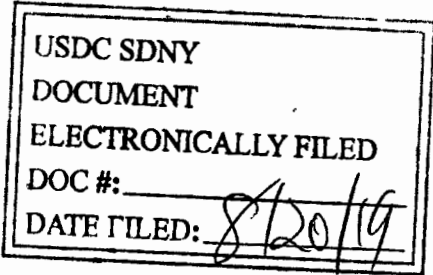


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 In re PLATINUM-BEECHWOOD LITIGATION : 18-cv-6658 (JSR)
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 MELANIE L. CYGANOWSKI, as Equity :
 Receiver for PLATINUM PARTNERS :
 CREDIT OPPORTUNITIES MASTER FUND :
 LP, PLATINUM PARTNERS CREDIT : 18-cv-12018 (JSR)
 OPPORTUNITIES FUND (TE) LLC, :
 PLATINUM PARTNERS CREDIT : ORDER
 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, :
 :
 Plaintiff, :
 :
 -v- :
 :
 BEECHWOOD RE LTD., et al., :
 :
 Defendants. :
 ----- X



JED S. RAKOFF, U.S.D.J.

On December 19, 2018, plaintiff Melanie L. Cyganowski filed a multi-count Complaint against numerous defendants. ECF No. 1. On March 27, 2019, defendants Washington National Insurance Company ("WNIC") and Bankers Consec Life Insurance Company ("BCLIC") filed an Answer, Cross-Claims, and Third-Party Complaint ("WNIC TPC"). ECF No. 75. On March 29, 2019, plaintiff filed a First Amended Complaint ("FAC"). ECF No. 81. And on May 15, 2019, defendant Senior Health Insurance Company of Pennsylvania ("SHIP") and Fuzion Analytics, Inc. ("Fuzion")

filed an Answer, Cross-Claims, and Third-Party Complaint ("SHIP TPC"). ECF No. 195.

With respect to the FAC, five motions to dismiss have been filed. They are the motions of: (1) Beechwood Re Ltd. ("Beechwood Re"), Beechwood Re Investments, LLC ("BRILLC"), B Asset Manager LP ("BAM I"), B Asset Manager II LP ("BAM II"), Beechwood RE Holdings, Inc. ("Beechwood Holdings"), Beechwood Bermuda International, Ltd. ("BBIL"), Beechwood Bermuda Ltd. ("BBL"), BAM Administrative Services LLC ("BAM Administrative"), Mark Feuer, and Scott Taylor, ECF No. 183; (2) CNO Financial Group, Inc. ("CNO") and 40|86 Advisors, Inc. ("40|86 Advisors"), ECF No. 173; (3) PB Investment Holdings, Ltd. ("PBIHL"), ECF No. 205; (4) SHIP and Fuzion, ECF No. 156; and (5) WNIC and BCLIC, ECF No. 168.

With respect to the WNIC TPC, ten motions to dismiss have been filed. They are the motions of: (1) BAM Administrative, BAM I, BBL, BBIL, Beechwood Capital Group LLC ("Beechwood Capital"), Beechwood Holdings, Beechwood Re, Feuer Family Trust, Taylor-Lau Family Trust, Feuer, Dhruv Narain, and Taylor, ECF No. 209; (2) Beechwood Trust Nos. 7-14, ECF No. 189; (3) David Bodner, ECF No. 186; (4) Murray Huberfeld, ECF No. 153; (5) Hokyong (Stewart) Kim, ECF No. 191; (6) Lincoln International LLC ("Lincoln"), ECF No. 181; (7) David Ottensoser, ECF No. 193;

(8) PBIHL, ECF No. 200; (9) Daniel Saks, ECF No. 177; and (10) Will Slota, ECF No. 231. Beechwood Re has also moved to compel WNIC and BCLIC to arbitrate their claims against Beechwood Re. ECF No. 209.

With respect to the SHIP TPC, fourteen motions to dismiss have been filed. They are the motions of: (1) BAM I, BAM II, BAM Administrative, Beechwood Re, Beechwood Holdings, BBL, BBIL, Feuer Family Trust, Taylor-Lau-Family Trust, B Asset Manager GP LLC ("BAM GP I"), B Asset Manager II GP LLC ("BAM GP II"), MSD Administrative Services LLC ("MSD Administrative"), N Management LLC ("N Management"), Beechwood Global Distribution Trust, Feuer Family 2016 Acq Trust, Taylor-Lau Family 2016 Acq Trust, and Beechwood Capital, ECF No. 284; (2) Beechwood Trust Nos. 7-14, Monsey Equities, LLC, and Beechwood Re Investments, LLC Series C ("BRILLC Series C"), ECF No. 280; (3) Bodner, ECF No. 278; (4) Kevin Cassidy and Michael Nordlicht, ECF No. 282; (5) Elliot Feit, ECF No. 344; (6) Bernard Fuchs, ECF No. 262; (7) Huberfeld, ECF No. 451 in 18-cv-6658; (8) Kim, ECF No. 291; (9) Lawrence Partners, LLC, ECF No. 356; (10) Ottensoser, ECF No. 276; (11) PBIHL, ECF No. 348; (12) Saks, ECF No. 271; (13) Slota, ECF No. 286; and (14) Whitestar LLC, Whitestar LLC II, and Whitestar LLC III, ECF No. 350.

After receiving full briefing from all relevant parties, the Court held oral argument on August 15, 2019. Upon consideration, the Court hereby grants FAC defendants' motions in the following respects:

- BAM Administrative: Counts 1-3 (RICO and RICO conspiracy), Count 4 (Section 10(b) of the Exchange Act and Rule 10b-5), and Count 18 (Unjust Enrichment) are dismissed.
- BAM I, BAM II, Beechwood Holdings, BRILLIC, CNO, 40186 Advisors, Fuzion, Feuer, and Taylor: All claims are dismissed.
- Beechwood Re, BBIL, BBL, and PBIHL: Counts 1-3 (RICO and RICO conspiracy) and Count 4 (Section 10(b) of the Exchange Act and Rule 10b-5) are dismissed.
- SHIP, BCLIC, and WNIC: Counts 1-3 (RICO and RICO conspiracy), Count 4 (Section 10(b) of the Exchange Act and Rule 10b-5), Count 6 (aiding and abetting breach of fiduciary duty), and Count 7 (aiding and abetting fraud) are dismissed.

All of the above dismissals with respect to the FAC are with prejudice. In all other respects, the motions are denied.

Upon consideration, the Court hereby grants WNIC TPC defendants' motions in the following respects:

- Bodner, Huberfeld, Kim, Ottensoser, Feuer Family Trust, Taylor-Lau Family Trust, Beechwood Holdings, BAM I, BAM Administrative, BBL, BBIL, and PBIHL: Counts 1 and 2 (RICO and RICO conspiracy), Count 18 (contribution and indemnity), and Count 19 (unjust enrichment) are dismissed.
- Feuer, Taylor, Beechwood Capital, and Beechwood Trust Nos. 7-14: All claims are dismissed.
- Lincoln: Counts 1 and 2 (RICO and RICO conspiracy), Count 6 (negligent misrepresentation), Count 18 (contribution and indemnity), and Count 19 (unjust enrichment) are dismissed.
- Narain: Counts 1 and 2 (RICO and RICO conspiracy), part of Count 3 (fraudulent inducement part only), Count 18 (contribution and indemnity), and Count 19 (unjust enrichment) are dismissed.
- Saks: Counts 1 and 2 (RICO and RICO conspiracy), part of Count 3 (fraudulent inducement part only), part of Count 7 (aiding and abetting fraudulent inducement

part only), Count 18 (contribution and indemnity), and Count 19 (unjust enrichment) are dismissed.

- Slota: Counts 1 and 2 (RICO and RICO conspiracy), Count 3 (fraudulent inducement and fraud), Count 18 (contribution and indemnity), and Count 19 (unjust enrichment) are dismissed.

All of the above dismissals with respect to the WNIC TPC are with prejudice. In all other respects, the motions are denied, except that with respect to Beechwood Re's motion to dismiss and to compel arbitration, the Court, in light of the Court's Memorandum Order dated July 10, 2019, will hold off decision until the arbitration panel resolves the dispute as to whether WNIC and BCLIC are precluded from bringing their motion to strike Beechwood Re's motion to dismiss and to compel arbitration. ECF No. 333.

Upon consideration, the Court hereby grants SHIP TPC defendants' motions in the following respects:

- Beechwood Global Distribution Trust, Feuer Family 2016 Acq Trust, and Taylor-Lau Family 2016 Acq Trust: Count 1 (aiding and abetting fraud), Count 2 (aiding and abetting breach of fiduciary duty), Count 5 (civil conspiracy), and Count 7 (unjust enrichment) are dismissed.

- Bodner, Feit, Huberfeld, Kim, Saks, Slota, BAM II, Beechwood Trust Nos. 7-14, BRILLC Series C, Lawrence Partners, LLC, Monsey Equities, LLC, Whitestar LLC, Whitestar LLC II, and Whitestar LLC III: Count 5 (civil conspiracy) and Count 7 (unjust enrichment) are dismissed.
- Cassidy: Count 5 (civil conspiracy) is dismissed.
- Fuchs, Michael Nordlicht, Beechwood Holdings, BBL, PBIHL, BAM Administrative, Beechwood Capital, BAM GP I, BAM GP II, MSD Administrative, N Management, Feuer Family Trust, and Taylor-Lau Family Trust: All claims are dismissed.
- Ottensoser: Count 7 (unjust enrichment) is dismissed.

All of the above dismissals with respect to the SHIP TPC are with prejudice. In all other respects, the motions are denied, except that this Court sua sponte orders SHIP's counsel to promptly amend the SHIP TPC only to the extent of replacing Beechwood Global Distribution Trust, Feuer Family 2016 Acq Trust, and Taylor-Lau Family 2016 Acq Trust with their respective trustees to cure the non-prejudicial defect that

trusts do not have the capacity to be sued unless waived.¹ See, e.g., Am. Tel. & Tel. Co. v. New York City Dep't of Human Res., 736 F. Supp. 496, 498 (S.D.N.Y. 1990); Swaim v. Moltan Co., 73 F.3d 711, 718 (7th Cir. 1996); Smartdoor Holdings, Inc. v. Edmit Industries, Inc., 78 F.Supp.3d 275, 277 (D.D.C. 2015). Failure to amend the SHIP TPC accordingly by August 30, 2019 will result in this Court issuing another order dismissing the remaining claims against Beechwood Global Distribution Trust, Feuer Family 2016 Acq Trust, and Taylor-Lau Family 2016 Acq Trust.

An opinion setting forth the reasons for all of the foregoing rulings will issue in due course.

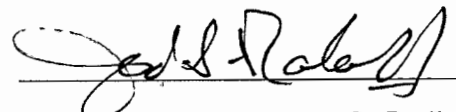
The Clerk is directed to close the following entries on the Cyganowski docket, 18-cv-12018: 153, 156, 168, 173, 177, 181, 183, 186, 189, 191, 193, 200, 205, 231, 262, 271, 276, 278, 280, 282, 284, 286, 291, 344, 348, 350, and 356. The Clerk is also directed to close the following entries on the master docket, 18-cv-6658: 331, 337, 344, 347, 351, 354, 358, 359, 362, 365, 417, 450, 451, 456, 464, 469, 471, 473, 475, 477, 479, and 563.

¹ For avoidance of doubt, all claims against Feuer Family Trust and Taylor-Lau Family Trust in the SHIP TPC are dismissed on independent grounds, so there is no need to substitute them with their respective trustees. All other trusts that are moving defendants in the WNIC TPC and the SHIP TPC are deemed to have waived the defense of lack of capacity to be sued, as they have not raised this defense by specific negative averment in the answer or by motion to dismiss.

SO ORDERED.

Dated: New York, NY

August 18, 2019



JED S. RAKOFF, U.S.D.J.