UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	Civil Action No. 1:18-cv-00658
MELANIE L. CYGANOWSKI, AS RECEIVER, BY AND FOR PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, *et al.*, *Plaintiffs*, v. BEECHWOOD RE LTD., *et al.*, *Defendants*.	Civil Action No. 1:18-cv-12018
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, *Third-Party Plaintiff*, v. PB INVESTMENT HOLDINGS LTD., *et al.*, *Third-Party Defendants*.	

THIRD-PARTY DEFENDANT PB INVESTMENT HOLDINGS LTD.'S MEMORANDUM OF LAW SUPPORTING DISMISSAL OF SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA'S THIRD-PARTY COMPLAINT

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PB Investment Holdings Ltd., as successor-in-interest to Beechwood Bermuda Investment Holdings Ltd. ("PBIHL"), asks the Court to dismiss the Third-Party Complaint [ECF 195] filed by Senior Health Insurance Company of Pennsylvania ("SHIP"). The Third-Party Complaint ("TPC") should be dismissed in its entirety for want of jurisdiction and failure to state a claim under Rules 9(b), 12(b)(2) and 12(b)(6).

PRELIMINARY STATEMENT

The TPC appears to assert claims for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, and unjust enrichment against PBIHL. The basis for these claims is an alleged conspiracy "carried out by the Platinum Entities, the Beechwood Entities, and the Co-Conspirators to gain and retain . . . access to the reserves of SHIP . . . in order to perpetuate the Ponzi-like scheme carried out by Platinum and to otherwise enrich themselves."[1] (TPC ¶ 1.)

Of the 471 numbered paragraphs that comprise the TPC, only one of those paragraphs specifically mentions PBIHL. (*See id.* ¶ 15.) The generalized and conclusory group pleadings regarding Beechwood, the Beechwood Entities, the Co-Conspirators, and the Co-Conspirator Defendants do not contain any facts that tend to connect PBIHL to the alleged conspiracy or to SHIP. Therefore, the TPC could be dismissed for this reason alone.

SHIP alleges that it was fraudulently induced to enter into investment management agreements with certain Beechwood Entities. (*Id.* ¶ 1.) As part of these agreements, SHIP alleges the Beechwood Entities gained access to and control over SHIP's reserves. (*Id.* ¶ ¶ 2 – 4.) SHIP

[1] PBIHL is not expressly included in the TPC's definitions for the "Platinum Entities," the "Beechwood Entities," or the "Co-Conspirators." (*Id.* ¶ 1 nn.1 – 3.) The TPC's definitions for "Beechwood" and the "Co-Conspirator Defendants" rely upon the definitions for the Beechwood Entities and the Co-Conspirators, respectively. SHIP relies upon all of these terms when identifying the parties against whom it seeks relief, so it is unclear whether SHIP even brings any third-party claims against PBIHL.

further alleges that "Beechwood" did not disclose its relationship with "Platinum" or that Platinum controlled Beechwood's investment decisions. (*Id.* ¶¶ 75 – 78.) According to SHIP, this failure to disclose harmed it because Platinum gained "unfettered control over, and access to, SHIP's investment account funds" and "misused and misappropriated funds entrusted to its care." (*Id.* ¶ 4.) SHIP now contends that, had it been aware of the relationship between Beechwood and Platinum, it "would not have engaged or retained Beechwood as [SHIP's] insurer or investment advisor." (*Id.* ¶ 77.)

SHIP makes no allegations about the alleged conspiracy that are specific to PBIHL. The claims against PBIHL (to the extent that SHIP makes claims against PBIHL) appear to be based solely on PBIHL's possible presence on an organization chart. There are no factual allegations that are specific to PBIHL that would tend to establish any element of the claims that SHIP may bring against it. Indeed, SHIP fails to allege any facts that tend to show that PBIHL (1) had actual knowledge of any underlying fraud or breach of fiduciary duty that harmed SHIP, (2) substantially assisted with the achievement of the fraud or breach of fiduciary duty, (3) engaged in any act that proximately caused any injury to SHIP, (4) participated in any conspiracy against SHIP, or (5) was unjustly enriched by receiving something of value at SHIP's expense (or that belonged to SHIP). Accordingly, SHIP's third-party claims against PBIHL should be dismissed with prejudice.

RELEVANT FACTUAL ALLEGATIONS

SHIP alleges that "[e]ach of the . . . Third-Party Defendants played a critical and knowing role in the furtherance of, and benefitted directly from, the Platinum-Beechwood Scheme." (*Id.* ¶ 5.)

The "Platinum-Beechwood Scheme," according to SHIP, was a conspiracy "to gain and retain, by means of artifice and fraud, access to the reserves of SHIP and other insurance companies

in order to perpetuate the Ponzi-like scheme being carried out by Platinum and to otherwise enrich themselves and their related parties." (*Id.* ¶ 1.) PBIHL's alleged involvement in this scheme appears to be as a "Beechwood Entity" and subsidiary of Beechwood Bermuda International Ltd. ("BBIL") that was involved in "executing certain transactions to the benefit of the Co-Conspirators, and to the detriment of SHIP." (*Id.* ¶ 15.) This is the extent of the supposed allegations against PBIHL.

The TPC does not identify the "certain transactions" which PBIHL allegedly executed. Rather, the TPC weaves a tale about bad acts perpetrated by "Beechwood," "Beechwood Entities," "Platinum," "Co-Conspirators," and other groups to "hide the relationship between Beechwood and Platinum" in order to do business with SHIP. (*Id.* ¶ 75.) These bad acts included an agreement between the "Co-Conspirators . . . that Beechwood would misrepresent the persons who owned and controlled Beechwood," as well as creating "a complex and elaborate ownership structure with the intent of confusing interested parties" like SHIP. (*Id.* ¶ 78.)

The apparent underlying basis for SHIP's claims is that some or all of the Third-Party Defendants provided "false information about Beechwood, its ownership, its capitalization, and its capabilities," and that SHIP relied upon this information when deciding to invest with "Beechwood." (*Id.* ¶ 131; *see also* ¶¶ 143, 144 & 148.) "Beechwood" also "knowingly and fraudulently concealed from SHIP that it intended to place SHIP's assets into investments that were highly speculative, opaque, and not adequately secured." (*Id.* ¶ 154.) These investments included "related-party transactions involving one or more principals of the Beechwood Advisors or the Platinum Entities and their associates." (*Id.* ¶ 155.)

SHIP alleges it entered into three investment management agreements ("IMAs") "with the Beechwood Advisors" based on this false information: (1) a May 22, 2014 IMA with BBIL ($80

million); (2) a June 23, 2014 IMA with Beechwood Re Ltd. ($80 million); and (3) a January 15, 2015 IMA with B Asset Manager L.P. ($110 million). (*Id.* ¶¶ 163, 166, 183, 186, 200 & 203.) It now regrets entering these agreements. It alleges that each of BBIL, Beechwood Re Ltd., and B Asset Manager L.P., "together with the Beechwood Insiders," used their respective IMAs "to take control over SHIP's assets and to deploy those assets to benefit Platinum, thereby enriching the Beechwood Insiders as well as Platinum's and Beechwood's owners and related parties, at the expense of SHIP." (*Id.* ¶¶ 178, 198 & 215.) BBIL, Beechwood Re Ltd., and B Asset Manager L.P. then "compounded the damage to SHIP by falsely overstating the value of the assets under management" in the IMA accounts "to justify" BBIL, Beechwood Re Ltd., and B Asset Manager L.P.'s respective "retention of Performance Fees to which [they] would not otherwise be entitled as well as to extend the duration of the scheme and magnify the losses." (*Id.* ¶¶ 182, 199 & 216.)

The above entities allegedly successfully "compounded the damage" when "Beechwood, other purported employees of Beechwood, and Beechwood's paid advisors and consultants submitted reports that contained inflated, and in some cases, entirely falsified valuations that purported to show that the Platinum-related investments were performing well and that SHIP's investments were sound." (*Id.* ¶ 322.) The TPC also generally alleges these entities were "aided by the actions and agreements of the Co-Conspirators." (*Id.* ¶ 324.) The TPC does not elaborate. It does not even contain factual allegations regarding the "Platinum-Beechwood Scheme" that are specific to PBIHL.

ARGUMENT

SHIP cites no facts in the TPC which plausibly suggest that PBIHL harmed SHIP. SHIP instead alleges that "Beechwood," the "Beechwood Entities," the "Co-Conspirators," and the "Co-Conspirator Defendants" engaged in conduct that harmed SHIP. Generalized allegations like these

are not enough to meet Rule 8's pleading requirements. *See In re JP Morgan Auction Rate Sec. (ARS) Mktg. Litig.*, 867 F. Supp. 2d 407, 425 (S.D.N.Y. 2012) (holding that generalized, vague, and conclusory statements are insufficient to state a claim for relief). They are also not enough to meet the heightened pleading standard set forth by Rule 9(b).

Rule 9(b) reflects "the desire to protect defendants from the harm that comes to their reputations or to their goodwill when they are charged with serious wrongdoing." *Segal v. Gordon*, 467 F.2d 602, 607 (2d Cir. 1972). Rule 9(b) "generally forbid[s]" group pleading "because each defendant is entitled to know what he is accused of doing." *In re Dreier LLP*, 452 B.R. 391, 409 (Bankr. S.D.N.Y. 2011). Group pleading may be appropriate "where the defendants are a narrowly defined group of highly ranked officers or directors who participated in the preparation and dissemination of a [published company document] . . .." *Elliott Assocs., L.P. v. Hayes*, 141 F. Supp. 2d 344, 354 (S.D.N.Y. 2000). Accordingly, "[t]he Court must be especially vigilant in applying Rule 9(b) where a complaint is made against multiple defendants" because "the complaint should inform each defendant of the nature of his alleged participation" in the tort. *Fernandez v. UBS AG*, 222 F. Supp. 3d 358, 388 (S.D.N.Y. 2016).

The TPC fails these rules of pleading. The allegations appear to lump together PBIHL with: (1) Beechwood Re, Ltd., Beechwood Bermuda International, Ltd., B Asset Manager, L.P., B Asset Manager II, L.P., MSD Administrative Services LLC, Beechwood Re Holdings, Inc., Beechwood Bermuda, Ltd., BAM Administrative Services LLC, Beechwood Capital Group, LLC, B Asset Manager GP LLC, and B Asset Manager II GP LLC to form the "Beechwood Entities;" (2) "Feuer, Taylor, Levy, Nordlicht, Huberfeld, Bodner, Manela, Beren, Saks, Kim, Steinberg, Feit, Small, Landesman, SanFilippo, Ottensoser, Slota, Fuchs, Michael Nordlicht, Cassidy, the Beechwood Entities, Platinum Management, BRILLC, N Management, and the 2016 Acquisition

Trusts" to form the "Co-Conspirators;" (3) "all Co-Conspirators except those already named in the SHIP Action, the SHIP Action Defendants," to form the "Co-Conspirator Defendants;" and (4) "the entire Beechwood enterprise, which includes the Beechwood Advisors, the Beechwood Entities, and the Beechwood Insiders" to form "Beechwood." (TPC ¶ 1 nn.1 – 3 & 5.) The Court and PBIHL should not be required to "sift" through the TPC to "decipher what factual allegations, if any, support the existence and materiality" of SHIP's claims against PBIHL. *In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d 326, 377 (S.D.N.Y. 2011). Therefore, the claims against PBIHL should be dismissed in their entirety.

I. THE TPC FAILS TO STATE A CLAIM FOR AIDING AND ABETTING.

SHIP's failure to satisfy Rule 9(b) notwithstanding, the TPC fails to state any actionable claim for relief against PBIHL. SHIP first attempts to assert two fraud-based claims against the "Co-Conspirator Defendants," one for aiding and abetting fraud and the other for aiding and abetting breaches of fiduciary duties. (*Id.* ¶¶ 410 – 428.) SHIP fails to plead facts that establish the existence of each element of these claims.

A. The TPC Fails to State a Claim for Aiding and Abetting Fraud.

A claim of aiding and abetting fraud requires specific allegations of facts supporting "(1) the existence of an underlying fraud; (2) knowledge of this fraud on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in achievement of the fraud." *Ritchie Capital Mgmt., L.L.C. v. Gen. Elec. Capital Corp.*, 121 F. Supp. 3d 321, 338 (S.D.N.Y. 2015), *aff'd*, 821 F.3d 349 (2d Cir. 2016). SHIP's third-party claim against PBIHL is deficient for several reasons.

First, the TPC lacks any allegations that PBIHL had actual knowledge of the underlying fraud. While actual knowledge may be pleaded generally for an aiding and abetting claim,

knowledge may *not* be pleaded in a conclusory fashion. *See Krys v. Pigott*, 749 F.3d 117, 129 (2d Cir. 2014). The TPC is notable for the wholesale absence of allegations that tend to show PBIHL had actual knowledge of any underlying fraud against SHIP.

Instead of proper allegations, SHIP asserts that "[t]he Co-Conspirators had direct knowledge of Platinum's undisclosed connections to Beechwood, and knew that the valuations assigned to the assets in which SHIP's funds were invested were unsupported, false, and misleading." (TPC ¶ 415.) These are conclusory and unsupported statements. Without facts in support, SHIP is not entitled to an inference that PBIHL had actual knowledge of any underlying fraud, and dismissal of the aiding and abetting claim is appropriate. *See, e.g., In re Platinum-Beechwood Litig.*, No. 18-cv-06658 (JSR), 2019 U.S. Dist. LEXIS 62745, at *44 – 45 (S.D.N.Y. Apr. 11, 2019) (dismissing aiding and abetting claims where allegations were insufficient to impute actual knowledge to the defendants).

Second, the TPC fails to plead that PBIHL substantially assisted in achievement of the alleged fraud. This element requires a fact-based pleading of affirmative conduct. *Sharp Int'l Corp. v. State St. Bank & Trust Co.*, 403 F.3d 43, 50 (2d Cir. 2005). Stated differently, the substantial assistance element requires allegations "that the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated." *Cromer Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001). The TPC does not contain these allegations. The TPC is, in fact, silent as to PBIHL outside of the instances where SHIP generalizes bad acts to the "Co-Conspirators," "Co-Conspirator Defendants," or "Beechwood Entities." These allegations are insufficient to show that PBIHL provided substantial assistance to any transaction that SHIP relies upon in support of this third-party claim.

Third, the TPC fails to adequately plead proximate causation. *See id.* Allegations of proximate causation must allege that an "injury was 'a direct or reasonably foreseeable result of the conduct.'" *Silvercreek Mgmt. v. Citigroup, Inc.*, 248 F. Supp. 3d 428, 442 (S.D.N.Y. 2017). The TPC concludes that "it was reasonably foreseeable that [the Co-Conspirators'] conduct and the scheme in which they knowingly participated would" harm SHIP, yet at no point does it set forth allegations which tend to show that an injury to SHIP was a direct or reasonably foreseeable result of same. SHIP's claim for aiding and abetting fraud is ripe for dismissal.

B. The TPC Fails to State a Claim for Aiding and Abetting Breach of Fiduciary Duty.

A claim of aiding and abetting a breach of fiduciary duty requires specific allegations of: (1) a breach of fiduciary obligations to another; (2) that the aider and abettor knowingly induced or participated in the breach; and (3) damages incurred by the plaintiff as a result of the breach. *SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 345 (2d Cir. 2018). "With respect to the second requirement, although a plaintiff is not required to allege that the aider and abettor had an intent to harm, there must be an allegation that such defendant had actual knowledge of the breach of duty. And a person knowingly participates in a breach of fiduciary duty only when he or she provides substantial assistance to the primary violator." *Id.*

First, the TPC is plainly deficient with respect to the substantial assistance element. The allegations focus on the transfers of money away from SHIP, but when it comes to alleged Co-Conspirators (like PBIHL), SHIP makes general, vague and conclusory allegations that "each of the other Co-Conspirators directly participated in, and played a principal role in consummating, several [] fraudulent transactions . . . for the benefit of Beechwood- and Platinum-related entities and individuals." (TPC ¶ 424.) The TPC does not allege how PBIHL was involved in, let alone

how PBIHL provided substantial assistance with regard to, any event that provides the basis of the aiding and abetting breach of fiduciary duty claim.

Second, the TPC fails to plead actual knowledge and proximate causation, for the reasons already set forth above in Section I.A.

At best, SHIP's third-party claims for aiding and abetting appear to be an attempt to create liability by association. The case law requires more than pleading mere association before an aiding and abetting claim becomes actionable; the party must be proximately involved with the transaction(s) at issue. The only allegations specific to PBIHL in the entire TPC regard it being a "Beechwood Entity" organized and operating in Bermuda, a subsidiary of BBIL, and involved in "executing certain transactions to the benefit of the Co-Conspirators, and to the detriment of SHIP." (TPC ¶ 15.) Whether PBIHL had any involvement in these events is necessary to state a claim for relief. SHIP's aiding and abetting claims should be dismissed, with prejudice, because it has failed to show PBIHL's involvement.

II. THE TPC FAILS TO STATE A CLAIM FOR CIVIL CONSPIRACY.

Like the aiding and abetting claims, SHIP's civil conspiracy claim is ripe for dismissal, for three reasons.

First, this claim is duplicative of the aiding and abetting claims. All three claims seek to hold the "Co-Conspirator Defendants" secondarily liable for primary torts committed by other defendants. *See, e.g., Briarpath Ltd. LP v. Phx. Pictures, Inc.*, 312 F. App'x 433, 434 (2d Cir. 2009) (noting that a claim for conspiracy to breach fiduciary duty is duplicative of an aiding and abetting claim); *In re Allou Distribs., Inc.*, 446 B.R. 32, 60 – 61 (Bankr. E.D.N.Y. 2011) (cases holding that conspiracy and aiding and abetting claims are duplicative).

Second, the allegations of conspiracy are insufficient under Rule 9(b) because the same allegations for the aiding and abetting claims are the grounds for the conspiracy claim. Those allegations fail to meet Rule 9(b)'s heightened pleading requirements. *See Demalco, Ltd. v. Feltner*, 588 F. Supp. 1277, 1278 (S.D.N.Y. 1984) ("[T]he gravamen of a claim of conspiracy is the underlying independent tort, and if the independent tort has not been adequately pleaded, the conspiracy claim will also fail.").

Third, the conspiracy claim simply fails to state a claim for relief against PBIHL. A claim of civil conspiracy "is available only if there is evidence of an underlying actionable tort." *Baker v. R.T. Vanderbilt Co.*, 260 A.D.2d 750, 688 N.Y.S.2d 726, 729 (App. Div. 3rd Dep't 1999). "All that an allegation of conspiracy can accomplish is to connect non-actors, who might otherwise escape liability, with the acts of their co-conspirators." *Burns Jackson Miller Summit & Spitzer v. Lindner*, 88 A.D.2d 50, 72, 452 N.Y.S.2d 80, 93 – 94 (2d Dep't 1982), *aff'd*, 59 N.Y.2d 314 (1983). A civil conspiracy under New York law requires: "(1) the corrupt agreement between two or more persons, (2) an overt act, (3) intentional participation in the furtherance of a plan or purpose, and (4) the resulting damage." *Pope v. Rice*, No. 04 Civ. 4171 (DLC), 2005 U.S. Dist. LEXIS 4011, at *42 (S.D.N.Y. Mar. 14, 2015). However, "to survive a motion to dismiss, a complaint must contain more than general allegations in support of the conspiracy. Rather, it must allege the specific times, facts, and circumstances of the alleged conspiracy." *Brownstone Inv. Grp., LLC v. Levey*, 468 F. Supp. 2d 654, 661 (S.D.N.Y. 2007) (internal citations omitted).

Alleging the existence of a corrupt agreement requires alleging facts "which support an inference that defendants knowingly agreed to cooperate in a fraudulent scheme or shared a perfidious purpose." *Ray Legal Consulting Grp. v. DiJoseph*, 37 F. Supp. 3d 704, 722 (S.D.N.Y. 2014). SHIP fails to plead any facts which tend to show the existence of a corrupt agreement

between PBIHL and the Co-Conspirator Defendants, Beechwood Entities, or Platinum Entities to defraud SHIP (or breach fiduciary duties owed to it).

Similarly, SHIP fails to plead facts that show PBIHL intentionally participated in the furtherance of any fraud or breach of fiduciary duty. SHIP makes no specific allegations whatsoever regarding PBIHL. Indeed, SHIP does not even allege facts that tend to show that PBIHL independently owed a fiduciary duty to SHIP, a requirement under New York law for any claim of conspiracy to breach a fiduciary duty. *See, e.g., Pope*, 2005 U.S. Dist. LEXIS 4011, at *42 (for a claim of civil conspiracy that involves a conspiracy to breach a fiduciary duty, "all members of the alleged conspiracy must independently owe a fiduciary duty to the" claimant). This failure to adequately allege the existence of any fiduciary duty that PBIHL independently owed to SHIP is fatal to this claim. SHIP's generalized allegations are insufficient, especially since it remains unclear how PBIHL was involved, if at all, in the events made the basis of the TPC. Therefore, SHIP's civil conspiracy claim must be dismissed.

III. THE TPC FAILS TO STATE A CLAIM FOR UNJUST ENRICHMENT.

The final third-party claim that SHIP brings against PBIHL is one for unjust enrichment. According to SHIP:

> [a]s set forth in this pleading, none of the Co-Conspirators was a party to any contract for which unjust enrichment is sought. To the extent that they received the proceeds of unearned Performance Fees or monies earned from transactions favoring Beechwood's or Platinum's interests over SHIP's and thus were enriched, and those proceeds are not recoverable or collectible from any other party, they were unjustly enriched in a manner that harmed SHIP and should be ordered to repay amounts they received, as a matter of equity.

(TPC ¶ 464).

This pleading of a general, non-specific benefit is insufficient to support an unjust enrichment claim. *Senior Health Ins. Co. of Pennsylvania v. Beechwood Re Ltd.*, 345 F. Supp. 3d

515, 533 (S.D.N.Y. 2018); *see also Gillespie v. St. Regis Residence Club*, 343 F. Supp. 3d 332, 352 – 53 (S.D.N.Y. 2018). As the Court explained in a related proceeding, "[r]elief for unjust enrichment is 'available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff.'" *Senior Health Ins. Co.*, 345 F. Supp. 3d at 532 (quoting *Corsello v. Verizon N.Y., Inc.*, 967 N.E.2d 1177, 1185 (N.Y. 2012)). SHIP does not (and cannot) allege that PBIHL was "enriched" from "unearned Performance Fees or monies earned from transactions." Rather, SHIP conditions its claim upon a hypothetical set of facts. (TPC ¶ 464) ("To the extent that [PBIHL] received the proceeds . . .."). This is insufficient to state a claim for unjust enrichment. *See Senior Health Ins. Co.*, 345 F. Supp. 3d at 533 (allegations that certain defendants were "enriched" were "entirely conclusory" and "not entitled to be assumed to be true").

First, a "complaint does not state a cause of action in unjust enrichment if it fails to allege that defendant received something of value which belongs to plaintiff." *Chevron Corp. v. Donziger*, 871 F. Supp. 2d 229, 260 (S.D.N.Y. 2012). The TPC contains no allegations that PBIHL was enriched or received any benefit at the expense of, or which belonged to, SHIP. SHIP believes that PBIHL may have earned fees or monies during transactions that were not in SHIP's interest. However, there are no allegations in the TPC which identify the transaction(s) where PBIHL may have benefitted, whether the purported benefit(s) came at SHIP's expense, whether the benefit(s) otherwise belonged to SHIP, or whether a relationship between PBIHL and SHIP that would give rise to an unjust enrichment claim even existed.

Second, an unjust enrichment claim must be dismissed if the relationship between the parties is "too attenuated." *Sperry v. Crompton Corp.*, 8 N.Y.3d 204, 215 – 16 (2007). There must

be "some type of direct dealing or actual, substantive relationship" between PBIHL and SHIP. *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD), 2014 U.S. Dist. LEXIS 46368, at *42 (S.D.N.Y. Mar. 28, 2014) (internal quotations omitted). SHIP does not allege any relationship or contact between itself and PBIHL, nor does it allege any direct dealing between these parties. Dismissal is proper where, as here, "it makes little sense to conclude that a particular defendant [] somehow improperly obtained [benefits] intended for a certain plaintiff when those two parties never transacted or otherwise maintained a business relationship at all." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 27 F. Supp. 3d 447, 479 (S.D.N.Y. 2014). Therefore, the Court should dismiss SHIP's unjust enrichment claim against PBIHL.

IV. THE TPC FAILS FOR WANT OF JURISDICTION

SHIP's third-party claims against PBIHL also fail for want of jurisdiction. PBIHL raises this basis for dismissal in its motions to dismiss the Receiver's First Amended Complaint and the Third-Party Complaint filed by BCLIC and WNIC. (*See* ECF 197 – 202.) PBIHL incorporates the jurisdictional arguments from the memoranda of law submitted in support of those motions as additional grounds for dismissing the TPC.

SHIP does not allege any facts to suggest that New York could be PBIHL's home for purposes of the TPC. To the contrary, and as set forth in the earlier memoranda of law, PBIHL: has never been registered as a foreign corporation under New York law; has no agent for service of process in New York; does not own property in the State of New York; has no officers, directors or employees residing in New York; maintains no office or books and records in New York; does not maintain a post office box, telephone listing or mailing address in New York, and; does not do business in New York. (*See* ECF 198, 199, 201, & 202.)

Also, and again as shown in the earlier memoranda of law, PBIHL's predecessor in interest, Beechwood Bermuda Investment Holdings Ltd., was formed in 2013. It was, and had always been, a limited company organized under Bermuda law, with its principal place of business in Bermuda. It was also a wealth management company whose investment products were not offered or available in the United States or to United States citizens. (*Id.*) SHIP alleges no facts which suggest that PBIHL purposefully availed itself of the privileges of doing business in New York. The claims against PBIHL should be dismissed under Rule 12(b)(2) for want of jurisdiction.

CONCLUSION

As the above makes clear, dismissal is proper for SHIP's claims of aiding and abetting fraud, aiding and abetting breach of fiduciary duties, participating in a civil conspiracy, and unjust enrichment. SHIP's third-party claims against PBIHL should be dismissed with prejudice.

Dated: July 15, 2019

Respectfully submitted,

Condon Tobin Sladek Thornton, PLLC

/s/ Kendal B. Reed

Kendal B. Reed (*pro hac vice*)
Texas Bar No. 24048755
kreed@ctstlaw.com

8080 Park Lane, Suite 700
Dallas, Texas 75231
(214)265-3853 Telephone
(214)691-6311 Facsimile

Attorneys for Defendant/Third-Party Defendant PB Investment Holdings Ltd.

CERTIFICATE OF SERVICE

It is hereby certified that on this 15th day of July 2019, a copy of the foregoing was served through the Court's electronic filing system as to all parties who have entered an appearance in this proceeding.

/s/ Kendal B. Reed
Kendal B. Reed