UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	
MELANIE L. CYGANOWSKI, AS RECEIVER, BY AND FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (TE) LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND LLC, PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL LTD., PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND INTERNATIONAL (A) LTD., and PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND (BL) LLC, Plaintiffs, v. BEECHWOOD RE LTD., et al., Defendants.	Master Case No. 1:18-cv-06658 (JSR) Case No. 1:18-cv-12018 (JSR)
WASHINGTON NATIONAL INSURANCE COMPANY and BANKERS CONSECO LIFE INSURANCE COMPANY, Third-Party Plaintiffs, v. MARK NORDLICHT, et al., Third-Party Defendants.	

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MEMORANDUM OF LAW IN SUPPORT OF THIRD-PARTY DEFENDANT LINCOLN INTERNATIONAL LLC'S MOTION TO DISMISS THIRD-PARTY COMPLAINT

Defendant Lincoln International LLC ("Lincoln") submits this Memorandum of Law in support of its motion to dismiss the Third-Party Complaint of Bankers Conseco Life Insurance Company and Washington National Insurance Company (the "Complaint").

PRELIMINARY STATEMENT

Lincoln is a multinational investment bank that offers a wide range of advisory and financial services, including valuation services. Lincoln's affiliate, Lincoln Partners Advisors LLC, entered into a limited engagement to provide valuations to Beechwood in 2014, but unilaterally terminated the relationship in early 2015, long before the alleged Ponzi-like scheme perpetrated by Platinum, Beechwood, and related individuals was brought to light. Many parties in this litigation have asserted claims arising out the alleged fraud, but only Third-Party Plaintiffs (hereinafter "Insurers") embrace the position that Lincoln, through its short-lived valuation services, participated in the scheme.

According to the Insurers' narrative, two business-savvy insurers were duped into losing hundreds of millions of dollars through the Platinum scheme because of less than a dozen third-party valuations Lincoln prepared for Beechwood. The Insurers portray the valuations as essential to the fraud even though they entered into Reinsurance Agreements with Beechwood before Lincoln issued any valuations and continued investing in Beechwood for over a year and a half after Lincoln downgraded the Insurers' investments and parted ways with Beechwood.

The crux of the Insurers' claims is that Lincoln prepared valuations for Beechwood knowing them to be false because the valuations suggested arms-length investments when Lincoln knew that Beechwood and Platinum were in fact connected. The Insurers claim they relied on these valuations to their detriment. Yet their Complaint disregards or downplays the

fact that the valuations: (1) identified Platinum as the owner of certain Beechwood investments; (2) stated that no third parties may rely on them; (3) disclosed that Lincoln relied on information provided by Beechwood without verification; and (4) explained the valuation methodology, which the Insurers had every opportunity to scrutinize.

Equally problematic, the Insurers allege that Lincoln conspired to defraud them and others of hundreds of millions of dollars without any of that money going to Lincoln. Unlike the other alleged co-conspirators, Lincoln signed a fixed-fee engagement letter that provided a flat fee per valuation of $4,500 to $5,500 (an amount that pales in comparison to what the other alleged co-conspirators allegedly received) regardless of the success or failure of the valued investments. Lacking a plausible motive, the Insurers suggest that the prospect of future professional fees led Lincoln astray. Yet, as the Insurers acknowledge, that alleged enticement failed to prevent Lincoln from severing ties with Beechwood after just one year. Lincoln spent most of the year-long engagement trying to obtain more information from Beechwood and ultimately terminated the engagement after issuing a valuation that dropped the value of several of the investments. It thus should come as no surprise that the Complaint is bereft of facts establishing that Lincoln knew Beechwood was providing false information for the valuations, that Lincoln knowingly agreed to hide the Beechwood-Platinum relationship from the Insurers, or even that Lincoln had a single direct communication with the Insurers.

Apart from their sheer implausibility, the claims against Lincoln are riddled with legal defects. The racketeering claims run headlong into the RICO Amendment of the Private Securities Litigation Reform Act, overlook the need to establish a "pattern of racketeering," and fail to plead adequately Lincoln's knowing and voluntary participation or operation or management of an enterprise. The Insurers' state law claims, fashioned in a similarly conclusory

manner, fail to satisfy the heightened pleading standards of Rule 9(b) and lack facts supporting certain critical elements of the claims. At bottom, these shortcomings are the by-product of a narrative woven by the Insurers with little basis in reality—in an apparent effort to drag a perceived deep pocket into this courthouse. Lincoln therefore requests that the Insurers' claims be dismissed with prejudice.

BACKGROUND

In 2013, the Insurers sought to reinsure certain long-term care policies. (Dkt. 75 ¶536.)[1] In May 2013, Beechwood presented itself to the Insurers as a "new entrant into the life and health reinsurance market" and stated its intent to submit a proposal for their reinsurance business. (*Id.*) The Insurers claim that, unbeknownst to them, Beechwood Re was created by Platinum and Beechwood Capital to be used "as the vehicle for fraudulently inducing insurers to hand over funds to Beechwood" and to use those funds to "keep Platinum afloat." (*Id.* ¶532.) The perpetrators of this fraud, they aver, "assiduously hid from their victims, as well as . . . the rest of the outside world, that Platinum's founders formed, owned, and controlled Beechwood and that the two were integrated for the express purpose of carrying out a fraud." (*Id.* ¶471.)

As part of that scheme, the Insurers allege they were induced into entering the Reinsurance Agreements as a result of the co-conspirators "repeatedly misrepresent[ing] Beechwood Re's ownership structure, capitalization and management team," (*id.* ¶483). These alleged misrepresentations began "[i]n May 2013" (*id.* ¶536) and continued "[t]hroughout the fall of 2013." (*Id.* ¶¶483, 489.) They were allegedly told that the leaders of Beechwood (Feuer, Taylor and Levy) owned the Beechwood entities, despite Platinum's "substantial ownership interests," (*id.* ¶¶533, 539, 541−42), and received slide decks, letters, and balance sheets from

[1] For purposes of this motion, Lincoln accepts the facts as alleged in the Complaint.

Beechwood representing that Beechwood Re had "$100 million in capital." (*Id.* ¶¶543−44, 547−48.) The Insurers also claim that Beechwood's leaders misrepresented key Beechwood individuals' ties to Platinum (*id.* ¶577), including during a November 2013 presentation by Levy and others at Beechwood to the Insurers at Platinum's offices. (*Id.* ¶¶562, 565, 568, 576.) Ultimately, they agreed in December 2013 to invest nearly $600 million in Beechwood through a series of reinsurance agreements, which were signed on February 10, 2014. (*Id.* ¶¶593-94, 698.)

The Reinsurance Agreements required Beechwood Re to provide the Insurers with written valuation reports from an outside vendor that demonstrated the "fair market value" of the assets in the trust. (*Id.* ¶597.) Those reports were to "contain supporting detail and other information" to enable the Insurers to "verify that the assets were properly valued." (*Id.*) The Insurers, in turn, were given authority to "object[]" to any aspect of the reports and engage a "Third Party Accountant" to "audit records" and resolve any disputes regarding the reports. (Reinsurance Agreement, Ex. A at 14.)

The Insurers do not allege that Lincoln was involved in any of the purported misrepresentations that led to the signing of the Reinsurance Agreements. It was not until November 12, 2013, that Platinum reached out to Lincoln (*id.* ¶693), seeking valuation services on behalf of Beechwood Re. (*Id.* ¶698.) Lincoln personnel later traveled to Platinum's offices (where Beechwood operated until at least February 2014) to meet with Platinum and Beechwood personnel on December 4, 2013. (*Id.* ¶697.) Lincoln was told that Beechwood would begin receiving $900 million of insurance obligations from CNO Financial Group soon and would also be investing $100 million in funding provided by Platinum. (*Id.* ¶698.)

On February 19, 2014, Lincoln was formally engaged by a Beechwood affiliate, B Asset Manager LP, for the purposes of providing positive assurance as to fair values determined by

Beechwood and valuations of Beechwood's existing investments.[2] (*Id.* ¶702; Beechwood Engagement Letter, Ex. B at 1.)[3] That Engagement Letter delineated the scope of Lincoln's work, including that Beechwood was to provide Lincoln with true and correct information and data necessary to perform its valuation:

> [Beechwood] warrants, represents, and covenants that all Information made available to Lincoln will, at all times during the period of engagement of Lincoln hereunder, be complete and correct in all material respects **and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which such statements are made**. . . . [Beechwood] acknowledges and agrees, that, in rendering its services hereunder, **Lincoln will be using and relying on the Information** (and information available from public sources and other sources deemed reliable by Lincoln) **without assuming any responsibilities for independent verification thereof or independent appraisal of any of the assets of any Portfolio Company**. [Beechwood] further acknowledges and agrees that the accuracy of the Valuations is dependent on the Information being complete and correct in all material respects. Lincoln does not assume responsibility for the accuracy or completeness of the Information or any other information regarding the Company, the Investments or the Portfolio Companies.

(*Id.* at 2) (emphasis added.) The Engagement Letter also explained that once Lincoln's valuations were issued to Beechwood, Lincoln was not obligated to reevaluate the valuations in

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[2] As part of this work, and as discussed *infra*, Lincoln also drafted negative assurance letters for Beechwood which were drafted to assist Beechwood with "the fair measurement principles of Financial Accounting Standards Board Codification, Title 820" and which explicitly provided that Beechwood "was ultimately responsible for such determination." (February 28th Negative Assurance Letter, Ex. G at 1.)

[3] On a motion to dismiss, this Court may consider documents "incorporated . . . by reference" and that are "integral" to the complaint. *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011) (citations omitted). The Complaint repeatedly references and heavily relies on the Engagement Letter, which is the contract between Beechwood and Lincoln, and asserts that its specific language was "calculated and strategic" and "meant to affirmatively conceal Platinum's involvement" (Dkt. 75. ¶702), as well as the valuation reports issued by Lincoln. Therefore, the Engagement Letter and valuation reports are integral to the Complaint and properly considered upon a motion to dismiss. *See Broder v. Cablevision Syst. Corp.*, 418 F.3d 187, 196 (2d Cir. 2005) ("Insofar as the complaint relies on the terms of [the contract] . . . we may look to the agreement itself.").

the future to account for new or changed circumstances. (*Id.* at 3.) Moreover, it provided that third parties (such as the Insurers) could not rely on Lincoln's valuations, and that Lincoln would have no responsibility to a third party to whom the valuations were disclosed. (*Id.*)

Lincoln began its work on the first valuations in late February 2014. (Dkt. 75 ¶704.) To do so, Lincoln sought from Beechwood information regarding its investments, including investment committee memoranda, offering memoranda, financial statements, and internal memos describing the investments or transactions. (*Id.* ¶¶712, 713.) Beechwood provided financial statements and indicated it would give more information in the future. (*Id.*) A little over two weeks into the engagement, Lincoln issued its first negative assurance letter to Beechwood, which stated that based on the information provided by Beechwood, "nothing came to [Lincoln's] attention that would lead [Lincoln] to believe that [Beechwood's] fair value estimates . . . are unreasonable." (*id.* ¶714; February 28th Negative Assurance Letter, Ex. G at 1.)

This first negative assurance letter, and each thereafter, stated that the letter was "advisory in nature only," "to assist with [Beechwood's] determination of the fair value of certain investments" in accordance with established accounting standards and was "subject to the conditions of the . . . Engagement Letter." (Ex. G at 1.) These letters also stated that Beechwood "[was] ultimately responsible for" determining the fair value of its investments and warned that, in rendering its opinion, Lincoln "relied upon and assumed the accuracy and completeness" of the information provided by Beechwood without independent verification and had engaged in discussions with Beechwood about the investments. (*Id.*; Dkt. 75 ¶716.) During its engagement Lincoln issued negative assurance letters to Beechwood dated as of February 28, April 30, May 31, July 31, October 31, November 30, 2014, and January 31, 2015. (*Id.* ¶714, Exs. G–M.)

The quarterly positive assurance valuation reports for Beechwood's portfolios, like the

negative assurance letters, expressly referenced the Engagement Letter. (*See* Q1 Positive Assurance Valuation, Ex. C.) In addition, they contained the terms of Beechwood's engagement of Lincoln (i.e., that they were prepared for Beechwood alone), recited the information Lincoln reviewed in making its valuations (including that it relied on that information provided by Beechwood as being accurate and complete without independent verification), and spelled out the methodologies Lincoln used to reach its valuations. (*Id.*) The outset of each report stated:

> **Our valuations herein are based on a limited scope analysis, primarily based on information provided by B Asset Manager LP and discussions with the management of B Asset Manager LP**. Lincoln has not made any independent appraisal of the assets or liabilities of any portfolio company. . . .
>
> **In arriving at the valuations herein, Lincoln has relied upon certain statements, estimates and projections provided by B Asset Manager LP** with respect to the historical and anticipated future performance of each company. Such statements, estimates and projections contain or are based on significant assumptions and subjective judgments made by management of B Asset Manager LP. . . . **Lincoln was not requested to and has not attempted to independently verify any such statements, estimates and projections**, and as such, Lincoln makes no representation or warranty as to, and assumes no responsibility for, their accuracy or completeness and for the effect which any such inaccuracy or incompleteness may have on the results or judgments contained in this Report.
>
> THIS REPORT AND THE VALUATIONS PROVIDED HEREIN ARE FOR THE INFORMATION AND ASSISTANCE OF, AND INTENDED FOR USE BY, THE MANAGEMENT OF B ASSET MANAGER LP ONLY. **THIS REPORT IS NOT INTENDED TO BE USED OR RELIED UPON, AND MAY NOT BE USED OR RELIED UPON, BY ANY OTHER PERSON, EXCEPT AS OTHERWISE PROVIDED IN OUR ENGAGEMENT LETTER DATED FEBRUARY 19, 2014.**

(Ex. C at 3-4.) (emphasis added).

Lincoln issued its first quarterly valuation (the Q1 Positive Assurance Valuation) to Beechwood on April 8, 2014. (Dkt. 75 ¶741.) Despite the report's admonitions that it was intended for Beechwood "ONLY," Beechwood forwarded the Q1 Positive Assurance Valuation to the Insurers the following day. (*Id.*) Beechwood has not alleged that any Lincoln employees were copied on that email, or that any Lincoln employees engaged in any communications with

the Insurers.

Lincoln continued its work pursuant to the Engagement Letter, requesting and reviewing information from Beechwood, some of which it received and some of which Beechwood stalled on. During its engagement, Lincoln occasionally sent drafts of its valuations to Beechwood and Beechwood provided suggested comments and revisions. Lincoln did not, however, always accept Beechwood's revisions. For example, Lincoln left in a reference to Platinum in its Q1 Positive Assurance Valuation that Beechwood requested it remove. (*Id.* ¶741.) When Lincoln revised its draft valuations, it did so when supported by documentation or other information from Beechwood. (*See Id*. ¶744 (alleging that Lincoln's report was updated "with documentation provided to it by [Beechwood].").) In any event, in every positive quarterly assurance valuation the bases for Lincoln's valuations were set forth in the letters themselves for anyone to see, review, and test. (Exs. C–F.) During the one-year engagement, Lincoln never communicated directly with the Insurers. On one occasion, the Insurers purportedly requested that Lincoln revise its October 7, 2014 Q3 Quarterly Positive Assurance Valuation Report, but that was relayed to Lincoln via Beechwood. (Dkt. 75 ¶755.)

By late December 2014, Lincoln finally received some of the promised information regarding certain Beechwood's loans and portfolio companies. When that information arrived on December 22, 2014, it indicated that some of Beechwood's investment entities were in fact guaranteed by Platinum. (*Id.* ¶724.) Soon after, Lincoln undertook another review of the Beechwood Portfolio. (*Id.* ¶¶765–66.) On January 8, 2015, Lincoln sent Beechwood its initial draft of its Q4 Positive Assurance Valuation, which reduced the value of multiple investments that had previously been marked at 100% fair value. (*Id.* ¶768.) On January 19, 2015, Lincoln then issued its Q4 Positive Assurance Valuation, which reflected a drop in value of multiple

investments. (Q4 Positive Assurance Valuation, Ex. F at 3-4.)

Lincoln thereafter sought to terminate its relationship with Beechwood. (Dkt. 75 ¶770.) Beechwood, in turn, tried to persuade Lincoln to continue on by offering to increase Lincoln's fees and give them additional work. (*Id.* ¶771.) That entreaty failed and on February 9, 2015, Lincoln informed Beechwood it intended to terminate the engagement. (*Id.* ¶¶772-73.) Lincoln issued its final negative assurance letter to Beechwood on February 19, 2015 and sent Beechwood a notice of termination letter the same day. (*Id.* ¶780.)

The devaluations and abrupt exit of Lincoln had no apparent impact on the Insurers—they kept their funds invested with Beechwood. (*Id.* ¶473.) In fact, it was not until September 2016, over a year and a half after Lincoln disengaged from Beechwood, that they terminated the Reinsurance Agreements with Beechwood and ceased investing with Beechwood. (*Id.*)

ARGUMENT

I. THE INSURERS' RICO CLAIMS SHOULD BE DISMISSED

"Because the 'mere assertion of a RICO claim has an almost inevitable stigmatizing effect on those named defendants, . . . courts should strive to flush out frivolous RICO allegations at an early stage of the litigation.'" *Katzman v. Victoria's Secret Catalogue*, 167 F.R.D. 649, 655 (S.D.N.Y. 1996). That principle holds true here. The Insurers recklessly invoke the racketeering statute against Lincoln, a well-established investment bank, with a Complaint that disregards the Private Securities Litigation Reform Act, ignores basic pleading requirements, and ultimately offers an implausible theory propped up by conclusory allegations.

A. The RICO Claims Against Lincoln are Barred by the Private Securities Litigation Reform Act

The RICO Amendment of the Private Securities Litigation Reform Act ("PSLRA") precludes racketeering claims that are predicated on "conduct that would have been actionable as

fraud in the purchase or sale of securities." *In re Platinum-Beechwood Litigation*, No. 18-cv-6658(JSR), 2019 WL 1759925, at *7 (S.D.N.Y. Apr. 22, 2019) (Rakoff, J.); *see also MLSMK Inv. Co. v. JP Morgan Chase & Co.*, 651 F.3d 268, 279 (2d Cir. 2011). This Court's own precedent on the RICO Amendment—including in this very case—compels dismissal of the racketeering claims against Lincoln.

Congress enacted the RICO Amendment to "eliminate[] 'any conduct actionable as fraud in the purchase or sale of securities' as a predicate act for a private cause of action under RICO." *Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc.*, 189 F.3d 321, 327 (3d Cir. 1999) (citation omitted). In so doing, Congress not only eliminated securities fraud as a RICO predicate, but also prevented plaintiffs from "plead[ing] other specified offenses, such as mail or wire fraud, as predicate acts under civil RICO if such offenses are based on conduct that would have been actionable as securities fraud." *MLSMK Inv. Co.*, 651 F.3d at 279. Thus, if a scheme to defraud "coincide[s] with the sale of securities"—i.e., if the fraud is "integral to the purchase and sale of the securities in question," *Leykin v. AT&T Corp.*, 423 F. Supp. 2d 229, 241 (S.D.N.Y. 2006)—a plaintiff may not "avoid the RICO amendment's bar by pleading mail fraud, wire fraud, and bank fraud as predicate offenses in a civil RICO action." *Bald Eagle*, 189 F.3d at 33.

Distilled to its essence, the Insurers allege that Lincoln conspired with a litany of Platinum and Beechwood entities and individuals in a multi-year Ponzi scheme. They claim the scheme's purpose was to deceive them into investing hundreds of millions of dollars, funds that were allegedly diverted to Platinum to both prop up the Ponzi scheme and enrich the conspirators. Lincoln purportedly facilitated this scheme in the course of issuing valuations to Beechwood, which the Insurers claim put them at ease about their investments.

This Court recently dismissed nearly identical RICO claims under the PSLRA brought by

another alleged victim of the alleged Platinum-Beechwood Ponzi scheme, the Senior Health Insurance Company of Pennsylvania ("SHIP"), whose RICO claims were also predicated on mail and wire fraud. *In re Platinum-Beechwood Litig.*, 2019 WL 1759925, at *6. This Court concluded that the alleged scheme was one "in which the funds were obtained precisely for the purpose of acquiring the securities," *id.* at 8, hence the alleged fraud coincides with the securities transactions. *Id.* Accordingly, SHIP was barred from asserting mail and fraud claims where the "gravamen" of the claim is that "Beechwood tunneled SHIP's assets to Platinum." *Id*; *see also Bald Eagle*, 189 F.3d at 330 ("Conduct undertaken to keep a securities fraud Ponzi scheme alive is conduct undertaken in connection with the purchase and sale of securities.").

That reasoning applies here with equal force. The Insurers, like SHIP before them, assert that the object of the Beechwood-Platinum RICO enterprise was to entice them to part with their money and then to use the Beechwood funds "as a piggybank for Platinum, while [Beechwood] was under the secret control of Nordlicht and Platinum." (Dkt. 75 ¶489.) Lincoln allegedly furthered that scheme by deceiving the Insurers, thereby keeping the Ponzi scheme alive. These claims, as the Insurers stress, have formed the basis of both federal indictments and a SEC civil action alleging fraud in the sale or purchase of securities both of which, "rightfully place Beechwood Re, its affiliates—including BAM—and their Co-Conspirators squarely in the center of the Platinum Ponzi-esque scheme." *Id.* ¶686.

The Insurers try to sidestep the RICO Amendment by pleading only mail and wire fraud, despite the obvious nexus to securities fraud. *See, e.g. id.* ¶789. But the PSLRA anticipated—and foreclosed—that very tactic. *See, e.g.*, *Picard v. Kohn*, 907 F. Supp. 2d 392, 398 (S.D.N.Y. 2012) (dismissing RICO claims against defendants whose alleged acts purportedly enabled Bernie Madoff to continue his Ponzi scheme); *see also Bald Eagle*, 189 F.3d at 330. Counts One and

Two should thus be dismissed as to Lincoln.

B. The RICO Claims Also Merit Dismissal Because of Several Pleading Deficiencies

The Insurers not only disregard the RICO Amendment, they pay no heed to other RICO pleading requirements. Their allegations, even when read most favorably, fail to plead that Lincoln: (i) engaged in a pattern of racketeering activity; (ii) "knowingly and purposefully" participated in the scheme; (iii) "operated or managed" the affairs of the scheme; or (iv) "consciously agreed" to further the affairs of the scheme. *See USA Certified Merchs., LLC v. Koebel*, 262 F. Supp. 2d 319, 332 (S.D.N.Y. 2003). These failures are particularly striking here given the allegations of fraud and the concomitant need to state with particularity the circumstances constituting fraud or mistake under Rule 9(b). *First Capital Asset Mgmt, Inc. v. Satinwood, Inc.*, 385 F.3d 159, 179-180 (2d Cir. 2004).

1. The Insurers Fail to Plead a Pattern of Racketeering Activity as to Lincoln

At the outset, the Insurers ignore altogether their obligation to allege that Lincoln participated in the alleged enterprise's affairs "through a pattern of racketeering activity" that extended more than two years. 18 U.S.C. § 1962(c); *see also Senior Health Ins. Co. of Pa. v. Beechwood Re Ltd.*, 345 F. Supp. 3d 515, 530 (S.D.N.Y. 2018). Although a pattern of racketeering activity, or continuity, may be either open- or close-ended, here only closed-ended continuity is available because the alleged Ponzi scheme is long over. *In re Platinum-Beechwood Litigation*, No. 18-cv-6658(JSR) et seq. 2019 WL 1570808, at *10 (S.D.N.Y. Apr. 11, 2019) (Rakoff, J.). Courts have long held that for close-ended continuity "predicate acts occurring over less than a two-year period may not be deemed a pattern." *Id.* (quoting *First Capital Asset Mgmt.*, 385 F.3d at 168.) This continuity requirement must be met "as to each defendant" through the predicate acts allegedly committed by that defendant. *DeFalco v. Bernas*, 244 F.3d 286, 322 n.22

(2d Cir. 2001).

The Insurers have not—and cannot—meet this basic pleading requirement. By their own admissions, Lincoln's allegedly fraudulent actions extended approximately one year. Dkt. 75 ¶709 ("[T]hroughout the entirety of its one-year engagement, Lincoln knowingly composed and issued valuation reports . . . . [which] were knowingly false and misleading."). Because this falls far short of the two-year requirement, the RICO claims must be dismissed.

2. The Insurers Fail to Allege that Lincoln Knowingly and Purposefully Participated in the Alleged RICO Enterprise

The Insurers also fail to plead with particularity Lincoln's knowing and purposeful participation in the alleged RICO enterprise. *See First Capital Asset Mgmt.*, 385 F.3d at 179 ("In addition to alleging the particular details of a fraud, the plaintiffs must allege facts that give rise to a *strong* inference of fraudulent intent." (emphasis added).). This burden can be discharged one of two ways: "(1) by alleging facts demonstrating a motive for committing fraud and a clear opportunity to do so; or (2) by identifying circumstances indicating conscious or reckless behavior by the defendant." *Zucker v. Sasaki*, 963 F. Supp. 301, 308 (S.D.N.Y. 1997). "Where motive is not alleged and plaintiff relies entirely on allegations of recklessness in asserting scienter, the evidence presented must be proportionally greater" to survive a motion to dismiss. *Id.* Here, the Insurers cannot plead either motive or conscious behavior.

Unable to identify any credible motive for Lincoln's participation in the alleged RICO enterprise, the Insurers resort to the farfetched theory that Lincoln was so fixated on the possibility of additional business from Platinum—in the form of four-figure fixed-fee valuation engagements—that it risked its entire business and leapt headlong into the Ponzi scheme. Nowhere, however, do the Insurers plead that Lincoln received anything more than its usual fees for the valuations, nor that fees were somehow tied to the Insurers keeping their funds with

Beechwood. And the only facts pled with specificity belie the Insurers' theory: Lincoln terminated its engagement even though Beechwood dangled the prospect of additional valuation work.

The law is also clear that Insurers cannot plead motive based on the prospect of future compensation. The "mere receipt of compensation and the maintenance of a profitable professional business relationship . . . does not constitute a sufficient motive for purposes of pleading scienter." *See Zucker*, 963 F. Supp. at 308 (rejecting notion that defendant "willingly . . . condoned fraud in order to preserve its fee, at the risk of jeopardizing its reputation"); *see also Laro, Inc. v. Chase Manhattan Bank*, 866 F. Supp. 132, 138 (S.D.N.Y. 1994) ("The economic irrationally of the scheme alleged by plaintiff precludes a reasonable inference of intent to agree to commit fraud.").

Similarly, Insurers plead no facts reflecting that Lincoln engaged in conscious or reckless behavior in order to further the racketeering activity. Lincoln is alleged to have known of a relationship between Platinum and Beechwood, which purportedly should have borne on its assessment of fair market value. That's it. This allegation alone falls well short of supporting racketeering claims against Lincoln. *See In re Scottish Re Grp. Sec. Litig.*, 524 F. Supp. 2d 370, 398 (S.D.N.Y. 2007) (allegations that "a reasonable auditor would have discovered the problems . . . would support a claim of negligence, but would not 'approximate an actual intent to aid in the fraud being perpetrated'"); *O'Brien v. Price Waterhouse*, 740 F. Supp. 276, 281, 284 (S.D.N.Y. 1990) (dismissing federal RICO claim when "the alleged failure of [the defendant] to investigate the factual representations made to it by other defendants . . . at best state[d] a claim for negligence").

To be sure, the Insurers portray Lincoln's communications with Beechwood and its

efforts to gather additional information as examples of Lincoln's knowing and voluntary involvement in the scheme. Yet the dozens of pages detailing these communications include no allegations to support even the inference that there was anything akin to a "'meeting of the minds'" between Platinum, Beechwood, and Lincoln to defraud the Insurers. *Arar v. Ashcroft*, 585 F.3d 559, 569 (2d Cir. 2009) .

The valuations themselves refute the notion that Lincoln knowingly participated in a racketeering enterprise. Lincoln explained its methodology for valuing the Beechwood investments in its positive valuation reports—indeed, those disclosures enable the Insurers now to stake out their methodological disagreements. Lincoln's straightforward disclosure of its information source, process, and rationale precludes any inference of intent to defraud. *See In re TVIX Secs. Litig.*, 25 F. Supp. 3d 444, 450 (S.D.N.Y. 2014) (rejecting a Section 11 securities claim premised on material omissions in offering documents where the issuer laid out the methodology by which it disclosed potential risks).

Lastly, for the same reasons the Insurers cannot "demonstrate reliance on [Lincoln's] [alleged] misrepresentation to establish causation under RICO." *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 119 (2d Cir. 2013). This is especially so given the sophistication of the Insurers and Lincoln's admonition that a third party could not rely on the valuations. *See Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc.*, 113 F. Supp. 2d 345, 369–370 (E.D.N.Y. 2000) (finding that the plaintiff did not rely on the defendant's alleged fraudulent conduct given the plaintiff's "corporate sophistication" and ability to have "investigated and accessed" defendant's claims).

3. The Insurers Fail to Plead that Lincoln Operated or Managed the Alleged RICO Enterprise

Third, the Investors fail to allege that Lincoln "operated or managed" the affairs of the RICO enterprise. *Reves v. Ernst & Young*, 507 U.S. 70. 178–79 (1993). "[P]erformance of tasks that are 'necessary or helpful' to the enterprise, without more, is insufficient to bring a defendant within the scope of § 1962(c)." *United States v. Viola*, 35 F.3d 37, 41 (2d Cir. 1994). Rather, the Insurers "must plausibly allege" that Lincoln "played 'some part in directing the enterprise's affairs' if the RICO claim is to survive a motion to dismiss." *D'Addario v. D'Addario*, 901 F.3d 80, 103 (2d Cir. 2018) (citations and emphasis omitted).

The Insurers cannot credibly claim that Lincoln played any role in directing the affairs of the alleged enterprise. Nowhere do they allege that Lincoln and the Insurers even communicated, much less that anyone at Lincoln directed the diversion of funds or knew that Platinum was using Beechwood as a "piggybank." And nobody at Lincoln is alleged to have managed the RICO enterprise. *See Duravest, Inc. v. Viscardi, A.G.*, No. 07 Civ. 10590(JSR), 2008 WL 1742845, at *1 (S.D.N.Y. Apr. 14, 2008) (Rakoff, J.) (holding that allegations that the defendant issued financial statements it "knew or should have known to be substantially or totally misleading and/or false" was insufficient, without more, to plead RICO's operate-or-manage prong).

The Insurers' allegations, under their most charitable reading, are that Lincoln prepared valuation reports for Beechwood pursuant to an Engagement Letter, that the Insurers received those reports from Beechwood, and that the Insurers relied on them despite the many disclaimers to the contrary. But "rendering a professional service by itself does not qualify as participation in a RICO enterprise," no matter "how indispensable or essential [the service] may have been." *Rosner v. Bank of China*, 528 F. Supp. 2d 419, 431 (S.D.N.Y. 2007) (dismissing RICO claims for, among other reasons, failure to allege defendants operated or managed the scheme). Having

failed to plead this element as well, the Insurers' RICO claims should be dismissed.

II. THE INSURERS' REMAINING STATE LAW CLAIMS FAIL

A. The Insurers' Misrepresentation Claims Fail to Plead Multiple Elements

Counts Five (fraudulent misrepresentation) and Six (negligent misrepresentation) warrant dismissal for several reasons. As with the RICO claims, these Counts fail to allege adequately the existence of particularized misrepresentations, the Insurers' reliance on them, and causation. Count Five must also be dismissed for failure to allege the requisite fraudulent intent. And Count Six neglects to plead the existence of a special relationship necessary to sustain a negligent misrepresentation claim.

1. The Insurers Fail to Allege a Misrepresentation

As a threshold matter, the Complaint lacks particularized allegations about any material misrepresentations or omissions that Lincoln made to the Insurers. The Complaint repeats the accusation that Lincoln's valuation reports conveyed "misrepresentations and omissions" (Dkt. 75 ¶820), but conclusory, unsupported accusations do not sustain a fraud claim. *See, e.g., Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.,* 837 F. Supp. 2d 162, 199-200 (S.D.N.Y. 2011) (dismissing fraud claim where "alleged misrepresentations [were] 'identified in vague and general terms,' concerning only the general topics as to which they were related").

The Complaint spills a significant amount of ink discussing Lincoln's valuation methodology, but .not a single drop identifies the actual fraudulent statements—or omissions—made in any valuation or that they were made with intent to deceive.[4] This failure to "set forth

[4] The Insurers summarily assert that "each and every valuation report" contained improper valuations (Dkt. 75 ¶817), but contradict this allegation throughout the Complaint. For example, they acknowledge that Lincoln's Q4 Positive Assurance Valuation lowered the valuation of several Beechwood investments. (*Id.* ¶768.)

the who, what when where and how" cannot survive scrutiny under any standard, let alone Rule 9(b). *See id.* at 200 .

2. The Insurers Fail to Allege Reliance

Even if the Insurers could point to a falsehood in the valuations, that would not salvage their claims because they cannot plead with particularity actual, direct reliance on the valuations that was justified under the circumstances. *Granite Partners, L.P. v. Bear, Stearns & Co.*, 58 F. Supp. 2d 228, 258-59 (S.D.N.Y. 1999) ("whether a plaintiff has adequately pleaded justifiable reliance can be a proper subject for a motion to dismiss.").

According to the Insurers, Lincoln made (unspecified) misrepresentations and omissions in its valuation reports that served as the Insurers' "only source of information regarding the value of [Beechwood]'s investments of the reinsurance assets." (Dkt. 75 ¶827.) They insist they relied on these reports in "not terminating the Reinsurance Agreements" or taking some other (unspecified) actions to mitigate their losses without specifying *when* they allegedly relied on the reports or what specific actions they would have taken. (*Id.* ¶832.) This nebulous theory cannot pass muster under Rule 9(b). *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 995 F. Supp. 2d 291, 313 (S.D.N.Y. 2014) ("Courts in this district have consistently held that reliance does not simply involve a state of mind; it involves specific action or inaction, and therefore must be pled with particularity."), *aff'd sub nom. SRM Glob. Master Fund Ltd. P'ship v. Bear Stearns Companies L.L.C.*, 829 F.3d 173 (2d Cir. 2016).

The Insurers fare even worse in attempting to plead their reliance was justified. As an initial matter, Lincoln's valuations were not their "sole" source of information—the Reinsurance Agreements gave the Insurers the opportunity "to verify that the assets were properly valued." (Dkt. 75 ¶597.) More to the point, each of Lincoln's valuation reports immediately informed the reader that they were intended for Beechwood only and should not be used or relied on by

anyone else. (*Supra* at 7.) The reports also disclosed that Lincoln conducted no independent verification and relied on information provided by Beechwood. (*Supra* at 6-7.) *See Serino v. Lipper*, 846 N.Y.S.2d 138, 145 (App. Div. 2007) ("Since the . . . [the third-party plaintiff] had access to [the underlying] valuations and could have discovered . . . misfeasance at any time, there was no justifiable reliance.").

The Insurers' reliance theory also founders because as sophisticated parties they were "under a duty to make affirmative efforts to protect themselves from misrepresentations." *See Granite Partners*, 58 F. Supp. 2d at 259. Indeed, the Reinsurance Agreements expressly obligated the Insurers to verify that Beechwood's investments were properly valued. (Dkt. 75 ¶597.) The Insurers cannot willfully disregard the prominent disclaimers as well as their own contractual obligation to verify valuations and then expect the Court to somehow deem their reliance on Lincoln's valuations to be reasonable. The Insurers "cannot be heard to complain when they fail to make diligent inquiries." *Granite Partners*, 58 F. Supp. 2d at 259.

3. The Insurers Fail to Plead Causation

Even the Insurers' causation theory is flawed enough to warrant dismissal at this stage. *See Friedman v. Anderson*, 23 A.D.3d 163, 167 (1st Dep't 2005) (fraud plaintiffs must allege that the defendant's actions "were the direct and proximate cause of the claimed losses."). Without citing any facts, the Insurers declare that "[a]s a proximate result of Lincoln's fraudulent misrepresentations, omissions, and concealments in the valuation reports, [they] sustained damages" (Dkt. 75 ¶823). This conclusory allegation cannot be squared with the fact that the Insurers continued to invest with Beechwood for over a year and a half after Lincoln downgraded several of Beechwood's investments and terminated the engagement. Insurers cannot plausibly contend that Lincoln proximately caused any injuries. *See, e.g. Picard v. Kohn*, 907 F. Supp. 2d at 397 (deeming insufficient the mere allegation that the defendant's actions

"extended" the Ponzi scheme, as the investors' injuries "could have happened independently" of the defendant's actions).

4. The Insurers Fail to Allege Fraudulent Intent

As for Count Five, the Insurers must also plead fraudulent intent in order to state a claim for relief, and have not done so here. *Landesbank Baden-Wurttemberg v. Goldman, Sachs & Co.*, 478 F. App'x 679, 681-82 (2d Cir. 2012). To plead fraudulent intent, the Insurers must either: (a) "'alleg[e] facts to show that [Lincoln] had both motive and opportunity to commit fraud,'" or (b) "'alleg[e] facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness.'" *Eternity Glob. Master Fund Ltd. v. Morgan Guar. Tr. Co. of N.Y.*, 375 F.3d 168, 187 (2d Cir. 2004). As set forth in detail above, the complaint fails on both counts.

The Insurers' inability to identify a credible motive, as explained before, dooms their fraud claims. *In re Petrobras Securities Litig.*, No. 14-cv-9662(JSR), 2016 WL 1533553 (S.D.N.Y. Feb. 19, 2016). The alleged prospect of future fees here cannot fill the void for pleading scienter, particularly where Lincoln *turned down* that prospect in exiting the engagement in early 2015. *Supra* at 9.

Nor do the Insurers adequately allege conscious misbehavior or recklessness. A critique of Lincoln's methodology and process hardly supports an inference that Lincoln harbored a fraudulent intent. *See supra* at 14-15. The notion that Lincoln should have undertaken more due diligence—despite the disclaimers that explained in plain English Lincoln's reliance on Beechwood's truthfulness—cannot suffice to survive a motion to dismiss. *Prickett v. N.Y. Life Insur. Co.*, 896 F. Supp. 2d 236, 246-47 (S.D.N.Y. 2012)*; see also In re DNTW Charted Accountants Sec. Litig.*, 172 F. Supp. 3d 675, 688 (S.D.N.Y. 2016) (finding that the allegation that defendant "'could have discovered the fraud'" had it performed further due diligence was insufficient to allege scienter (citations omitted)).

5. The Insurers Fail to Allege the Existence of a Special Relationship

The Insurers' negligent misrepresentation claim (Count Six) also must be dismissed as they fail to plead "a special relationship of trust or confidence between [themselves and Lincoln]," as is required for those claims. *Barron Partners LP v. LAB123, Inc.*, 593 F. Supp. 2d 667, 674 (S.D.N.Y. 2009). A "special relationship" requires "actual privity of contract between the parties or a relationship so close as to approach that of privity." *Anschutz Corp. v. Merrill Lynch & Co., Inc.,* 690 F.3d 98, 114 (2d Cir. 2012) (citation omitted).

Unable to assert contractual privity, the Insurers claim that Lincoln "knew" they relied on the valuation reports, but even if true that fact would not give rise to a "special relationship." *See Antidote Int'l Films, Inc. v. Bloomsbury Pul'gb., PLC*, 467 F. Supp. 2d 394, 402 (S.D.N.Y. 2006) ("[T]hat one party . . . knows the particular purpose to which the other party is putting material information supplied by the first party . . . does not . . . mandate[] a duty of care."). Nothing else in the Complaint suggests a special relationship. To the contrary, Lincoln had no direct dealings with the Insurers, its reports were addressed to Beechwood only, and the reports said they could not be relied on by anyone else. This forecloses the negligent misrepresentations claim. *See N.Y. York State Workers Comp. Bd v. Comp. Risk Managers, LLC*, 67 N.Y.S. 3d 792, 804-06 (Sup. Ct. Albany Cty. 2017); *see also Anschutz v. Merrill Lynch & Co., Inc.*, 690 F.3d 98, 115 (2d Cir. 2012) .

B. The Insurers' Civil Conspiracy Claim Fails for Lack of a Viable Underlying Tort and Causation

The Insurers' claim of civil conspiracy to commit fraud also misfires. First, as New York recognizes no independent claim for civil conspiracy, the Insurers must have a viable underlying tort, and they have come up short on their fraud allegation, as explained above. *In re Magnesium*

Corp. of Am., 399 B.R. 722, 774-75 (Bankr. S.D.N.Y. 2009).[5] Second, the civil conspiracy claim comes with the same fatal causation problems and should be dismissed on that basis as well. *Id.* at 775 (civil conspiracy claim requires causation).

C. The Insurers' Aiding and Abetting Claims Fail to Plead Actual Knowledge and Substantial Assistance

The Insurers aiding and abetting claims (Counts Eight and Thirteen) bear many of the same problems regarding Lincoln's role in and knowledge of the purported Ponzi-like scheme, and should also be dismissed. Under New York law, "the elements of aiding and abetting a breach of fiduciary duty . . . and aiding and abetting a fraud are substantially similar." *Kirschner v. Bennett*, 648 F. Supp. 2d 525, 533 (S.D.N.Y. 2009). "The claims require the existence of a primary violation, actual knowledge of the violation on the part of the [alleged] aider and abettor, and substantial assistance." *Id*. The Insurers fail to plead adequately that Lincoln actually knew about or substantially assisted in the alleged scheme.

1. The Insurers Fail to Allege that Lincoln Had Actual Knowledge of the Wrongdoing

To proceed with their aiding-and-abetting claims, the Insurers must allege Lincoln's "actual knowledge" of the alleged fraud. Neither constructive knowledge nor recklessness is enough. *Kobleck v. LIT Am., Inc.*, 939 F.Supp. 240, 246 (S.D.N.Y. 1996).[6] Despite this burden, at no point in their lengthy Complaint do the Insurers plausibly allege that Lincoln actually knew about the Ponzi-like scheme. Indeed, when Lincoln learned more about the ties between Beechwood and Platinum (which still falls short of knowing of the fraud), it reduced the value of

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[5] Even if the Insurers' fraud claim were to survive, the underlying conduct is identical and the conspiracy claim should be dismissed as duplicative. *In re Magnesium Corp. of Am.*, 399 B.R. 722, 774-75 (Bankr. S.D.N.Y. 2009).

[6] Indeed, the Insurers concede that "ignorance of obvious warning signs of fraud will not suffice to adequately allege 'actual knowledge.'" (Dkt. 59 at 16.)

multiple investments that were previously marked at 100% fair value.

Even if one regards the Complaint as identifying "red flags" for Lincoln, allegations that Lincoln should have been able to deduce the fraud on the basis of red flags is not a substitute for actual knowledge. *In re Refco Inc. Secs. Litig.*, No. 07 MDL 1902(JSR) et seq., 2012 WL 3126834, at *3 (S.D.N.Y. July 20, 2012) (Rakoff, J.) ("Vague suspicions are far removed from reckless disregard, let alone actual knowledge.").

2. The Insurers Fail to Allege that Lincoln Provided Substantial Assistance to the Alleged Fraud

Aiding and abetting liability also requires that "substantial assistance in the primary violation proximately caused the harm on which the primary liability is predicated." *In re Refco Sec. Litig.,* 759 F. Supp. 2d 301, 336 (S.D.N.Y. 2010) (citation omitted). That standard requires that a defendant "affirmatively assists, helps conceal or fails to act when required to do so, thereby enabling the breach to occur." *Id*. Assistance is substantial only where the action of "the aider and abettor 'proximately caused the harm on which the primary liability is predicated.'" *In re WorldCom, Inc. Sec. Litig.*, 382 F. Supp. 2d 549, 560 (S.D.NY. 2004) (citations omitted).

Lincoln's limited engagement with Beechwood and the handful of valuations it issued are not substantial assistance. *See SPV OSUS Ltd. v. AIA LLC*, No. 15-cv-619 (JSR), 2016 WL 3039192, at *6 (S.D.N.Y. May 26, 2016) (Rakoff, J.) (dismissing plaintiffs claim that defendants substantially assisted a Ponzi scheme by providing it the "cover" that allowed it to continue to operate as a "textbook example of a 'but-for' theory of causation masquerading as a theory of proximate causation"), *aff'd* 882 F.3d 333 (2d Cir. 2018); *see also Cromer Fin. Ltd. V. Berger*, 137 F. Supp. 2d 452, 472 (S.D.N.Y. 2001) (substantial assistance inadequately alleged because, "[w]hile the Ponzi scheme may only have been possible because of [the defendant's] actions, or inaction, [the defendant's] conduct was not a proximate cause of the Ponzi scheme").

Much like the plaintiff in *SPV OSUS*, the Insurers allege that Lincoln's failure to heed certain "red flags" helped sustain the alleged scheme. But because Lincoln owed the Insurers no duty, those "red flags" do not give rise to aiding and abetting liability.[7] *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 294–95 (2d Cir. 2006) (holding that alleged "red flags . . . were insufficient to establish a claim for aiding and abetting fraud because, although they may have put the banks on notice that some impropriety may have been taking place, those alleged facts do not create a strong inference of actual knowledge of Schick's outright theft of client funds.").

D. The Insurers' Unjust Enrichment/Constructive Trust Claim Fails

The Insurers assert a claim for enrichment/constructive trust, even though Lincoln neither "perform[ed] services" for the Insurers nor had a special relationship with them, both of which are essential elements. *GeigTech E. Bay LLC v. Lutron Elecs. Co.*, 352 F. Supp. 3d 265, 286 (S.D.N.Y. 2018) (requiring a special relationship and that the party "performed services . . . which caused unjust enrichment."); *see also Phillips v. Am. Int'l Grp., Inc.*, 498 F. Supp. 2d 690, 698 (S.D.N.Y. 2007) (Rakoff, J.) (dismissing unjust enrichment claim where plaintiff did not allege he performed services for defendants). This claim thus merits dismissal.[8]

E. The Insurers' Contribution and Indemnity Claim Falls With the Others

A claim for contribution or indemnification cannot lie unless all of the essential elements of an underlying cause of action against the proposed indemnifier can be made out. *Olin Corp. v. Lamorak Insur. Co.*, 332 F. Supp. 3d 818, 884 (S.D.N.Y. 2018); *Monisoff v. Am. Eagle Invs.,*

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[7] The Insurers themselves admit that the failure to conduct "robust due diligence" does not constitute substantial assistance. (Dkt. 59 at 17.) Their admission dooms their aiding-and-abetting claims.

[8] Likewise, the Insurers are not entitled to a constructive trust because of their failure to plead a special relationship between themselves and Lincoln. *See Winklevoss Cap. Fund, LLC v. Shrem*, 351 F. Supp. 3d 710, 719 (S.D.N.Y. 2019) (Rakoff, J.).

Inc., 955 F. Supp. 40, 42 (S.D.N.Y. 1997). Having failed to set forth facts indicating that Lincoln committed any wrongdoing, the Insurers' contribution and indemnification claims fail. *See Old Republic Nat'l Title Ins. Co. v. Cardinal Abstract Corp.*, 790 N.Y.S. 2d 143, 145 (App. Div. 2005).[9]

F. The Insurers' Claims Cannot Be Cured by Amendment

The Insurers' claims against Lincoln should be dismissed with prejudice.[10] "An amendment to a pleading is futile if the proposed claim could not withstand a motion to dismiss." *Lucente v. Int'l Bus. Machs. Corp.*, 310 F.3d 243, 258 (2d Cir. 2002). This is especially true for the Insurers' RICO claims, which are subject to the PSLRA. *In re Longtop Fin. Techs. Ltd. Secs. Litig.*, 939 F. Supp. 2d 360, 391-92 (S.D.N.Y. 2013).

CONCLUSION

For the foregoing reasons, the Counts against Lincoln should be dismissed with prejudice.

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[9] Alternatively, the Insurers failure to plead a "special relationship" between themselves and Lincoln bars their contribution and indemnification claims. *See Guadalupi v. Morelli*, 7 N.Y.S. 3d 477, 478-79 (App. Div. 2015).

[10] Because the Insurers fail to state claims for relief, Lincoln does not address their requests for punitive damages.

Dated: May 15, 2019

Chicago, Illinois

Respectfully submitted,

/s/ Lara A. Flath

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CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2019, I served the foregoing Third-Party Defendant Lincoln International LLC's Memorandum of Law in Support of Motion to Dismiss the Third-Party Complaint via the Court's electronic filing system on all attorneys of record who have entered an appearance by ECF in this proceeding.

/s/ Lara A. Flath
Lara A. Flath