

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD ⁸⁴ OF 2019

- BETWEEN:**
- (1) PLATINUM PARTNERS VALUE ARBITRAGE FUND (INTERNATIONAL) LIMITED (in official liquidation)
 - (2) PLATINUM PARTNERS VALUE ARBITRAGE INTERMEDIATE FUND LTD. (in official liquidation)



PLAINTIFFS

- AND:**
- (1) MARK ALAN NORDLICHT
 - (2) ESTATE OF URI DAVID LANDESMAN
 - (3) DAVID ISIAAH LEVY
 - (4) PLATINUM MANAGEMENT (NY) LLC
 - (5) PLATINUM PARTNERS VALUE ARBITRAGE LP

DEFENDANTS



WRIT OF SUMMONS

TO: MARK ALAN NORDLICHT
Of: 245 Tenor Drive
New Rochelle, NY 10804

And

TO: ESTATE OF URI DAVID LANDESMAN
Of: c/o Dean Grayson, Court Appointed Executor
515 Hermleigh Road
Silver Spring, Maryland 20902



And

TO: DAVID ISAIAH LEVY
Of: 80 Riverside Boulevard, Apt 24C
New York, NY 10069

And

TO: PLATINUM MANAGEMENT (NY) LLC
Of: 152 West 57th Street, 54th Floor
New York, NY 10019

c/o Registered Agent
Vcorp Services LLC
1013 Centre Road, Suite 403-B
Wilmington, DE 19805

And

TO: PLATINUM PARTNERS VALUE ARBITRAGE LP
Of: 370 Central Park West, Suite 101
New York, NY 10025

c/o Registered Agent
Vcorp Services LLC
1013 Centre Road, Suite 403-B
Wilmington, DE 19805

THIS WRIT OF SUMMONS has been issued against you by the above-named First and Second Plaintiffs in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 7th day of May 2019.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

INDORSEMENT OF NATURE OF CLAIM

1. The Plaintiffs are each Cayman exempted limited companies formerly managed by a board of directors but now in liquidation. They operated as feeder funds in a master/feeder structure. The Master Fund was Platinum Partners Value Arbitrage Fund LP (in liquidation) (**'the Master Fund'**).
2. The Plaintiffs invested substantially all of their assets in the Master Fund and were Limited Partners of the Master Fund. As investors and Limited Partners, the Plaintiffs did not acquire direct ownership of the investments in which the Master Fund invested, but instead contributed capital entitling them to a share of the Master Fund's profit and losses.
3. Assets held by the Master Fund were purportedly valued pursuant to a Valuation Policy adopted by the Fourth Defendant, Platinum Management (NY) LLC (**'PMNY'**), acting through its Valuation Committee and in accordance with the applicable US Generally Accepted Accounting Principles (**'GAAP'**) from time to time.
4. The First Defendant, Mark Alan Nordlicht, was:
 - 4.1 a director of the First Plaintiff from 30 April 2015 to 13 September 2016;
 - 4.2 a director of the Second Plaintiff from 22 June 2010;
 - 4.3 a de facto and/or shadow director of the Plaintiffs at all material times from 22 June 2010 onwards when he was not a formally appointed director;
 - 4.4 at all material times the Chief Investment Officer of PMNY and from 2003 to 31 December 2010, and April 2015 the President of PMNY;
 - 4.5 at all material times a member of the PMNY Valuation Committee; and
 - 4.6 at all material times an owner, directly and indirectly, of PMNY and the Fifth Defendant, Platinum Partners Value Arbitrage LP (**'PPVA LP'**).
5. The Second Defendant, Uri David Landesman, was:
 - 5.1 a director of the First Plaintiff from 23 December 2010 to 30 April 2015;
 - 5.2 a shadow and/or de facto director of the Plaintiffs at all material times from 22 June 2010 onwards when he was not a formally appointed director;
 - 5.3 President and Managing Partner of PMNY from 1 January 2011 until around April 2015;
 - 5.4 at all material times a member of the PMNY Valuation Committee; and

- 5.5 at all material times an owner, directly and indirectly, of PMNY and PPVA LP.
6. Landesman died, testate, in September 2018. His will was admitted to probate in the Westchester County (New York) Surrogate's Court on 19 March 2019. Dean Grayson of Silver Spring, Maryland was named as the Executor of the estate in the decedent's will and was issued Letters Testamentary by the Surrogate's Court on 13 March 2019.
7. The Third Defendant, David Isaiah Levy, was:
- 7.1 a Portfolio Manager of PMNY from at least 2006 to approximately 2014;
- 7.2 Co-Chief Investment Officer of PMNY from approximately 2015;
- 7.3 a member of the PMNY Valuation Committee from approximately 2015;
- 7.4 a member of the PMNY Risk Committee from approximately 2016;
- 7.5 at material times an owner, directly and indirectly, of PMNY; and
- 7.6 the recipient of management fees, incentive fees, bonuses and/or other compensation payments from PMNY in his role as a Portfolio Manager.
8. At all material times, the Fourth Defendant, PMNY was:
- 8.1 a shadow and/or de facto director of the Plaintiffs;
- 8.2 the Investment Manager of the Master Fund and the Plaintiffs, based on an Investment Management Agreement dated 1 December 2010;
- 8.3 the General Partner of the Master Fund based on a Limited Partnership dated 1 July 2008; and
- 8.4 the recipient of management fees and incentive fees from the Plaintiffs calculated based on the Plaintiffs' Net Asset Value ('NAV').
9. At all material times, the Fifth Defendant, PPVA LP, was the recipient of incentive allocations from the Plaintiffs calculated based on the Plaintiffs' NAV.
10. Nordlicht, Landesman, Levy and PMNY assumed responsibility for the control and stewardship of the Master Fund's assets and the Plaintiffs' investments in the Master Fund.
11. The PMNY Valuation Committee met on at least 8 April 2010, 9 July 2010, 4 April 2011, 6 July 2011, 17 October 2011, 17 November 2011, 13 December 2011, 7 March 2012, 2 July 2012, 24 January 2013, 13 October 2013, 24 July 2014, 4 November 2014, 1 December 2014, 24 June 2015, 24 September 2015 and 2 March 2016.

12. The Board of the First Plaintiff (and where relevant the Second Plaintiff) met on at least 23 December 2010, 22 December 2011, 13 March 2013, 12 March 2014, 20 May 2015, 16 September 2015 and 24 March 2016.

13. The Plaintiffs allege that:

13.1 Nordlicht, Landesman, Levy and PMNY breached their duties to the Plaintiffs through their knowing or reckless over-statement of the valuation of the Master Fund's Level 3 assets and corresponding overstatement of NAV, and in knowingly or recklessly providing misleading information to the Boards and investors of the Plaintiffs as to the valuation of the Master Fund's Level 3 assets and the financial position, performance and liquidity of the various entities within the Platinum group; and

13.2 Nordlicht, Landesman and Levy further breached their duties to the Plaintiffs through their improper receipt of fees, bonuses, compensation payments and/or other payments from the Plaintiffs, PMNY and/or PPVA LP with actual knowledge, or knowledge which is to be inferred from willful blindness or reckless indifference, that the transfers of funds were made in breach of fiduciary duty by Nordlicht, Landesman, Levy, PMNY and/or PPVA LP; and

13.3 PMNY and PPVA LP breached their duties to the Plaintiffs through their improper receipt of management fees, incentive fees and/or incentive allocations from the Plaintiffs with actual knowledge, or knowledge which is to be inferred from willful blindness or reckless indifference, that the transfers of funds were made in breach of fiduciary duty by Nordlicht and/or Landesman.

14. The reasonableness and appropriateness of the fair values ascribed to the Master Fund's Level 3 assets were of utmost importance in the management and operation of the Plaintiffs. The valuation and other financial information was reasonably relied upon by the independent directors of the Plaintiffs and/or investors in approving and issuing the financial statements of the Plaintiffs, determining the NAV of the Plaintiffs and in making decisions based on the financial performance of the Plaintiffs. Such reliance was at all times known to the Defendants.

15. The Plaintiffs claim against the Defendants:

15.1 As against Nordlicht and Landesman:

(a) in their roles as de jure, de facto or shadow directors of the Plaintiffs, for breach of fiduciary and tortious duties owed to the Plaintiffs;

- (b) for fraudulent trading pursuant to section 147 of the Cayman Islands Companies Law (as Revised); and
- (c) for unjust enrichment as the recipients of fees, bonuses, compensation payments and/or other payments improperly received from the Plaintiffs, PMNY and/or PPVA LP.

15.2 As against Levy:

- (a) for breach of fiduciary, tortious and contractual duties owed to the Plaintiffs;
- (b) for fraudulent trading pursuant to section 147 of the Cayman Islands Companies Law (as Revised); and
- (c) for unjust enrichment as the recipient of fees, bonuses compensation payments and/or other payments improperly received from the Plaintiffs and/or PMNY.

15.3 As against PMNY:

- (a) in its role as de facto or shadow director of the Plaintiffs, for breach of fiduciary and tortious duties;
- (b) for breach of its fiduciary, contractual and tortious duties as General Partner of the Master Fund;
- (c) for breach of its fiduciary, contractual and tortious duties as Investment Manager of the Plaintiffs;
- (d) for fraudulent trading pursuant to section 147 of the Cayman Islands Companies Law (as Revised); and
- (e) for unjust enrichment and/or accessorial liability as recipient of management fees and incentive fees improperly received from the Plaintiffs and/or the improper transfer of funds to Nordlicht, Landesman and/or Levy.

15.4 As against PPVA LP:

- (a) for unjust enrichment and/or accessorial liability as recipient of incentive allocations from the Plaintiffs; and
- (b) for fraudulent trading pursuant to section 147 of the Cayman Islands Companies Law (as Revised); and

- (c) for unjust enrichment and/or accessorial liability as recipient of incentive allocations improperly received from the Plaintiffs and/or the improper transfer of funds to Nordlicht and/or Landesman.
16. By their conduct, the Defendants acted in breach of their duties, made deliberate and/or negligent misstatements and/or engaged in willful misconduct by failing to act in accordance with their duties and by contributing directly or indirectly to the over-valuation of assets and provision of misleading financial information which caused loss to the Plaintiffs.
17. As a result, the Plaintiffs have suffered loss and damage and have legal and/or equitable claims against the Defendants (**'the Claims'**) upon which interest is sought pursuant to Section 34 Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 at the rate of 2.375% for such period as the Court thinks fit.
18. Without waiving their rights to dispute the issue of time limitation, Nordlicht, Levy, PMNY and PPVA LP have agreed to toll the limitation periods with respect to the Claims still in time as at 7 November 2018 until 7 May 2019. Where *prima facie* limitation periods relating to some of the Claims set out herein may have expired, the Plaintiffs do not concede that any time limitation has expired and reserve the right to claim under section 37 of the Limitation Law (1996 Revision) to postpone the relevant limitation periods.
19. For the avoidance of doubt, the Plaintiffs have made no decision as to whether or not they will pursue the Claims. Any decision as to whether or not the Plaintiffs will pursue the Claims is subject to further and ongoing investigations by the Joint Official Liquidators appointed by the Court. This writ has been issued solely for the purpose of preserving the Claims, pending the resolution of this uncertainty and in light of the possible expiry of limitation periods.

THE PLAINTIFFS claim the following remedies:

1. Damages to be assessed for breach of fiduciary, contractual and tortious duties, fraudulent trading, unjust enrichment and accessorial liability under the following heads of damage:
 - 1.1 Management fees and incentive fees paid to PMNY based on overstated net asset values;
 - 1.2 Incentive allocations made to PPVA LP based on overstated net asset values;
 - 1.3 Fees, bonuses and/or other compensation payments paid to Nordlicht, Landesman and/or Levy;
 - 1.4 Any other amounts improperly received by Nordlicht, Landesman and/or Levy from the Plaintiffs, PMNY and/or PPVA LP.

- 1.5 Professional expenses paid by the Plaintiffs, including (but not limited to):
- (a) margin and financing interest;
 - (b) trader fees;
 - (c) brokerage fees;
 - (d) audit fees;
 - (e) valuer fees;
 - (f) administrator fees; and
 - (g) legal fees.
2. Alternatively, the Plaintiffs seek compensation calculated by reference to the increase in net deficiency of the value of the Plaintiffs' investments in the Master Fund arising from the delay in the windings up of the Plaintiffs;
3. Pre- and post-judgment interest pursuant to Section 34 Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules, 2012 at the rate of 2.375% for such period the Court thinks fit;
4. Costs; and
5. Such other relief as the Court thinks fit.


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HSM CHAMBERS
ATTORNEYS-AT-LAW FOR THE PLAINTIFFS

THIS WRIT was issued by HSM Chambers, 68 Fort Street, PO Box 31726, George Town, Grand Cayman, KY1-1207, Cayman Islands, Attorneys-At-Law for the Joint Official Liquidators of the Plaintiffs whose address is c/- Borrelli Walsh (Cayman) Limited, PO Box 30847, Strathvale House, 3rd Floor, 90 North Church Street, George Town, Grand Cayman, KY-1204, Cayman Islands whose address for service is PO Box 31726, 68 Fort Street, George Town, Grand Cayman, Ky-1207, Cayman Islands.

Acknowledgement of service of writ of summons (O. 12, r. 3)

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

GCR 1995 (Revised)

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (..... after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD OF 2019

- BETWEEN:**
- (1) PLATINUM PARTNERS VALUE ARBITRAGE
FUND (INTERNATIONAL) LIMITED (in official
liquidation)**
 - (2) PLATINUM PARTNERS VALUE
ARBITRAGE INTERMEDIATE FUND
LTD. (in official liquidation)**

PLAINTIFFS

- AND:**
- (1) MARK ALAN NORDLICHT**
 - (2) ESTATE OF URI DAVID LANDESMAN**
 - (3) DAVID ISAIAH LEVY**
 - (4) PLATINUM MANAGEMENT (NY) LLC**
 - (5) PLATINUM PARTNERS VALUE ARBITRAGE LP**

DEFENDANTS

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

-
1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged (tick appropriate box):

yes

no

2. State whether the Defendant intends to contest the proceedings (tick appropriate box):

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick appropriate box):

yes

no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.