

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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: IN RE PLATINUM-BEECHWOOD LITIGATION : 18-cv-6658 (JSR)  
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: MELANIE L. CYGANOWSKI, as Equity Receiver for : 18-cv-12018 (JSR)  
: PLATINUM PARTNERS CREDIT OPPORTUNITIES :  
: MASTER FUND LP, *et al.*, :  
:

Plaintiffs,

v.

BEECHWOOD RE LTD., *et al.*,

Defendants.

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: SENIOR HEALTH INSURANCE COMPANY OF :  
: PENNSYLVANIA, :  
:

Third-Party Plaintiff,

v.

PB INVESTMENT HOLDINGS LTD., *et al.*,

Third-Party Defendants.

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**REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION BY  
THIRD-PARTY DEFENDANTS BEECHWOOD TRUST NOS. 7-14,  
MONSEY EQUITIES, LLC, AND BEECHWOOD RE INVESTMENTS,  
LLC SERIES C TO DISMISS SHIP'S THIRD-PARTY COMPLAINT**

Third-party defendants Beechwood Trust Nos. 7–14 (“Trusts 7–14”), Monsey Equities, LLC (“Monsey Equities”), and Beechwood Re Investments, LLC Series C (“BRILLC Series C,” and collectively the “Moving Defendants”) respectfully submit this reply memorandum of law in further support of their motion to dismiss (ECF No. 280) the Third-Party Complaint (ECF No. 195) of third-party plaintiff Senior Health Insurance Company of Pennsylvania (“SHIP”) pursuant to Federal Rule of Civil Procedure 12(b)(6).<sup>1</sup>

### **REPLY POINTS**

SHIP’s 71-page Opposition Memorandum (ECF No. 322) (the “Opposition” or “Opp.”) fails to remedy the deficiencies of its TPC allegations against the Moving Defendants. It cannot save the serious and substantive counts asserted against the Moving Defendants in the TPC: Counts Three and Four for aiding and abetting fraud and fiduciary breaches, respectively, Count Five for civil conspiracy, and Count Seven for unjust enrichment. Each of these counts requires Rule 9(b) specificity. SHIP fails to meet that pleading standard.

The Opposition merely restates the conclusory assertions of the TPC that the Moving Defendants were “formed by [David] Bodner to conceal his Beechwood interests,” and acted as “alter egos of” and “asset protection vehicles for” Bodner and his family. (Opp. at 9–10). These assertions are not facts, and they cannot support SHIP’s tort and unjust enrichment claims against these entities.

Neither do the few remaining allegations. The Opposition states that BRILLC Series C and Monsey Equities held Beechwood preferred stock (Opp. at 10), but never claims how the ownership of preferred stock furthered any wrongdoing upon SHIP. Nor does the Opposition or TPC identify a single payment, distribution or other remuneration to BRILLC

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<sup>1</sup> ECF citations refer to the *Cyganowski* docket, 18-cv-12018 (JSR). Capitalized terms not defined herein shall have the meanings ascribed to them in the Moving Defendants’ opening memorandum (ECF No. 281).

Series C or Monsey Equities on account of the preferred stock, or on account of any other transaction or instrument. There is no enrichment of them alleged in the TPC.

Indeed, the Court has already dismissed SHIP's claims for unjust enrichment as against Beechwood Re Investments, LLC ("BRILLC") due to SHIP's attempt to state a claim "based on the payment of contractually owned performance fees," and for its failure to "specify who was enriched" or to specify who "improperly benefitted from SHIP's direct investment in Agera." *Senior Health Ins. Co. of Pa. v. Beechwood Re Ltd. (In re Platinum-Beechwood Litig.)*, 377 F. Supp. 3d 414, 427, 2019 U.S. Dist. LEXIS 67952, \*33 (S.D.N.Y. April 22, 2019). The Court has also held that the *Trott* plaintiffs made allegations "insufficient to state aiding and abetting claims" as to BRILLC by failing to allege substantial assistance, and dismissed them from *Trott*. *In re Platinum-Beechwood Litig.*, No. 18-cv-6658 (JSR), 18-cv-10936 (JSR), 2019 U.S. Dist. LEXIS 104562, at \*37–39 (S.D.N.Y. June 21, 2019). The TPC merits the same result as to BRILLC Series C.

Likewise, with respect to Trusts 7–14, the Opposition repeats the refrain of the TPC that the trusts were used in "siphoning off and secreting the ill-gotten gains from the Platinum–Beechwood Scheme" but never identifies a single payment or distribution to Trusts 7–14 from any source. (Opp. at 10). But SHIP fails to identify the timing, nature, character or source of any such payment. In *Trott*, where the allegations against Trusts 7–14 were substantially identical to those made by SHIP in the TPC, the Court found that the *Trott* plaintiffs "ma[de] no specific allegations about Beechwood Trust Nos. 7–14," and dismissed them from the case. *In re Platinum-Beechwood Litig.*, Nos. 18-cv-6658 (JSR), 18-cv-10936 (JSR), 2019 U.S. Dist. LEXIS 62745, at \*34-35 (S.D.N.Y. April 11, 2019).

Finally, SHIP refers to the “August 2016 transactions”—whereby the Moving Defendants sold their preferred and common stock to entities controlled by Mark Feuer and Scott Taylor—alleging that the stock sale was “designed to further conceal Bodner’s role.” (Opp. at 9–10). But nothing about the sale is alleged to have caused any damage to SHIP, or to have enriched the Moving Defendants at SHIP’s expense. Nor is it plausible to allege that a multi-party, corporate transaction documented at length by sophisticated counsel, preserved for posterity, where the deal documents are readily available to regulators and others, could be deemed an act of “concealment.” Indeed, SHIP concedes that Beechwood disclosed to New York regulators Bodner’s prior indirect ownership of BRILLC Series C and Trusts 7–14 within a few weeks after transaction closed. (TPC ¶ 30). The August 2016 transactions are not actionable by SHIP in any respect.

### **CONCLUSION**

Rule 9(b) requires particularized allegations, but the TPC provides no factual detail as to how the Moving Defendants allegedly aided and abetted, conspired, or were unjustly enriched, and the Opposition fails to explain how the Moving Defendants could be liable for any of the counts in the TPC. For these reasons and for the reasons set forth in the Reply Memorandum of Law filed by Bodner, the TPC’s counts against the Moving Defendants should be dismissed in their entirety, and with prejudice.

Dated: July 12, 2019  
New York, New York

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