

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,
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,

Civil Action No.
1:18-cv-12018

Plaintiffs,

v.

BEECHWOOD RE LTD., *et al.*,

Defendants.

**DEFENDANT PB INVESTMENT HOLDINGS LTD.'S RULE 56.1 STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56 of the Civil Rules for the Southern District of New York, Defendant PB Investment Holdings, Ltd. (“PBIHL”), submits its Rule 56.1 Statement of Undisputed Material Facts in support of its Motion for Summary Judgment.

A. STRUCTURE OF PPCO

1. PPCO marketed itself as an “asset-based investment fund” that invested through “originating loans and/or making equity investment in markets that are underserved by traditional sources of financing.” First Am. Compl., Doc. 83 [“FAC”], ¶ 66.

2. PPCO is structured as a master-feeder hedge fund, comprised of three offshore feeder funds and one onshore feeder fund (collectively, the “Feeder Funds”). FAC, ¶ 67.

3. Investors make investments into PPCO via the Feeder Funds. Rogers Dep., 238:7-18.

4. The onshore feeder fund is Platinum Partners Credit Opportunities Fund LLC (the “Onshore Fund”). Rogers Dep., 238:7-8.

5. The three offshore feeder funds are Platinum Partners Credit Opportunities Fund (TE) LLC; Platinum Partners Credit Opportunities Fund International Ltd; and, Platinum Partners Credit Opportunities Fund International (A) Ltd (the “Offshore Funds”). FAC, ¶70.

6. The Offshore Funds invest substantially all of their assets in the PPCO Blocker LLC (the “Blocker Fund”). Rogers Dep., 238: 22-25.

7. The Onshore Fund and the Blocker Fund invest substantially all of their assets into Platinum Partners Credit Opportunities Master Fund LP (“Master Fund”). *See* Rogers Dep., 239:3-4.

8. [REDACTED]

9. Investments in the Master Fund are made via purchasing limited partnership interests in the Master Fund. Rogers Dep., 240:20-25.

10. [REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

12. The Master Fund had no employees, directors, or officers. Rogers Dep., 243: 20-25.

13. [REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. PPCO INVESTMENT STRATEGY

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

19. [Redacted]

[Redacted]

[Redacted]

20. [Redacted]

[Redacted]

[Redacted]

[Redacted]

21. [Redacted]

[Redacted]

22. [Redacted]

[Redacted]

23. [Redacted]

[Redacted]

[Redacted]

[Redacted]

24. [Redacted]

[Redacted]

25. [Redacted]

[Redacted]

26. [Redacted]

[Redacted]

27. [REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

C. VALUATION OF PPCO INVESTMENTS

31. [REDACTED]

[REDACTED]

[REDACTED]

32. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. Indeed, independent valuation experts, such as Alvarez & Marsal, reviewed the information on which the Portfolio Manager and Nordlicht determined an asset's valuation and, based on this information, came up with a range of value. *See* Rogers Dep., 82:5-9; 84:13-15.

34. [REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

D. PPCO RESTRUCTURING

38. Towards the end of 2015, Nordlicht asked Beechwood to restructure certain loans between Platinum and Beechwood. Feuer Dep., 210:19-25.

39. Feuer testified that he was involved in the PPCO restructuring "on the periphery." *Id.*, 462:8-10.

40. Feuer testified that Beechwood had substantially divested its investments in Platinum-related entities, effectively distancing themselves from Nordlicht. *See Id.*, 339:12-25; 341:9-13.

41. Feuer testified that Nordlicht was not a principal or shareholder of BBIHL and did not have any control over Beechwood. *Id.*, 773:15-22; 781:10-18.

42. Feuer testified that he did not know what powers and duties Nordlicht possessed over Platinum, apart from knowing that those powers were very broad. *Id.*, 282:17-283:3.

43. Feuer testified that Nordlicht expressed two “significant issues” concerning the loans between Platinum and Beechwood. *Id.*, 392:3-6.

44. First, the collateral that Beechwood had on certain loans with Platinum “was placing a stranglehold” on Nordlicht’s ability to raise capital, as the collateral was against the entire fund. *Id.*, 392:6-12.

45. Second, Nordlicht wished to lower the interest rates that were on some of the loans, as it was very difficult for Platinum to sustain. *Id.*, 392:12-14.

46. Taylor recalled the same reasons that Platinum wanted to enter into the transaction:

I think I had a general sense in early 2016 that there was a desire from Platinum and certain portfolio companies to change the terms of interest associated with various loans; and that, right, dealt with liquidity among potentially other things.

Taylor Dep., 526:25-527:7.

47. Feuer testified that he did not know whether the Restructuring benefitted one Platinum entity over the other, as they testified that they did not even know the organizational-level differences between PPVA and PPCO. Feuer Dep., 463:13-19.

48. Feuer did not know how Platinum structured the deals behind the scenes or whether a particular transaction benefitted PPVA or PPCO. *See id.*, 462:13-19.

49. From his perspective, PPVA and PPCO were one in the same and they considered their dealings and the restructuring to be or the benefit of Platinum. *See id.*, 466:4-7.

50. Beechwood did not know how Platinum performed its own internal valuation of the underlying collateral (which was independent of Beechwood's own internal valuation), including the Northstar Note. *See Id.*, 790:9-791:5.

51. Feuer acknowledged that he “tried to effectuate transactions with the Platinum organization to try to help them with some of their challenges.” *Id.*, 464:16-19,

52. Feuer testified that he was concerned about his clients—namely, SHIP and the CNO Trusts' interests—so he needed to “continue making sure that the loans that [Beechwood] had given the Platinum funds were as securitized as possible.” *Id.*,

53. David Steinberg (“Steinberg”) was the primary person representing Platinum in the March 2016 Transaction. Kirschner, 340:4-16; *see Steinberg Dep.*, 365:5-11.

54. Steinberg remained at PPCO after the institution of the receivership and worked with the Receiver to understand the March 2016 Transaction. Kirschner *Dep.*, 340:4-16; *see Steinberg Dep.*, 365:5-11.

55. Steinberg testified that the purpose of the transaction was to make the Platinum portfolio more sustainable. *Steinberg Dep.*, 364:25-365:4.

56. Steinberg testified that “Mark [Nordlicht] very much wanted to put the fund back into – what he called balance, which was having a significant liquid portfolio.” *Steinberg Dep.*, 361:13-17.

57. Steinberg explained how the PPCO Restructuring was intended to put PPCO back in balance and correct Platinum's liquidity issue. *Steinberg Dep.*, 363:18-364:24.

58. Steinberg testified that, at the time of the March 2016 Transaction, Steinberg believed he was acting in Platinum's best interests. *Id.* 365:21-23.

1. The December 2015 Transaction

59. The first round of transactions were executed on or around December 23, 2015, when the Master Fund executed a Delayed Draw Demand Note for \$15.5 million to SHIP. FAC, ¶ 225.

60. That demand note was secured pursuant to a Master Security Agreement in which BAM Administrative, as SHIP's agent, was granted security interests in substantially all of the assets of the Master Fund and the Master Fund's direct and indirect subsidiaries (the "December 2015 Security Agreement"). FAC, ¶ 225. Kirschner Dep., 19:11-20; 19:24-20:11.

61. BAM Administrative filed a UCC-1 financing statement concerning the security interests. FAC, ¶ 228.

62. The Master Fund's subsidiaries entered into a Subsidiary Guarantee in which each entity guaranteed the amounts due to SHIP under the demand note. Id., ¶ 226.

63. The funds loaned in the demand note were disbursed back to certain of SHIP's investment accounts and the CNO Trusts as PPCO purchased debt owed by Desert Hawk and LC Energy. Id., ¶¶ 230, 233.

2. The March 2016 Transaction

64. On March 21, 2016, the Master Fund entered the March NPA with BAM Administrative as agent for, and on behalf of, SHIP and the CNO Trusts. Id., ¶ 240; see Reed Dec., Ex. I, BW-SHIP-00175340-175386.

65. The March NPA restated the demand note and authorized the sale of additional promissory notes to SHIP and the CNO Trusts, as follows:

Noteholder	Note
SHIP	\$42,963,949.04 (\$123,190.55 consisting of accrued interest)
BRe BCLIC Primary	\$10,000,000.00
BRe BCLIC Sub	\$500,000.00
BRe WNIC 2013 LTC Primary	\$14,989,677.78
BRe WNIC 2013 Sub	\$700,000.00
TOTALS	\$69,153,626.82

Id., BW-SHIP-00175375; FAC, ¶ 240.

66. In conjunction with the March NPA, the Master Fund entered into an Amended and Restated Master Security Agreement on March 21, 2016 (the “Amended Security Agreement”).

Id., BW-SHIP-00175295-175309.

67. The Amended Security Agreement granted security interests to BAM Administrative, as agent for SHIP and the CNO Trusts, in substantially all of the Master Fund’s assets. *See id.*; FAC, ¶ 241.

68. The Amended Security Agreement expressly provided that it did not amend or restate the December 2015 Security Agreement. FAC, ¶ 242

69. In connection with the March NPA, certain Master Fund subsidiaries and affiliates entered a March 21, 2016 Subsidiary Guaranty.

70. This guaranty guaranteed all payment obligations the Master Fund had under the March NPA. Reed Dec., Ex. I, BW-SHIP-00175310-175335; FAC, ¶ 245.

71. The Master Fund directed SHIP and the CNO Trusts to distribute the funds flowing from the March NPA to “BAM Administrative Services LLC, as Agent for each of the [March NPA] Lender, BRe WNIC 2013 LTC Primary, Beechwood Bermuda International Limited and Beechwood Bermuda Investment Holdings, Ltd., for its segregated accounts.” *See, e.g.*, Reed Dec., Ex. I, BW-SHIP-00175427; FAC, ¶ 246.

72. The Master Fund utilized the funds to purchase assignments of all right, title, and interest in the entirety of a \$50 million Second Priority Senior Secured Note (the “Northstar Note”). FAC ¶ 247.

73. The Northstar Note was purchased by PPCO from SHIP and BRe WNIC 2013 LTC Primary at its face value. *See* Reed Dec., Ex. I, BW-SHIP-00175432-175442.

74. The Northstar Note was issued by Northstar GOM Holdings Group and due September 18, 2019. *Id.*

75. The Northstar Note carried a 12% interest rate from the lenders, SHIP and BRe WNIC 2013 LTC Primary, as follows:

- \$20,056,611.11 (\$19,000,000.00 principal) of BRe WNIC 2013 LTC Primary’s interest in the Northstar Note to the Master Fund;
- \$11,400,600.00 (\$10,800,000.00 principal) of SHIP’s interest in the Northstar Note to the Master Fund; and,
- \$21,323,344.44 (\$20,200,000.00 principal) of SHIP’s interest in the Northstar Note to PPVA Oil & Gas, LLC.

See Id.

76. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. [REDACTED]

[REDACTED]

E. PBIHL

78. PBIHL is the successor to Beechwood Bermuda Investment Holdings Limited (“BBIHL”).

79. BBIHL was formed under Bermuda law on November 28, 2014. Boug Dep., 33:16.

80. BBIHL had its own board of directors, which was comprised of Scott Taylor, Mark Feuer, and David Lessing. *See id.*, 34:3-6.

81. Lessing oversaw BBIHL's day-to-day operations. *See Feuer Dep.*, 780:22-781:9.

82. Lessing was the senior executive, based in Bermuda, and headed the investments business. Taylor Dep., 657:22-658:10.

83. Feuer testified that he did not know what BBIHL was, or how BBIHL fit into the Beechwood structure, if at all. Feuer Dep., 776:7-11; 776:17-19.

84. Nordlicht was not a director or officer at BBIHL. Feuer Dep. 781:10-18.

85. Unlike the other entities associated with the Beechwood brand, BBIHL did not sell insurance products. Boug Dep., 30:1-5.

86. Rather, BBIHL was formed to provide certain investment products to high net-worth non-U.S. residents. *Id.*, 28: 22-25.

87. Specifically, BBIHL offered two types of savings vehicles, which were similar to an annuity product in the United States. *Id.*, 29:2-7.

88. BBIHL was registered under Bermuda's Segregated Accounts Companies (SAC) Act. *Id.*, 55:16-25.

89. BBIHL formed a segregated account for each of its clients, in order to separate the assets and liabilities of the company and from those of each client. Taylor Dep., 661:15-23.

90. The segregated account functioned like a new company and held a client's investment products. Boug Dep., 56:1-6.

91. BBIHL's clients' invested assets were pooled into a segregated custody account, held by Wilmington Trust as custodian, pursuant to a Custody Account Trust Agreement. Boug Dep., 61:7-10.

F. THE RECEIVER'S ALLEGATIONS

92. The Receiver alleges the fraudulent scheme began back in 2012 and consisted of an overvaluation of assets. Kirschner Dep., 110:21-25; 151:18-22.

93. The Receiver concedes that the March 2016 Transaction was not the product of any fraud committed by Nordlicht or the Portfolio Manager, but rather was orchestrated by SHIP. Id., 320:4-18.

94. The Receiver's corporate representative, Marc Kirschner ("Kirschner") testified that SHIP was the "mastermind" of the March 2016 Transaction and directed BAM Administrative to do it. Id., 320:19-321:10; 323:3-6; 337:19-23

95. Kirschner testified that he believes "this March transaction was the culmination of three loans that SHIP engineered through [its investment management agreements with] Beechwood, working with Beechwood and Platinum, to put [the loans] back to Platinum." Id., 337:19-23.

96. Kirschner testified that the Receiver views the Beechwood entities, including PBIHL, all the same, grouping them into an "amorphous" structure. *See id.*, 36:6-19. 44:21-45:11.

97. BBIHL was not a party to the first part of the March 2016 Transaction—the March NPA. Reed Dec., Ex. I, BW-SHIP-00175340-175386.

98. BBIHL was not a signatory or party to any document memorializing the March 2016 Transaction. *See generally*, Reed Dec., Ex., I.

99. BBIHL was not a lender to PPCO. *See id.*, BW-SHIP-00175340-175386.

100. BBIHL did not take a security interest against any of PPCO's assets. *See id.*, BW-SHIP-00175295-175309.

101. BBIHL did not assign any portion of the Northstar Note to PPCO. *See id.*, BW-SHIP-00175432-175442.

102. [REDACTED]

103. First, the Receiver alleges an agency relationship between PPCO and Nordlicht and the Portfolio Manager. *See FAC*, ¶¶ 77, 80.

104. [REDACTED]

105. Kirschner testified that Nordlicht was acting on behalf of PPCO. Kirschner Dep., 339:19-21.

106. [REDACTED]

107. [REDACTED]

108. [REDACTED]

[REDACTED]

[REDACTED]

109. [REDACTED]

[REDACTED]

(\$MM)	Dec-15			Mar-16		
	Low	Mid	High	Low	Mid	High
Balance Sheet Test						
Total Assets	218.4	238.0	255.2	287.3	305.6	321.7
Total Liabilities	263.5	263.5	263.5	308.6	308.6	308.6
Surplus / (Deficit)	(45.0)	(25.5)	(8.3)	(21.4)	(3.0)	13.0
Adequate Capitalization Test						
Total Assets	176.4	201.6	226.7	235.3	261.6	287.8
Total Liabilities	263.5	263.5	263.5	308.6	308.6	308.6
Surplus / (Deficit)	(87.0)	(61.8)	(36.8)	(73.4)	(47.0)	(20.8)
CCAR Test						
Total Assets	191.2	207.8	222.5	253.4	268.9	282.6
Total Liabilities	263.5	263.5	263.5	308.6	308.6	308.6
Surplus / (Deficit)	(72.3)	(55.6)	(41.0)	(55.3)	(39.7)	(26.0)

[REDACTED]

110. [REDACTED]

[REDACTED]

111. [REDACTED]

[REDACTED]

112. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dated: February 14, 2020

Respectfully submitted,

CONDON TOBIN SLADEK THORNTON, PLLC

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