

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, et al.,

Plaintiff,

v.

Case No. 1:18-cv-12018-JSR

BEECHWOOD RE LTD., et al.,

Defendants.

**LOCAL RULE 56.1 STATEMENT OF UNDISPUTED
AND MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Aidan M. McCormack (AMM 3017)
R. Brian Seibert (RS 1978)
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

James D. Mathias (admitted *pro hac vice*)
Kathleen A. Birrane (admitted *pro hac vice*)
Ellen E. Dew (admitted *pro hac vice*)
DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-3000

*Attorneys for Defendant
Senior Health Insurance Company
of Pennsylvania*

Pursuant to Local Civil Rule 56.1, Defendant Senior Health Insurance Company of Pennsylvania (“SHIP”) submits this statement of material facts as to which there is no genuine issue to be tried.

I. The Parties

A. SHIP

1. SHIP is a long-term care insurance company domiciled in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana. Exh. 1, Platinum Partners Credit Opportunities’s (“PPCO”) First Amended Complaint dated March 29, 2019 [ECF No. 209] (“FAC”) ¶ 50; Exh. 2, Answer of Senior Health Insurance Company of Pennsylvania [ECF No. 390] (“SHIP Ans.”) ¶ 50; Exh. 3, Deposition Transcript of Marc Kirschner (“Kirschner Tr.”) at 234:15–18.¹

2. SHIP is owned and overseen by a charitable trust, Senior Health Care Oversight Trust (the “Oversight Trust”), which was formed in or about 2008 and is organized under the laws of Pennsylvania. Exh. 4, SHIP Rule 7.1 Corporate Disclosure Statement [ECF No. 13] (“SHIP Disclosure”); Exh. 1, FAC ¶ 50; Exh. 5, Deposition Transcript of Thomas Hampton (“Hampton Tr.”) at 23:22–24:16.

3. The Oversight Trust was created specifically for the purpose of managing the run-off of SHIP’s long-term care insurance business. Exh. 5, Hampton Tr. at 23:22–24:16.²

¹ “Exh.” refers to exhibits attached to the Declaration of Aidan M. McCormack, dated February 14, 2020. Exhibits are numbered according to the order in which they appear in this Statement of Undisputed Material Facts.

² On January 29, 2020, SHIP was placed into rehabilitation at the request of the Pennsylvania Insurance Commissioner, who has been appointed as rehabilitator. Exh. 74, Rehabilitation Order. Under the Order of Rehabilitation, the Commissioner is charged with the duty to safeguard and to marshal SHIP’s assets for the benefit of its approximately 51,000 elderly policyholders who rely on the long-term care insurance policies issued by SHIP. *Id.*; Exh. 75, Application for Rehabilitation Order, at ¶ 6.

B. Platinum Partners and the PPCO Funds

4. Platinum Partners, an affiliated group of funds, was founded by Mark Nordlicht, Murray Huberfeld, and David Bodner (the “Platinum Founders”) in 2003, with the formation of the Platinum Partners Value Arbitrage Fund, L.P. and its related funds (collectively, “PPVA”) in 2003. Exh. 3, Kirschner Tr. at 96:13–97:6; Exh. 6, BW-SHIP-00826755 at 758; Exh. 7, CNOCSL_00268913 at 932; Exh. 8, Deposition Transcript of David Bodner (“Bodner Tr.”) at 61:12–62:19; Exh. 9, Deposition Transcript of Murray Huberfeld (“Huberfeld Tr.”) at 36:22–37:18.

5. In the fall of 2005, Platinum Partners Credit Opportunities Master Fund LP (“PPCO Master Fund”) was organized as the flagship fund of a family of funds (collectively, the “PPCO Funds”) marketed as a single-strategy hedge fund primarily focused on the origination of “short and medium term, high yield, debt secured by collateral, and/or equity investments.” Exh. 10, CTRL8217510 at 4, 11.

6. The PPCO Funds were organized in a “Master-Feeder” structure, whereby investors initially would contribute capital to an intermediate “feeder fund” that would then contribute the investors’ capital to PPCO Master Fund. Exh. 11, Deposition Transcript of Trey Rogers (“Rogers Tr.”) at 237:9–239:13; Exh. 12, BW-SHIP-00138306; Exh. 3, Kirschner Tr. at 201:20–202:21.

7. Each such feeder fund was constructed for different classes of investors, namely:
- a. Platinum Partners Credit Opportunities Fund LLC (“PPCO Fund LLC”) was organized for investors based in the United States and contributed investors’ capital directly to PPCO Master Fund in exchange for limited partnership interests in PPCO Master Fund;

- b. Platinum Partners Credit Opportunities Fund (TE) LLC (“PPCO Fund (TE)”) was organized for tax-exempt investors based in the United States; and
- c. Platinum Partners Credit Opportunities Fund International Ltd. and Platinum Partners Credit Opportunities Fund International (A) Ltd. (collectively, the “International Funds”) were organized for investors based outside of the United States.

Exh. 11, Rogers Tr. at 238:7–239:3, 240:16–25; Exh. 12, BW-SHIP-00138276 at BW-SHIP-00138306.

8. PPCO Fund (TE) and the International Funds contributed assets provided by investors to Platinum Partners Credit Opportunities Fund (BL) LLC (the “PPCO Blocker Fund,” or the “Blocker Fund”). Exh. 11, Rogers Tr. at 238:7–239:22; Exh. 13, BW-SHIP-00990460 at BW-SHIP-00990498. PPCO Blocker Fund was created for tax purposes as an onshore intermediary between PPCO Fund (TE) and the International Funds, on the one hand, and PPCO Master Fund, on the other. Exh. 11, Rogers Tr. at 238:7–239:22.

9. In exchange for their investments in PPCO Master Fund, PPCO Fund LLC and the PPCO Blocker Fund received limited partnership interests in the Master Fund. Exh. 11, Rogers Tr. at 243:11–13, 240:21–241:3. The Receiver’s Rule 30(b)(6) designee, Trey Rogers, described the limited partnership interests held by PPCO Fund LLC and PPCO Blocker Fund as “equity” in PPCO Master Fund. *Id.* at 240:21–241:3.

10. PPCO Master Fund invested the capital it received from PPCO Fund LLC and the Blocker Fund in assets spanning numerous industries, including oil and gas companies and metals and mining companies. Exh. 10, CTRL8217510 at 7.

11. As part of its overall organization and structure, PPCO Master Fund generally held its investments in separate limited liability companies that were organized solely for that purpose (the “PPCO Subsidiaries”). Exh. 11, Rogers Tr. at 165:11–168:25; Exh. 12, BW-SHIP-00138276 at BW-SHIP-00138306.

12. A limited set of the PPCO Subsidiaries also had subsidiaries of their own, as reflected in the organizational chart in Exhibit 12 at BW-SHIP-00138306. For purposes of this motion, the term “PPCO Subsidiaries” is limited to the direct subsidiaries of PPCO Master Fund, which appear as white boxes in the organizational chart.

13. Between 2005 and 2015, the PPCO Funds reported positive full-year returns of no less than 7.87% and as high as 18.95% on an annual basis. Exh. 10, CTRL8217510 at 11.

14. Platinum Credit Holdings LLC (the “PPCO Managing Member”) served as general partner of PPCO Master Fund. Exh. 7, CNOCSL_00268913 at 921; Exh. 14, BW-SHIP-00243846 at 848.

15. Platinum Credit Management, L.P. (the “PPCO Portfolio Manager”) served as PPCO Master Fund’s loan portfolio manager, which was responsible for determining how, when, on what terms, in which contexts, and to whom PPCO lent out money and conducted its investment operations. Ex. 8, Bodner Tr. at 109:10–13; Exh. 3, Kirschner Tr. at 208:12–20; Exh. 7, CNOCSL_00268913 at 921; Exh. 14, BW-SHIP-00243846.

16. At all times relevant to this Action, Mark Nordlicht was a principal of the PPCO Managing Member and the PPCO Portfolio Manager. Exh. 3, Kirschner Tr. at 208:12–18; Exh. 7, CNOCSL_00268913 at 931; Exh. 14, BW-SHIP-00243846 at BW-SHIP-00243850.

C. The PPCO Receiver

17. On December 19, 2016, the PPCO Master Fund and certain affiliated entities were placed in receivership following the filing of a complaint by the Securities and Exchange

Commission alleging numerous violations of federal securities law by the PPCO Portfolio Manager, Platinum Management (NY) LLC (the manager of PPVA), Mark Nordlicht, David Levy, and several other Platinum Partners associates. *See Securities & Exchange Commission v. Platinum Management (NY) LLC, et al.*, No. 16-CV-6848, [ECF No. 1] (E.D.N.Y.) (the “SEC Action”). Bart Schwarz initially was appointed as receiver on that date, but he subsequently resigned his position by letter dated June 23, 2017. *See SEC Action*, [ECF No. 170].

18. On October 16, 2017, Melanie L. Cyganowski (the “PPCO Receiver” or the “Receiver”) was appointed as receiver pursuant to a Second Amended Order Appointing Receiver entered in the SEC Action (the “Receivership Order”). Exh. 15, Receivership Order.

19. The Receivership Order authorizes the Receiver to pursue claims on behalf of the “Receivership Entities,” defined as the PPCO Portfolio Manager, PPCO Master Fund, PPCO Fund (TE), PPCO Fund LLC, the PPCO Blocker Fund, Platinum Liquid Opportunity Management (NY) LLC, and Platinum Partners Liquid Opportunity Fund (USA) L.P. *Id.* at 1.

20. The Receivership Order does not include either of the International Funds (described in paragraph 7 above) within the definition of “Receivership Entities,” but the Receiver identifies them as such in the FAC and purports to assert claims on their behalf. *Id.*; Exh. 1, FAC ¶¶ 29-30. The PPCO Subsidiaries also are not included within the definition of Receivership Entities. Exh. 15, Receivership Order at 1.

21. Under the terms of the Receivership Order, the only Receivership Entities that are “Feeder Funds” are PPCO Fund LLC and PPCO Fund (TE). *Id.*

22. The Receiver acknowledges that she stands in the shoes of the Receivership Entities and asserts claims to “recover and/or conserve Receivership Property.” Exh. 1, FAC ¶ 23; Exh. 15, Receivership Order ¶¶ 6.J., 34.

23. The Receivership Order defines “Receivership Property,” in relevant part, to mean the “property interests of the Receivership Entities” Exh. 15, Receivership Order ¶ 6.A.

24. The PPCO Subsidiaries, in which PPCO Master Fund holds equity interests, are not Receivership Entities. *Id.* at 1; Exh. 11, Rogers Tr. at 164:17–165:10.

25. The Receiver’s primary directive is to “marshal[] and preserv[e] all assets of” the Receivership Entities. Exh. 15, Receivership Order at 1.

II. The Platinum Founders Form Beechwood, and SHIP Is Fraudulently Induced to Enter into the Beechwood IMAs

26. In or about 2013, several Platinum insiders, including the Platinum Founders and David Levy, joined with Mark Feuer and Scott Taylor to establish a collection of corporate entities doing business under the trade name “Beechwood.” Exh. 16, Deposition Transcript of Scott Taylor (“Taylor Tr.”) at 14:13–19:21.

27. Beechwood was a family of reinsurance companies, investment managers, administrative companies, and holding companies organized for the purpose of gaining access to hundreds of millions of dollars in insurance assets. *See* Exh. 9, Huberfeld Tr. at 269:8–23; Exh. 17, CTRL3748840; Exh. 18, BW-SHIP-00000801; Exh. 3, Kirschner Tr. at 157:10–158:10.

28. SHIP was introduced to Beechwood Re (defined below) in late 2013. Exh. 19, Deposition Transcript of Brian Wegner (“Wegner Tr.”) at 29:25–32:4; Exh. 20, SHIP0019117; Exh. 3, Kirschner Tr. at 142:25–143:5.

29. Beechwood was owned and controlled by the Platinum Founders and Levy, with Taylor and Feuer respectively serving as President and CEO of Beechwood. Exh. 1, FAC ¶ 110; Exh. 2, SHIP Ans. ¶ 110; Exh. 18, BW-SHIP-00000801 at BW-SHIP-00000802; Exh. 21, BW-SHIP-00262451. The ownership interests of the Platinum Founders in Beechwood were held in various entities with generic names such as Beechwood Re Investments, LLC and Beechwood

Trust Nos. 1-20. Exh. 22, Deposition Transcript of Mark Feuer (“Feuer Tr.”) at 21:8–11, 22:19–22, 73:17–74:11.

30. Feuer and Taylor also held ownership interests in Beechwood through trusts bearing their respective last names. Exh. 23, BW-SHIP-00835874; Exh. 24, BW-SHIP-00835424. Beechwood’s management team principally consisted of individuals who, at one point or another, were employed by or otherwise affiliated with Platinum. Exh. 1, FAC ¶ 111; Exh. 2, SHIP Ans. ¶ 111; Exh. 25, CTRL6214675.

31. Between May 2014 and January 2015, SHIP entered into three Investment Management Agreements (the “IMAs”) with Beechwood Bermuda International Ltd. (“BBIL”), Beechwood Re Ltd. (“Beechwood Re”), and B Asset Manager LP (“BAM,” and collectively with BBIL and Beechwood Re, the “Beechwood Advisors” or “Beechwood”), respectively. Exh. 1, FAC ¶¶ 162, 165; Exh. 26, SHIP0019746-68; Exh. 27, SHIP0019769-92; Exh. 28, SHIP0019797-833.

32. Under the terms of the IMAs, SHIP granted Beechwood authority [REDACTED]

[REDACTED]

[REDACTED] Exh. 26 at ¶ 3; Exh. 27 at ¶ 3; Exh. 28 at ¶ 3.

33. In light of its broad discretionary authority, Beechwood did not present proposed investments to SHIP for SHIP’s approval before making those investments. Exh. 29, Deposition Transcript of John Robison, Rule 30(b)(6) designee of SHIP (“Robison Tr.”) Vol. I at 87:8-11; Exh. 30, Deposition Transcript of Christian Thomas (“Thomas Tr.”) at 430:6-13; Exh. 31, Deposition Transcript of Paul Lorentz (“Lorentz Tr.”) at 156:20-157:23, 172:15-173:3, 201:7-203:10; Exh. 19, Wegner Tr. at 232:2-234:4.

34. Through these IMAs, SHIP invested \$270 million with the three Beechwood Advisors and related companies. Exh. 19, Wegner Tr. at 229:18-20, 250:22–251:4.

35. SHIP lost a significant amount of the funds it invested through the IMAs through overvalued assets and performance fees charged based on the same overvaluations. Exh. 1, FAC ¶ 6; Exh. 2, SHIP Ans. ¶ 6; Exh. 32, Deposition of Timothy Hart (“Hart Tr.”) at 88:17–89:10; Exh. 33, Expert Rebuttal Report of Timothy Hart (“Hart Rebuttal Rpt.”) ¶ 24.³ A substantial portion of SHIP’s funds were invested in Platinum assets, including numerous PPCO Master Fund assets. Exh. 19, Wegner Tr. at 132:2-16, 212:11-223:12.

36. At no time prior to execution of the IMAs did Beechwood or its principals ever disclose to SHIP the substantial connections between Beechwood and Platinum Partners, including the Platinum Founders’ significant ownership stake in the Beechwood enterprise. Exh. 19, Wegner Tr. at 164:20–165:5, 180:5-16.

37. In fact, Beechwood’s principals went to significant lengths to ensure that any connections between Beechwood and Platinum were concealed from SHIP to the greatest extent possible, as detailed by Beechwood’s former chief investment officer, Daniel Saks. Exh. 34, Declaration of Daniel Saks dated October 10, 2019 (“Saks Decl.”) ¶¶ 65-75.

38. SHIP only became aware of any connection between Platinum and Beechwood in July 2016 (following the June 2016 arrest of Platinum Founder Huberfeld on federal bribery charges) through press reports that Beechwood representatives immediately attempted to downplay, assuring SHIP that Beechwood was taking [REDACTED]

³ The Hart Rebuttal Report was issued in response to the report of David Prager, the Receiver’s expert. At his deposition, Mr. Hart adopted the conclusions in his rebuttal report and stated that he did not wish to make any changes to it. Exh. 32, Hart Tr. at 9:7-11:3.

[REDACTED] Exh. 35; Exh. 19, Wegner Tr. at 180:5-16.

39. In fact, as late as July 26, 2016, Beechwood still was representing to SHIP that Beechwood was [REDACTED] and misleadingly stated that [REDACTED]

[REDACTED] Exh. 36. These were lies. The Platinum Founders still held significant ownership interests in Beechwood at the time of the July 26, 2016 letter. Exh. 16, Taylor Tr. at 192:7-194:3; *see generally*, Exh. 21.

III. The December 2015 and March 2016 Loan Transactions

A. The December 2015 Loan Transaction

40. On December 22, 2015, it was announced internally at Platinum that Mark Nordlicht, on behalf of PPCO Master Fund, had negotiated a loan funding with Beechwood whereby Platinum personnel understood that Beechwood was [REDACTED] [REDACTED] Exh. 37.

41. On the same day, [REDACTED] [REDACTED] [REDACTED]. Exh. 38. As reflected in the [REDACTED] [REDACTED] *Id.* at BW-SHIP-00138277. No person at SHIP was included on this e-mail correspondence.

42. Over the next day, Platinum and Beechwood traded revised drafts of the loan documents. Exhs. 39-42. Ms. Horowitz provided comments to the draft documents on behalf of Platinum. Exh. 41.

43. The parties ultimately finalized and executed the transaction documents on December 23, 2015. Beechwood affiliate B Asset Manager LP, acting on SHIP's behalf as its agent, executed a Delayed Draw Demand Note that permitted PPCO Master Fund to draw a maximum of \$15.5 million from SHIP (the "December 2015 SHIP Note"). Exhs. 43 & 44, BW-SHIP-01332105 at BW-SHIP-01332159 and BW-SHIP-01331549 at BW-SHIP-01331590, respectively.⁴ The note carried a 7% annual interest rate. *Id.* at § 2.

44. Mark Nordlicht executed the December 2015 SHIP Note on behalf of PPCO Master Fund in his capacity as chief investment officer. Exh. 44 at BW-SHIP-01331595. Nordlicht possessed the authority to enter into that transaction on behalf of PPCO Master Fund. Exh. 16, Taylor Tr., Vol II, 594:11-19, 596:8-20.

45. To secure PPCO Master Fund's promise to pay under the December 2015 SHIP Note, PPCO Master Fund and the PPCO Subsidiaries granted to SHIP a security interest in all of their assets (the "Master Security Agreement"). Exh. 43, BW-SHIP-01332105 at BW-SHIP-01332131. Specifically, the Master Security Agreement granted to BAM Administrative Services, LLC ("BAM Admin"), as agent for SHIP, a continuing security interest in all of the property then owned or at any time thereafter acquired by PPCO Master Fund or the PPCO Subsidiaries. *Id.* § 1.

46. As was the case with the December 2015 SHIP Note, Mark Nordlicht possessed the authority to, and did, execute the Master Security Agreement on behalf of the Master Fund and each of the PPCO Subsidiaries. Exh. 16, Taylor Tr., Vol II, 594:11-19, 596:8-20.

47. The PPCO Subsidiaries also executed a guarantee of repayment of the note in the event of a default by PPCO Master Fund (the "December 2015 Subsidiary Guaranty"). Exh. 43

⁴ Exhibits 43 and 44 represent the transaction documents as executed by Platinum and Beechwood, respectively. Both exhibits are included here to provide the Court with a fully executed set of documents.

BW-SHIP-01332105 at BW-SHIP-01332108. Specifically, the December 2015 Subsidiary Guaranty provides that the PPCO Subsidiaries guarantee, on a joint and several basis, [REDACTED]

[REDACTED] the December 2015 SHIP Note or the Master Security Agreement. *Id.*

48. Mark Nordlicht again executed the Subsidiary Guaranty on behalf of the PPCO Subsidiaries. Exh. 44, BW-SHIP-01331549 at BW-SHIP-01331605-617.

49. Concurrent with the execution of the December 2015 SHIP Note, PPCO Master Fund drew \$9,198,750.00 of the \$15.5 million available under the note. Exh. 43, BW-SHIP-01332105 at BW-SHIP-01332159, § 1(a).

50. Pursuant to a direction letter issued by PPCO Master Fund to SHIP, c/o B Asset Manager, LP, that exact amount in cash was drawn from SHIP's account at Wilmington Trust and sent to BAM Admin via wire transfer on December 23, 2015. Exh. 44, BW-SHIP-01331549 at BW-SHIP-01331588; Exh. 45, BW-SHIP-00834169; Exh. 46, WT 0000565-574.

51. PPCO Master Fund then used these loan proceeds to purchase participation interests in \$9.2 million of secured debt owed by Desert Hawk Gold Corporation ("Desert Hawk"), a PPVA investment, to DMRJ Group I LLC, the PPVA subsidiary through which PPVA held its investment in Desert Hawk. Exh. 43 at BW-SHIP-01332156-58, 65-70; Exh. 11, Rogers Tr. at 130:13-25.

52. At the time, those participation interests were held by two Beechwood entities, Beechwood Re and BBIL, as reflected in the assignment agreements evidencing the sale of the participation interests to PPCO Master Fund:

- a. Beechwood Re sold its \$4 million participation interest in Desert Hawk debt to PPCO Master Fund for a purchase price of \$4,088,333.34, which

represented the \$4 principal amount of the debt plus accrued interest, *see* Exh. 43 at BW-SHIP-01332168;

- b. BBIL sold its 50% share of a \$6.65 million participation interest in Desert Hawk debt to PPCO Master Fund for a purchase price of \$3,398,427.08, which represented the \$3.325 million principal amount of the debt plus accrued interest, *see* Exh. 43 at BW-SHIP-01332156; and
- c. BBIL sold its 50% share of a \$3.35 million participation interest in Desert Hawk debt to PPCO Master Fund for a purchase price of \$1,711,989.58, which represented the \$1.675 million principal amount of the debt plus accrued interest, *see* Exh. 43 at BW-SHIP-01332165.

53. SHIP held no interest in Desert Hawk at the time these Assignment Agreement transactions took place. Exh. 30, Thomas Tr. 387:15-390:20, 396:14-397:4, 399:15-400:9; Exh. 33, Hart Rebuttal Rpt. ¶ 19; Exh. 46; Exh. 47, WT 0000565-574; Exh. 48, WT 0001257-272.

54. One week later, on December 30, 2015, PPCO Master Fund drew an additional \$5 million in cash from SHIP's Wilmington Trust account pursuant to the December 2015 SHIP Note. Exh. 44 at BW-SHIP-01331586; Exh. 48, WT 0001257-272; Exh. 49, BW-SHIP-01333660.

55. PPCO Master Fund used that cash to repay [REDACTED] a wholly owned subsidiary of PPCO Master Fund, under four Secured Term Notes originally issued to BRe WNIC 2013 Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary, and BRe BCLIC Sub (collectively, the "WNIC/BCLIC Trusts") on June 3, 2014. Exh. 11, Rogers Tr. at 126:2-4; Exh. 44 at BW-SHIP-01331549; Exh. 50. The WNIC/BCLIC Trusts have no relation to SHIP. Exh. 1, FAC ¶¶ 118, 120.

56. The LC Energy indebtedness carried an annual interest rate of 18% and bore a maturity date of December 2, 2015. Exh. 16, Taylor Tr. at 590:21-25; Exh. 50 at 9 ([REDACTED]), §§ 2.2(b), 2.3. LC Energy [REDACTED] [REDACTED] Exh. 50 at § 2.2(b). By December 21, 2015, the lender on the LC Energy debt was inquiring about the maturity date, which had already passed. *See* Exh. 73, CNOCSL00530458.

57. In addition, PPCO Master Fund fully guaranteed the LC Energy debt pursuant to a guarantee executed on June 3, 2014, the same day the Secured Term Notes were issued. Exh. 11, Rogers Tr. at 139:22-140:10; Exh. 52 at BW-SHIP-00980963.

58. Altogether, therefore, PPCO Master Fund drew approximately \$14.2 million in cash from SHIP's Wilmington Trust accounts under the December 2015 SHIP Note. Exh. 44; Exh. 45; Exh. 46; Exh. 48; Exh. 49.

59. The Receiver's expert, David Prager, concedes that cash is worth its face value. Exh. 53, Deposition Transcript of David Prager ("Prager Tr.") at 176:18-25.

60. Shortly thereafter, on January 20, 2016, the December 2015 SHIP Note was amended and restated to increase the maximum amount available for withdrawal to \$18.5 million (the "January 2016 A&R SHIP Note"). Exh. 54, BW-SHIP-0167640 at BW-SHIP-0167658. As with the December 2015 SHIP Note, Beechwood executed the January 2016 A&R SHIP Note on SHIP's behalf. *Id.* at BW-SHIP-0167664.

61. PPCO Master Fund then immediately drew an additional \$2 million in cash from SHIP's account, which was directed to PPCO Master Fund's Capital One Bank account in Brooklyn, New York. *Id.* at BW-SHIP-0167657; Exh. 55, WT 0000195.

62. The Receiver has been unable to account for the whereabouts of this additional \$2 million. Exh. 3, Kirschner Tr. at 331:17-333:13.

63. PPCO Master Fund and the PPCO Subsidiaries also executed a Reaffirmation and Ratification Agreement on January 20, 2016, which explicitly acknowledges, ratifies, and confirms that all of the terms, conditions, representations, and covenants contained in the December 23, 2015 Master Security Agreement and Subsidiary Guaranty remained remain in full force and effect following execution of the January 2016 A&R SHIP Note. Exh. 54, BW-SHIP-0167640 at BW-SHIP-0167641.

B. The March 2016 Loan Transaction

64. In or about February 2016, Platinum and Beechwood began negotiating a new loan transaction that they referred to as the “PPCO Restructuring”; documentation of the terms of the contemplated transaction began with the exchange of various iterations of a term sheet between Dhruv Narain, on behalf of Beechwood, and David Steinberg, on behalf of Platinum. Exhs. 56-59.

65. Towards the end of February, Platinum general counsel Suzanne Horowitz and Beechwood general counsel Christian Thomas became involved in the negotiations, along with Beechwood’s outside counsel at Loeb and Loeb. Exh. 60, B000638654-655; Exh. 61, BW-SHIP-01513109; Exh. 62, BW-SHIP-00170607-608; Exh. 63, BW-SHIP-00877098-100; Exh. 64, BW-SHIP-00877961-963.

66. David Steinberg, one of the lead negotiators of the transaction for Platinum, testified that the purpose of the proposed transaction was to “reduce[] interest rates . . . [,] defer[] interest payments, and [] free[] up Agera from its encumbrances.” Exh. 65, Steinberg Tr. at 360:14-361:3.

67. “Agera” referred to retail energy company Agera Energy LLC, in which PPCO Master Fund held an equity interest through its 45% equity interest in Principal Growth Strategies, LLC (“PGS”); PPVA held the remaining 55% interest in PGS. At the time, PPCO Master Fund’s equity interest was encumbered by a pledge of that interest (the “Agera Pledge”) as security for the indebtedness of Northstar GOM Holdings, Inc. (“Northstar”), a PPVA investment. Exh. 52, BW-SHIP-000980925-965 at BW-SHIP-000980980-967; Exh. 66, Expert Report of David Prager (“Prager Rpt.”) at p. 8.⁵

68. Ultimately, on March 21, 2016, Beechwood—again acting on behalf of SHIP—executed a loan transaction whereby the January 2016 A&R SHIP Note, which had not been repaid, was rolled over into a new Second Amended and Restated Secured Term Note in the amount of approximately \$43 million (the “March 2016 SHIP Note”). Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175443-452.

69. In exchange for an approximate increase of \$26.8 million in the principal amount previously owed to SHIP under the January 2016 A&R SHIP Note, Beechwood caused SHIP to loan \$25.7 million in additional cash and assets to PPCO Master Fund. Exh. 33, Hart Rebuttal Rpt. ¶ 22 & Table 2.

70. The \$25.7 million in cash and assets contributed from SHIP’s accounts to PPCO Master Fund consisted of (i) approximately \$9.9 million in cash; and (ii) a direct holding of \$15.8 million in Northstar debt. Exh. 33, Hart Rebuttal Rpt. ¶ 22, Table 2, App’x Y.1, & App’x Z; Exh. 68.

⁵ At his deposition, Mr. Prager adopted the conclusions in his report and stated that there were no substantive changes that he wished to make to it. Exh. 53, Prager Tr. at 14:19-15:4.

71. Beechwood initially had caused SHIP to acquire an interest in the Northstar debt on or about September 19, 2014, in an all-cash transaction. Exh. 32, Hart Tr. at 111:25–112:10, 113:11–114:18, 120:5–121:4; Exh. 33, Hart Rebuttal Rpt. ¶ 23, App’x Z; Exh. 69, WT 0000713 at WT 0000717, 719.

72. SHIP’s initial acquisition of the Northstar debt was accompanied by the execution of the Agera Pledge. Exh. 33, Hart Rebuttal Rpt. ¶ 23; Exh. 52 at BW-SHIP-00980967; Exh. 66, Prager Rpt. at 8.

73. PPCO Master Fund’s acquisition of the Northstar debt as a result of the March 2016 loan transaction enabled PPCO Master Fund to release the Agera Pledge. Exh. 33, Hart Rebuttal Report ¶ 23; Exh. 66, Prager Rpt. at 8.

74. The Receiver’s expert estimates that PPCO Master Fund’s acquisition of the Northstar debt created between \$23.8 million and \$27.2 million in value for PPCO Master Fund. Exh. 66, Prager Rpt. at 29.

75. In light of SHIP’s prior acquisition of the Northstar debt for cash consideration and the increase in value of PPCO Master Fund’s interest in Agera resulting from the release of the Agera Pledge, the value of the Northstar debt transferred by SHIP is properly assigned its face value of \$15.8 million. Exh. 33, Hart Rebuttal Rpt. ¶ 24; Exh. 66, Prager Rpt. at 8, 33.

76. As a result, SHIP transferred \$25.7 million in value in connection with March 2016 SHIP Note, or 96% of the \$26.8 million increase in the amount PPCO Master Fund promised to repay to SHIP under that note. Exh. 33, Hart Rebuttal Rpt. ¶ 26.

77. As security for PPCO Master Fund’s promise to pay under the March 2016 SHIP Note, the parties executed an Amended and Restated Master Security Agreement (“March 2016 A&R MSA”). Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175295. The March 2016 A&R

MSA provided that the [REDACTED]

[REDACTED]

[REDACTED] *Id.*

§ 1.

78. In addition to reaffirming and ratifying the security interests previously granted, the March 2016 A&R MSA further granted SHIP a security interest in, among other things, PPCO Master Fund's [REDACTED]

[REDACTED]

[REDACTED]. *Id.* § 2 (emphasis added). [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at BW-SHIP-00175298 § 4(k),

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79. As further security for PPCO Master Fund's promise to pay, the PPCO Subsidiaries executed a Subsidiary Guaranty to guarantee repayment of the note in the event of a default by PPCO Master Fund. Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175310.

80. Dhruv Narain, acting on behalf of SHIP, executed the foregoing transaction documents in his capacity as chief investment officer of Beechwood, and Mark Nordlicht executed the documents on behalf of PPCO Master Fund and the PPCO Subsidiaries. *See generally* Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175319-335; Exh. 30, Thomas Tr. at 409:18-410:2, 426:8-13, 430:6-13.

81. The March 2016 SHIP Note ultimately was rolled into a Note Purchase Agreement (the "NPA"), which also covered Secured Term Notes issued by PPCO Master Fund in favor of

the BCLIC/WNIC Trusts with an aggregate face value of approximately \$26.2 million. Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175344.

82. PPCO Master Fund directed a portion of the funds obtained under the NPA to PPVA so that PPVA could acquire an additional \$23.2 million in Northstar debt, thus effectuating a release of PPVA's obligations under the Agera Pledge. Exh. 66, Prager Rpt. at 8.

83. In exchange for these funds, PPVA increased the amount that it owed to PPCO Master Fund under an interfund loan agreement by \$23.2 million. Exh. 66, Prager Rpt. at 8; Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175438.

84. Mr. Prager values this \$23.2 million increase in the PPCO-PPVA interfund loan at its face amount. Exh. 66, Prager Rpt. at 11.

85. Viewing all of the foregoing transactions in the aggregate, the Receiver's expert opines that PPCO Master Fund transferred \$52.8 million in value in the form of the promises to pay made under the Secured Term Notes covered by the NPA. Exh. 66, Prager Rpt. at 28.

86. The Receiver's expert further opines that PPCO Master Fund received between \$47 million and \$50.5 million in exchange for its promises to pay. *Id.* at 29. The Receiver's expert confirmed that these figures represent between 89% and 96% of the value that PPCO Master Fund transferred when the various March 2016 transactions. Exh. 53, Prager Tr. at 221:8–222:2.

87. As of the most recent Wilmington Trust account statements available, the March 2016 SHIP Note had not been repaid. Exh. 33, Hart Rebuttal Rpt. ¶ 26; Exh. 70, WT 0000787-800 at WT 0000794 (listing two assets identified as "PPMF 2016 Secured Term Note" valued at a total of \$13,755,144.50).

C. SHIP Was Neither Aware of Nor Involved in the Execution of the December 2015 and March 2016 Loan Transactions

88. The December 2015 SHIP Note, the January 2016 A&R SHIP Note, the March 2016 SHIP Note, and all related transactions were undertaken without SHIP's knowledge or consent, as established by the following deposition testimony and documentary evidence:

- a. Brian Wegner, SHIP's CEO at the time of the transactions, testified that he had never even seen the documents evidencing the December 2015 and March 2016 Transactions before. Exh. 19, Wegner Tr. at 231:12-237:7.
- b. Paul Lorentz, SHIP's CFO at the time of the transactions, similarly testified that he had never seen the documents evidencing the December 2015 and March 2016 Transactions before and was not involved in any contemporaneous communications concerning those transactions. Exh. 31, Lorentz Tr. at 165:3-166:11, 176:3-177:2.
- c. John Robison, SHIP's Rule 30(b)(6) designee, testified that he was unaware of any information to suggest that anyone at SHIP had knowledge of the transactions at or around the time of their execution. Exh. 29, Robison Tr. at 126:22-140:8.
- d. Beechwood's Rule 30(b)(6) witness, Christian Thomas, testified that he did not "believe SHIP approved" the December 2015 Transactions documents and was unaware of any communications between SHIP and Beechwood concerning the March 2016 Transaction. Exh. 30, Thomas Tr. at 401:4-7, 401:25-402:17, 405:14-25, 409:18-410:2, 426:8-13, 430:6-13.
- e. Mark Feuer, Beechwood's CEO at the time of the December 2015 and March 2016 Transactions, testified that the December 2015 and March 2016

Transactions were executed at Platinum's behest and that he was unaware of any communications between anyone at SHIP and anyone at Beechwood "requesting in any shape or fashion diversification out of the [Platinum] assets that were purchased with regard to our relationship." Exh. 22, Feuer Tr. at 209:20-212:19, 341:20-25, 342:12-343:16, 367:24-368:4, 381:4-382:25, 462:24-464:11.

- f. Both of the Receiver's Rule 30(b)(6) designees testified that they could not identify a single piece of evidence even suggesting that anyone at SHIP was aware of either transaction, despite having access to "10 million documents" that the Receiver's counsel "did a very thorough job of vetting." Exh. 3, Kirschner Tr. at 175:7-176:8, 178:6-181:4, 188:6-18; Exh. 11, Rogers Tr. at 122:3-25, 123:20-124:19.
- g. Documentary evidence shows that no individual from SHIP was included on any contemporaneous e-mail communications concerning the transactions. Exhs. 38-42, 56-64.

89. The Receiver's Rule 30(b)(6) designee further testified that Beechwood breached the fiduciary duty it owed to SHIP by executing the December 2015 and March 2016 loan transactions because Beechwood was operating under a conflict of interest in light of the overlapping roles of key individuals at Beechwood and Platinum. Exh. 3, Kirschner Tr. at 41:15-42:24, 43:17-22, 169:24-170:5, 173:21-174:2.

90. In addition, as described above, Beechwood was committing an ongoing fraud against SHIP at the time of these transactions, as it continued to conceal the true nature of its relationship with the Platinum Founders and other Platinum-related individuals and entities. *See,*

e.g., Exh. 16, Taylor Tr. at 192:7-194:3; Exh. 19, Wegner Tr. at 164:20–165:5, 180:5-16; Exh. 21, BW-SHIP-00262451-263181; Exh. 34, Saks Decl. ¶¶ 65-75.

D. PPCO Master Fund Was Solvent and Did Not Have Unreasonably Small Capital at the Time of the Transactions

91. The Receiver’s expert report sets forth an analysis of [REDACTED]
[REDACTED]
[REDACTED]. Exh. 66, Prager Rpt. at 12-16, 42.

92. As part of that analysis, the Receiver’s expert states that [REDACTED]
[REDACTED]
[REDACTED]” Exh. 66, Prager Rpt. at 12.

93. The Receiver [REDACTED]
[REDACTED]. *Id.* Mr. Prager [REDACTED]
[REDACTED]. Exh. 66, Prager Rpt. at 42.

94. For purposes of his balance-sheet test, Mr. Prager [REDACTED]
[REDACTED]
[REDACTED]. *Id.*

95. According to Mr. Prager, [REDACTED]
[REDACTED]
[REDACTED]. *Id.*

96. As of December 2015 and March 2016, no “Rescission Claims” had been asserted by any investor against PPCO Master Fund. Exh. 11, Rogers Tr. at 214:22–215:10; Exh. 53, Prager Tr. at 194:11-24.

97. Mr. Prager has confirmed that [REDACTED]

[REDACTED]
[REDACTED] Exh. 53, Prager Tr. at 192:7-193:2; Exh. 66, Prager Rpt. at 42-43.

98. [REDACTED]

[REDACTED]” Exh. 66, Prager Rpt. at 12. [REDACTED]

[REDACTED]. See Exh. 53, Prager Tr. at 191:3-22.

99. The Receiver’s Rule 30(b)(6) designee similarly could not provide any detail as to how “non-insiders” were identified, testifying generally that he “was given a parameter of what, in general, the receivership is viewing as non-insiders.” Exh. 11, Rogers Tr. at 227:9-15.

100. The Receiver has only provided a spreadsheet containing [REDACTED]

[REDACTED]. Exh. 71. The spreadsheet

101. Joseph SanFilippo was the PPCO Funds’ chief financial officer at the time of the December 2015 and March 2016 transactions. Exh. 72, Deposition Transcript of Joseph SanFilippo (“SanFilippo Tr.”) at 366:7-369:1.

102. Mr. SanFilippo testified that, based on his knowledge and understanding of PPCO Master Fund’s financial condition and the valuation reports prepared by third-party companies that assessed the fund’s assets, PPCO Master Fund was solvent both before and after the December 2015 and March 2016 transactions and never sustained any indication of going concern. Exh. 72,

Sanfilippo Tr. at 375:9–376:18, 377:18–24, 380:25–381:19, 387:6–388:17, 395:16–397:2, 403:12–404:10, 407:15–409:23.

103. Mr. SanFilippo’s testimony is consistent with the representations and warranties made by PPCO Master Fund and the PPCO Subsidiaries in connection with the December 2015 transaction. In the December 2015 Subsidiary Guaranty, the PPCO Subsidiaries represented and warranted that as of the date of the Guaranty, the fair saleable value of each of their assets exceeded each of their liabilities and that each of the entities was meeting its current liabilities as they matured. Exh. 43 at BW-SHIP-01332112.

104. The PPCO Subsidiaries further represented and warranted that each of them “has derived or expects to derive a financial or other advantage from each and every loan, advance or extension of credit made under the Documents or other Obligation incurred by the Company to the Creditor Parties.” *Id.*

105. In the December 2015 Master Security Agreement, PPCO Master Fund represented and warranted that, at all relevant times, the shareholders’ equity, as reflected on its balance sheet (less all contingent obligations and its direct and indirect subsidiaries), shall be no less than \$375 million and that the collateral of PPCO and the PPCO Subsidiaries shall have a value, as reasonably determined by BAM Admin, of no less than three times the amount of their outstanding obligations at such time. *Id.* at BW-SHIP-01332132.

106. PPCO Master Fund and the PPCO Subsidiaries made essentially identical representations and warranties in the March 2016 Subsidiary Guaranty and the March 2016 MSA. Exh. 67 at BW-SHIP-00175289-452.

107. The representations and warranties in both the December 2015 and March 2016 transaction documents were reviewed and vetted by, among others, Platinum general counsel Suzanne Horowitz before execution of the transactions. Exhs. 41, 60-64.

108. Mr. SanFilippo testified that these representations and warranties were true and accurate at the time they were made. Exh. 72, SanFilippo Tr. at 395:21-396:11, 408:19-409:23.

Dated: New York, New York
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DLA PIPER LLP (US)

By: /s/ Aidan M. McCormack
Aidan M. McCormack (AMM 3017)
R. Brian Seibert (RS 1978)

1251 Avenue of the Americas
New York, New York 10020
(212) 335-4500

James D. Mathias (admitted *pro hac vice*)
Kathleen A. Birrane (admitted *pro hac vice*)
Ellen E. Dew (admitted *pro hac vice*)
DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-3000

*Attorneys for Defendant
Senior Health Insurance Company
of Pennsylvania*