

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
IN RE PLATINUM-BEECHWOOD LITIGATION,	:	Civil Action No.
	:	1:18-cv-06658
	:	
	X	
MELANIE L. CYGANOWSKI, AS 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	:	Civil Action No.
PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND	:	1:18-cv-12018
(BL) LLC,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
BEECHWOOD RE LTD., et al.,	:	
	:	
	:	
Defendants.	X	

THE RECEIVER’S STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL CIVIL RULE 56.1 IN SUPPORT OF HER MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA ON THE ISSUES OF AGENCY AND IMPUTATION

Pursuant to Local Civil Rule 56.1, Plaintiff, Melanie L. Cyganowski, as Receiver for the above-named Platinum entities, by her attorneys, Otterbourg P.C., respectfully sets forth the following material facts as to which no genuine issue exists. The documents and other materials cited in this Rule 56.1 Statement are reflected in or being submitted as exhibits to the Declaration of Erik B. Weinick in Support of the Receiver’s Motion for Partial Summary Judgment against

Senior Health Insurance Company of Pennsylvania on the Issue of Agency, dated February 14, 2020 (“**Weinick Decl.**”).

THE PARTIES

1. At all times since July 6, 2017, Melanie L. Cyganowski (the “**Receiver**”) has been the duly appointed receiver for Platinum Partners Credit Opportunities Master Fund LP (“**PPCO MF**”), Platinum Partners Credit Opportunities Fund (TE) LLC (“**PPCO TE**”), Platinum Partners Credit Opportunities Fund LLC (“**PPCO Fund**”), Platinum Partners Credit Opportunities Fund International Ltd. (“**PPCO Fund International**”), Platinum Partners Credit Opportunities Fund International (A) Ltd. (“**PPCO Fund International A**”), and Platinum Partners Credit Opportunities Fund (BL) LLC (“**PPCO Blocker Fund**,” and, together with PPCO MF, PPCO TE, PPCO Fund, PPCO Fund International, and PPCO Fund International A, collectively, the “**Receivership Entities**”). (Docket entry on July 6, 2017 in *United States Securities and Exchange Commission et al v. Platinum Management (NY) LLC, et al.*, 16-cv-6848 (E.D.N.Y.) (the “**Receivership Action**”), Weinick Decl. Ex. 1 at 1; Second Amended Order Approving Receiver dated October 16, 2017, Ex. 1 at 2; Order Approving Expansion of Receivership dated December 29, 2017, Ex. 1 at 23)

2. PPCO MF is, and at all material times hereinafter mentioned was, a limited partnership organized under Delaware law with its principal place of business in New York, New York. (First Amended Complaint (“**FAC**”), Consolidated Dkt. No. 209, ¶ 26 (Filed Apr. 1, 2019); Amended Answer of Senior Health Insurance Company of Pennsylvania and Fuzion Analytics, Inc. and Crossclaims, and Third-Party Complaint of Senior Health Insurance Company of Pennsylvania (“**SHIP Answer**”), Cons. Dkt. No. 605 ¶ 26 (filed September 11, 2019))

3. PPCO TE is, and at all material times hereinafter mentioned was, a limited liability company organized under Delaware law with its principal place of business in New York, New York. (FAC ¶ 27; SHIP Answer ¶ 27)

4. PPCO Fund is, and at all material times hereinafter mentioned was, a limited liability company organized under Delaware law with its principal place of business in New York, New York. (FAC ¶ 28; SHIP Answer ¶28)

5. PPCO Fund International is, and at all material times hereinafter mentioned was, a Cayman Islands exempted company. (FAC ¶ 29; SHIP Answer ¶ 29)

6. PPCO Fund International A is, and at all material times hereinafter mentioned was, a Cayman Islands exempted company. (FAC ¶ 30; SHIP Answer ¶30)

7. PPCO Blocker Fund is, and at all material times hereinafter mentioned was, a limited liability company organized under Delaware law with its principal place of business in New York, New York. (FAC ¶ 31; SHIP Answer ¶ 31)

8. Beechwood Re Ltd. ("**Beechwood Re**") is, and at all material times hereinafter mentioned was, a stock life reinsurance company domiciled in the Cayman Island with its principal place of business in New York, New York. (FAC ¶ 32; SHIP Answer ¶ 32)

9. B Asset Manager LP ("**BAM**") is, and at all times hereinafter mentioned was, a Delaware limited partnership with its principal place of business in New York, New York. (FAC ¶ 34; SHIP Answer ¶ 34)

10. B Asset Manager II LP ("**BAM II**") is and, at all material times hereinafter mentioned was, a Delaware limited partnership with its principal place of business in New York, New York. (FAC ¶ 35; SHIP Answer ¶ 35)

11. Beechwood Bermuda International Ltd. (“**BBIL**”) is, and at all material times hereinafter mentioned was, a reinsurance company domiciled in Bermuda with its principal place of business in New York, New York. (FAC ¶ 37; Answer ¶ 37)

12. BAM Administrative Services LLC (“**BAM Administrative**,” together with BAM, BAM II and BBIL, collectively, “**Beechwood**” or the “**Beechwood Entities**”) is, and at all times hereinafter mentioned was, a limited liability company organized under Delaware law with its principal place of business in New York, New York. (FAC ¶ 40; Answer ¶ 40)

13. BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub are, and at all material times hereinafter mentioned were, insurance trusts organized under Delaware and New York state law, managed by BAM Administrative, and administered in New York, New York. (FAC ¶ 41; Answer ¶ 41)

14. Moshe M. Feuer a/k/a Mark Feuer (“**Feuer**”) is, and at all material times hereinafter mentioned was, a resident of Lawrence, New York. (FAC ¶ 47; SHIP Answer ¶ 47)

15. Scott A. Taylor (“**Taylor**”) is, and at all material times hereinafter mentioned was, a resident of New York, New York. (FAC ¶ 48; SHIP Answer ¶ 48)

16. Senior Health Insurance Company of Pennsylvania (“**SHIP**”) was at all material times hereinafter mentioned an insurance company domiciled in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana. (FAC ¶ 50; SHIP Answer ¶ 50) As of September 11, 2019, SHIP was “a long-term care insurer in run-off.” (SHIP Answer ¶ 8)

THE RECEIVER'S REMAINING CLAIMS AGAINST SHIP

17. On March 29, 2019, the Receiver filed the FAC. (Cons. Dkt. No. 209, ¶ 26 (filed Apr. 1, 2019)) In the FAC, the Receiver asserted claims against numerous parties, including SHIP.

18. Several of the defendants, including SHIP, thereafter filed motions to dismiss the FAC.

19. On September 11, 2019, the Court's ruling on motions to dismiss filed by SHIP and various other defendants, SHIP filed the SHIP Answer. (SHIP Answer, Cons. Dkt. No. 605 (filed September 11, 2019)) In the SHIP Answer, SHIP asserted numerous affirmative defenses. (SHIP Answer, Dkt. No. 605, pp. 46-51)

FACTS

A. The IMAs

20. As described in greater detail below, in or after 2014, SHIP transferred \$270 million to Beechwood to be managed on SHIP's behalf pursuant to three investment management agreements. (FAC ¶ 168, SHIP Answer ¶ 168) SHIP entered into those investment management agreements with Beechwood as a means of earning a guaranteed rate of return on a small portion of its investment portfolio. (SHIP Answer ¶ 8)

21. On or about May 22, 2014, SHIP and BBIL executed an Investment Management Agreement dated as of May 22, 2014, between SHIP and BBIL (the "**BBIL IMA**"). (FAC ¶¶ 162, 165(i); SHIP Answer ¶¶ 162, 165; BBIL IMA, Weinick Decl. Ex. 2)

22. On or about June 13, 2014, SHIP and BRe executed an Investment Management Agreement dated as of June 13, 2014, between SHIP and BRe (the "**BRe IMA**"). (FAC ¶¶ 162, 165(ii); SHIP Answer, ¶¶ 162, 165; BRe IMA, Weinick Decl. Ex. 3)

23. On or about January 15, 2015, SHIP and BAM executed an Investment Management Agreement dated as of January 15, 2015, between SHIP and BAM (the “**BAM IMA**,” together with the BBIL IMA and the BRe IMA, collectively, the “**IMAs**”). (FAC ¶¶ 162, 165(iii); SHIP Answer ¶¶ 162, 165; BAM IMA, Weinick Decl. Ex. 4)

24. On or about January 15, 2015, SHIP entered into a side letter with Beechwood Re Investments, LLC dated as of January 15, 2015, with respect to the BAM IMA (the “**Side Letter**”). (BAM IMA at SHIP0019793)

25. Section 1(a) of the BBIL and BRe IMAs provides:

*The Client hereby appoints the Adviser as investment adviser and manager with the power and authority subject at all times to the fiduciary duties imposed upon it by reason of its appointment to invest and manage the Assets (as defined below), and the Adviser hereby accepts such appointment, on the terms and conditions set forth in this Agreement which shall include and incorporate all Exhibits (as may be amended from time to time) attached hereto. The responsibilities of the Adviser hereunder shall commence on [the applicable Effective Date of the IMA] ... (the “**Effective Date**”) and shall continue until this Agreement is terminated as provided in Section 17 hereof. The term “**Assets**” shall mean the securities, cash and other property of the Client, whether held directly or indirectly or by other indirect means, which such Assets Client shall hold in one or more custody accounts (collectively, the “**Account**”) of the Client maintained with the “**Custodian**” (as such term is defined in Section 2 hereof), together with those additional Assets which result from transactions in the Account, earnings thereon, distributions with respect thereto or additions thereto made by the Client. The Adviser shall use all proper and professional skill, diligence and care at all times in the performance of its duties and the exercise of its powers under this Agreement.*

(BBIL IMA, BRe IMA, Weinick Decl. Exs. 2-3, § 1(a), emphasis added; *see also* BAM IMA¹ Weinick Decl. Ex. 4, § 1(a))

26. Section 2(a) of the BBIL and BRe IMAs provides:

*The Client will appoint a custodian that maintains a separate account for the Client under the Client’s name (the “**Custodian**”) to take and have possession of the securities, cash, and other property held in the Account. The Client will*

¹ The language in the BAM IMA varies slightly; however, it is not substantively different from that of the BBIL and BRe IMAs.

promptly notify the Adviser in writing upon its appointment of a Custodian which meets the requirements set forth above. ***Any such Custodian utilized by the Client must be approved by the Adviser, such approval not to be unreasonably withheld. It is agreed that the Custodian must meet the NAIC SVO requirements.***

(BBIL IMA, BRe IMA, Weinick Decl. Exs. 2-3, § 2(a), emphasis added; *see also* BAM IMA, Weinick Decl. Ex. 4, § 2(a))

27. Section 3(a) of the BBIL and BRe IMAs sets forth SHIP's authority as follows:

Subject to the general investment policy, guidelines and restrictions established by the Client with respect to the Account (attached hereto as Exhibit A) and the provisions of this Agreement as may be amended from time to time, the Client hereby grants to the Adviser complete, unlimited and unrestricted authority with respect to the investment and reinvestment of the Account. Such authority shall include the authority, at the sole expense of the Client:

(i) to invest and reinvest the Assets at such time and in such manner as the Adviser in its sole discretion shall determine or elect;

(ii) to purchase and sell securities and other investments for the Account in the name of the Account, for the Account and at the sole risk of the Account;

(iii) to select and retain counterparties in furtherance of the Account's investment program, including entering into swap arrangements and ISDA master agreements with such counterparties as Adviser may select;

(iv) to enter into other hedging transactions and other derivative instruments pursuant to a derivative use plan that has been presented by Adviser to and approved by Client.

(v) to arrange for the delivery of and payment for any such investments, including securities, bought and sold for the account of the Client, by providing clear and proper settlement instructions to the Custodian provided that the Adviser shall not have authority to cause the Custodian to deliver securities and other assets or pay cash to the Adviser other than in settlement of the fees and expenses payable under the terms of this Agreement; and

(vi) in effecting any such investments, reinvestments, purchases and sales, to use and obtain the assistance and services of such brokers, dealers, investment bankers, underwriters and other firms, enterprises and services as the Adviser in its sole discretion shall designate or select. The Client shall advise the Custodian of the Client's retention of the Adviser as provided herein and shall ensure that the Custodian (i) provides the necessary reporting and systems to the Adviser to facilitate the Adviser's activities in connection with the Account, (ii) provides the

Adviser with appropriate cash and investment holdings reports, (iii) settles executed transactions where appropriate information is provided to the Custodian by the Adviser, and (iv) otherwise complies with and honors requests and instructions of the Adviser made or given in connection with the exercise of the authority granted to the Adviser hereunder. The Adviser shall conduct reconciliations with the Custodian for purposes of determining that the Custodian arranges for the collection of all moneys receivable in respect of the investments held for the Account, pays interest on credit balances on the accounts maintained with the Custodian and credits such interest periodically in accordance with normal banking practice at the Custodian's prevailing call rates.

(BBIL IMA, BRe IMA, Weinick Decl. Exs. 2-3, § 3(a), emphasis added; *see also* BAM IMA, Weinick Ex. 4, § 3(a))

28. Section 3(b) of the BBIL and BRe IMAs provides:

The Adviser shall make its investment decisions consistent with the general investment policy, guidelines and restrictions as described on Exhibit A, but otherwise shall have sole and exclusive authority and discretion to manage and control the Assets of the Account. The Adviser shall have no obligation to determine whether the investment guidelines are appropriate for the Client and shall not be responsible or liable for the selection of or revisions to such policy, guidelines and/or restrictions. Without affecting any other parts of this Agreement, the Client may, with the prior written consent of the Adviser, revise the general investment policy, guidelines and restrictions with respect to the Account in writing from time to time following consultation with the Adviser and shall make due allowance, as the parties hereto shall mutually agree, for the time that the Adviser shall have within which to come into compliance with such revised policy, guidelines and/or restrictions.

(BBIL IMA, BRe IMA, § 3(b), emphasis added; *see also* BAM IMA, § 3(b))

29. Section 7 of the BBIL and BRe IMAs, entitled "Valuation of Assets," provides:

Any valuation of the Assets in the Account pursuant to this Agreement, including for purposes of calculating fees under Section 6 and/or the Termination Amount under Section 1(b), shall be made by or at the direction of the Adviser in accordance with the Adviser's valuation policy. In computing the value of any Asset in the Account for purposes of this Agreement, a security regularly traded shall be valued as of the valuation date at the latest available price quotation furnished to the Adviser or its agents by sources the Adviser deems appropriate. All other securities and investments included in the Account shall be valued by or at the direction of the Adviser in its reasonable discretion in a manner determined in good faith to reflect fair market value. *The Adviser shall conduct quarterly reconciliations with the Custodian to verify the valuation of the Assets in the Account.*

(BBIL IMA, BRe IMA, Weinick Decl. Exs. 2-3, § 7, emphasis added; *see also* BAM IMA, Weinick Decl. Ex. 4, § 7)

30. Section 20 of each of the IMAs, entitled “Governing Law,” provides: “This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.” (BBIL IMA, BRe IMA, BAM IMA, § 20)

31. Section 23 of the BBIL and BRe IMAs, entitled “Agency Appointment,” provides:

To enable the Adviser to exercise fully its discretion and authority as provided in this Agreement, the Client hereby authorizes the Adviser to act as the Client’s agent with full power and authority for the Client and on the Client’s behalf to buy, sell and otherwise deal in securities and other property and contracts relating to same for the Account, including, without limitation, trading agreements and confirmations. The Client further grants to the Adviser as the Client’s agent full power and authority to do and perform every act necessary and proper to be done in the exercise of the foregoing limited powers as fully as the Client might or could do if personally present. This agency appointment shall terminate on termination of this Agreement.

(BBIL IMA, BRe IMA, § 23, emphasis added; *see also* BAM IMA, § 23)

32. The BBIL IMA permitted BBIL to retain investment returns above a 5.85% guaranteed investment return as a “Performance Fee.” (BBIL IMA, Weinick Decl. Ex. 2, at Ex. B ¶ 1; SHIP’s Second Amended Complaint and Demand for Trial by Jury in *Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd., et al.*, 18-cv-06658 (Dkt. No. 84) (“**SHIP Second Amended Complaint**”), Dkt. No. 84 in the Consol. Action, ¶ 101; Proof of Claim Filed by SHIP with the Receiver on March 29, 2019 (“**POC**”), Weinick Decl. Ex. 14 at 496)

33. The BRe IMA permitted BRe to retain investment returns above a 5.85% guaranteed investment return as a “Performance Fee.” (BRe IMA, Weinick Decl. Ex. 3 at Ex. B ¶ 1; SHIP Second Amended Complaint ¶ 119, POC at 501)

34. The BAM IMA permitted BAM to retain a “Performance Fee” that was calculated in a slightly different manner from those under the BBIL IMA and the BRe IMA. The “Performance Fee” was to be the greater of the following:

(1) 1% of the net asset value of the Assets in the Account as of the last day of each measuring Year, or (2) 100% of the cash value reflected in the Net Profit Yield (as defined below). For purposes hereof, (a) “Net Profit Yield” shall be defined as the Total Portfolio Yield (as defined below) minus 5.85% and (b) “Total Portfolio Yield” shall be defined as the investment return (based on both realized and unrealized trading profit) on the Account for each respective measuring Year....”)

(BAM IMA, Weinick Decl. Ex. 4, at Ex. B ¶ 1; SHIP Second Amended Complaint ¶ 136, POC at 506)

35. Pursuant to the BBIL IMA, SHIP deposited approximately \$80 million into a custody account at Wilmington Trust for investment by BBIL on SHIP’s behalf (the “**BBIL-SHIP Custody Account**”). (FAC ¶ 165(i); SHIP Answer ¶ 165)

36. Pursuant to the BRe IMA, SHIP deposited approximately \$80 million into a custody account at Wilmington Trust for investment by BRe on SHIP’s behalf. (FAC ¶ 165(ii); SHIP Answer ¶ 165)

37. Pursuant to the BAM IMA, SHIP invested approximately \$110 million with BAM. (FAC ¶ 165(iii); SHIP Answer ¶ 165)

38. By signing the IMAs, Beechwood accepted the undertakings therein, and did in fact undertake to invest assets for SHIP under the terms of the IMAs. (BBIL IMA, BRe IMA, BAM IMA) In accordance with their appointment under the IMAs, the three Beechwood Advisers acted as agent for SHIP at all times from the inception of the IMAs through at least November 2016. (SHIP Amended Complaint, ¶¶ 271-72; POC at 557-58)

39. Under these agreements, Beechwood had discretionary authority to manage the assets that were subject to the IMAs. Extensive deposition testimony supports this conclusion.

For example:

- Timothy Hart, SHIP's expert, admitted during his deposition that Beechwood was "more than a conduit [for SHIP]. They [Beechwood] were their agent and fiduciary." (Transcript of Deposition of Timothy Hart, SHIP Expert ("**Hart-SHIP Expert Tr.**"), Weinick Decl. Ex. 5 at 118:8-16)
- John Robison, former Chief Investment Officer of SHIP (and one of SHIP's 30(b)(6) witnesses, testified during his deposition that Beechwood was an "outside manager who had discretionary authority" to manage SHIP's assets. (Transcript of Deposition of John Robison, SHIP 30(b)(6) Dep. ("**Robison-SHIP 30(b)(6) Tr.**"), Weinick Decl. Ex. 6 at 12:7-8, 132:4-10)
- Barry Staldine, president and CEO of SHIP following Wegner's termination for cause (and one of SHIP's 30(b)(6) witnesses), described Beechwood's authority under the IMAs as "full discretionary authority on what their [SHIP's] investments would be." (Transcript of Deposition of Barry Staldine, SHIP 30(b)(6) Dep. ("**Staldine-SHIP 30(b)(6) Tr.**"), Weinick Decl. Ex. 7 at 10:8-9, 53:21-54:3, 56:22-24)
- Mark Feuer, former CEO of BBIL and other Beechwood Entities, testified at his deposition that he did not recall "any communications between anyone at Beechwood and anyone at SHIP where Beechwood failed to answer a question asked by SHIP." (Transcript of Deposition of Mark Feuer ("**Feuer Tr.**"), Weinick Decl. Ex. 11 at 266:13-17, 307:13-22) According to Feuer, "our clients were given whatever they asked and

sometimes where the contracts or agreements provided for more, they got it proactively.”
(Feuer Tr. at 680:5-8)

- Brian Wegner, former board member and CEO of SHIP, testified that SHIP was provided with a list of investments that Beechwood made on SHIP’s behalf. (Transcript of Deposition of Brian Wegner, (“**Wegner Tr.**”), Weinick Decl. Ex. 13, at 26:20-21, 384:13-16)

40. Consistent with the language of the IMAs, the deposition testimony confirms that there were “caveats” to Beechwood’s discretion under the IMAs. In this regard:

- Hart confirmed at his deposition that “the Beechwood people agreed to follow those [SHIP’s] investment policies.” (Hart-SHIP Expert Tr., Weinick Decl. Ex. 5 at 30:3-6)
- There were caveats regarding Beechwood’s obligation to report back to SHIP, the custodian for the custodial accounts established under the IMAs, the 5.85% “guaranteed” investment return referred to in the IMAs, and compliance with “regulatory concerns” of the Department of Insurance. (Staldine-SHIP 30(b)(6) Tr., Weinick Decl. Ex. 7 at 54:4-23) Paul Lorentz (“**Lorentz**”), who was the Chief Financial Officer of SHIP, was appointed to ensure that Beechwood satisfied those “regulatory concerns.” (Staldine-SHIP 30(b)(6) Tr. at 54:4-23; Transcript of Deposition of Paul Lorentz (“**Lorentz Tr.**”), Weinick Decl. Ex. 9 at 13:20-23)
- Beechwood’s discretion under the IMAs was subject to SHIP’s investment guidelines as set forth in Exhibit A to that IMA. (Robison-SHIP 30(b)(6) Tr., Weinick Decl. Ex. 6 at 87:12-25; SHIP Answer ¶ 167) “SHIP’s Adviser Investment Policy, Guidelines, and Restrictions are attached and incorporated into each IMA as Exhibit A to each agreement” and “SHIP’s Guidelines for Senior Secured Credit Opportunities are included

in Exhibit A to the BBIL and BRE IMA but are not included in the BAM I IMA.” (SHIP Answer ¶ 167) Those investment guidelines included certain limitations on what type of debt Beechwood was able to invest SHIP assets into. (Transcript of Deposition of Dhruv Narain (“**Narain Tr.**”), Weinick Decl. Ex. 8 at 585:24-586:3)

- SHIP did in fact monitor Beechwood’s investments and knew what assets had been invested on its behalf “[b]ecause they had access to the same data that CNO had, every one of our clients had, which is full disclosure of all documents, anything the file had, they had access to.” (Feuer Tr., Weinick Decl. Ex. 11 at 359:14-17) Thus, to the extent that SHIP was invested through Beechwood into Desert Hawk, SHIP would have had access to that information. (Feuer Tr. at 359:14-17) SHIP kept a list of all of the investments that Beechwood had made on its behalf. (Wegner Tr., Weinick Decl. Ex. 13 at 384:13-16)
- Julianne Bowler, SHIP trustee and board member, testified that “[t]hey [Beechwood] were reporting to the board what their buys and sells were, just like Conning quarterly reports their buys and sells.” (Transcript of Deposition of Julianne Bowler (“**Bowler Tr.**”), Weinick Decl. Ex. 12 at 82:17-19)

41. SHIP visited Beechwood’s offices “once a quarter” to discuss investments in the IMAs, including Platinum related investments. (Wegner Tr., Weinick Decl. Ex. 13 at 261:21-262:19) On these occasions, Brian Wegner (“**Wegner**”), former board member and Chief Executive Office of SHIP, brought a team of approximately “15 or so people” to do a “quarterly review” of “the various things that they were involved with regard to [Beechwood].” (Feuer Tr., Weinick Decl. Ex. 11 at 254:11-24) The “general agenda” at those “quarterly reviews” included “how [SHIP’s] block [of investments with Beechwood] fared the prior quarter.” (Feuer Tr. at

315:11-316:1) Those reviews lasted for “days” and included conversations regarding SHIP’s investments. (Feuer Tr. at 317:15-23) SHIP also requested valuations of the Beechwood investments, and received them, from Lincoln and Duff & Phelps. (Wegner Tr., Weinick Decl. Ex. 13 at 182:6-18)

B. BAM’s Role as Agent for SHIP in the PPCO Loan Transactions

42. The Receiver’s remaining claims against SHIP all arise out of a series of transactions in late 2015 and March 2016 (referred to herein as the “**PPCO Loan Transactions**”) in which, according to the FAC, among other things:

- BAM, as agent for SHIP, BBIL, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub assigned nonperforming notes issued by Desert Hawk Gold Corp. (“**Desert Hawk**”), LC Energy Holdings LLC (“**LC Energy**”) and Northstar GOM Holdings Group LLC (“**Northstar**”) for a total of approximately \$67 million at prices that greatly exceeded the value of those notes. (FAC ¶¶ 229-258, 341-416)
- SHIP, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub, through BAM and BAM Administrative as their agent, financed those purchases by lending approximately \$69 million to PPCO MF, purportedly secured by a security interest in all of PPCO MF’s and its subsidiaries’ assets. (FAC ¶¶ 240-258, 341-416)
- These transactions resulted in the transfer of tens of millions of value from PPCO MF to BAM Administrative and its principals, including SHIP,

because they improved their position from (a) owning loans to nonperforming secured loans to Desert Hawk, LC Energy and Northstar worth at least \$18 million to (b) owning liens against all of PPCO MF's and its subsidiaries' assets. (FAC ¶¶ 240-258, 341-416)

43. As part of those transactions, Beechwood loaned money to PPCO MF on behalf of its clients, including SHIP. (Narain Tr., Weinick Decl. Ex. 8 at 529:3-8)

44. Beechwood served as agent on behalf of "its clients," including SHIP, in connection with the PPCO Loan Transactions. (Feuer Tr., Weinick Decl. Ex. 11 at 382:3-17)

45. BAM executed numerous documents on behalf of and served as SHIP's agent in connection with the PPCO Loan Transactions.

46. On or about December 23, 2015, PPCO MF executed a "Delayed Draw Demand Note" dated December 23, 2015 (the "**Delayed Draw Demand Note**"), in the principal amount of \$15,500,000.00, in favor of SHIP, dated as of December 23, 2015. (POC at Schedule 4 p. 1-2 & Schedule 8 ¶ 1; POC at 29-36) BAM executed this document on behalf of SHIP under the words "ACCEPTED AND AGREED TO" as "its [SHIP's] investment manager." (POC at Schedule 4, pp. 1-2 & Schedule 8 ¶ 1; POC at 29-36) The Delayed Draw Demand Note stated that BAM Administrative, for the benefit of SHIP, had been granted a "security interest" by PPCO MF and its direct and indirect subsidiaries in certain of their assets as more fully described in a "Master Security Agreement" dated as of December 23, 2015 and that the outstanding obligations under the Delayed Draw Demand Note were "guaranteed" by those subsidiaries as more fully described in a "Subsidiary Guaranty" dated as of December 23, 2015. (POC at 35 ¶ 15)

47. On or about December 23, 2015, PPCO MF issued a letter dated December 23, 2015 addressed to “Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager,” regarding the disbursement of \$9,198,750.00 under the Delayed Draw Demand Note to BAM Administrative, “as agent” (the “**December 23, 2015 Disbursement Letter**,” December 23, 2015) (POC at 364-65)

48. On or about December 30, 2015, PPCO MF issued a letter dated December 23, 2015 addressed to “Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager,” directing the disbursement under the Delayed Draw Demand Note of \$5,000,000.00 to BAM Administrative “as agent” (the “**December 30, 2015 Disbursement Letter**”) (POC at 366-67)

49. On or about January 20, 2016, PPCO MF executed an “Amended and Restated Delayed Draw Demand Note” (the “**A&R Delayed Draw Demand Note**”), in the principal amount of \$18,500,000.00, in favor of SHIP, dated as of January 20, 2016. (POC at Schedule 4 p. 2 & Schedule 8 ¶ 7) Scott Taylor executed this note as an “Authorized Signatory” of BAM, as “investment manager” of SHIP, under the words “ACCEPTED AND AGREED TO.” (POC at Schedule 4 p. 2 & Schedule 8 ¶ 7; POC at 163-69) The A&R Delayed Draw Demand Note stated that BAM Administrative, for the benefit of SHIP, had been granted a “security interest” by PPCO MF and its direct and indirect subsidiaries in certain of their assets as more fully described in a “Master Security Agreement” dated as of January 20, 2016, and that the outstanding obligations under the A&R Delayed Draw Demand Note were “guaranteed” by those subsidiaries as more fully described in a “Subsidiary Guaranty” dated as of January 20, 2016 (POC at 167-68 ¶ 15)

50. On March 21, 2016, PPCO MF, as the “Company”; SHIP, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub, as

“Purchasers” (together with the other purchasers from time to time thereunder, each a “Purchaser,” and collectively, the “Purchasers”); and BAM Administrative, as “Agent” for the Purchasers, entered into a Note Purchase Agreement, dated as of March 21, 2016 (the “NPA,” Weinick Decl. Ex. 15, Depo. Ex. 85), in which, the parties thereto agreed, among other things, that “Company shall sell to each Purchaser, and each Purchaser shall purchase from Company, the applicable Notes listed on Schedule 1 under the heading ‘Notes’ and set forth opposite such Purchaser’s name, in the original aggregate principal amount of Seventy Million Dollars (\$70,000,000).....” which thereby executed the NPA on behalf of SHIP, “as investment manager.” (NPA at 31; Narain Tr., Weinick Decl. Ex. 8 at 506:11-507:11; POC at Schedule 8 ¶ 8, 170-229) Dhruv Narain executed the NPA as an “Authorized Signatory” of BAM.

51. The NPA stated that attached to it as Exhibit “A” a “Form of Term Note” and provided that “[t]he Notes shall be substantially in the form attached hereto as Exhibit A and shall include such notations, legends or endorsements set forth therefor or required by law.” (NPA, Weinick Decl. Ex. 15 at ¶ 1; POC at 175, 213)

52. The NPA stated that attached to it as Exhibit “B” was a form of “Security Agreement.” (POC at 214)

53. The NPA stated that attached to it as Exhibit “C” a form of “Guaranty Agreement.” (POC at 215)

54. The first sentence of Section 2 of the NPA provides: “Prior to the Closing Date, Company shall issue to each Purchaser a disbursement letter (the “Disbursement Letter”) setting forth the Purchase Price payable by such Purchaser at such Closing Date and the recipients to receive such proceeds on behalf of Company.” (POC at 176)

55. Section 9.1 of the NPA, entitled “Conditions Precedent,” provides, in pertinent part:

- (i) Related Agreements. Agent shall have received from Company executed originals of this Agreement, the Notes and the other Related Agreements [including, among other documents, the attached “Security Agreement” and “Guaranty Agreement,” *see* NPA § 4.1] and documents and instruments to be delivered in connection therewith.
- (ii) Searches, Filings, Registrations and Recordings. Agent shall have received copies of UCC, tax lien and judgment searches, or other evidence satisfactory to Lender, listing all effective financing statements which name Company (under present name, any previous name or any trade or doing business name) as debtor and covering all jurisdictions requested by Agent, together with copies of such other financing statements. Each document (including any UCC financing statement) required by this Agreement, or any other Related Agreements or under applicable law or reasonably requested by Agent to be filed, registered or recorded in order to create, in favor of Agent, a perfected first priority security interest (subject to Permitted Encumbrances) in or Lien upon the Collateral shall have been properly filed, registered or recorded in each jurisdiction in which the filing, registration or recordation thereof is so required or requested, and Agent shall have received an acknowledgment copy, or other evidence satisfactory to it, of each such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto.

(NPA, Weinick Decl. Ex. 15 at ¶ 9.1; POC at 195-196)

56. Section 10.16 of the NPA, entitled “Agency Agreement,” provides “Each Purchaser has pursuant to an Administrative and Collateral Agency Agreement designated and appointed Agent as the administrative and collateral agent of such Purchaser under this Agreement and the Related Agreements.” (NPA, Weinick Decl. Ex. 15 at ¶ 10.16; POC at 204)

57. In accordance with the NPA, on or about March 21, 2016, SHIP, BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary and BRe BCLIC Sub, as “Noteholders,” and “BAM Administrative Services LLC, as “Agent,” executed an “Agency

Agreement” (the “**Agency Agreement**”). (POC at Schedule 2 ¶ 18; POC at 352-362) Dhruv Narain executed the Agency Agreement as an Authorized signatory by BAM, which thereby executed the Agency Agreement on behalf of SHIP. (POC at 362) In the Agency Agreement, SHIP appointed another Beechwood entity, BAM Administrative, to act on SHIP’s behalf, and BAM Administrative entered into certain of the agreements on behalf of SHIP in connection with the PPCO Loan Transactions. (POC at 352-362)

58. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Second Amended and Restated Secured Term Note” (the “**Second A&R SHIP PPCO Note**” or “**NPA Note 1**”), in the principal amount of \$42,963,949.04, in favor of “the SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA,” with an address of c/o B Asset Manager, LP, 1370 Avenue of the Americas, 32nd Fl, New York, New York 10019,” dated as of March 21, 2016. (POC at Schedule 5 p. 1 & Schedule 8 ¶ 9; POC at 230-240; POC at 216)

59. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Secured Term Note” (“**NPA Note 2**”), in the principal amount of \$10,000,000.00, in favor of BRe BCLIC Primary. (POC at Schedule 8 ¶ 10; POC at 241-252)

60. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Secured Term Note” (“**NPA Note 3**”), in the principal amount of \$500,000, in favor of BRe BCLIC Sub. (POC at Schedule 5 p. 1 & Schedule 8 ¶ 11; POC at 253-264; POC at 216)

61. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Secured Term Note” (“**NPA Note 4**”), in the principal amount of \$14,989,677.78, in favor of BRe WNIC LTC Sub. (POC at Schedule 8 ¶ 12; POC at 265-276; POC at 216)

62. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Secured Term Note” (“**NPA Note 5**”), in the principal amount of \$700,000, in favor of “BRE

WNIC 2013 LTC SUB, with an address of c/o B Asset Manager, LP, 1370 Avenue of the Americas, 32nd Fl, New York, New York 10019,” dated as of March 21, 2016. (POC at Schedule 5 p. 1 & Schedule 8 ¶ 13; POC at 277-287; POC at 216)

63. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a disbursement letter dated March 21, 2016, addressed to “Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager,” directing the disbursement of \$26,590,877.78 to BAM Administrative under NPA Note 1 to BAM Administrative, “as Agent for each of [SHIP], BRe WNIC 2013 LTC Primary, BBIL and Beechwood Bermuda Investment Holdings, Ltd., for its Segregated Accounts” (the “**March 21, 2016 Disbursement Letter**,” POC at 375).

64. On or about March 21, 2016, SHIP entered into an “Assignment Agreement” dated as of March 21, 2016 with PPVA Oil & Gas, LLC (the “**SHIP-PPVA Northstar Assignment Agreement**”), in which SHIP assigned “Entirety of that 12% Second Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to the Senior Health Insurance Company of Pennsylvania in the initial principal amount of \$20,200,000” to PPVA Oil & Gas, LLC, for a total purchase price of \$21,323,344.44, including principal indebtedness outstanding under the instrument of \$20,200,000.00 and accrued unpaid interest purchased of \$21,323,344.44. Narain executed that agreement as an “Authorized Signatory” of BAM, on behalf of SHIP, as “its investment manager.” (SHIP-PPVA Northstar Assignment Agreement, Weinick Decl. Ex. 16 at BW-SHIP-00175440)

65. On or about March 21, 2016, SHIP entered into an “Assignment Agreement” with PPCO MF and BRe WNIC 2013 LTC Primary dated as of March 21, 2016 (the “**Tri-Party Northstar PPCO Assignment Agreement**”), in which SHIP assigned “Entirety of that 12% Second Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM

Holdings Group LLC to the Senior Health Insurance Company of Pennsylvania in the initial principal amount of \$10,800,000.00” to PPCO MF for a total purchase price of \$11,400,600.00, consisting of \$19,000.00 in principal indebtedness purchased plus \$600,000.00 in accrued and unpaid interest purchased, and BRe WNIC 2013 LTC Primary assigned “Entirety of that 12% Senior Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to BRe WNIC 2013 LTC Primary in the initial principal amount of \$19,000,000” to PPCO MF for a total purchase price of \$20,056,611.11, consisting of \$19,000,000 in principal indebtedness outstanding plus \$1,056,611.11 in accrued and unpaid interest purchased of \$20,056,611.11. Dhurv Narain executed that agreement as an “Authorized Signatory” of BAM on behalf of SHIP, as “its investment manager.” (Tri-Party Northstar-PPCO Assignment Agreement, Weinick Decl. Ex. 17, Depo. Ex. 86 at 5; Transcript of Deposition of Christian Thomas (“**Thomas Tr.**”), Weinick Decl. Ex. 10 at 424:15-426:13)

66. After the PPCO Loan Transactions were consummated, BAM executed two participation agreements on behalf of SHIP in which SHIP sold participation interests in portions of NPA Note 1 to BBIL. (POC at Schedule 8 ¶¶ 29-30; POC at 424-347)

67. On or about May 23, 2016, BBIL, and SHIP entered into a “Participation Agreement” dated as of and effective as of May 23, 2016, in which SHIP sold a \$7,000,000 participation interest in NPA Note 1 to BBIL (the “**SHIP to BBIL Participation Agreement**”) (POC at Schedule 8 ¶ 29; POC at 424-435) Narain executed both the SHIP to BBIL Participation Agreement and the “Annex” thereto as “President” of BAM, which thereby executed the SHIP to BBIL Participation Agreement on two separate pages on behalf of SHIP, as “its [SHIP’s] investment adviser.” (POC at 431, 435)

68. On or about May 23, 2016, Old Mutual (Bermuda) Ltd. (“**Old Mutual**”) and SHIP entered into a “Participation Agreement” dated as of and effective as of May 23, 2016, in which SHIP sold a \$14,600,000 participation interest in the NPA Note 1 to Old Mutual (the “**SHIP to Old Mutual Bermuda Participation Agreement**”) (POC at Schedule 8 ¶ 30; POC at 436-447) Narain executed both the SHIP to Old Mutual Bermuda Participation Agreement and the “Annex” thereto as “President” of BAM, which thereby executed the SHIP to Old Mutual Bermuda Participation Agreement on two separate pages on behalf of SHIP, as “its [SHIP’s] investment adviser.” (POC at 443, 447)

69. Effective May 23, 2016, BBIL, “for the benefit of its ‘BBIL-SHIP’ account,” purchased participation interests in notes that had been issued by PPCO MF to BRe BCLIC Sub and BRe WNIC 2013 LTC Sub as part of the PPCO Loan Transactions, and effective November 29, 2016, those participations were elevated to assignments. (POC at Schedule 8 ¶¶ 25-28; POC 385-423)

70. On or about May 23, 2016, BBIL, “for the benefit of its ‘**BBIL-SHIP**’ account” (*i.e.*, for the benefit of the BBIL-SHIP Custody Account), entered into a “Participation Agreement” with BRe BCLIC Sub effective as of May 23, 2016, in which, as described by SHIP in the POC, “BRE BCLIC Sub, sold to BBIL for the benefit of its BBIL-SHIP account [*i.e.*, the BBIL-SHIP Custody Account], a \$250,000 participation in interest in NPA Note 3” (the “**BRe BCLIC Sub to SHIP Participation Agreement**”) (POC at Schedule 8 ¶ 25; POC 385-396) Feuer executed this “Participation Agreement” and an “Annex” to it as “Authorized Signatory” of BAM II, which thereby executed them on behalf of BBIL, as “its investment adviser.” (POC at 392, 396)

71. On or about November 29, 2016, BRe BCLIC Sub, as “Assignor,” and BBIL “(for its BBIL-SHIP account)” (*i.e.*, for the benefit of the BBIL-SHIP Custody Account), as “Assignee” entered into an “Elevation Assignment Agreement,” effective as of November 1, 2016 (the “**BRE BCLIC Sub Elevation Assignment Agreement**”) (POC at Schedule 8 ¶ 26; POC 397-404), in which, as described by SHIP in the POC, “BRE BCLIC Sub assigned to BBIL for its BBIL-SHIP account, a \$261,335.80 interest in NPA Note 3, thereby elevating the NPA Note 3 participation interest held in the BBIL-SHIP account to an assignment effective as of November 1, 2016.” (POC at Schedule 8 ¶ 25; POC at 397-404) Feuer executed the BRE BCLIC Sub Elevation Assignment Agreement as “Authorized Signatory” of BAM II, which thereby executed the BRE BCLIC Sub Elevation Assignment Agreement on behalf of BBIL, as “its [BBIL’s] investment adviser.” (POC at 400)

72. On or about May 23, 2016, BBIL, “for the benefit of its ‘**BBIL-SHIP**’ account” (*i.e.*, for the benefit of the BBIL-SHIP Custody Account), and BRe WNIC 2013 LTC Sub entered into a “Participation Agreement” effective as of May 23, 2016, in which, as described by SHIP in the POC, “BRE WNIC 2013 LTC Sub, sold to BBIL for the benefit of its BBIL-SHIP account [*i.e.*, the BBIL-SHIP Custody Account], a \$350,000 participation in interest in NPA Note 5” (the “**BRe WNIC 2013 LTC Sub to SHIP Participation Agreement**”). (POC at Schedule 8 ¶ 27; POC at 405-414) Feuer executed this participation agreement and an “Annex” to it as “Authorized Signatory” of BAM II, which thereby executed BRe WNIC 2013 LTC Sub to SHIP Participation Agreement on two separate pages on behalf of BBIL, as “its investment adviser.” (POC at 410, 414)

73. On or about November 29, 2016, BRe WNIC 2013 LTC Sub, as “Assignor,” and BBIL “(For its BBIL-SHIP Account),” (*i.e.*, for the BBIL-SHIP Custody Account), as

“Assignee,” entered into an “Elevation Assignment Agreement,” dated as of November 29, 2016, for effectiveness as of November 1, 2016 (the “**BRE BCLIC Sub Elevation Assignment Agreement**”) (POC at Schedule 8 ¶ 26; POC at 415-423), in which, as stated by SHIP in the POC, BRE WNIC 2013 LTC Sub assigned to BBIL for its BBIL-SHIP account, a \$365,331.02 interest in NPA Note 5, thereby elevating the NPA Note 5 participation interest held in the BBIL-SHIP account to an assignment effective as of November 1, 2016.” (POC at Schedule 8 ¶ 27; POC at 415-423) Feuer executed the BRE WNIC 2013 LTC Sub Elevation Assignment Agreement as “Authorized Signatory” of BAM II, which thereby executed the BRE WNIC 2013 LTC Sub Elevation Assignment Agreement on behalf of BBIL, as “its [BBIL’s] investment adviser.” (POC at 418)

C. BAM Administrative’s Role as Agent in Connection with the PPCO Loan Transactions

74. BAM Administrative is a “Beechwood entity” and “served as the administrative agent for all Beechwood-related debt investments that Beechwood acquired for the account of SHIP.” (SHIP Second Amended Complaint ¶ 248; POC at 549)

75. As noted above, as required by the NPA, BAM executed the Agency Agreement on behalf of SHIP. In the Agency Agreement, SHIP, BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary and BRe BCLIC Sub agreed that: “Each of the Noteholders hereby irrevocably appoints BAM Administrative Services LLC to act on its behalf as the Agent under the Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.” (POC at 204; POC at 354)

76. On or about December 23, 2015, PPCO MF, thirty-five (35) subsidiaries of PPCO MF, and BAM Administrative as “Agent” for SHIP (the “holder” of the Delayed Draw Demand Note), entered into a “Master Security Agreement” dated as of December 23, 2015 and addressed to BAM, “as Agent” (the “**MSA**”). (POC at Schedule 1 p.1, Schedule 4 pp. 1-2 & Schedule 8 ¶ 3) BAM Administrative executed the MSA “as Agent” for SHIP (the “holder of the [Delayed Draw Demand Note]”), under the words “AGREED AND ACKNOWLEDGED.” (POC at Schedule 1, p. 1, Schedule 4, pp. 1-2, Schedule 8 ¶ 3; POC at 67-96)

77. On or about December 23, 2015, thirty-five (35) subsidiaries of PPCO MF purportedly executed a “Subsidiary Guaranty” dated as of December 23, 2015 (the “**MSA Subsidiary Guaranty**”), and BAM Administrative executed the MSA Subsidiary Guaranty under the words “AGREED AND ACKNOWLEDGED” “as Agent” for SHIP and its “successors and assigns.” (POC at Schedule 8 ¶ 2; POC at 37-66)

78. On or about January 20, 2016, PPCO MF and 35 subsidiaries of PPCO MF executed a “Reaffirmation and Ratification Agreement” dated as of January 20, 2016 (the “**Ratification and Reaffirmation Agreement**”), and BAM Administrative executed that that agreement “as Agent” for SHIP. (Ratification and Reaffirmation Agreement, Weinick Decl. Ex. 18, Depo. Ex. 236 at 7; POC at Schedule 4 p. 2 & Schedule 8 ¶ 7; Narain Tr., Weinick Decl. Ex. 8 at 522:20-524:15; POC at 144-162)

79. In accordance with the NPA, on or about March 21, 2016, numerous subsidiaries of PPCO MF purportedly executed a “Subsidiary Guaranty” dated as of March 21, 2016 (the “**A&R MSA Subsidiary Guaranty**”), and BAM Administrative executed that the A&R MSA Subsidiary Guaranty under the words “Agreed and Acknowledged.” (A&R MSA Subsidiary Guaranty, Weinick Decl. Ex. 20; Narain Tr., Weinick Decl. Ex. 8 at 532:6-20; POC at Schedule

8 ¶ 14; POC at 288-323) Dhruv Narain executed the A&R MSA Subsidiary Guaranty as an “Authorized Signatory” of BAM Administrative, “as Agent” for the “Purchasers” under the NPA including SHIP. (A&R MSA Subsidiary Guaranty, Weinick Decl. Ex. 19, Depo. Ex. 238; Narain Tr., Weinick Decl. Ex. 8 at 532:6-20; POC at Schedule 5 at 1 & Schedule 8 ¶ 14; POC at 288-323)

80. In accordance with the NPA, on or about March 21, 2016, PPCO MF and BAM Administrative, “as Agent” for, among other parties, SHIP, entered into an “Amended and Restated Master Security Agreement” dated as of March 21, 2016 (the “**A&R MSA**”). Dhruv Narain executed the A&R MSA as an “Authorized Signatory” of BAM Administrative, “as Agent” for the “Purchasers” under the NPA, including SHIP. (A&R MSA, Weinick Decl. Ex. 20, Depo. Ex. 237; Narain Tr., Weinick Decl. Ex. 8 at 529:9-530:12; POC at Schedule 2 pp. 1-2, Schedule 4 p.1 & Schedule 8 ¶ 15; POC at 324-344)

D. SHIP’s Reaffirmation of Beechwood’s Status of Agent for SHIP in Asserting Claims under the Documents Executed by Beechwood on behalf of SHIP

81. “[I]n 2016, after learning that their investments were underperforming SHIP instructed Beechwood to reduce SHIP’s exposure to the Platinum Funds.” (SHIP Answer ¶ 206)

82. On or about October 21, 2016, BAM Administrative sent a letter “AS AGENT” for the “Investors” under the NPA including, among others, SHIP, to PPCO MF, pursuant to which, according to SHIP in the POC, “BAM confirmed the existence of certain Events of Default and reserved all rights” (the “**NPA ROR Letter**”). (POC at ¶ 23; POC at 377-380) In the NPA ROR Letter, BAM Administrative, as agent for SHIP, relied upon, among other documents, the NPA, the NPA Notes, the A&R MSA, the A&R MSA Subsidiary Guaranty, and the “Related Agreements” as defined in the NPA. (POC at 377)

83. On or about November 18, 2016, BAM Administrative sent a letter “AS AGENT” for the “Investors” under the NPA including, among others, SHIP, to PPCO MF, pursuant to which, according to SHIP in the POC, “BAM [Administrative] accelerated all obligations and liabilities owing by the Borrower to the Agent and the Investors under the NPA, the NPA Notes and other documents referred to therein” (the “**NPA Acceleration Letter**”) (POC ¶ 24; POC at 381-383) In the NPA Acceleration Letter, BAM Administrative, as agent for SHIP, relied upon, among other documents, the NPA, the NPA Notes, the A&R MSA, the A&R MSA Subsidiary Guaranty, and the “Related Agreements” as defined in the NPA, and the NPA ROR Letter. (POC at 381)

84. On or about April 6, 2018, R. Craig Martin of DLA Piper LLP (US), counsel for SHIP, sent a letter to the Receiver via email which purported “to provide further details regarding PPCO’s debt obligations to SHIP and SHIP’s security interests in PPCO’s and the Receivership Entities’ assets” (the “**April 6, 2018 Letter**”) (POC at Schedule 4 p. 2, Schedule 8 ¶ 33; POC at 456-460) In the April 6, 2018 Letter, SHIP relied upon, among other documents, the Delayed Draw Demand Note, the MSA, the Subsidiary Guaranty, the A&R Delayed Draw Demand Note, the Reaffirmation and Ratification Agreement, the NPA, the NPA Notes, the BRe BCLIC Sub to SHIP Participation Agreement, the BRe WNIC 2013 LTC Sub to SHIP Participation Agreement the Related Agreements” as defined in the NPA, the NPA ROR Letter and the NPA Acceleration Letter. (POC at 456-460)

85. On March 29, 2019, SHIP filed the POC in the receivership of the Receivership Entities. In the POC, SHIP purported to assert a secured claim in the amount of \$34,427,980.83 against PPCO MF and 36 of its subsidiaries or affiliates, as well as an unsecured claim in unknown amount. The secured claim asserted in in the POC was based upon the PPCO Loan

Transactions, including, among other agreements, the Delayed Draw Demand Note, the A&R Delayed Draw Demand Note and the NPA, which had been entered into and directed by the Beechwood Advisers in accordance with the agency established under the IMAs. (POC at 1, 19, 23-477)

86. In the support of the POC, SHIP relied upon and attached the following documents, among others, in order to establish amounts allegedly due to it and/or security interests in assets of PPCO MF and/or its subsidiaries and affiliates:

- the Delayed Draw Demand Note;
- the Subsidiary Guaranty;
- the MSA;
- the Reaffirmation and Ratification Agreement;
- the A&R Delayed Draw Demand Note;
- the NPA;
- the NPA Notes;
- the A&R Subsidiary Guaranty;
- the A&R MSA;
- the Agency Agreement;
- the December 23, 2015 Disbursement Letter;
- the December 30, 2015 Disbursement Letter;
- the March 21, 2016 Disbursement Letter;
- the NPA ROR Letter;
- the NPA Acceleration Letter;
- the BRé BCLIC Sub to SHIP Participation Agreement;

- the BRe BCLIC Sub Elevation Assignment Agreement;
- the BRe WNIC 2013 LTC Sub to SHIP Participation Agreement;
- the BRe WNIC 2013 LTC Sub Elevation Assignment Agreement;
- the SHIP to BBIL Participation Agreement;
- the SHIP to Old Mutual Bermuda Participation Agreement; and
- numerous UCC filing statements.

(POC at 23-96, 144-462)

87. Schedule 2 to SHIP's Proof of Claim states as follows:

Senior Health Insurance Company of Pennsylvania (“**SHIP**”) has perfected security interests in the Collateral described in the Master Security Agreement dated December 23, 2015, and in the Collateral described in the Amended and Restated Master Security Agreement dated March 21, 2016, which Collateral descriptions are set forth below.

(POC at 12)

88. Schedule 4 of SHIP's Proof of Claim further states, in pertinent part:

Basis for Perfection:

SHIP's security interests that were granted by Platinum Partners Credit Opportunities Master Fund, LP (“**PPCO**”) in the Collateral described in the Master Security Agreement dated December 23, 2015, and in the Collateral described in the Amended and Restated Master Security Agreement dated March 21, 2016, are perfected by the Uniform Commercial Code Financing Statement naming Platinum Partners Credit Opportunities Master Fund, LP, as the Debtor, and BAM Administrative Services LLC, as Agent... which covers all “assets and all personal property of the Debtor, whether now owned and/or hereafter acquired” (the “**PPCO Financing Statement**”).

In addition, SHIP's security interests that were granted by the following thirty-five (35) subsidiaries of PPCO (the “Initial Subsidiary Guarantors”) in the Collateral described in the Master Security Agreement dated December 23, 2015, were perfected by the filing of the Uniform Commercial Code Financing Statements filed with the Delaware Secretary of State on December 28, 2015, which cover “all assets and all personal property of the Debtor, whether now owned and/or hereafter acquired”...

(POC at 16)

89. In the POC, SHIP further relies upon UCC financing statements which it claims were filed by BAM Administrative, as SHIP, including:

- A “UCC Financing Statement identifying Platinum Partners Credit Opportunities Master Fund LP, as the Debtor, and BAM Administrative Services LLC, as Agent, as the Secured Party, filed with the Delaware Secretary of State on December 28, 2015 as U.C.C. Initial Filing No: 2015 6280993”; and
- “UCC Financing Statements identifying the Initial Subsidiary Guarantors as the Debtors, and BAM Administrative Services LLC, as Agent, as the Secured Party, filed with the Delaware Secretary of State on December 28, 2015.”

(POC at Schedule 8 ¶¶ 4-5; POC at 97-143)

90. On July 24, 2018, SHIP commenced an action in this Court against the Beechwood Advisers and several of their related persons and entities, as well as Beechwood principals, Mark Feuer, Scott Taylor, David Levy and Dhurv Narain, seeking to hold the defendants liable for, among other things, alleged fraud in connection with the exercise of the Beechwood Advisers’ powers under the IMAs (the “**SHIP-Beechwood Complaint**”). *See Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd., et al.*, 18-cv-06658 (S.D.N.Y., filed July 24, 2018) (“**SHIP-Beechwood Action**”) (Dkt. No. 1).

91. On December 28, 2018, SHIP filed its Second Amended Complaint and Demand for Trial by Jury in the SHIP-Beechwood Action. (SHIP Second Amended Complaint, POC at 463-588) Notwithstanding its allegations of massive and persuasive fraud in the Second Amended Complaint, rather than seeking rescission of the IMAs, in the SHIP-Beechwood Complaint, SHIP sought to enforce the IMAs as “contractually binding” agreements in their

action against Beechwood. (SHIP Second Amended Complaint, ¶¶ 283, 295, 307; POC at 561, 563, 564)

WHEREFORE, the Receiver respectfully requests that the Motion be granted and the Court grant her motion for partial summary judgment.

Executed: New York, New York
February 14, 2020

OTTERBOURG P.C.

/s/ Erik B. Weinick
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