

Eliot Lauer
Jacques Semmelman
Gabriel Hertzberg
CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP
101 Park Avenue
New York, New York 10178-0061
Telephone: 212-696-6000
Facsimile: 212-697-1559
Email: elauer@curtis.com
jsemmelman@curtis.com
ghertzberg@curtis.com

Attorneys for Defendant David Bodner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X
	:
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	No. 18 Civ. 10936 (JSR)
OFFICIAL LIQUIDATION),	:
	:
Plaintiffs,	:
	:
v.	:
	:
PLATINUM MANAGEMENT (NY) LLC, <i>et al.</i> ,	:
	:
Defendants.	:
-----	X

DECLARATION OF JACQUES SEMMELMAN

JACQUES SEMMELMAN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of Curtis, Mallet-Prevost, Colt & Mosle LLP (“Curtis”), counsel for defendant David Bodner. I have been a member of Curtis for the past 25 years. Prior to that, I served as an Assistant U.S. Attorney for the Eastern District of New York. I am

admitted to practice law in New York, New Jersey, and Pennsylvania, as well as in this Court and in various other federal courts.

2. I submit this Declaration on behalf of Curtis in opposition to plaintiffs' motion to disqualify Curtis from serving as counsel to Mr. Bodner in this case (the "Motion").

3. I have knowledge of the facts set forth in this Declaration. Some of the facts are within my direct personal knowledge. The remaining facts are based upon my review of documents maintained by Curtis in the course of its business, including client files, engagement agreements, time records, invoices, and emails.

A. Curtis, Bodner and Platinum

4. David Bodner has been a client of Curtis since 2000. Curtis has represented Mr. Bodner and his family in an array of business transactions and litigation matters. He has been primarily represented by litigation partner Eliot Lauer, with support from various other attorneys within the firm.

5. In the early 2000s, Curtis helped form the entity known as Platinum Management (NY) LLC ("Platinum Management"). Curtis was aware that Mr. Bodner had a minority beneficial interest in Platinum Management. Mr. Bodner's business partners Mark Nordlicht and Murray Huberfeld also had beneficial interests.

6. Platinum Management was an operating company that served as an investment adviser for various investment funds. One such fund was Platinum Partners Value Arbitrage Fund LP ("PPVA" or the "Fund"). Curtis was aware that Mr. Bodner's family-owned entities held limited partnership interests in the Fund.

7. At various times, Platinum Management required the services of outside counsel, sometimes on its own behalf, sometimes on behalf of the Fund (or another vehicle it managed), and sometimes on behalf of both itself and the Fund. Curtis provided those services

from time to time. In exactly two matters, Curtis represented the Fund (along with Platinum Management and other persons and entities):

- i. In 2009, Platinum Management appointed Curtis as lead litigation counsel for the Fund in connection with claims asserted against the Fund by a chapter 11 trustee in the Southern District of Florida bankruptcy of the law firm Rothstein, Rosenfeldt & Adler, and in related proceedings, all of which terminated by early 2014.
- ii. In 2012, Platinum Management appointed Curtis to represent the interests of the Fund in connection with an investigation by the SEC of investments by a Fund affiliate in certain variable annuity insurance contracts, which investigation concluded in 2014.

8. To be very clear: ***These are the only two matters in which Curtis represented the Fund.*** Any suggestion that Curtis represented the Fund in other matters is incorrect.¹

9. Neither of those matters is “substantially related” to — or is even mentioned in — the allegations in the Complaint in this action.

10. Separate and apart from those two engagements, Curtis represented Platinum Management — *but not the Fund* — in a variety of litigation, regulatory and business matters. A description of those matters was provided by letter from Curtis to the Joint Official Liquidators, dated July 21, 2017, a true and correct copy of which is attached as Exhibit A.

11. Curtis never interacted with any Fund personnel. This was so even in the two matters in which Curtis represented the Fund. That is because the Fund had no personnel of its own. It was a limited partnership. The general partner was Platinum Management. All

¹ In Exhibit 4 to the Declaration of Plaintiff Martin Trott (the “Trott Decl.”), Plaintiffs include an engagement letter dated August 4, 2016, in which Curtis agreed to represent the Fund and other entities in an arbitration commenced by a Fund investor (the “Stadtmauer Arbitration”). While Platinum Management initially requested that Curtis represent the Fund in the Stadtmauer Arbitration, and Curtis was ready to do so, Platinum Management subsequently informed Curtis that the JOLs’ counsel, Holland & Knight LLP, would represent the Fund in that matter. Curtis continued as counsel in the Stadtmauer Arbitration on behalf of its non-Fund clients.

communications between Curtis and the Fund was conducted with Platinum Management personnel. These included Mark Nordlicht and David Levy, both of whom are named as defendants in this action.

12. In the course of its numerous representations of Platinum Management, and its two representations of the Fund, Curtis obtained from Platinum Management documents and information relevant to Curtis's representation. To the extent those representations were related in any way to Platinum Management's management of the Fund, Curtis's sole source of access to documents and information relating to the Fund was through Platinum Management and its personnel. Thus, it is impossible that Curtis learned anything in the course of its representations that was not also known to, or at least accessible by, many individual defendants in this action, including Messrs. Nordlicht, Levy, and others.

13. Moreover, because Mr. Bodner held a beneficial interest in Platinum Management, and because his family-owned entities held limited partnership interests in the Fund, Mr. Bodner would inquire of Curtis from time to time about litigation matters Curtis was handling on behalf of Platinum Management, the Fund, or both. 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.

B. Beechwood

14. The Complaint alleges that various defendants engaged in transactions improperly designed to transfer assets from the Fund to a reinsurance business operating under the name "Beechwood."

15. In 2016, Curtis was retained by Mr. Bodner, as well as by Mr. Nordlicht, Mr. Levy, and Murray Huberfeld, in connection with their sale of Beechwood stock to entities owned or controlled by Beechwood principals Mark Feuer and Scott Taylor. The Fund was neither a Curtis client nor a party to that transaction.² Curtis has never represented Platinum Management, any individual, or the Fund in any transaction between the Fund and Beechwood.

16. On one occasion in March 2016, Curtis provided to the U.S. Attorney's Office for the Southern District of New York an oral summary, by telephone, of historical transactions between Beechwood and entities advised by Platinum Management, including the Fund. The inquiry arose in the context of the government's investigation, which started in 2015 (the "SDNY Investigation"), into alleged improper payments made to Norman Seabrook, the head of the Corrections Officers Benevolent Association ("COBA"), a union representing employees of the New York City Department of Corrections. In the SDNY Investigation, Curtis was representing Platinum Management as well as Mr. Huberfeld.

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Plaintiffs have included as Exhibit 10 to the Trott Decl. an invoice that the firm sent to Mr. Levy, one its clients in the Beechwood stock sale matter. Plaintiffs concede that Curtis did not represent the Fund in that matter. (Plaintiffs' Memorandum of Law in Support of Motion ("JOL Mem.") at 8). They claim that the Curtis attorneys are fact witnesses with respect to that matter, but fail to explain why the principals to that transaction could not testify for themselves, such that the Curtis attorneys' recollection of the transaction would be merely cumulative. They speculate that "a number of the Defendants may assert the Fifth Amendment right against self-incrimination" (JOL Mem. at 12), but that conjecture is entirely unsupported. The only two principals in that transaction to have been charged criminally in connection with Beechwood – where the charges have nothing to do whatsoever with the stock sale referenced in Exhibit 10 – are Messrs. Nordlicht and Levy. No other principal has been charged.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (partially redacted on the basis of privilege).⁴

18. To follow up on Mr. Capone’s request for historical transactional information, Mr. Hertzberg consulted with Mr. Werblowsky and with Naftali Manela, an accountant at Platinum Management, and, on March 9, 2016, reported back to Mr. Capone what he had learned from Platinum Management about historical transactions between Platinum funds and Beechwood entities, namely the dates, parties, and assets transferred in both directions. Apart from these communications during the period March 2-9, 2016, there was no other occasion during the SDNY Investigation in which Curtis was asked about Beechwood.

³ Ms. Sareva took contemporaneous notes of the calls, and memorialized them by email to Mr. Hertzberg. Mr. Hertzberg forwarded Ms. Sareva’s email summaries to Mr. Werblowsky at Platinum Management on March 3, 2016. Without the consent of either Platinum Management or Curtis, Plaintiffs have included Ms. Sareva’s privileged (and work product) notes as part of their Motion. (*See* Trott Decl. Ex. 6).

⁴ I will bring an unredacted version of this email to oral argument.

C. The 2016 Investigations

19. On June 8, 2016, Mr. Huberfeld was indicted in the COBA matter, and Curtis, following his arraignment, brought in separate counsel for Mr. Huberfeld, and continued representing Platinum Management (*but not the Fund*) in several investigatory and regulatory matters. Specifically, Mr. Capone in the SDNY Investigation sought additional information from Platinum Management by grand jury subpoena; and prosecutors in the Eastern District of New York served grand jury subpoenas on Platinum Management and certain individuals (the “EDNY Investigation”). Additionally, Platinum Management received subpoenas or requests from the Commodities and Futures Trading Commission (“CFTC”), and the SEC’s Office of Compliance, Inspection and Examinations (“OCIE”) opened a new examination of Platinum Management under Section 204 of the Investment Advisers Act of 1940. I will refer collectively to the EDNY Investigation, the CFTC and OCIE inquiries, and the SDNY Investigation in the period after Mr. Huberfeld’s arraignment, as the “2016 Investigations.” To the best of my knowledge, the Fund did not receive any subpoenas or requests in the 2016 Investigations.

20. In connection with the 2016 Investigations, Platinum Management retained Curtis, as well as Andrew Levander of Dechert LLP. Platinum Management directed Curtis and Dechert to divide the representations, where Curtis would have primary responsibility for the SDNY Investigation and CFTC matters, and Dechert would have primary responsibility for the EDNY and SEC matters. Curtis participated with Dechert in advising Platinum Management on the SEC and EDNY matters, and, to bring Dechert up to speed, shared with Dechert internal memoranda Curtis prepared in connection with the SDNY Investigation. Again, to be very clear: *Curtis did not represent the Fund in any of these matters.*

21. In each of these matters, Curtis's sole source of documents and information relating to the Fund was through Platinum Management personnel. There was no Fund-related information obtained by Curtis that did not come through Platinum Management.

22. Curtis represented Mr. Bodner as well as Platinum Management in the EDNY Investigation. Curtis attorneys (Mr. Lauer and Mr. Hertzberg) specifically addressed the potential for conflict with both Mr. Bodner and with Platinum Management, and both consented to the joint representation. With respect to Platinum Management, Curtis discussed the matter with Mr. Werblowsky and Platinum Management's Chief Legal Officer, Suzanne Horowitz. Curtis specifically advised them of the potential for conflict in joint representations, and proposed that if a conflict arose between Platinum Management and Mr. Bodner, Curtis could discontinue representing Platinum Management and continue representing Mr. Bodner even in matters where the two were adverse. Mr. Werblowsky and Ms. Horowitz consented to Curtis proceeding under those terms of engagement.⁵

⁵ Plaintiffs unfairly criticize Curtis for failing to obtain a conflict waiver from "non-conflicted agents of PPVA." (JOL Mem.at 12). Curtis did not seek a waiver from PPVA (the Fund) for four independent reasons: (i) the Fund, which had not received any subpoenas or requests, was not the firm's client in connection with the 2016 Investigations, so there was no reasonable expectation of any conflict between that entity and the firm's clients Platinum Management and Mr. Bodner; (ii) Curtis had no reason to believe (and still has no reason to believe) that Ms. Horowitz or Mr. Werblowsky were "conflicted" in any respect or disloyal to the Fund; (iii) the Fund had no employees and was solely managed and operated by its general partner, Platinum Management, so there was no one other than Platinum Management's duly appointed officers and personnel for Curtis to advise; and (iv) within weeks of Curtis's retention in connection with the 2016 Investigations, Platinum Management placed the Fund into a voluntary liquidation, resulting in the appointment of the JOLs (independent fiduciaries for the Fund) and the retention by the JOLs of Holland & Knight LLP to represent the Fund's interests. Holland & Knight and Curtis communicated on many matters in the course of the 2016 Investigations; neither the JOLs nor Holland & Knight ever expressed the view that Curtis was counsel to the Fund, or that Curtis was in any way conflicted. (*See e.g.* Ex. J).

D. The Motion to Disqualify

23. The Motion asserts that Curtis represented the Fund from 2009 to 2016, including in connection with the government's investigation into (i) the sale of Black Elk assets to Renaissance, (ii) the ownership of Beechwood, and (iii) the sale of Beechwood stock in or around August 2016. (JOL Mem. at 2-4). That is false. As detailed above, Curtis represented Platinum Management and certain individuals in connection with the 2016 Investigations, ***but did not represent the Fund***. To the extent Curtis was involved in providing information *about* the Fund to government investigators, that provision of information was on behalf of Platinum Management and Curtis's individual clients, not on behalf of the Fund, which was not Curtis's client. Likewise, as noted above, Curtis did not represent the Fund in any transaction involving Beechwood.

24. It is also untrue that Curtis represented the Fund in connection with the 2016 Investigations, as alleged in the Motion. (JOL Mem. at 4). The Plaintiffs' sleight-of-hand is exposed when the Motion quotes from one of the March 2016 emails written by Ms. Sareva. (Trott Decl. Ex. 6.) That email, which Plaintiffs portray as arising in the EDNY Investigation, was sent three months before the EDNY Investigation surfaced in June 2016, and arose in the separate, earlier SDNY Investigation. More importantly, in that email, Ms. Sareva refers twice to "Platinum employees." (JOL Mem. at 6). Immediately after the quote, Plaintiffs assert: "As such, it is clear that PPVA (Platinum) was, through 2006 [*sic*], just prior to the Cayman Liquidation, considered by Curtis Mallet to be Curtis Mallet's primary client." (*Id.*) But Ms.

Sareva's email is referring to Platinum Management, not the Fund. The proof is that at the time, Platinum Management had employees. *The Fund never had any employees.*⁶

25. The Motion misleadingly cites to emails between Curtis and its clients – *not the Fund* – and seeks to create the false impression that these reflect communications with the Fund. Exhibit 5 is an email chain from 2014 that includes an email marked “Privileged and Confidential Communication” between Joshua Kramer-Eisenbud and Curtis. As shown in the email chain, Mr. Kramer-Eisenbud was Director of Operations at Platinum Credit Management LP (“PCM”), another entity *that was not the Fund*. PCM was a “relying adviser” for regulatory purposes, i.e., a sub-adviser to Platinum Management, and it advised Platinum Partners Credit Opportunities Master Fund LP, an entirely separate fund that is outside the jurisdiction of the JOLs. Mr. Kramer-Eisenbud's draft response – which he prepared in connection with a 2014 OCIE examination directed to “Platinum Management and Relying Advisers” (again, *not the Fund*) – was prepared on behalf of PCM and Platinum Management. Mr. Werblowsky is among those copied. (*See also* Exhibit A at p. 3) (describing the engagement to the JOLs).

26. These are just some of the more glaring misstatements in the Motion. There are other incorrect statements as well.

E. Additional Exhibits to this Declaration

27. Attached as Exhibit C is a true and correct copy of a letter from Trisha Rich, Esq. of Holland & Knight LLP, to Mr. Hertzberg, dated December 13, 2018.

⁶ In a similar effort to confuse the timing and context of Ms. Sareva's email of March 2, 2016 (Trott Decl. Ex. 6), Plaintiffs tell the Court that Ms. Sareva's email memorializes a conversation between Mr. Hertzberg and a lawyer at Dechert. (JOL Mem. at 6) (“Ms. Sareva tells Hertzberg that *co-counsel at Dechert* ‘...asked if any Platinum employees are officers of any Beechwood entities’”). This is demonstrably false. Dechert did not join the team until June 2016. As is evident on its face, Ms. Sareva's email is memorializing a conversation between Mr. Hertzberg and SDNY AUSA Russell Capone, not anyone at Dechert.

28. Attached as Exhibit D is a true and correct copy of a letter from myself to Ms. Rich, dated December 13, 2018.

29. Attached as Exhibit E is a true and correct copy of a letter from Ms. Rich to me, dated December 17, 2018.

30. Attached as Exhibit F is a true and correct copy of a letter from myself to Ms. Rich, dated December 18, 2018.

31. Attached as Exhibit G is a true and correct copy of an email thread between myself and Ms. Rich, concluding on December 23, 2018.

32. Attached as Exhibit H is a true and correct copy of a letter from myself to Ms. Rich, dated December 28, 2018.

33. Attached as Exhibit I is a true and correct copy of an email thread between myself, Ms. Rich and Warren Gluck, Esq., of Holland & Knight LLP, concluding on December 31, 2018.

34. Attached as Exhibit J is a true and correct copy of an email from Harvey Werblowsky of Platinum Management, to Messrs. Lauer and Hertzberg of Curtis, and Barbra Parlin of Holland & Knight LLP, dated September 8, 2016.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 2, 2019.

/s/ Jacques Semmelman

Jacques Semmelman

EXHIBIT A



Curtis, Mallet-Prevost, Colt & Mosle LLP

Almaty	Houston
Ashgabat	London
Astana	Mexico City
Beijing	Milan
Buenos Aires	Muscat
Dubai	Paris
Frankfurt	Rome
Geneva	Washington, D.C.

101 Park Avenue
New York, New York 10178-0061

Telephone +1 212 696 6000
Facsimile +1 212 697 1559
www.curtis.com

Gabriel Hertzberg
Tel: +1 212 696 8856
Fax: +1 917 368 7356
E-Mail: ghertzberg@curtis.com

July 21, 2017

VIA E-MAIL

Barry Lynch
James McGrath
RHSW (Cayman) Limited
Windward 1
Regatta Office Park
PO Box 897
Grand Cayman KY1-1103
Cayman Islands

Re: Platinum Partners Value Arbitrage Fund LP

Dear Barry and James:

We write in response to Christopher Kennedy's letter (the "Letter") dated June 28, 2017, regarding the request of the Joint Official Liquidators ("JOLs") for turnover of the books and records of Platinum Partners Value Arbitrage Fund LP ("PPVAF") and certain PPVAF affiliates identified in an enclosure to the Letter. Reference is made to our email correspondence of July 13, 2017, limiting our initial response to the Letter to the items set forth herein.

This firm has been appointed as counsel in numerous matters by its clients Platinum Credit Management LP ("Platinum Credit") and Platinum Management (NY) LLC ("Platinum Management") (jointly, the "Advisors"). As you know, the Advisors are not in liquidation or parties to the chapter 15 proceeding.

In certain historical matters, the Advisors have appointed the firm to represent the interests of PPVAF when PPVAF was named as a party in a litigation or proceeding. We have never advised or been counsel to the affiliates identified in the enclosure to the Letter.

We set forth below each matter in which the Advisors have retained the firm. We omit matters where the firm opened an administrative billing number but did not provide substantive advice, perform substantive services, or take possession of the client's books and records.



July 21, 2017

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Curtis, Mallet-Prevost, Colt & Mosle LLP

1. Client Matter 015722-0002: Rothstein Litigation (2009-2014)

We were retained to represent the interests of PPVAF in connection with the fund's credit facility to Banyon Investments, LLC, a Nevada company that used the loan proceeds to purchase interests in structured litigation settlements marketed by a South Florida law firm, Rothstein Rosenfeldt & Adler LLP ("RRA"). In November 2009 it became known that the RRA-marketed litigation settlements were fictitious and that RRA's principal, Scott Rothstein, was perpetrating a scheme to defraud investors. We represented the Advisors' principals and employees in the criminal and regulatory investigations that followed Rothstein's arrest, and served as lead counsel in civil litigation on multiple fronts and in various forums, including the United States District Court in Nevada, the United States Bankruptcy Court for the Southern District of Florida, and in the Florida state courts. Neither the Advisors, nor their members, principals, nor employees, were accused of wrongdoing in any government or regulatory proceeding. The United States District Court for the Southern District of Florida deemed PPVAF a "victim" of the scheme pursuant to 18 U.S.C. § 3663A, and several principals and employees of the Advisors testified as witnesses for the government in prosecutions of Rothstein's conspirators.

2. Client Matter 015722-0005: Glacial Energy Subpoena (2012)

We were retained in 2012 to respond to a subpoena issued by the Office of the New York State Attorney General. The subpoena was directed to funds advised by Platinum Credit. The investigation related to New York sales tax owed by a company in which funds advised by Platinum Credit had made convertible loans. PPVAF was not a party or respondent in any respect.

3. Client Matter 015722-0006: BDL Investigation (2012-2014)

We were retained in 2012 to represent the interests of the Advisors, their principals and employees, PPVAF and certain affiliates (including BDL Group LLC ("BDL")), and other persons, in an investigation by the Securities and Exchange Commission. The investigation concerned investments by BDL in variable annuity insurance contracts. The investigation concluded in 2013 with no proceedings commenced against PPVAF or the Advisors. In 2014 we represented individual clients as non-party witnesses in an administrative enforcement proceeding brought by the Commission against a person not affiliated with any of our clients.

4. Client Matter 015722-0007: General Litigation Advice (2013-2017)

We have been asked to provide *ad hoc* advice to the Advisors from time to time. Time and expenses in connection with such advice was invoiced separately from our other matters. A receivable has been outstanding since March 2017.



Curtis, Mallet-Prevost, Colt & Mosle LLP

5. Client Matter 015722-0008: SEC Section 204 Examination (2013-2014)

We were retained by the Advisors in connection with an audit of their books and records by the SEC's Office of Compliance, Inspections and Examination (OCIE). OCIE demanded an inspection of millions of documents from the Advisors, and we were engaged to manage the review and production of documents and to protect attorney-client privilege. We provided advice to the Advisors as requested throughout the year-long audit.

6. Client Matter 015722-0009: Life Partners (2015)

We were retained by the Advisors to advise them with respect to a potential investment in a distressed asset being auctioned in a Texas bankruptcy. The Advisors did not proceed with the investment.

7. Client Matter 015722-0010: COBA Investigation (2015-2016)

We represented the Advisors and their members, principals and employees in connection with grand jury subpoenas issued by the United States Attorney's Office for the Southern District of New York. The investigation concerned the investment of the Correction Officers' Benevolent Association in PPVAF. In June 2016, a grand jury in the Southern District of New York indicted Murray Huberfeld, formerly an officer of Platinum Credit, and a founding member of the Advisors, in connection with the investigation. Shortly after the indictment the Advisors retained Dechert LLP to represent them and their employees in connection with the investigation.

8. Client Matter 015722-0011: New Jersey Investigation (2015)

We were retained in 2015 in connection with a grand jury subpoena from the United States Attorneys' Office for the District of New Jersey. The subpoena was directed to Platinum Management and sought records relating to various persons identified in the subpoena and relating to the Birchas Shmuel Foundation and MS Family Foundation. We produced the documents and that concluded the representation.

9. Client Matter 015722-0012: SEC/EDNY Investigation (2016)

We were retained in June 2016 in connection with subpoenas from the SEC Division of Enforcement and grand jury subpoenas from the United States Attorney's Office for the Eastern District of New York. We represented the Advisors as co-counsel to Dechert LLP. We have outstanding receivables for this period, as set forth below.

10. Client Matter 015722-0013: Stadtmauer Arbitration (2017)

We were retained in 2016 to represent Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund LLC (jointly, "PPCO"), and Platinum Partners Value Arbitrage Fund (USA) L.P. (the "PPVA US Feeder") in connection with a demand for arbitration by investor Richard Stadtmauer, his wife and an entity they



July 21, 2017

Page 4

Curtis, Mallet-Prevost, Colt & Mosle LLP

control. PPVAF was named as a respondent in that proceeding and was represented by the liquidators' appointed counsel at Holland & Knight LLP. The matter is presently stayed pursuant to an order of the United States District Court for the Eastern District of New York.

* * *

We have outstanding receivables due from the Advisors in the amount of \$341,321.62 in connection with matters -07 (General Litigation Advice), -12 (SEC/EDNY Investigation), and -13 (Stadtmauer). A breakdown by matter and invoice is enclosed in the attached schedule from our accounting department. While we are willing to work with the JOLs with respect to the matters set forth in the Letter, we must insist that our bills first be paid, consistent with our rights under New York law.

In the interim, please be assured that any books and records in our possession that are property of PPVAF are — like all of our client files — maintained and preserved professionally in the ordinary course of our business, consistent with our obligations as a New York law firm.

We are available to discuss these matters with you at your convenience. Please do not hesitate to write or call.

Kind regards,

/s/ Gabriel Hertzberg

Gabriel Hertzberg

Enclosures

cc: Eliot Lauer, Esq. (Curtis, Mallet)
Melanie Cyganowski, Esq. (Otterbourg LLP)
Barbra Parlin, Esq. (Holland & Knight LLP)

29274254

EXHIBIT B

From: [Hertzberg, Gabriel](#)
To: [Sareva, Sylvi](#); [Lauer, Eliot](#)
Subject: RE: 3.2.2016 Call to R. Capone
Date: Thursday, March 03, 2016 5:15:31 PM

Gabriel Hertzberg

Counsel

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 8856
Fax: +1 917 368 7356
ghertzberg@curtis.com



www.curtis.com

From: Sareva, Sylvi
Sent: Wednesday, March 02, 2016 5:31 PM
To: Hertzberg, Gabriel
Subject: RE: 3.2.2016 Call to R. Capone





Sylvi Sareva

Associate

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6934

Fax: +1 212 697 1559

ssareva@curtis.com



www.curtis.com



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From: Hertzberg, Gabriel
Sent: Wednesday, March 02, 2016 3:45 PM
To: Sareva, Sylvi
Subject: RE: 3.2.2016 Call to R. Capone

Thanks. Could you come by, Russell called again.

Gabriel Hertzberg

Counsel

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 8856

Fax: +1 917 368 7356
ghertzberg@curtis.com



www.curtis.com

From: Sareva, Sylvi
Sent: Wednesday, March 02, 2016 3:31 PM
To: Hertzberg, Gabriel
Subject: 3.2.2016 Call to R. Capone



Sylvi Sareva
Associate

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6934

Fax: +1 212 697 1559
ssareva@curtis.com



www.curtis.com



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EXHIBIT C

Holland & Knight

131 South Dearborn Street, 30th Floor | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Trisha M. Rich
(312) 578-6514
trisha.rich@hklaw.com

December 13, 2018

VIA E-MAIL AND U.S. MAIL

Mr. Gabriel Hertzberg
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061
ghertzberg@curtis.com

Re: *Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in official liquidation), et al., v. Platinum Management (NY) LLC, et al.*, Civil Action No. 1:18-cv-10936-JSR: Representation of David Bodner

Dear Mr. Hertzberg:

We understand that you and Curtis, Mallet-Prevost, Colt & Mosle LLP (collectively, “Curtis Mallet”) desire to represent David Bodner in his capacity as a defendant in *Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in official liquidation), et al., v. Platinum Management (NY) LLC, et al.*, Civil Action No. 1:18-cv-10936-JSR (the “Litigation”). As you know, in this Litigation, we represent Martin Trott and Christopher Smith as the joint official liquidators and the foreign representatives of Platinum Partners Value Arbitrage Fund L.P. (“PPVA”), and also PPVA in its own capacity (collectively, “our client”).

Any representation of David Bodner (or any other defendant in the Litigation) by Curtis Mallet would be a clear conflict of interest and in contravention of the applicable rules of professional conduct. Our client is unwilling to waive that conflict and further believes that any waiver would harm the interests that our client must protect.

Our records indicate that Curtis Mallet represented Platinum Partners Credit Opportunities Master Fund LP (the “Master Fund”), and PPVA on multiple matters from at least 2012 until the time that the Cayman Liquidation commenced on August 2016. The scope of these

Mr. G. Hertzberg
December 13, 2018
Page 2

representations was broad, and it notably included representing PPVA and the Master Fund in an investigation conducted by the United States Securities and Exchange Commission, the capitalization and withdrawal of capital in respect of Beechwood, and other matters that form the basis of the Litigation. Our initial (and still limited) review of the available documents indicates that Curtis Mallet was in constant communication with the Master Fund and many individuals that are now defendants in the Litigation about a wide variety of issues, many of which are at issue in the Litigation.

As we are sure you are aware, New York Rule of Professional Conduct 1.7 provides as follows:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:
 - (1) the representation will involve the lawyer in representing differing interests; or
 - (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

“The authority of federal courts to disqualify attorneys derives from their inherent power to ‘preserve the integrity of the adversary process.’” *GSI Commerce Solutions, Inc. v. BabyCenter, L.L.C.*, 644 F.Supp.2d 333, 336 (S.D.N.Y. July 27, 2009) (citation omitted). Absent appropriate waivers, disqualification is the proper remedy whenever an attorney's representation in a matter poses “a significant risk of trial taint.” *Id.* In *U.S. v. Prevezon Holdings Ltd. et al.*, the United States Court of Appeals for the Second Circuit applied the *Evans* factors in explaining when trial taint existed. Namely, the court stated that disqualification is warranted where “(1) the moving party is a former client of the adverse party's counsel; (2) there is a substantial relationship between the subject matter of the counsel's prior representation of the moving party and the issues in the present lawsuit; and (3) the attorney whose disqualification is sought had access to,

Mr. G. Hertzberg
December 13, 2018
Page 3

or was likely to have access to, the relevant privileged information in the court of his prior representation of the client.” *U.S. v. Prevezon Holdings, Ltd., et al.*, 839 F.3d 227, 239 (2d Cir. 2016). In this instance, Curtis Mallet (through, in fact, the same individual attorneys) is purporting to represent a defendant who is accused of significant wrongdoing vis-à-vis a former client on at least some of the very matters Curtis Mallet represented that former client in. A very clear conflict exists, and disqualification is the only appropriate remedy.

In addition, and given the breadth of the issues in the Litigation, it seems quite possible that one or more lawyers at Curtis Mallet will be witnesses in the Litigation. For that reason as well, we believe that Curtis Mallet should not represent Mr. Bodner or any other defendant in the Litigation.

We hope that you will understand the seriousness that this conflict of interest represents and that you will cease any attempts to represent Mr. Bodner or any other defendant in this litigation. If you do wish to continue to pursue representation of Mr. Bodner, we ask that you provide us immediately with a list of all matters on which Curtis Mallet or any of its attorneys provided or agreed to provide legal advice to PPVA or any entity related to PPVA, with copies of any engagement letters or amendments thereto under which such work was performed and with copies of all billings submitted on any of these matters. We will also want copies of all client files, but we understand that that may take you a bit more time to pull together.

Please note as well that based even on our limited review thus far, we believe that any resistance to a motion to disqualify would be frivolous under Rule 11. We would therefore intend to seek costs and attorneys’ fees related to litigating that issue.

Sincerely yours,

HOLLAND & KNIGHT LLP



Trisha M. Rich

TMR:tb

cc: Mr. Warren Gluck
Mr. Peter Jarvis
Mr. Martin Trott
Mr. Christopher Smith

EXHIBIT D



Curtis, Mallet-Prevost, Colt & Mosle LLP

Almaty
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Rome
Washington, D.C.

101 Park Avenue
New York, New York 10178-0061

Telephone +1 212 696 6000
Facsimile +1 212 697 1559
www.curtis.com

Jacques Semmelman
Tel: +1 212 696 6067
Fax: +1 917 368 8867
E-Mail: jsemmelman@curtis.com

December 13, 2018

VIA EMAIL

Ms. Trisha M. Rich
Holland & Knight
131 South Dearborn Street
Chicago, IL 60603

**Re: Martin Trott, et ano. v. Platinum Management (NY) LLC, et al.,
No. 1:18-cv-10936-JSR**

Dear Ms. Rich:

We are in receipt of your letter dated December 13, 2018. This Firm takes very seriously any claim of conflict like the one asserted in your letter.

We are not aware of, and have not identified, any conflict of interest in representing our client David Bodner in connection with the Complaint filed in Trott et ano. v. Platinum Management (NY) LLC et al., 18 Civ. 10936 (the "New Action") based upon our past representation of our former client Platinum Partners Value Arbitrage Fund L.P. ("PPVAF").

As set forth in our letter to the Joint Official Liquidators dated July 21, 2017, in the past we have represented PPVAF in only two matters, both of which concluded in 2014: the Rothstein Litigation in 2009-2014; and the BDL Investigation by the SEC in 2012-2014. Neither matter is substantially related to the New Action in any respect, and your letter does not show any substantial relationship.

If you have specific information that indicates that either past matter in which we represented PPVAF is substantially related to the New Action, please provide it to us so that we can consider it carefully.



Curtis, Mallet-Prevost, Colt & Mosle LLP

Ms. Trisha M. Rich

December 13, 2018

Page 2

Very truly yours,

/s/ Jacques Semmelman

Jacques Semmelman

cc: Eliot Lauer
Gabriel Hertzberg

EXHIBIT E

Holland & Knight

131 South Dearborn Street, 30th Floor | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Trisha M. Rich
(312) 578-6514
trisha.rich@hklaw.com

December 17, 2018

VIA E-MAIL AND U.S. MAIL

Mr. Jacques Semmelman
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, New York 10178-0061
jsemmelman@curtis.com

Re: *Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in official liquidation), et al., v. Platinum Management (NY) LLC, et al., Civil Action No. 1:18-cv-10936-JSR: Representation of David Bodner*

Dear Mr. Semmelman:

We are in receipt of your December 13, 2018 letter in which you state categorically that your firm does not have a conflict. With respect, we disagree. As requested in our December 13, 2018 letter, please provide us immediately with a list of all matters on which Curtis Mallet or any of its attorneys provided or agreed to provide legal services or advice to PPVA, or any entity related to PPVA, along with copies of all engagement letters and amendments or supplements thereto as well as copies of all billings submitted on any matters. Once that is done, please also provide any and all client files and documents related to this work. Unless you need an extension of time, we will expect the files no later than December 31, 2018.

Sincerely yours,

HOLLAND & KNIGHT LLP



Trisha M. Rich

Mr. J. Semmelman
December 17, 2018
Page 2

TMR:tb

cc: Mr. Warren Gluck
Mr. Peter Jarvis
Mr. Martin Trott
Mr. Christopher Smith

EXHIBIT F



Curtis, Mallet-Prevost, Colt & Mosle LLP

Almaty	Houston
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Beijing	Milan
Buenos Aires	Muscat
Dubai	Paris
Frankfurt	Rome
Geneva	Washington, D.C.

101 Park Avenue
New York, New York 10178-0061

Telephone +1 212 696 6000
Facsimile +1 212 697 1559
www.curtis.com

Jacques Semmelman
Tel: +1 212 696 6067
Fax: +1 917 368 8867
E-Mail: jsemmelman@curtis.com

December 18, 2018

VIA EMAIL

Ms. Trisha M. Rich
Holland & Knight
131 South Dearborn Street
Chicago, IL 60603

**Re: Martin Trott, et ano. v. Platinum Management (NY) LLC, et al.,
No. 1:18-cv-10936-JSR**

Dear Ms. Rich:

I am writing in response to your letter dated December 17, 2018, and in further response to your letter dated December 13, 2018.

Your December 17 letter states that you “disagree” with our statement that Curtis has no conflict representing David Bodner in the defense of the above-referenced lawsuit (the “New Action”) initiated by the Joint Official Liquidators (the “Liquidators”) of Platinum Partners Value Arbitrage Fund (“PPVAF”). Yet, you offer no basis for your asserted disagreement. You have not disputed that Curtis has only represented PPVAF in two matters, and that neither is substantially related to the New Action.¹

There is an additional reason why there is no conflict. Even if hypothetically Curtis had at some point represented PPVAF in a matter that is substantially related to the New Action, there still would be no conflict because there was never an informational barrier between PPVAF and Platinum Management (NY) LLC (“Platinum Management”). Mr. Bodner, who

¹ Your December 13 letter states that Curtis represented PPVAF in the “capitalization and withdrawal of capital in respect of Beechwood.” That is not correct. The only Curtis engagement that even remotely fits that description was a transaction in which Curtis advised certain Beechwood stockholders (including Mr. Bodner and his family) in connection with their sale of Beechwood equity to third parties. PPVAF was neither a Curtis client in that transaction nor a party to the transaction in any respect.



Curtis, Mallet-Prevost, Colt & Mosle LLP

Ms. Trisha M. Rich
December 18, 2018
Page 2

personally and through his family was a beneficial stakeholder in Platinum Management, had the practical ability to access any PPVAF information in connection with litigation matters in which Curtis was appointed counsel, and there was no informational barrier separating him from PPVAF in connection with such matters.

In the leading case *Allegaert v. Perot*, 565 F.2d 246 (2d Cir. 1977), the Second Circuit upheld a decision denying a motion to disqualify. The Court of Appeals held that “before the substantial relationship test is even implicated, it must be shown that the attorney was in a position where he *could* have received information which his former client might reasonably have assumed the attorney would withhold from his present client.” *Id.* at 250 (emphasis in original). In affirming the district court’s denial of the motion to disqualify, the Second Circuit found that the movant could not have thought “that any information given to the law firms conceivably would have been held confidential from the primary clients of the firms.” *Id.* The Second Circuit also took into account that the law firms had a longstanding relationship with their client, and that they had “not changed sides from a former client to a current, adverse client[.]” *Id.* at 251.

In *Intelstat, Ltd. v. Int’l Telcoms Satellite Org.*, 06 Civ. 10165 (JSR), 2007 U.S. Dist. LEXIS 23113 (S.D.N.Y. Mar. 16, 2007), Judge Rakoff denied a motion to disqualify where “whatever confidential information [the law firm] may have acquired in the course of its representation of the parent is no more than what [the current client’s] current employees, carried over from the parent, already know.” *Id.* at *3 (citing *Allegaert*).

These decisions are dispositive. Mr. Bodner has been a Curtis client since 2000. He was involved as a Curtis client in the creation of PPVAF. He has been associated as a Curtis client with Platinum Management since its foundation. Curtis is not switching sides. And it is beyond dispute that at all relevant times, PPVAF’s information was fully accessed by Platinum Management. As noted above, Mr. Bodner had the practical ability to access any PPVAF information in connection with litigation matters in which Curtis served as counsel.

Moreover, PPVAF had no employees of its own, and the only individuals acting on PPVAF’s behalf were Platinum Management personnel. Several of those individuals, as well as Platinum Management itself, have been named as defendants in the New Action. There is no way to compartmentalize any of PPVAF’s information so that it cannot be used in the New Action.

In sum, you have not demonstrated even a plausible ground for disqualification.

With regard to your request for documents and information, please be advised that on July 21, 2017, Mr. Hertzberg of this Firm sent a detailed, four-page letter to Barry Lynch and James McGrath (for the Liquidators) listing and describing each of the matters in which Platinum Credit Management LP and Platinum Management have retained Curtis. I enclose another copy for your convenience.

As for your request for engagement letters, amendments or supplements thereto, and copies of bills, it is our understanding that the Liquidators have had PPVAF’s server in their



Curtis, Mallet-Prevost, Colt & Mosle LLP

Ms. Trisha M. Rich
December 18, 2018
Page 3

possession, custody, and control for several years. Those documents should be on that server, and your letter does not claim otherwise. The server should also contain the substantive PPVAF materials you request.

Finally, your request for a wide array of materials pertaining to work done for entities other than PPVAF is not in accordance with the Federal Rules of Civil Procedure for multiple reasons, not the least of which is that discovery has not yet begun. When discovery begins, you may serve your requests for production, and we will respond in accordance with the Federal Rules.

Mr. Bodner reserves all rights.

Very truly yours,

/s/ Jacques Semmelman

Jacques Semmelman

cc: Eliot Lauer
Gabriel Hertzberg



Curtis, Mallet-Prevost, Colt & Mosle LLP

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101 Park Avenue
New York, New York 10178-0061

Telephone +1 212 696 6000
Facsimile +1 212 697 1559
www.curtis.com

Gabriel Hertzberg
Tel: +1 212 696 8856
Fax: +1 917 368 7356
E-Mail: ghertzberg@curtis.com

July 21, 2017

VIA E-MAIL

Barry Lynch
James McGrath
RHSW (Cayman) Limited
Windward 1
Regatta Office Park
PO Box 897
Grand Cayman KY1-1103
Cayman Islands

Re: Platinum Partners Value Arbitrage Fund LP

Dear Barry and James:

We write in response to Christopher Kennedy's letter (the "Letter") dated June 28, 2017, regarding the request of the Joint Official Liquidators ("JOLs") for turnover of the books and records of Platinum Partners Value Arbitrage Fund LP ("PPVAF") and certain PPVAF affiliates identified in an enclosure to the Letter. Reference is made to our email correspondence of July 13, 2017, limiting our initial response to the Letter to the items set forth herein.

This firm has been appointed as counsel in numerous matters by its clients Platinum Credit Management LP ("Platinum Credit") and Platinum Management (NY) LLC ("Platinum Management") (jointly, the "Advisors"). As you know, the Advisors are not in liquidation or parties to the chapter 15 proceeding.

In certain historical matters, the Advisors have appointed the firm to represent the interests of PPVAF when PPVAF was named as a party in a litigation or proceeding. We have never advised or been counsel to the affiliates identified in the enclosure to the Letter.

We set forth below each matter in which the Advisors have retained the firm. We omit matters where the firm opened an administrative billing number but did not provide substantive advice, perform substantive services, or take possession of the client's books and records.



Curtis, Mallet-Prevost, Colt & Mosle LLP

1. Client Matter 015722-0002: Rothstein Litigation (2009-2014)

We were retained to represent the interests of PPVAF in connection with the fund's credit facility to Banyon Investments, LLC, a Nevada company that used the loan proceeds to purchase interests in structured litigation settlements marketed by a South Florida law firm, Rothstein Rosenfeldt & Adler LLP ("RRA"). In November 2009 it became known that the RRA-marketed litigation settlements were fictitious and that RRA's principal, Scott Rothstein, was perpetrating a scheme to defraud investors. We represented the Advisors' principals and employees in the criminal and regulatory investigations that followed Rothstein's arrest, and served as lead counsel in civil litigation on multiple fronts and in various forums, including the United States District Court in Nevada, the United States Bankruptcy Court for the Southern District of Florida, and in the Florida state courts. Neither the Advisors, nor their members, principals, nor employees, were accused of wrongdoing in any government or regulatory proceeding. The United States District Court for the Southern District of Florida deemed PPVAF a "victim" of the scheme pursuant to 18 U.S.C. § 3663A, and several principals and employees of the Advisors testified as witnesses for the government in prosecutions of Rothstein's conspirators.

2. Client Matter 015722-0005: Glacial Energy Subpoena (2012)

We were retained in 2012 to respond to a subpoena issued by the Office of the New York State Attorney General. The subpoena was directed to funds advised by Platinum Credit. The investigation related to New York sales tax owed by a company in which funds advised by Platinum Credit had made convertible loans. PPVAF was not a party or respondent in any respect.

3. Client Matter 015722-0006: BDL Investigation (2012-2014)

We were retained in 2012 to represent the interests of the Advisors, their principals and employees, PPVAF and certain affiliates (including BDL Group LLC ("BDL")), and other persons, in an investigation by the Securities and Exchange Commission. The investigation concerned investments by BDL in variable annuity insurance contracts. The investigation concluded in 2013 with no proceedings commenced against PPVAF or the Advisors. In 2014 we represented individual clients as non-party witnesses in an administrative enforcement proceeding brought by the Commission against a person not affiliated with any of our clients.

4. Client Matter 015722-0007: General Litigation Advice (2013-2017)

We have been asked to provide *ad hoc* advice to the Advisors from time to time. Time and expenses in connection with such advice was invoiced separately from our other matters. A receivable has been outstanding since March 2017.



Curtis, Mallet-Prevost, Colt & Mosle LLP

5. Client Matter 015722-0008: SEC Section 204 Examination (2013-2014)

We were retained by the Advisors in connection with an audit of their books and records by the SEC's Office of Compliance, Inspections and Examination (OCIE). OCIE demanded an inspection of millions of documents from the Advisors, and we were engaged to manage the review and production of documents and to protect attorney-client privilege. We provided advice to the Advisors as requested throughout the year-long audit.

6. Client Matter 015722-0009: Life Partners (2015)

We were retained by the Advisors to advise them with respect to a potential investment in a distressed asset being auctioned in a Texas bankruptcy. The Advisors did not proceed with the investment.

7. Client Matter 015722-0010: COBA Investigation (2015-2016)

We represented the Advisors and their members, principals and employees in connection with grand jury subpoenas issued by the United States Attorney's Office for the Southern District of New York. The investigation concerned the investment of the Correction Officers' Benevolent Association in PPVAF. In June 2016, a grand jury in the Southern District of New York indicted Murray Huberfeld, formerly an officer of Platinum Credit, and a founding member of the Advisors, in connection with the investigation. Shortly after the indictment the Advisors retained Dechert LLP to represent them and their employees in connection with the investigation.

8. Client Matter 015722-0011: New Jersey Investigation (2015)

We were retained in 2015 in connection with a grand jury subpoena from the United States Attorneys' Office for the District of New Jersey. The subpoena was directed to Platinum Management and sought records relating to various persons identified in the subpoena and relating to the Birchas Shmuel Foundation and MS Family Foundation. We produced the documents and that concluded the representation.

9. Client Matter 015722-0012: SEC/EDNY Investigation (2016)

We were retained in June 2016 in connection with subpoenas from the SEC Division of Enforcement and grand jury subpoenas from the United States Attorney's Office for the Eastern District of New York. We represented the Advisors as co-counsel to Dechert LLP. We have outstanding receivables for this period, as set forth below.

10. Client Matter 015722-0013: Stadtmauer Arbitration (2017)

We were retained in 2016 to represent Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund LLC (jointly, "PPCO"), and Platinum Partners Value Arbitrage Fund (USA) L.P. (the "PPVA US Feeder") in connection with a demand for arbitration by investor Richard Stadtmauer, his wife and an entity they



July 21, 2017

Page 4

Curtis, Mallet-Prevost, Colt & Mosle LLP

control. PPVAF was named as a respondent in that proceeding and was represented by the liquidators' appointed counsel at Holland & Knight LLP. The matter is presently stayed pursuant to an order of the United States District Court for the Eastern District of New York.

* * *

We have outstanding receivables due from the Advisors in the amount of \$341,321.62 in connection with matters -07 (General Litigation Advice), -12 (SEC/EDNY Investigation), and -13 (Stadtmauer). A breakdown by matter and invoice is enclosed in the attached schedule from our accounting department. While we are willing to work with the JOLs with respect to the matters set forth in the Letter, we must insist that our bills first be paid, consistent with our rights under New York law.

In the interim, please be assured that any books and records in our possession that are property of PPVAF are — like all of our client files — maintained and preserved professionally in the ordinary course of our business, consistent with our obligations as a New York law firm.

We are available to discuss these matters with you at your convenience. Please do not hesitate to write or call.

Kind regards,

/s/ Gabriel Hertzberg

Gabriel Hertzberg

Enclosures

cc: Eliot Lauer, Esq. (Curtis, Mallet)
Melanie Cyganowski, Esq. (Otterbourg LLP)
Barbra Parlin, Esq. (Holland & Knight LLP)

29274254

EXHIBIT G

From: trisha.rich@hklaw.com
To: [Simmelman, Jacques; Hertzberg, Gabriel](mailto:Simmelman_Jacques;Hertzberg_Gabriel)
Cc: Warren.Gluck@hklaw.com; Peter.Jarvis@hklaw.com; [Lauer, Eliot](mailto:Lauer_Eliot)
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR
Date: Sunday, December 23, 2018 7:00:15 AM

*****EXTERNAL EMAIL*****

We will provide those emails with enough time for your review.

Thanks so much,
Trish

Trisha M. Rich | Holland & Knight

Partner
Holland & Knight LLP
131 South Dearborn Street, 30th Floor | Chicago, IL 60603
Direct 312.578.6514 | Mobile 734.272.2189 | Fax 312.578.6666
trisha.rich@hklaw.com | www.hklaw.com

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From: [Simmelman, Jacques](mailto:Simmelman_Jacques) [mailto:jsemmelman@curtis.com]
Sent: Saturday, December 22, 2018 8:46 PM
To: Rich, Trisha M (CHI - X66514) <trisha.rich@hklaw.com>; Hertzberg, Gabriel <ghertzberg@curtis.com>
Cc: [Gluck, Warren E \(NYC - X73396\)](mailto:Gluck_Warren) <Warren.Gluck@hklaw.com>; [Jarvis, Peter R \(POR - X55877\)](mailto:Jarvis_Peter) <Peter.Jarvis@hklaw.com>; [Lauer, Eliot](mailto:Lauer_Eliot) <elauer@curtis.com>
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

We do not expect to receive your draft motion in advance of the filing date set by Judge Rakoff. We do expect to receive immediately the emails that Warren explicitly stated to Gabe were being brought to court last Wednesday.

Jacques

From: trisha.rich@hklaw.com [mailto:trisha.rich@hklaw.com]
Sent: Saturday, December 22, 2018 8:58 PM
To: Hertzberg, Gabriel
Cc: [Simmelman, Jacques](mailto:Simmelman_Jacques); Warren.Gluck@hklaw.com; Peter.Jarvis@hklaw.com; [Lauer, Eliot](mailto:Lauer_Eliot)
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

*****EXTERNAL EMAIL*****

Gabe,

We're still reviewing documents, but will get some over to you prior to filing our motion.

Also, we've discussed sending you a copy of our motion as well, prior to filing. While we think that could make this process more efficient, we have concerns about sending you a draft, in case we end up making additional edits before filing. Would you be willing to agree not to use any of our edits/changes in your briefing or argument of this motion?

Thanks,
Trish

Trisha M. Rich | Holland & Knight

Partner
Holland & Knight LLP
131 South Dearborn Street, 30th Floor | Chicago, IL 60603
Direct 312.578.6514 | Mobile 734.272.2189 | Fax 312.578.6666
trisha.rich@hklaw.com | www.hklaw.com

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From: [Hertzberg, Gabriel](mailto:Hertzberg_Gabriel) [mailto:ghertzberg@curtis.com]
Sent: Friday, December 21, 2018 11:42 PM
To: Rich, Trisha M (CHI - X66514) <trisha.rich@hklaw.com>
Cc: [Simmelman, Jacques](mailto:Simmelman_Jacques) <jsemmelman@curtis.com>; [Gluck, Warren E \(NYC - X73396\)](mailto:Gluck_Warren) <Warren.Gluck@hklaw.com>; [Jarvis, Peter R \(POR - X55877\)](mailto:Jarvis_Peter) <Peter.Jarvis@hklaw.com>; [Lauer, Eliot](mailto:Lauer_Eliot) <elauer@curtis.com>
Subject: Re: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

Trish,

Jacques is sabbath observant, so if you have a late submission to send us please make sure to copy me on it.

Regards
Gabe

Gabriel Hertzberg
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, NY 10178
Tel (212) 696-8856
Fax (917) 368-7356
ghertzberg@curtis.com <mailto:ghertzberg@curtis.com>

On Dec 21, 2018, at 10:52 AM, "trisha.rich@hklaw.com<mailto:trisha.rich@hklaw.com>" <trisha.rich@hklaw.com<mailto:trisha.rich@hklaw.com>>" wrote:

*****EXTERNAL EMAIL*****

We will be in touch later today regarding this issue.

Trisha M. Rich | Holland & Knight

Partner
Holland & Knight LLP
131 South Dearborn Street, 30th Floor | Chicago, IL 60603
Direct 312.578.6514 | Mobile 734.272.2189 | Fax 312.578.6666
trisha.rich@hklaw.com <mailto:trisha.rich@hklaw.com> | www.hklaw.com <<http://www.hklaw.com>>

Add to address book<<http://www.hklaw.com/vcard.aspx?user=tmrich>> | View professional biography<<http://www.hklaw.com/id77/biostmrich>>

From: Semmelman, Jacques [<mailto:jsemmelman@curtis.com>]
Sent: Friday, December 21, 2018 9:51 AM
To: Rich, Trisha M (CHI - X66514) <trisha.rich@hklaw.com<<mailto:trisha.rich@hklaw.com>>>
Cc: Gluck, Warren E (NYC - X73396) <Warren.Gluck@hklaw.com<<mailto:Warren.Gluck@hklaw.com>>>; Jarvis, Peter R (POR - X55877) <Peter.Jarvis@hklaw.com<<mailto:Peter.Jarvis@hklaw.com>>>; Lauer, Eliot <elauer@curtis.com<<mailto:elauer@curtis.com>>>; Hertzberg, Gabriel <ghertzberg@curtis.com<<mailto:ghertzberg@curtis.com>>>
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

Dear Trish,

I have not received any response to my December 19 email. Please advise as to your intentions.

Thank you.

Jacques

Jacques Semmelman
Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP

101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6067
Fax: +1 917 368 8867
jsemmelman@curtis.com<<mailto:jsemmelman@curtis.com>>

<image001.jpg><[From: Semmelman, Jacques
Sent: Wednesday, December 19, 2018 2:24 PM
To: 'trisha.rich@hklaw.com' <<mailto:trisha.rich@hklaw.com>>
Cc: \[Warren.Gluck@hklaw.com\]\(mailto:Warren.Gluck@hklaw.com\)<<mailto:Warren.Gluck@hklaw.com>>; \[Peter.Jarvis@hklaw.com\]\(mailto:Peter.Jarvis@hklaw.com\)<<mailto:Peter.Jarvis@hklaw.com>>; Lauer, Eliot; Hertzberg, Gabriel
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMGaQ&c=14jPbF-1hWnYXveI5rxtS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZ1N_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=-G4JYQPn3vDsrpKytoxc-CLZ0lxs2PdpoC7CyKArkfo&s=JxNoqc_fbChdqtrjXOg1Cj6PA97wOVOY01wo0i1IBTI&e=>www.curtis.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMGaQ&c=14jPbF-1hWnYXveI5rxtS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZ1N_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=-G4JYQPn3vDsrpKytoxc-CLZ0lxs2PdpoC7CyKArkfo&s=JxNoqc_fbChdqtrjXOg1Cj6PA97wOVOY01wo0i1IBTI&e=></p></div><div data-bbox=)

Dear Trish,

I understand that Warren Gluck told Gabe Hertzberg this morning that an associate at your firm was bringing to court a set of emails that, according to Warren, support your claim that Curtis is operating under a disqualifying conflict.

We remain receptive to seriously evaluating any evidence that establishes that Curtis has a conflict. If Curtis actually has a conflict, it will not be necessary for you to file a motion to disqualify. Please send those emails to us immediately so we can review them. Thank you.

Jacques

Jacques Semmelman
Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP

101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6067
Fax: +1 917 368 8867
jsemmelman@curtis.com<<mailto:jsemmelman@curtis.com>>

<image001.jpg><[<image002.jpg>](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMGaQ&c=14jPbF-1hWnYXveI5rxtS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZ1N_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=-G4JYQPn3vDsrpKytoxc-CLZ0lxs2PdpoC7CyKArkfo&s=JxNoqc_fbChdqtrjXOg1Cj6PA97wOVOY01wo0i1IBTI&e=>www.curtis.com<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMGaQ&c=14jPbF-1hWnYXveI5rxtS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZ1N_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=-G4JYQPn3vDsrpKytoxc-CLZ0lxs2PdpoC7CyKArkfo&s=JxNoqc_fbChdqtrjXOg1Cj6PA97wOVOY01wo0i1IBTI&e=></p></div><div data-bbox=)

Please consider the environment before printing this email.

From: trisha.rich@hklaw.com<<mailto:trisha.rich@hklaw.com>> [<mailto:trisha.rich@hklaw.com>]
Sent: Monday, December 17, 2018 10:28 PM
To: Semmelman, Jacques

Cc: Warren.Gluck@hkklaw.com<<mailto:Warren.Gluck@hkklaw.com>>; Peter.Jarvis@hkklaw.com<<mailto:Peter.Jarvis@hkklaw.com>>
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

EXTERNAL EMAIL
Mr. Semmelman, please see attached.

Thanks,
Trish

Trisha M. Rich | Holland & Knight
Partner
Holland & Knight LLP
131 South Dearborn Street, 30th Floor | Chicago, IL 60603
Direct 312.578.6514 | Mobile 734.272.2189 | Fax 312.578.6666
trisha.rich@hkklaw.com<<mailto:trisha.rich@hkklaw.com>> | www.hkklaw.com<<http://www.hkklaw.com>>

Add to address book<<http://www.hkklaw.com/vcard.aspx?user=tmrich>> | View professional biography<<http://www.hkklaw.com/id77/biostmrich>>

From: Semmelman, Jacques [<mailto:jsemmelman@curtis.com>]
Sent: Thursday, December 13, 2018 9:24 PM
To: Rich, Trisha M (CHI - X66514)
Cc: Lauer, Eliot ; Hertzberg, Gabriel
Subject: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

Dear Ms. Rich:

Please see enclosed letter.

Jacques Semmelman
Partner
Curtis, Mallet-Prevost, Colt & Mosle LLP

101 Park Avenue
New York, New York 10178-0061

Direct Dial: +1 212 696 6067
Fax: +1 917 368 8867
jsemmelman@curtis.com<<mailto:jsemmelman@curtis.com>>

<image001.jpg><[https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMFAQ&c=14jPbF-1hWnYXveI5rixIS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZIN_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=2P1_AfuizkYhyGUsuuWyCjtF7_iHztQT7sNuN16C6JU&s=L0rLUf22v9A8JDSEIY1mnwIkNYavSKcGlpwkerhphAI&e="](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMFAQ&c=14jPbF-1hWnYXveI5rixIS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZIN_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=2P1_AfuizkYhyGUsuuWyCjtF7_iHztQT7sNuN16C6JU&s=L0rLUf22v9A8JDSEIY1mnwIkNYavSKcGlpwkerhphAI&e=)>
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www.curtis.com<[https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMFAQ&c=14jPbF-1hWnYXveI5rixIS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZIN_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=2P1_AfuizkYhyGUsuuWyCjtF7_iHztQT7sNuN16C6JU&s=L0rLUf22v9A8JDSEIY1mnwIkNYavSKcGlpwkerhphAI&e="](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.curtis.com_&d=DwMFAQ&c=14jPbF-1hWnYXveI5rixIS_Fo3DRrpL7HUwJDAc4Hlc&r=u-mZIN_3FhdbC4bMg0D73xppxTIpKo_jTkRKNWnoT_0&m=2P1_AfuizkYhyGUsuuWyCjtF7_iHztQT7sNuN16C6JU&s=L0rLUf22v9A8JDSEIY1mnwIkNYavSKcGlpwkerhphAI&e=)>
>

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Curtis, Mallet-Prevost, Colt & Mosle LLP (101 Park Avenue, New York, NY 10178)

NOTE: This e-mail is from a law firm, Holland & Knight LLP ("H&K"), and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose it to anyone else. If you are not an existing client of H&K, do not construe anything in this e-mail to make you a client unless it contains a specific statement to that effect and do not disclose anything to H&K in reply that you expect it to hold in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of H&K, you should maintain its contents in confidence in order to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

EXHIBIT H



Curtis, Mallet-Prevost, Colt & Mosle LLP

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101 Park Avenue
New York, New York 10178-0061

Telephone +1 212 696 6000
Facsimile +1 212 697 1559
www.curtis.com

Jacques Semmelman
Tel: +1 212 696 6067
Fax: +1 917 368 8867
E-Mail: jsemmelman@curtis.com

December 28, 2018

VIA EMAIL

Ms. Trisha M. Rich
Holland & Knight LLP
131 South Dearborn Street
Chicago, IL 60603

**Re: Martin Trott, et ano. v. Platinum Management (NY) LLC, et al.,
No. 1:18-cv-10936-JSR**

Dear Ms. Rich:

It is apparent from the disqualification motion (the “Motion”) filed on December 26, 2018, by Holland & Knight LLP on behalf of the Joint Official Liquidators (the “JOLs”) of Platinum Partners Value Arbitrage Fund L.P. (the “Fund”) that the JOLs and/or their lawyers at Holland & Knight have been reviewing attorney-client privileged and work product protected emails that do not belong to the Fund, but rather to Platinum Management (NY) LLC (“Platinum Management”), and possibly to other persons and entities that have been represented by this firm (“Curtis”).

Examples include Exhibits 5, 6, and 7 to the Motion. Each of these contains or consists of attorney-client privileged communications between Curtis and its client, Platinum Management. Some of these also contain Curtis work product.¹ Presumably, the JOLs and/or their lawyers at Holland & Knight have combed through a much larger set of attorney-client privileged and work product protected documents in order to locate these.

The JOLs, who are adverse to Platinum Management in this litigation, have represented that they have taken possession of the Platinum Management email servers. (ECF No. 21.) They evidently have not taken steps to segregate and protect Platinum Management’s

¹ The emails at Exhibits 5 and 6 are explicitly labeled “privileged and confidential” in their subject lines. Exhibit 7 is a quintessentially candid work product discussion among joint defense counsel.



Curtis, Mallet-Prevost, Colt & Mosle LLP

Ms. Trisha M. Rich
December 28, 2018
Page 2

attorney-client privileged and work product protected documents, or even to notify Platinum Management that its privileged communications are being read and used by the JOLs.

To the best of our knowledge, Platinum Management has not waived attorney-client or work product privileges with respect to any communications or work product. If the JOLs or Holland & Knight have received a valid privilege waiver from Platinum Management, please produce it promptly. If you have received no such waiver, please provide justification for this conduct.

Very truly yours,

/s/ Jacques Semmelman

Jacques Semmelman

cc: Eliot Lauer
Gabriel Hertzberg
Warren Gluck
Peter Jarvis

EXHIBIT I

From: Warren.Gluck@hklaw.com
To: Simmelman, Jacques; trisha.rich@hklaw.com
Cc: Lauer, Eliot; Hertzberg, Gabriel; Peter.Jarvis@hklaw.com; Barbra.Parlin@hklaw.com
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR
Date: Monday, December 31, 2018 7:55:04 AM
Attachments: [image001.jpg](#)

*****EXTERNAL EMAIL*****

Dear Jacque,

There is an approved protocol agreed between the Platinum office-holders. Otherwise, I do think Trisha was clear.

We will determine whether the protocol can or must be shared with any or some of the parties to this action, including whether it is relevant to any claim or defense, in due course.

In the interim, you have stated you do not represent Platinum Management, and our client has objected to your representation of Mr. Bodner.

Once the latter issue is settled, perhaps we can discuss further with yourselves or Mr. Bodner's new counsel.

Sincerely,

Warren Gluck | Holland & Knight

Partner

Holland & Knight LLP

31 West 52nd Street | New York, NY 10019

Phone 212.513.3396 | Fax 212.385.9010

warren.gluck@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Semmelman, Jacques [<mailto:jsemmelman@curtis.com>]
Sent: Sunday, December 30, 2018 11:12 PM
To: Rich, Trisha M (CHI - X66514)
Cc: Lauer, Eliot ; Hertzberg, Gabriel ; Gluck, Warren E (NYC - X73396) ; Jarvis, Peter R (POR - X55877)
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

Trish,

I am aware that you do not wish to engage further on this. But your email refers to a "detailed protocol between the office holders of PPVA and as approved by various regulatory bodies." We have no knowledge of such a protocol. Are you able to share it with us?

Jacques

Jacques Semmelman

Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP

101 Park Avenue

New York, New York 10178-0061

Direct Dial: +1 212 696 6067

Fax: +1 917 368 8867

jsemmelman@curtis.com



www.curtis.com

From: trisha.rich@hklaw.com [<mailto:trisha.rich@hklaw.com>]
Sent: Sunday, December 30, 2018 4:39 PM
To: Semmelman, Jacques
Cc: Lauer, Eliot; Hertzberg, Gabriel; Warren.Gluck@hklaw.com; Peter.Jarvis@hklaw.com

Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

*****EXTERNAL EMAIL*****

Jacques,

As you know, the disclosure of privileged documents to a third party waives the privilege. In this case, Platinum Management has previously (and voluntarily) disclosed these documents, in accordance with a detailed protocol between the office holders of PPVA and as approved by various regulatory bodies. Any privilege over those documents has been waived.

Further, we reject the assertion that Platinum Management as general partner of PPVA had its own separate privilege distinct from PPVA. This was never contemplated, nor were the documents treated in a way that would suggest that there was any separate and distinct privilege.

Finally, we again reject the assertion that you have standing in relation to this issue, and do not expect further extra-judicial exchange on this matter.

Thanks,

Trish

Trisha M. Rich | Holland & Knight

Partner

Holland & Knight LLP

131 South Dearborn Street, 30th Floor | Chicago, IL 60603

Direct 312.578.6514 | Mobile 734.272.2189 | Fax 312.578.6666

trisha.rich@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Semmelman, Jacques [<mailto:jsemmelman@curtis.com>]

Sent: Sunday, December 30, 2018 12:26 PM

To: Rich, Trisha M (CHI - X66514) <trisha.rich@hklaw.com>

Cc: Lauer, Eliot <elauer@curtis.com>; Hertzberg, Gabriel <ghertzberg@curtis.com>; Gluck, Warren E (NYC - X73396) <Warren.Gluck@hklaw.com>; Jarvis, Peter R (POR - X55877) <Peter.Jarvis@hklaw.com>

Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

Trisha,

Platinum Management is a long-time former client, and we feel duty bound to follow up on this, as we are not aware that any lawyer is currently representing Platinum Management.

Your email states that “any privileges that would have attached have long since been waived with the disclosure of these documents.” We are unaware of any waiver. Please explain the basis for your statement.

Your email also states that “to the extent that any privileges were not waived – which we believe is not the case – PPVA is within, rather than outside, that privilege as it relates to Platinum Management.” Is it H&K’s position that it is entitled to access every privileged document located on the server of Platinum Management, regardless of whether the document relates to PPVA? If that is not H&K’s position, how has H&K screened out privileged documents unrelated to PPVA from the eyes of H&K lawyers?

Jacques

Jacques Semmelman

Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP

101 Park Avenue

New York, New York 10178-0061

Direct Dial: +1 212 696 6067

Fax: +1 917 368 8867

jsemmelman@curtis.com



www.curtis.com

From: trisha.rich@hklaw.com [<mailto:trisha.rich@hklaw.com>]
Sent: Friday, December 28, 2018 4:10 PM
To: Semmelman, Jacques
Cc: Lauer, Eliot; Hertzberg, Gabriel; Warren.Gluck@hklaw.com; Peter.Jarvis@hklaw.com
Subject: RE: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR
*****EXTERNAL EMAIL*****

Jacques,

Thanks for your letter.

We disagree with your conclusion for multiple reasons. First, any privileges that would have attached have long since been waived with the disclosure of these documents. Second, to the extent that any privileges were not waived – which we believe is not the case – PPVA is within, rather than outside, that privilege as it relates to Platinum Management. Finally, unless you represent Platinum Management – and certainly let us know if you do – we believe you lack standing to make any such assertion at this point.

Thanks,

Trish

Trisha M. Rich | Holland & Knight

Partner

Holland & Knight LLP

131 South Dearborn Street, 30th Floor | Chicago, IL 60603

Direct 312.578.6514 | Mobile 734.272.2189 | Fax 312.578.6666

trisha.rich@hklaw.com | www.hklaw.com

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From: Semmelman, Jacques [<mailto:jsemmelman@curtis.com>]
Sent: Friday, December 28, 2018 1:52 PM
To: Rich, Trisha M (CHI - X66514)
Cc: Lauer, Eliot ; Hertzberg, Gabriel ; Gluck, Warren E (NYC - X73396) ; Jarvis, Peter R (POR - X55877)
Subject: Trott et ano. v. Platinum et al, No. 1:18-cv-10936-JSR

Dear Trish,

Please see attached letter.

Jacques

Jacques Semmelman

Partner

Curtis, Mallet-Prevost, Colt & Mosle LLP

101 Park Avenue

New York, New York 10178-0061

Direct Dial: +1 212 696 6067

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Curtis, Mallet-Prevost, Colt & Mosle LLP (101 Park Avenue, New York, NY 10178)

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EXHIBIT J

From: [Harvey Werblowsky](#)
To: [Lauer, Eliot](#); [Hertzberg, Gabriel](#); barbara.parlin@hklaw.com
Subject: Introduction
Date: Thursday, September 08, 2016 9:45:41 AM

Eliot , making the introduction. She is expecting to hear from you re the southern district and cobra. Ty

Sent from my iPad

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