

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
IN RE PLATINUM-BEECHWOOD LITIGATION,	:	Master Docket No. 18-CV-6658 (JSR)
	:	
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MELANIE L. CYGANOWSKI, as Equity	:	Index No. 18-CV-12018 (JSR)
Receiver for PLATINUM PARTNERS	:	
CREDIT OPPORTUNITIES MASTER	:	
FUND LP, PLATINUM PARTNERS	:	
CREDIT OPPORTUNITIES FUND (TE)	:	
LLC, PLATINUM PARTNERS CREDIT	:	
OPPORTUNITIES FLIND LLC,	:	
PLATINUM PARTNERS CREDIT	:	
OPPORTUNITIES FUND	:	
INTERNATIONAL LTD., PLATINUM	:	
PARTNERS CREDIT OPPORTUNITIES	:	
FLIND INTERNATIONAL (A) LTD., and	:	
PLATINUM PARTNERS CREDIT	:	
OPPORTUNITIES FUND (BL) LLC,	:	

Plaintiffs,

v.

BEECHWOOD RE LTD., *et al.*,

Defendants.

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	:	
SENIOR HEALTH INSURANCE COMPANY OF	:	Index No. 18-CV-12018 (JSR)
PENNSYLVANIA,	:	
	:	

Crossclaimant,

v.

BEECHWOOD RE LTD., B ASSET MANAGER
LP, B ASSET MANAGER II LP, BEECHWOOD
RE HOLDINGS, INC., BEECHWOOD
BERMUDA LTD., BEECHWOOD BERMUDA
INTERNATIONAL LTD., BEECHWOOD
BERMUDA INVESTMENT HOLDINGS, LTD.,
BAM ADMINISTRATIVE SERVICES LLC,
FEUER FAMILY TRUST, and TAYLOR-LAU

FAMILY TRUST, :
:
:
Crossclaim Defendants. :
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:

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SENIOR HEALTH INSURANCE COMPANY OF : Index No. 18-CV-12018 (JSR)
PENNSYLVANIA, :
:

Third-Party Plaintiff, :
:
:

v. :
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:

PB INVESTMENT HOLDINGS LTD., :
BEECHWOOD CAPITAL GROUP, LLC, B :
ASSET MANAGER GP LLC, B ASSET :
MANAGER II GP LLC, MSD :
ADMINISTRATIVE SERVICES LLC, :
PLATINUM MANAGEMENT (NY) LLC, N :
MANAGEMENT LLC, MARK NORDLICHT, :
MURRAY HUBERFELD, DAVID BODNER, :
ESTATE OF URI LANDESMAN, NAFTALI :
MANELA, JOSEPH SANFILIPPO, DANIEL :
SMALL, ELLIOT FEIT, DAVID STEINBERG, :
EZRA BEREN, DAVID OTTENSOSER, WILL :
SLOTA, BERNARD FUCHS a/k/a BERISH :
FUCHS, DANIEL SAKS, HOKYONG KIM a/k/a :
STEWART KIM, BEECHWOOD TRUST NO. 1, :
BEECHWOOD TRUST NO. 2, BEECHWOOD :
TRUST NO. 3, BEECHWOOD TRUST NO. 4, :
BEECHWOOD TRUST NO. 5, BEECHWOOD :
TRUST NO. 6, BEECHWOOD TRUST NO. 7, :
BEECHWOOD TRUST NO. 8, BEECHWOOD :
TRUST NO. 9, BEECHWOOD TRUST NO. 10, :
BEECHWOOD TRUST NO. 11, BEECHWOOD :
TRUST NO. 12, BEECHWOOD TRUST NO. 13, :
BEECHWOOD TRUST NO. 14, BEECHWOOD :
TRUST NO. 15, BEECHWOOD TRUST NO. 16, :
BEECHWOOD TRUST NO. 17, BEECHWOOD :
TRUST NO. 18, BEECHWOOD TRUST NO. 19, :
BEECHWOOD TRUST NO. 20 a/k/a THE :
DAVID I LEVY BEECHWOOD TRUST, :
BEECHWOOD ASSET MANAGEMENT :
TRUST I, BEECHWOOD ASSET :
MANAGEMENT TRUST II, BEECHWOOD RE :
INVESTMENTS, LLC SERIES A, :

BEECHWOOD RE INVESTMENTS, LLC :
 SERIES B, BEECHWOOD RE INVESTMENTS, :
 LLC SERIES C, BEECHWOOD RE :
 INVESTMENTS, LLC SERIES D, :
 BEECHWOOD RE INVESTMENTS, LLC :
 SERIES E, BEECHWOOD RE INVESTMENTS, :
 LLC SERIES F, BEECHWOOD RE :
 INVESTMENTS, LLC SERIES G, :
 BEECHWOOD RE INVESTMENTS, LLC :
 SERIES H, BEECHWOOD RE INVESTMENTS, :
 LLC SERIES I, ROAD HOLDINGS, LLC, :
 LAWRENCE PARTNERS, LLC, MONSEY :
 EQUITIES, LLC, WHITESTAR LLC, :
 WHITESTAR LLC II, WHITESTAR LLC III, :
 PLATINUM CREDIT HOLDINGS, LLC, :
 MARK NORDLICHT GRANTOR TRUST, :
 DAHLIA KALTER, MICHAEL JOSEPH :
 NORDLICHT, KEVIN CASSIDY, :
 BEECHWOOD GLOBAL DISTRIBUTION :
 TRUST, FEUER FAMILY 2016 ACQ TRUST, :
 and TAYLOR-LAU FAMILY 2016 ACQ :
 TRUST, :
 :
 Third-Party Defendants :
 :
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**REPLY MEMORANDUM OF LAW IN SUPPORT OF DAVID OTTENSOSER'S
 PARTIAL MOTION TO DISMISS THIRD-PARTY COMPLAINT OF SENIOR
 HEALTH INSURANCE COMPANY OF PENNSYLVANIA**

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We respectfully submit this reply memorandum of law in support of David Ottensoser's partial motion to dismiss certain causes of action in the Third-Party Complaint ("SHIP" ECF No. 195 in Index No. 18-CV-12018 (JSR) and "Beechwood" ECF No. 390 in Master Docket No. 18-CV-6658) (the "SHIP TPC") filed by Senior Health Insurance Company of Pennsylvania ("SHIP") pursuant to Federal Rules of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

INTRODUCTION

In the Memorandum of Law In Support of David Ottensoser's Partial Motion to Dismiss the Third-Party Complaint of Senior Health Insurance Company of Pennsylvania ("Ottensoser MOL," SHIP ECF No. 277 and Beechwood ECF No. 470), Ottensoser noted that nowhere in the SHIP TPC does SHIP allege that Ottensoser, individually, was enriched at SHIP's expense, or even enriched at all. SHIP's opposition ("SHIP Opp.," SHIP ECF No. 322 and Beechwood ECF No. 522) does no better, as it only summarily alleges that Ottensoser was enriched, but again fails to identify how Ottensoser was enriched or how that enrichment came at SHIP's expense. Accordingly, SHIP's unjust enrichment claim against Ottensoser fails to meet the liberal notice pleading standard of Federal Rule of Civil Procedure 8, let alone the heightened pleading standard of Rule 9(b).

ARGUMENT

SHIP does not dispute that it must meet the heightened pleading standards of Rule 9(b) for its unjust enrichment claim. *See* SHIP Opp. at 51 (not disputing that Rule 9(b) applies). Rather, SHIP proclaims that it has met its burden due to the "overwhelming factual allegations laid out in the TPC." *Id.* Indeed, just as with the SHIP TPC, SHIP identifies the benefits that *other* defendants purportedly received but fails to do the same with Ottensoser. *See* SHIP Opp. at 52-53. *See also* Ottensoser MOL at 3. But nowhere does SHIP allege how Ottensoser is

supposed to have benefited from the alleged misconduct. *See* SHIP Opp. at 13, 52. For example, nothing in the SHIP TPC or the SHIP Opp. alleges that Ottensoser was an owner of any of the Beechwood Entities or of Platinum Management (NY) LLC such that he would receive the benefits of the alleged fraud.

Rather than meeting its burden of stating “with particularity the circumstances constituting fraud,” Fed. R. Civ. P. 9(b), SHIP nakedly asserts that “Ottensoser benefitted from the inflated valuations associated with PPVA.” *Id.* at 52. Such “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” under Rule 8. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). They certainly cannot pass muster under the more stringent requirements of Rule 9(b). *See, e.g., Royal Host Realty, LLC v. 793 Ninth Ave. Realty, LLC*, 192 F. Supp. 3d 348, 358 (S.D.N.Y. 2016) (dismissing unjust enrichment claim premised on fraud for failure to sufficiently allege with particularity that defendants benefitted from the purported fraud).

Accordingly, because SHIP has yet again failed to sufficiently allege that Ottensoser, individually, benefitted from any inequitable unjust enrichment at the expense of SHIP, SHIP’s unjust enrichment claims against Ottensoser fail and should be dismissed.¹

¹ Ottensoser joins in the arguments of all other Cross-Claim or Third-Party Defendants to the SHIP TPC that SHIP has failed to meet its burden on its unjust enrichment claim.

CONCLUSION

For all the foregoing reasons, and for all the reasons set forth in the motions and memoranda by all other moving Cross-Claim or Third-Party Defendants to the SHIP TPC and/or SHIP Crossclaim, David Ottensoser respectfully requests the Court enter an order dismissing Count Seven of the SHIP TPC as against him, with prejudice.

Dated: July 12, 2019

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