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By Email (Unredacted) and ECF (Redacted)

April 29, 2019

The Honorable Jed S. Rakoff
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1340
New York, New York 10001

Re: *In re Platinum-Beechwood Litigation*, Case Nos. 1:18-cv-06658-JSR; 1:18-cv-10936-JSR; 1:18-cv-12018-JSR.

Dear Judge Rakoff:

With Your Honor's permission, please accept this letter as Senior Health Insurance Company of Pennsylvania ("SHIP's") and Fuzion Analytics Inc.'s ("Fuzion's") motion to compel the Beechwood Parties¹ to produce their objections, responses, and production to the Securities and Exchange Commission's ("SEC's") June 10, 2016 subpoena to BAM ("SEC Subpoena"). The production should be ordered because: (1) Your Honor already Ordered it, (2) the material is highly relevant, and (3) it has already been produced to some (but not all) parties.

The SEC Subpoena [REDACTED]

[REDACTED] (See Ex.² 1), and BAM produced records in response (the "SEC Production"). Then, in the related arbitration entitled *Bankers Conseco Life Insurance Company ("BCLIC") and Washington National Insurance Company ("WNIC") v. Beechwood Re Limited*, AAA Case No. 01-16-0004-2510 (the "CNO Arbitration"), [REDACTED]. Notably, the issues in the CNO Arbitration are identical to those at issue in this action; BCLIC/WNIC were allegedly defrauded by Beechwood Re's misrepresentation of its relationship to the Platinum fraud scheme. When

¹ The "Beechwood Parties" refer to the "Beechwood SHIP Defendants": Beechwood Re Ltd. ("Beechwood Re"), B Asset Manager, L.P. ("BAM"), Beechwood Bermuda International, Ltd. ("BBIL"), Beechwood Re Investments, LLC a/k/a Beechwood Re Investors, LLC ("BRILLC"), Moshe M. Feuer a/k/a Mark Feuer ("Feuer"), Scott A. Taylor ("Taylor"), David I. Levy ("Levy"), and Dhruv Narain ("Narain") (the foregoing "SHIP Defendants"); and to the "Beechwood PPCO Defendants": Beechwood Re, BRILLC, BAM, B Asset Manager II, LP ("BAM II"), Beechwood Re Holdings, Inc. ("Beechwood Holdings"), BBIL, Beechwood Bermuda Ltd. ("Beechwood Bermuda"), BAM Administrative Services LLC ("BAM Administrative"), Feuer, and Taylor (the "Beechwood PPCO Defendants") in the *Cyganowski* Action.

² "Ex. ___" refers to the exhibits attached to the Declaration of R. Brian Seibert, dated April 29, 2019.



The Honorable Jed S. Rakoff
April 29, 2019
Page 2

Beechwood Re refused to produce the SEC Production, the very issue before this Court was fully briefed and the CNO Arbitration Tribunal [REDACTED]. See Ex. 2. Later, in this action, SHIP, Fuzion, Plaintiffs in the *Trott* Action (“PPVA”), Plaintiff in the *Cyganowski* Action (“PPCO”), and certain Beechwood Parties all demanded the SEC Production. SHIP requested the SEC Production in its First Request for Production of Documents to the Beechwood SHIP Defendants in the *SHIP* Action (“SHIP’s Document Requests”). See Ex. 3 at Requests Nos. 18 and 20. SHIP and Fuzion also requested the SEC Production in their First Request for Production of Documents to the Beechwood PPCO Defendants in *Cyganowski* Action. See Ex. 4 at Requests Nos. 18 and 20. Certain Beechwood Parties (the Beechwood PPCO Defendants, Beechwood Capital Group LLP, Illumin Capital Management L.P., BBLN-PEDCO Corp., BHLN-PEDCO Corp., Feuer Family Trust, Taylor-Lau Family Trust, and Narain (collectively, the “Beechwood Propounding Parties”)) demanded the SEC Production in their First Request for Production of Documents to BCLIC, WNIC, CNO Financial Group, Inc., and 40/86 Advisors, Inc. (collectively, “CNO”) (“Beechwood’s Document Requests”). See Ex. 5 at Request No. 1 and Ex. 6 at p. 3, ¶ 2. CNO in response produced the SEC Production to the Beechwood Propounding Parties. That production was made in response to their Requests Nos. 1, 3, 9, 10-12, 14-15, 18-19, 21-26, 28-31, 34-37, 40-45, and 49-56. See Ex. 7 at 4-5, ¶ 8 and at 5-6, Request No. 1; Ex. 8; and Ex. 9 at email dated April 17, 2019 at 10:40AM and at email dated April 17, 2019 at 2:03PM. CNO were (and are) poised to produce the SEC Production to all parties in this case, but suddenly certain other Beechwood Parties objected. Accordingly, as things now stand, the four CNO parties and the seventeen Beechwood Propounding Parties have the SEC Production in this case. See Ex. 8; and Ex. 9 at email dated April 17, 2019 at 10:40AM and email dated April 17, 2019 at 2:03PM. SHIP and Fuzion do not.

1. The Beechwood SHIP Defendants Were Already Ordered To Produce The Records

On January 7, 2019, after briefing by the parties, Your Honor granted SHIP’s request to compel the Beechwood SHIP Defendants to produce documents responsive to request number 20 of SHIP’s Document Requests (the “January 7, 2019 Order”). See Ex. 10 at p. 7-8, § II.C. of parties’ positions and Ex. 11. That request sought “Documents produced by any Defendant in any litigation or arbitration arising out of or relating to Beechwood’s management of assets or investment services, including, but not limited to, documents produced in: (i) arbitration among BCLIC and WNIC and Beechwood Re Ltd.” See Ex. 3 at Request No. 20. The documents produced by the Beechwood SHIP Defendants in the arbitration include Beechwood’s SEC Production. As such, pursuant to the Court’s January 7, 2019 Order, the Beechwood SHIP Defendants were required to produce the SEC Production. The Beechwood SHIP Defendants, however, have failed to comply with this Court’s January 7, 2019 Order. That, in and of itself, should end this matter.

2. The SEC Production Is Highly Material To This Case

While relevancy was already litigated and then ruled on through the Court’s January 7, 2019 Order, it is worth noting that there is no real dispute that the SEC Production is relevant to



The Honorable Jed S. Rakoff
 April 29, 2019
 Page 3

the claims and defenses at issue in this litigation. The SEC is investigating Beechwood's involvement with the Platinum and affiliates fraud scheme that is the very subject matter of this case. *SEC v. Platinum Mgmt. (NY) LLC, et al.*, Case No. 1:16-cv-6848 (E.D.N.Y.), Dkt. No.1 ("SEC Complaint"). SHIP – like BAM – was subpoenaed by the SEC for the same investigation. SHIP, undoubtedly like BAM, negotiated with the SEC and produced a set of relevant materials in response to the SEC's requests. SHIP, unlike BAM or any of the Beechwood Parties, produced its entire production to the SEC to all parties in this case. The records are relevant. The SEC is investigating the same thing that SHIP, Fuzion, PPVA, PPCO, and CNO are investigating – the fraudulent scheme that Beechwood with Platinum and its affiliates perpetrated. *Id.* at ¶¶ 89-96 & 167-169. Indeed, WNIC and BCLIC (who have the SEC Production) perhaps made the point best. In their Cross-Claims and Third-Party Claims *in this case*, [REDACTED]

[REDACTED] See Sealed Version of Answer, Cross-Claim and Third-Party Complaint BCLIC and WNIC at ¶ 678 [Redacted Version at Doc. No. 204]. As they made clear:

[REDACTED] *Id.* As such, the Beechwood Parties complaints that this is a "piggy backing" discovery effort are baseless. It is not piggybacking where, as here, the production sought is relevant. See *Alaska Electrical Pension Fund v. Bank of Am. Corp.*, Case No. 14-cv-7126 (JMF), 2017 WL 280816 (S.D.N.Y. Jan. 20, 2017) (granting motion to compel party to produce documents produced to CFTC or DOJ, despite fact "there are some distinctions between the CFTC's investigation and the instant action," because materials sought are "indisputably 'relevant' insofar as 'relevance, for purposes of discovery, is an extremely broad concept.'" (citations omitted)); *Mallinckrodt Chem. Works v. Goldman, Sachs & Co.*, 58 F.R.D. 348 (S.D.N.Y. 1973) (granting plaintiffs' motion to compel defendant to produce its SEC production, concluding, "The substantive issues raised by plaintiffs in this action are intimately related to [the issues investigated by the SEC]. Even if some terms are irrelevant, plaintiffs' demand for this group of documents certainly complies with requirement of relevance."); *In re Delphi Corp.*, No. 05-md-1725, 2017 WL 518626 (E.D. Mich. Feb. 15, 2007) (granting motion to compel Delphi's production to SEC even though there was not complete overlap); *In re Enron Corp.*, Nos. MDL-1446, Civ. A. H-01-3624, 2002 WL 31845114 (S.D. Tex. 2002) (granting motion to compel Enron's production to SEC, noting that "the burden would be slight because Enron has already found, reviewed, and organized the documents...[i]n sense, this discovery has already been made...."); *In re Weatherford Intern. Secs. Litig.*, No. 11 Civ. 1646 (LAK)(JCF) (S.D.N.Y. Oct. 28, 2013) (compelling production of SEC production); *In re WorldCom, Inc. Securities Litig.*, 234 F.Supp.2d 301 (S.D.N.Y. 2002) (same).

Even the Beechwood Parties are squeamish about saying the SEC Production is not relevant or that it is not proportional to the needs of the case. Rather, the Beechwood Defendants argue that they have a "concern" that certain documents from Beechwood's SEC Production "are not necessarily relevant." See Ex. 9 at email dated April 11, 2019 at 9:17 PM. We have no doubt that the Beechwood Parties are concerned about all parties having the materials, but the documents were (as this Court previously ruled) and remain relevant. And it is not for the Beechwood Parties



The Honorable Jed S. Rakoff
April 29, 2019
Page 4

to determine what is relevant. For example, the Beechwood Defendants [REDACTED] – and say it as an example of a demand that may not be relevant. [REDACTED], of course it is relevant. [REDACTED] because (like SHIP and Fuzion) its case is about a massive fraudulent scheme in which it is alleged certain Beechwood Parties and Platinum affiliates used various methods to move money out of various companies in a shell-game whose purpose was hiding assets. See SEC Complaint at ¶¶ 89-96 & 167-169. The SEC, no doubt better informed than SHIP and Fuzion, knew precisely what it was about when it made that and the other requests. Moreover, and in any event, complete overlap between the matters is not required for this Court to require production of the SEC Production. See proceeding cases cited above.

What are the Beechwood Parties’ real “concerns”? It cannot be confidentiality. Beechwood Re is defunct and in liquidation; it is not a going concern that needs to protect proprietary business information from competitors. In any event, the Protective Order in this litigation will protect the information. It cannot be about privilege. Presumably all privileged documents were removed before the SEC Production was even made let alone provided to CNO and others. It cannot be about costs. The material is all in a batch, CNO has already produced it to some parties, and CNO is ready, willing and able to produce it to SHIP and Fuzion at no cost to the Beechwood Parties. Indeed, it is not lost on us that the Beechwood Parties – who constantly allege they have limited funds – are refusing to take the clearly cost effective approach of allowing all parties access and, instead, suggest we do further searches and select records from an already prepared and produced set of material. And using search terms is not only more expensive, but would undoubtedly result in the production of some irrelevant documents anyway. That is a reality in any case. Instead, the Beechwood Parties’ motivations are strategic – they want to prevent the other parties from obtaining documents that were so revealing to BCLIC and WNIC. The Beechwood Parties know that using search terms will be for SHIP and Fuzion the equivalent of using a reacher to find a needle in the haystack. The terms will be fought over, and SHIP and Fuzion will forever miss the key records. And Beechwood Parties also remain intent on continued delay. This Court ordered that the arbitration productions be produced in its January 7, 2019 Order, yet here we remain almost three months later with SHIP and Fuzion continuing to wait.

Indeed, Beechwood Re [REDACTED]

[REDACTED]

See Ex. 2 at ¶ 2.

[REDACTED]

See Ex. 2 at ¶ 3.

[REDACTED]



The Honorable Jed S. Rakoff
April 29, 2019
Page 5

[Redacted]

[Redacted] See Ex. 2 at

¶¶ 4 and 6.

[Redacted]

[Redacted] See Ex. 2 at ¶ 6. These rulings are right and we commend them to this Court for adoption, and they are binding and should bar arguments to the contrary.

3. It Is Highly Prejudicial To Have Some But Not All Parties Have The SEC Production

As noted above, the four CNO parties have the SEC Production. They [Redacted], and have made it abundantly clear that they will, as is their right, continue to use those records. Ex. 9 at email dated April 17, 2019 at 2:03PM. In addition, CNO produced the SEC Production in this case in response to the Beechwood Propounding Parties' own demands for those records. See Ex. 8 and Ex. 9 at email dated April 17, 2019 at 10:40 AM and email dated April 17, 2019 at 2:03PM. The Beechwood Propounding Parties never withdrew or amended their document requests to BCLIC and WNIC. *See id.* Having demanded the records themselves, the Beechwood Propounding Parties have waived any claim that the SEC Production is irrelevant. Moreover, as a result, 21 parties in this case now have the SEC Production, but not SHIP and Fuzion. The genie is out of the bottle and will not be put back. The current state of play, therefore, unfairly disadvantages SHIP and Fuzion, and will lead to chaos in depositions and other discovery. Accordingly, it is respectfully submitted that the Court should order the Beechwood Parties to produce (or permit CNO to produce) the SEC Production to all parties.

Respectfully submitted,

/s/ R. Brian Seibert

R. Brian Seibert

Enc.

cc: All counsel of record by Email (Unredacted) and ECF (Redacted)