he committed actions or omissions constituting fraud, gross negligence or willful misconduct, breached his fiduciary obligations to PPVA, and knowingly aided and abetted PMNY and the other Platinum Defendants in connection with the breaches of fiduciary duty, fraud and other misconduct, including violations of RICO, alleged in the Second Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

Ottensoser's Counterclaim for Indemnification is barred, in whole or in part, because the losses or expenses that Ottensoser may sustain or suffer in connection with the above captioned case will not result from "a mistake of judgment" by Ottensoser or "from action or inaction" by

Ottensoser that Ottensoser “reasonably believed to be in the best interests” of PPVA, as required to qualify for indemnification under section 2.07 of the PPVA LPA.

SIXTH AFFIRMATIVE DEFENSE

Ottensoser’s Counterclaim for Indemnification is barred, in whole or in part, by the doctrine of unclean hands.

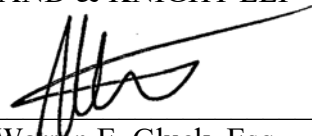
DEMAND FOR TRIAL BY JURY

On behalf of PPVA, the JOLs demand a trial by jury on all issues so triable with respect to Ottensoser’s Counterclaim for Indemnification.

WHEREFORE, the JOLs demand judgment dismissing Ottensoser’s Counterclaim and such other and further relief as this Court may deem just and proper.

Dated: May 10, 2019
New York, New York

HOLLAND & KNIGHT LLP

By: 
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