

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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.

PLAINTIFFS' PROPOSED PRELIMINARY INSTRUCTION

Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (together, the “**JOLs**”) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (“**PPVA**”), respectfully submit the following proposed preliminary instruction.

This preliminary instruction is intended to give you a brief overview of the overarching claims in this civil case. It is no substitute for the more detailed instructions of the law that I will provide at the close of the presentation of the evidence, which will govern your deliberations.

There are two plaintiffs in this case. The first set of Plaintiffs are Martin Trott and Christopher Smith, who are known as the “**JOLs**.” The JOLs have been granted authority by courts in the Cayman Islands and New York to liquidate the assets of PPVA and bring litigation, including this case. The other plaintiff is PPVA, an investment fund that, prior to its liquidation in 2016, was managed by Platinum Management (NY), LLC. The defendant in this case is David Bodner.

Plaintiffs allege that Bodner breached his fiduciary duties to PPVA by using his control over the assets and operations of PPVA and Platinum Management to improperly cause millions of dollars in unearned fees and distributions to be paid to Platinum Management and its owners — including Mr. Bodner and his family. Plaintiffs also allege that Bodner took such fees and distributions despite his knowledge that PPVA’s net asset value, or NAV, was overvalued, and that he failed to disclose or stop the scheme when he had an obligation to do so. Plaintiffs also allege that, by orchestrating this scheme, Bodner aided and abetted PMNY’s breach of its fiduciary duties to PPVA and committed fraud. Bodner will raise various defenses, including that PPVA released him from the claims alleged in this case. Plaintiffs allege that the Release Agreement is void and unenforceable because it was executed for a fraudulent purpose.

If you find Bodner liable, you will determine whether to award damages to Plaintiffs. I note that this preliminary instruction constitutes a brief overview of the claims in this case.

Dated: New York, New York
November 28, 2022

HOLLAND & KNIGHT LLP

By: /s/ Warren E. Gluck

Warren E. Gluck

Warren E. Gluck, Esq.

Martin L. Seidel, Esq.

Richard A. Bixter Jr., Esq. (*pro hac vice*)

Qian (Sheila) Shen, Esq.

Elliot A. Magruder, Esq.

31 West 52nd Street

New York, New York 10019

Telephone: 212-513-3200

Facsimile: 212-385-9010

Email: warren.gluck@hklaw.com

martin.seidel@hklaw.com

richard.bixter@hklaw.com

qian.shen@hklaw.com

elliott.magruder@hklaw.com

Attorneys for Plaintiffs