

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION

Master Docket No. 1:18-cv-06658-JSR

MELANIE L. CYGANOWSKI, as Equity
Receiver for PLATINUM PARTNERS
CREDIT OPPORTUNITIES MASTER
FUND LP, PLATINUM PARTNERS
CREDIT OPPORTUNITIES FUND (TE)
LLC, PLATINUM PARTNERS CREDIT
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,
Plaintiffs,

18-cv-12018-JSR

v.

BEECHWOOD RE LTD., *et al.*,
Defendants.

SENIOR HEALTH INSURANCE COMPANY OF
PENNSYLVANIA, Third-Party Plaintiff,

v.

PB INVESTMENT HOLDINGS LTD., *et al.*,
Third-Party Defendants.

Third-Party Defendant Murray Huberfeld (“Huberfeld”), by and through his undersigned counsel, hereby answers the third-party complaint (“TPC”) of Senior Health Insurance Company of Pennsylvania (“SHIP”) as follows:

NATURE OF THE ACTION

1. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 1, 2, 3, 4, 5 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

THE PARTIES AND OTHER KEY PLAYERS

2. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 6, 9, 32, 33, 35, 36, 37, 38, 39, 40, 41, 47, 48, 49 of the TPC

3. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 29, 30, 31, 34, 43, 44, 45, 46 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

4. Huberfeld admits that David Levy is the nephew of Murray Huberfeld, otherwise denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 10 of the TPC.

5. Huberfeld admits that he is a resident of Lawrence, New York, was a founder of Platinum Management, and was arrested on June 8, 2016; refers to any documents concerning his criminal plea or sentencing for their terms and content; and otherwise denies the remaining allegations directed to him as set forth in paragraph 23 of TPC.

6. Huberfeld admits that he was one of the founders of Platinum Management, otherwise denies the allegations directed to him, and otherwise denies knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 25 of the TPC.

7. Huberfeld admits that Beechwood Trust Nos. 15-19 were owned by the children of Huberfeld, otherwise denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 26 of the TPC.

8. Huberfeld admits that Ezra Beren is the son-in-law of Murray Huberfeld, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 42 of the TPC.

JURISDICTION AND VENUE

9. The allegations of paragraphs 50 and 51 of the TPC purport to state conclusions of law to which no response is required. To the extent a response is required, Huberfeld denies the allegations set forth in paragraphs 50 and 51 of the TPC.

FACTUAL BACKGROUND

A. The Development of the Platinum-Beechwood Scheme

10. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 52, 55, 56, 57, 58, 62, 63, 64, 65, 66, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

11. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 54, 67, 68, 69, 70, 71, 73 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

12. Huberfeld admits that Platinum Management was founded in or about 2001 by himself and others for the purpose of, among other things, serving as the general partner of PPVA and PPCO, and otherwise denies the allegations directed to him set forth in paragraph 53 of the TPC.

13. Huberfeld admits that in or about 1990, Huberfeld plead guilty to criminal charges of false identification with intent to defraud, otherwise denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 59 of the TPC.

14. Huberfeld admits that he entered into a consent order with the SEC, refers to the referenced consent order with the SEC for its terms and content, otherwise denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 60 of the TPC.

15. Huberfeld admits that he entered into a settlement with the SEC, refers to the referenced documents for their terms and content, otherwise denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 61 of the TPC.

i. Beechwood's Ownership Structure

16. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 96, 98, 100, 101, 102 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

17. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 92, 94, 95, 97, 99 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

ii. Beechwood and Platinum had Shared Management and Control and are In Fact Integrated Companies

18. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 103, 104, 106, 107, 108, 109, 110, 113, 114, 116, 117, 118, 119, 121, 124, 125, 126, 127 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

19. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 105, 115, 120, 122, 123 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

20. Huberfeld admits that for a certain period of time he maintained an office in the same premises as Beechwood, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 111 of the TPC, and refers to the document referenced therein for its terms and content.

21. Huberfeld admits that for a certain period of time he maintained an office in the same premises as Beechwood, that he was arrested on or about June 8, 2016, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 112 of the TPC, and refers to the document referenced therein for its terms and content.

B. CNO Reinsurance Agreements

22. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 128, 129, 132, 134 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

23. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 130, 131, 133, 135, 136 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

C. Beechwood's Misrepresentations to Induce SHIP to Enter Into the IMAs

24. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 137, 138, 139, 140, 141, 142, 146, 147, 148, 149, 152, 159 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

25. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 143, 144, 145, 150, 151, 153, 154, 155, 156, 157, 158, 160, 161 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

D. The Investment Management Agreements

26. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 162 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

i. The BBIL IMA

27. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

ii. The Beechwood Re IMA

28. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

iii. The BAM IMA and Side Letter

29. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

iv. Indemnification Under the IMAs

30. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

E. The Platinum-Beechwood Scheme Goes into Action Against SHIP

31. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in

paragraphs 232, 233, 234 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

i. Beechwood Partakes in Numerous Related-Party Transactions

32. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 247, 248 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

33. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 246 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

a. Montsant Partners LLC

34. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 249, 250, 251, 252, 253, 254, 255, 256, of the TPC, and refers to each document referenced therein (if any) for their terms and content.

b. PEDEVCO Corp.

35. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

c. Agera Energy

36. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294,

295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

37. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 319, 320 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

ii. Beechwood Overvalues Investments and Collects Performance Fees as a Result

38. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 321, 322, 323, 324, 325, 327, 328, 334, 335, 336, 337, 338, 340, 341, 342, 343, 344 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

39. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 326, 329, 330, 331, 332, 333, 339 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

iii. Beechwood Takes Performance Fees

40. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 345, 346, 350, 352, 353, 355, 356, 357, 358, 359, 361, 362, 363, 364, 365, 366 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

41. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 347, 348, 349, 351, 354, 360 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

iv. Continued Concealment

42. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 367, 371 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

43. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 368, 369, 370, 372 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

v. Transfer of Beechwood Investments Made with CNO Assets to SHIP

44. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 373, 374, 376, 377, 378 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

45. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 375 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

vi. The Unjust Profits from the Platinum-Beechwood Scheme are Hidden from Creditors

46. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 379, 380, 381, 382, 383 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

F. Revelation of the Fraudulent Platinum-Beechwood Scheme and Further Concealment

47. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 384, 386, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 404, 405, 407, 408, 409 of the TPC, and refers to each document referenced therein (if any) for its terms and content.

48. Huberfeld denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs 387, 402, 403, 406 of the TPC, and refers to each document referenced therein (if any) for their terms and content.

49. Huberfeld admits that he was arrested on or about June 8, 2016, refers to each document referenced therein for their terms and content, and otherwise denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraph 385 of the TPC.

COUNT ONE

**Aiding and Abetting Fraud
(Against the Co-Conspirator Defendants)**

50. In response to paragraph 410 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-409 of the TPC as if fully set forth herein.

51. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 411, 412, 413, 414, 415, 416, 417, 418 of the TPC.

COUNT TWO

**Aiding and Abetting Breach of Fiduciary Duty
(Against the Co-Conspirator Defendants)**

52. In response to paragraph 419 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-418 of the TPC as if fully set forth herein.

53. Huberfeld denies the allegations directed to him, and otherwise denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, set forth in paragraphs 420, 421, 422, 423, 424, 425, 426, 427, 428 of the TPC.

COUNT THREE

**Aiding and Abetting Fraud
(Against the Beechwood Owner Trusts, The BRILLC Series Entities, the BRILLC Series Members, and the 2016 Acquisition Trusts)**

54. In response to paragraph 429 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-428 of the TPC as if fully set forth herein.

55. Paragraphs 430, 431, 432, 433, 434, 435, 436, 437, 438 of the TPC purport to state allegations in support of a claim that is not directed to Huberfeld, and to which no response is required. To the extent a response is required, Huberfeld denies the allegations directed to him set forth in those paragraphs.

COUNT FOUR

**Aiding and Abetting Breach of Fiduciary Duty
(Against the Beechwood Owner Trusts, The BRILLC Series Entities, the BRILLC Series Members, and the 2016 Acquisition Trusts)**

56. In response to paragraph 439 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-438 of the TPC as if fully set forth herein.

57. Paragraphs 440, 441, 442, 443, 444 of the TPC purport to state allegations in support of a claim that is not directed to Huberfeld, and to which no response is required. To the

extent a response is required, Huberfeld denies the allegations directed to him set forth in those paragraphs.

COUNT FIVE

**Civil Conspiracy
(Against all Crossclaim Defendants and Third-Party Defendants except the SHIP Action Defendants)**

58. In response to paragraph 445 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-443 of the TPC as if fully set forth herein.

59. Paragraphs 446, 447, 448, 449, 450, 451, 452, 453 of the TPC purport to state allegations in support of a claim that was dismissed by the Court in its August 19, 2019 Order, and to which no response is required. To the extent a response is required, Huberfeld denies the allegations directed to him set forth in those paragraphs.

COUNT SIX

**Breach of Contract Guaranty
(Against Mark Nordlicht and Dalia Kalter)**

60. In response to paragraph 454 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-453 of the TPC as if fully set forth herein.

61. Paragraphs 455, 456, 457, 458, 459, 460 of the TPC purport to state allegations in support of a claim that is not directed to Huberfeld, and to which no response is required. To the extent a response is required, Huberfeld denies the allegations directed to him set forth in those paragraphs.

COUNT SEVEN

Unjust Enrichment

(Against the Co-Conspirator Defendants, the Beechwood Owner Trusts, The BRILLC Series Entities, and the BRILLC Series Members)

62. In response to paragraph 461 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-460 of the TPC as if fully set forth herein.

63. Paragraphs 462, 463, 464, 465, 466 of the TPC purport to state allegations in support of a claim that was dismissed by the Court in its August 19, 2019 Order, and to which no response is required. To the extent a response is required, Huberfeld denies the allegations directed to him set forth in those paragraphs.

COUNT EIGHT

Declaratory Judgment for Contractual Indemnification

(Against Beechwood re, BBIL, and BAM I)

64. In response to paragraph 467 of the TPC, Huberfeld repeats and realleges the responses to paragraphs 1-466 of the TPC as if fully set forth herein.

65. Paragraphs 468, 469, 470, 471 of the TPC purport to state allegations in support of a claim that is not directed to Huberfeld, and to which no response is required. To the extent a response is required, Huberfeld denies the allegations directed to him set forth in those paragraphs.

WHEREFORE, Huberfeld denies that SHIP is entitled to the relief set forth in the *ad damnum* clause, or to any relief at all.

GENERAL DENIAL

Except as otherwise expressly admitted above, Huberfeld denies each and every allegation of the TPC, and specifically denies any wrongdoing or liability to SHIP.

AFFIRMATIVE DEFENSES

Without in any way admitting any of the allegations in the TPC, and without admitting or suggesting that Huberfeld bears the burden of proof on any of the following issues, Huberfeld alleges the following separate and independent affirmative defenses:

First Affirmative Defenses

SHIP's claims against Huberfeld are barred in whole or in part for lack of standing.

Second Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part for failure to state a claim.

Third Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part for failure to allege their claims sounding in fraud, misrepresentation, and/or breach of trust with requisite particularity.

Fourth Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part by applicable statutes of limitation.

Fifth Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part by the doctrine of *in pari delicto*.

Sixth Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part by SHIP's, or SHIP's agents', representatives', or consultants', inequitable conduct.

Seventh Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part by the equitable doctrines of bad faith and unclean hands.

Eighth Affirmative Defense

SHIP's claims against Huberfeld are barred, based on SHIP's conduct, in whole or in part by equitable doctrines, including acquiescence, waiver, estoppel, and laches.

Ninth Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part, and/or SHIP's damages must be reduced, because SHIP failed to mitigate damages.

Tenth Affirmative Defense

SHIP's claims against Huberfeld are barred in whole or in part by the doctrine of intervening or superseding causation.

Eleventh Affirmative Defense

SHIP's claims for punitive damages against Huberfeld are barred because an award of punitive damages is not permissible.

Twelfth Affirmative Defense

SHIP's claims are barred, in whole or in part, because they have been released, discharged, compromised, and settled; and/or by accord and satisfaction.

Reservation And Non-Waiver Of Additional Affirmative Defenses

Huberfeld reserves the right to assert and rely on, and does not waive, any additional defenses that become available or apparent during the course of this action.

WHEREFORE, Huberfeld respectfully requests judgment dismissing SHIP's claims as against Huberfeld in their entirety with prejudice, awarding Huberfeld costs and expenses, including attorneys' fees, and such further and additional relief as the court deems just and proper.

Dated: New York, New York
September 13, 2019

/s/ Jeffrey C. Daniels
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