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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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**ANSWER TO CONDITIONAL COUNTERCLAIM
OF DEFENDANT DAVID BODNER**

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 Answer to the Conditional Counterclaim for Indemnification against PPVA filed by defendant David Bodner (“Bodner”) in his Amended Answer, dated August 26, 2020, to the Second Amended Complaint, allege as follows:

1. The JOLs, on behalf of PPVA, (a) admit that the PPVA Limited Partnership Agreement (a copy of which is attached as Exhibit 6 to the Second Amended Complaint (the “PPVA LPA”)) contains an indemnification provision at section 2.07; (b) admit that pursuant to section 2.07 of the PPVA LPA, PPVA is not obligated to indemnify any person for liabilities or losses suffered with respect to actions or omissions that violate either the PPVA LPA or the Platinum Management Operating Agreement (a copy of which is attached as Exhibit 7 to the Second Amended Complaint (the “PMNY LLC Agreement”)); (c) admit that PPVA is not obligated to indemnify any person for liabilities or losses suffered with respect to actions or omissions constituting fraud, gross negligence or willful misconduct; (d) refer the Court to the PPVA LPA and the PMNY LLC Agreement for a complete and accurate statement of their respective terms; and (e) otherwise deny the allegations in Bodner’s Conditional Counterclaim for Indemnification.

**AFFIRMATIVE DEFENSES TO CONDITIONAL
COUNTERCLAIM FOR INDEMNIFICATION**

The JOLs allege and assert the following defenses in response to Bodner’s Conditional 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 Answer, and to assert additional or different defenses, based upon information or evidence developed in discovery or otherwise.

FIRST AFFIRMATIVE DEFENSE

Bodner's Conditional Counterclaim for Indemnification fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Bodner's Conditional 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

Bodner's Conditional 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

Bodner's Conditional Counterclaim for Indemnification is barred, in whole or in part, because all claims asserted against Bodner 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 and Beechwood Defendants in connection with the breaches of fiduciary duty, fraud and other misconduct, alleged in the Second Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

Bodner's Conditional Counterclaim for Indemnification is barred, in whole or in part, because the losses or expenses that Bodner may sustain or suffer in connection with the above

captioned cases will not result from “a mistake of judgment” by Bodner or “from action or inaction” by Bodner that Bodner “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

Bodner’s Conditional Counterclaim for Indemnification is barred, in whole or in part, because the losses or expenses that Bodner may sustain or suffer in connection with the above captioned cases were caused by Bodner’s “gross negligence, willful misconduct, bad faith, or fraud,” which are exempted from indemnification under section 11.2 of the PMNY LLC Agreement.

SEVENTH AFFIRMATIVE DEFENSE

Bodner’s Conditional Counterclaim for Indemnification is barred, in whole or in part, because the losses or expenses that Bodner may sustain or suffer in connection with the above captioned cases: (a) will not result from acts taken by Bodner “in good faith” or “in a manner reasonably believed to be, or not opposed to, the best interest” of PPVA, as required to qualify for indemnification under section 5 of the Fourth Amended and Restatement Investment Management Agreement, dated December 1, 2020 (as amended and restated), among others, PPVA and PMNY (the “IMA”); and (b) were caused by Bodner’s “actions or failures that constitute gross negligence or a willful violation of law” by Bodner with respect to the “performance or non-performance” of Bodner’s duties to PPVA, which are exempted from indemnification under section 5 of the IMA.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

To the extent Bodner attempts to rely on the March 20, 2016 Release Agreement (the “March 2016 Release”), the March 2016 Release is void as an agreement amongst coconspirators that purports to grant exemption from liability for grossly negligent and/or fraudulent acts and is unenforceable as a matter of public policy.


DEMAND FOR TRIAL BY JURY

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

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

Dated: September 16, 2020
New York, New York

HOLLAND & KNIGHT LLP

By: 
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