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Platinum Execs Say Insurers Must Give Cash For Defense

Share us on: By [Stewart Bishop](#)

Law360, New York (October 10, 2017, 9:06 PM EDT) -- Attorneys for hedge fund [Platinum Partners](#) and some of its executives on Tuesday pressed a New York state judge to force three excess insurers to advance money to cover their costs of defending against criminal charges over a purported \$1 billion securities fraud scheme involving an offshore driller, saying the insurers are duty-bound to provide coverage.

[Freedom Specialty Insurance Co.](#), Atlantic Specialty Insurance Co. and [Berkley Specialty Insurance Co.](#) filed suit in May, claiming that they need not fund the Platinum defense since the fund falsely represented in warranty statements submitted along with insurance applications in November 2015 that it was unaware of any wrongful acts or circumstances that could potentially give rise to a claim.

The founder of New York hedge fund Platinum Partners and seven executives and affiliates were [charged in December](#) with fraudulently inflating the value of investments and duping bondholders of defunct offshore driller Black Elk. Another Platinum boss, Murray Huberfeld, is also facing charges over claims that he bribed the former head of New York City's correction officers' union in exchange for \$20 million in pension investments.

During oral arguments over a motion to compel the excess insurers to advance funds for attorneys' fees and costs, an attorney for the Platinum parties, Bradley J. Nash of [Schlam Stone & Dolan LLP](#), told New York Supreme Court Judge O. Peter Sherwood that the insurance companies have a duty to advance the costs.

"The duty to advance is triggered whenever there's any possibility of coverage," Nash said.

Moreover, Nash said that under the excess insurers' standard, covered defendants are left with an "impossible catch-22," namely that in order to fund their defense, they have to first prove their innocence in a coverage action.

"If the duty to advance can be avoided simply by repeating allegations of wrongdoing in the underlying criminal case, there would never be defense coverage when a corporate officer is accused of fraud," Nash said.

But the insurers contend that by the time Platinum filled out the warranties, it had already received a grand jury subpoena and other communications clearly indicating that it could face legal troubles over various alleged schemes, and is thus not entitled to coverage under the policies.

An attorney for Freedom Specialty, Alexander B. Simkin of [Kasowitz Benson & Torres LLP](#), told Judge Sherwood that the Platinum parties have to show they're entitled to receive payment under the policies, and discovery is first required to resolve factual disputes.

"There are still factual disputes about whether they told the truth in this warranty statement. And if they did not tell the truth, they can't get coverage from my client," Simkin said.

Simkin argued the excess insurers haven't been given a "single piece of paper" in support of their claims for coverage, or explained why in November 2015, Platinum suddenly increased its officers and directors coverage from \$5 million to \$25 million, a 500 percent hike.

"We think the defendants knew they were being investigated and lied to the excess insurers to increase their coverage shortly before they were indicted," Simkin said.

He said documents referred to in the indictment in the criminal case pending in Brooklyn federal court indicate that Platinum was lying to the excess insurers when it obtained the policies.

In addition to the Black Elk-related criminal case, the Platinum parties are also seeking coverage for a related action brought by the [U.S. Securities and Exchange Commission](#), as well as another civil action in Texas.

Judge Sherwood reserved decision.

According to Brooklyn federal prosecutors, Platinum founder Mark Nordlicht and his colleagues had lied to investors since 2012 about the health of Platinum's portfolio company [Black Elk Energy Offshore Operations LLC](#). Prosecutors said that as the investment faltered, Platinum relied on insider loans and new sales to repay increasingly worried investors. And in 2014, ex-Black Elk CEO Jeffrey Shulse allegedly helped Platinum usurp assets owed to bondholders, according to prosecutors.

Prosecutors say the cover-up of Platinum's downturn involved Nordlicht and David Levy, both chief investment officers; Uri Landesman and Joseph SanFilippo, a former president and a chief financial officer for Platinum funds, respectively; and investor relations representative Joseph Mann. Also named in the indictment was Daniel Small, a former managing director and co-portfolio manager of Platinum.

The men have all pled not guilty.

A court filing revealed the [probe behind the charges](#) in November, a month after a judge overseeing Black Elk's Chapter 11 bankruptcy froze more than \$118 million in Platinum assets on bondholders' behalf.

Freedom Specialty is represented by Michael J. Bowe and Alexander B. Simkin of [Kasowitz Benson & Torres LLP](#), as well as Darius N. Kandawalla and Sabrina Haurin of [Bailey Cavalieri LLC](#). Atlantic Specialty is represented by Ivan J. Dolowich and Jeffrey S. Matty of [Kaufman Dolowich & Voluck LLP](#). Berkley is represented by Geoffrey W. Heineman and John Joseph Iacobucci Jr. of [Ropers Majeski Kohn & Bentley PC](#).

Nordlicht is represented by William A. Burck, Danielle L. Gilmore and Daniel R. Koffmann of [Quinn Emanuel Urquhart & Sullivan LLP](#). Levy is represented by Michael S. Sommer of [Wilson Sonsini Goodrich & Rosati PC](#).

Small is represented by Seth L. Levine of [Levine Lee LLP](#). Landesman is represented by Jeffrey M. Eilender and Bradley J. Nash of [Schlam Stone & Dolan LLP](#).

Mann is represented by Benjamin S. Fischer, Judith L. Mogul and Brent M. Tunis of [Morvillo Abramowitz Grand Jason & Anello PC](#). SanFilippo is represented by Kevin J. O'Brien, Adam C. Ford and Adam Pollock of [Ford O'Brien LLP](#).

The case is Atlantic Specialty Insurance Co. et al. v. Platinum Management (NY) LLC et al., case number 652505/2017, in the Supreme Court of the State of New York, County of New York.

--Editing by Catherine Sum.

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By [Stewart Bishop](#) Aug 28, 2017

The Brooklyn federal judge overseeing prosecutors' \$1 billion securities fraud case against former Platinum Partners executives clarified her order barring the hedge fund's co-founder Mark Nordlicht's lawyers from contacting potential witnesses or their counsel, saying Monday that the order applied to witness tampering, not lawful contacts.

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Platinum Partners Not Covered For Fraud Claims, Insurers Say

By [Jeff Sistrunk](#) May 09, 2017

A pair of excess insurers on Monday asked a New York state court to rule that they don't have to cover hedge fund Platinum Partners or several of its executives in connection with litigation over an alleged \$1 billion securities fraud scheme and a purported kickback scheme, claiming the fund made misrepresentations on its policy applications.

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By [Martin O'Sullivan](#) Apr 10, 2017

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Atty Says FBI Leaker Possibly Tainted Platinum Partners Case

By [Pete Brush](#) Mar 27, 2017

Counsel for Platinum Partners founder Mark Nordlicht told a Brooklyn federal judge on Monday that the same FBI agent found to have leaked information to the press in the insider trading case against gambler Billy Walters may also have tipped reporters in the alleged \$1 billion hedge fund securities fraud scheme.

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Platinum Execs Hid Funds After Raid, Feds Say

By [Stewart Bishop](#) Jan 12, 2017

Federal prosecutors said Thursday in Brooklyn that Platinum Partners founder Mark Nordlicht and another executive took steps to divert money invested in the distressed hedge fund for their own benefit, after authorities raided Platinum's offices over a purported \$1 billion securities fraud scheme.

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