

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE PLATINUM-BEECHWOOD LITIGATION, X
: Civil Action No.
: 1:18-cv-06658

MELANIE L. CYGANOWSKI, AS RECEIVER FOR X
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.,

:

**RECEIVER’S COUNTERSTATEMENT OF MATERIAL AND UNDISPUTED
FACTS IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT FILED BY
(I) SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, (II) THE
BEECHWOOD DEFENDANTS AND (III) PB INVESTMENT HOLDINGS, LTD.**

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Pursuant to Local Civil Rule 56.1 Plaintiff Melanie L. Cyganowski, as Receiver (the “**Receiver**”) for the above named plaintiffs, submits this counterstatement of undisputed and material facts in opposition to the motions for summary judgment filed by (i) Senior Health Insurance Company of Pennsylvania (“**SHIP**”) (ECF No. 498), (ii) the Beechwood Entities (defined below) (ECF No. 488) and (iii) PB Investment Holdings, Ltd. (“**PBIH**”) (ECF No. 492).¹

I.

SUMMARY OF THE FACTS

1. The Criminal Action, the SEC Action, the SHIP Action, the PPVA Action and this action are predicated on the now widely established fact that Nordlicht and the PPCO and PPVA Portfolio Managers he controlled were actively engaged in several fraudulent schemes designed to benefit Nordlicht, certain other Platinum insiders and their families. *See, e.g.*, Criminal Action Indictment and complaints filed in SEC Action, the SHIP Action, the PPVA Action and the FAC.

2. Specifically, dating as far back as 2012, Nordlicht overvalued the assets held by the Platinum Funds in an effort to (i) continue selling limited partnership interests in the PPCO Funds

¹ Unless otherwise stated, all of the documents referenced below are attached as exhibits to the *Declaration of Erik B. Weinick in Opposition to SHIP’s Motion for Summary Judgment* (“**Weinick Dec.**”) or have previously been submitted to this Court through the:

- (i) *Declaration of Aidan M. McCormack*, dated February 14, 2020 (“**McCormack Dec.**”) (ECF No. 765);
- (ii) *Declaration of Donald H. Chase in Support of the Huberfeld Family Foundation, Inc.’s Motion for Summary Judgment* (the “**Chase Dec.**”) (ECF No. 744);
- (iii) *Declaration of Erik B. Weinick in Support of the Receiver’s Motion for Partial Summary Judgment* (the “**Weinick Agency Dec.**”) (ECF No. 761); or
- (iv) *Declaration of William Ridgeway* (the “**Ridgeway Dec.**”) (ECF Nos. 752, 753).

All transcripts of deposition testimony cited herein are referred to as “**(Deponent’s last name) Tr. [page:line]**”

and (ii) maintain his ability to charge management fees calculated on the PPCO Funds' net asset value. SHIP Crossclaims ¶ 245.

3. As the Chief Investment Officer of the Platinum Funds, Nordlicht had exclusive authority to value the funds' assets and when Platinum employees attempted to address the evident overvaluation of assets, Nordlicht admonished them: "make sure you don't affect my returns too badly." Weinick Ex. 19, Mandelbaum Crim. Trial Test., 4268:1-4269:11.

4. Notwithstanding Nordlicht's efforts to raise capital by advertising false returns, the Platinum Funds desperately needed additional liquidity to satisfy growing redemption requests. Rogers Dec. ¶ 47. To that end, Nordlicht endeavored to obtain the much needed liquidity through the creation of Beechwood. Weinick Dec. Ex. 8, Saks Tr., 36:14-43:2 (Nordlicht told Saks that Platinum would have capital from an insurance company he was creating called Beechwood).

5. 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. Weinick Dec. Ex. 14, Huberfeld Tr., 269:8-23; McCormack Dec. Ex. 17 (CTRL3748840); McCormack Dec. Ex. 18 (BW-SHIP-00000801); Weinick Dec. Ex. 20, Kirschner Tr., 157:10-158:10.

6. Beechwood was specifically created to attract institutional investors that the Platinum Funds themselves could not directly attract. SHIP Complaint ¶ 59.

7. Nordlicht was ultimately successful in gaining capital for the Platinum Funds from Beechwood given his ownership and influence over it. *See* Section II.E, F, *infra*. In turn, Beechwood obtained funds from SHIP to invest in Platinum related assets. *See* Section II., H., *infra*.

8. Indeed, in just a short period of time, between 2014 and late 2015, the Platinum Funds, Beechwood and SHIP engaged in countless transactions wherein Beechwood and SHIP purchased both limited partnership interests in the Platinum Funds and came to hold debt and equity positions in their portfolio companies. ¶¶ 124-127, *infra*. In or about November and/ or December 2015, PPCO and SHIP, through its agent, Beechwood, embarked on negotiating, documenting and consummating an integrated transaction designed to restructure the parties' relationship. Specifically, the PPCO Loan Transaction was intended to, *inter alia*, reduce SHIP's exposure to Platinum related assets and certain other unrated assets which were nonperforming. But there was no intended, or realized, benefit to PPCO. As established in detail below:

- (i) In or about the time of the PPCO Loan Transaction SHIP directed the reduction of its interests in Platinum to a level below \$5.5 million in accordance with stated investment guidelines, Weinick Dec. Ex. 11, Narain Tr., 485:20-487:24, 533:17-534:5, 584:3-588:5; *see also* Weinick Dec. Ex. 6, Thomas Tr., 375:25-376:22 (Beechwood's 30(b)(6) witness adopting Narain's testimony concerning ongoing discussions in and January 2016 to divest SHIP's Platinum assets at SHIP's request).
- (ii) SHIP was actively seeking to increase its risk based capital by exiting unrated loans and investing in rated loans. Weinick Dec. Ex. 13, Serio Tr., 181:11-15.
- (iii) Despite having admitted that encumbering all of the assets of the PPCO Fund would place a stranglehold on it, Nordlicht nevertheless compelled PPCO to enter into the PPCO Loan Transaction to appease SHIP (to avoid regulatory takeover) so that its money remained with Platinum. *See* ¶ 154 and Section II.L, *infra*. Left holding

the bag: the creditors and investors of PPCO, whose interests were never considered by Nordlicht when he negotiated the PPCO Loan Transaction.

9. Based on the forgoing, and as established below, there are ample facts demonstrating that the PPCO Loan Transaction was actually and/ or constructively fraudulent. Section II.S.T, *infra*.

II.

THE FACTS UNDERLYING THE RECEIVER'S ACTION

A. Procedural History

10. On July 24, 2018, SHIP commenced an action in this Court against the Beechwood Advisers (defined below) and several of their related persons and entities (the "**SHIP Action**"). *Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd., et al.*, 18-cv-06658, ECF No. 1.

11. On November 21, 2018, Martin Trott and Christopher Smith, as the Court-appointed Joint Official Liquidators and Foreign Representatives of PPVA (defined below), filed a complaint against over fifty defendants (the "**PPVA Action**"). *Trott, et al. v. Platinum Management (NY) LLC, et al.*, 18-cv-10936, ECF No. 1.

12. On December 19, 2018, the Receiver filed a complaint (the "**Receiver's Original Complaint**") in this Court asserting multiple causes of action against, among others, (i) the Beechwood Entities, (ii) SHIP, (iii) Fuzion Analytics, Inc. ("**Fuzion**"), (iv) CNO Financial Group, Inc. ("**CNO**"), (v) Bankers Conesco Life Insurance Company ("**BCLIC**"), (vi) Washington National Insurance Company ("**WNIC**") and (vii) 40|86 Advisors, Inc. ("**40|86 Advisors**"). *Cyganowski, et al v. Beechwood Re LTD. et al.*, 18-cv-12018, ECF No. 1.

13. On March 29, 2019, the Receiver amended the Receiver's Original Complaint by filing a First Amended Complaint (the "**FAC**"). ECF No. 81.

14. Following an August 18, 2019 order of this Court, the remaining claims held by the Receiver are:

- (i) SHIP. Fraudulent conveyance claims, unjust enrichment and declaratory judgment.
- (ii) BAM Administrative: Aiding and abetting breach of fiduciary duty and fraud, fraudulent conveyance claims and declaratory judgment.
- (iii) Beechwood Re, BBIL, BBL and PBIH: Aiding and abetting breach of fiduciary duty and fraud.

B. The SEC and Criminal Actions

15. On December 19, 2016, the United States Government unsealed an eight-count indictment in the United States District Court for the Eastern District of New York (the "**EDNY**") against Platinum Management (NY) LLC (the "**PPVA Portfolio Manager**"), Platinum Credit Management LP (the "**PPCO Portfolio Manager**"), Mark Nordlicht, David Levy, Daniel Small, Uri Landesman, Joseph Mann, Joseph SanFilippo and Jeffrey Shulse (collectively, the "**Criminal Defendants**"). *U.S. v. Mark Nordlicht, et al.*, 16 Cr. 640 (BMC) (the "**Criminal Action**"), ECF No. 1.

16. On that same day, December 19, 2016, the United States Securities and Exchange Commission (the "**SEC**") commenced a civil enforcement action in the EDNY against the Criminal Defendants. *SEC v. Platinum Management (NY) LLC, et al.*, 16 Civ. 06848 (BMC) (the "**SEC Action**"), ECF No. 1.

17. The SEC's complaint alleges "a multi-pronged fraudulent scheme by [the PPVA Portfolio Manager] and [the PPCO Portfolio Manager], the managers of hedge funds Platinum

Partners Value Arbitrage Fund L.P. (collectively with its feeder funds, “**PPVA**”) and Platinum Partners Credit Opportunities Master Fund L.P. (collectively with its feeder funds, the “**PPCO Funds**”), respectively, led by Nordlicht.” SEC Action, ECF No. 1, ¶ 8.

18. The funds comprising PPCO, PPVA and PPLO (defined below) shall be referred to herein as the “**Platinum Funds**.”

19. On December 19, 2016, the SEC also applied in the EDNY for the immediate appointment of a receiver over (i) the PPCO Portfolio Manager, (ii) Platinum Partners Credit Opportunities Master Fund LP (“**PPCO**”), (iii) Platinum Partners Credit Opportunities Fund LLC (“**PPCO Fund**”), (iv) Platinum Partners Credit Opportunities Fund (TE) LLC (“**PPCO TE**”) and (v) Platinum Partners Credit Opportunities Fund (BL) LLC (“**PPCO Blocker Fund**”), as well as (vi) Platinum Liquid Opportunity Management (NY) LLC and (vii) Platinum Partners Liquid Opportunity Fund (USA) L.P. (collectively with the PPCO Portfolio Manager, PPCO, PPCO Fund, PPCO TE and PPCO Blocker Fund, the “**Initial Receivership Entities**”). ECF No. 5. The defendants in the SEC Action consented to the relief requested. *Id.* Min. Entry 12/19/16.

20. Pursuant to a December 19, 2016 *Order Appointing Receiver*, the EDNY appointed Bart M. Schwartz as receiver over the Initial Receivership Entities. SEC Action, ECF No. 7.

21. On July 6, 2017, Melanie L. Cyganowski replaced Bart M. Schwartz as receiver of the Initial Receivership Entities pursuant to an order of the EDNY and the Receiver is now administering the receivership estate pursuant to an October 16, 2017 order issued by the EDNY (the “**Receivership Order**”). SEC Action, ECF No. 276.

22. Pursuant to the Receivership Order, the Receiver is empowered to “manage, control, operate and maintain the Receivership Entities” and is given the “right to sue for and collect ... from third parties all Receivership Property.” Receivership Order ¶¶ 6.C and 6.B. In

addition, the Receiver is empowered, among other things, “[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the Receiver’s duties as Receiver” and “[t]o pursue ... all suits, actions, claims and demands which may now be pending or which may be brought by ... the Receivership Estate.” Receivership Order ¶¶ 6J & K.

23. The Receivership Order also (i) directs the Receiver to take custody of all “**Receivership Property**,” defined as “all property interests of the Receivership Entities ... of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly” (Receivership Order ¶ 6.A.) and (ii) prohibits and otherwise enjoins all parties from (a) interfering with the Receiver’s efforts to take control, possession, or management of Receivership Property (Receivership Order ¶ 22.A.) and (b) diminishing the value of any Receivership Property, including, but not limited to, asserting claims against any Receivership Property. Receivership Order ¶ 22.C.

24. Pursuant to a December 29, 2017 Order, the EDNY expanded the receivership to include (i) Platinum Partners Liquid Opportunity Master Fund L.P. (collectively with Platinum Partners Liquid Opportunities Fund (USA) L.P. and Platinum Partners Liquid Opportunities Fund (International) Ltd., “**PPLO**”), (ii) Platinum Partners Credit Opportunities Fund International Ltd. (“**PPCO Fund International**”) and (iii) Platinum Partners Credit Opportunities Fund International (A) Ltd. (“**PPCO Fund International A**,” and collectively with the entities referred to in this paragraph in (i) and (ii) and the Initial Receivership Entities, the “**Receivership Entities**”). SEC Action, ECF No. 297.

25. On or about March 28, 2019, BAM Administrative Services LLC (“**BAM Administrative**”) filed a proof of claim against PPCO and certain of its affiliates, which has since

been assigned claim no. 145, asserting a single secured claim against PPCO in the amount of \$95 million as agent for, among others, SHIP. <https://dm.epiq11.com/case/ptm/claims>.

26. On or about March 29, 2019, SHIP filed several duplicative \$34.4 million secured claims on account of the purported loans made to PPCO in or about December 2015 and March 2016 (collectively, the “**POC**”). <https://dm.epiq11.com/case/ptm/claims>; Exhibit 14 to *Declaration of Erik B. Weinick in Support of the Receiver’s Motion for Partial Summary Judgment* (ECF No. 497). SHIP’s claims have since been assigned claim numbers 247-249 and 253-258. SHIP asserts an all asset lien against PPCO’s property and also asserts an unliquidated unsecured claim for (i) tort, including claims for negligent misrepresentation and fraud, (ii) RICO, (iii) unjust enrichment and (iv) certain other unspecified claims.

C. The Parties to this Action

27. The Receiver is the successor receiver of the Receivership Entities, appointed to succeed Bart M. Schwartz, whose resignation was accepted on July 6, 2017. SEC Action, ECF No. 216.

28. SHIP is a long-term care insurance company domiciled in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana. *Answer of Senior Health Insurance Company of Pennsylvania* [ECF No. 390] (“**SHIP Answer**”) ¶ 50.

29. In or about 2003, after sustaining significant and ongoing underwriting losses, SHIP stopped writing new business and began to work with the Pennsylvania Insurance Department to develop a run-off strategy. *Second Amended Complaint and Demand for Trial by Jury* [Case 1:18-cv-06658-JSR, ECF No. 84] (“**SHIP Complaint**”) ¶ 51.

30. In or about 2008, the ownership of SHIP was transferred from CNO to the Senior Healthcare Trust, which was then merged into the Senior Healthcare Oversight Trust (the

“**Oversight Trust**”), and the company’s name was changed to the “Senior Health Insurance Company of Pennsylvania.” *Id.* The Trustees of the Oversight Trust served as SHIP’s Directors and are primarily former insurance regulators. *Id.*

31. According to an order issued by the Commonwealth Court of Pennsylvania on or about January 29, 2020, the Insurance Commissioner of the Commonwealth of Pennsylvania (the “**Commissioner**”) has been appointed as Rehabilitator of SHIP, and according to a letter issued by the Commissioner on that same date, Mr. Patrick Cantilo has been designated as the Special Deputy Rehabilitator. McCormack Dec. Ex. 74 (January 29, 2020 order) and Weinick Dec. Ex. 28, January 29, 2020 Letter.

32. Other defendants in this action who filed motions for summary judgment, include:
- (i) Beechwood Re Ltd. (“**Beechwood Re**”), a stock life reinsurance company domiciled in the Cayman Islands with its principal place of business in New York, New York. FAC ¶ 32; SHIP Answer ¶ 32.
 - (ii) B Asset Manager LP (“**BAM**”), a Delaware limited partnership with its principal place of business in New York, New York. FAC ¶ 34; SHIP Answer ¶ 34.
 - (iii) B Asset Manager II LP (“**BAM II**”), a Delaware limited partnership with its principal place of business in New York, New York. FAC ¶ 35; SHIP Answer ¶ 35.
 - (iv) Beechwood Bermuda International Ltd. (“**BBIL**”), a reinsurance company domiciled in Bermuda with its principal place of business in New York, New York. FAC ¶ 37; SHIP Answer ¶ 37.
 - (v) PBIH, as successor-in-interest to Beechwood Bermuda Investment Holdings Ltd. (“**BBIHL**”), a Beechwood Entity organized under Bermuda law, with its principal

place of business in Bermuda. *Memorandum of Law of Defendant PB Investment Holdings, Ltd. in Support of its Motion for Summary Judgment*, (ECF. No. 492) (“**PBIH MOL**”) p. 8.

(vi) BAM Administrative (collectively with Beechwood Re, BAM, BAM II, BBIL and PBIH, “**Beechwood**” or the “**Beechwood Entities**”), a limited liability company organized under Delaware law with its principal place of business in New York, New York. FAC ¶ 40; SHIP Answer ¶ 40.

33. Other relevant individuals and entities to this action include:

(i) BCLIC, an indirect, wholly owned subsidiary of CNO. Corporate Disclosure Statement Pursuant to Fed R. Civ. P. 7.1, ECF. No. 167.

(ii) WNIC, an indirect, wholly owned subsidiary of CNO. Corporate Disclosure Statement Pursuant to Fed R. Civ. P. 7.1, ECF. No. 168.

(iii) Mark Nordlicht (“**Nordlicht**”), the Managing Member and Chief Investment Officer (“**CIO**”) of the PPCO Portfolio Manager. *See* ¶ 57, *infra*.

(iv) Moshe M. Feuer a/k/a Mark Feuer (“**Feuer**”), the Chief Executive Officer of Beechwood. SHIP Complaint ¶ 64.

(v) Scott A. Taylor (“**Taylor**”), the President of Beechwood. SHIP Complaint ¶ 64.

(vi) Beechwood Bermuda, Ltd. (“**BBL**”), which owned 100% of BBIHL (n/k/a PBIH). Weinick Dec. Ex. 23, Boug Tr., 39:21-40:4.

34. With respect to BBIHL (n/k/a PBIH):

(i) Feuer and Taylor were two of BBIHL’s three directors from December 17, 2014 until June 30, 2016. Weinick Dec. Ex. 23, Boug Tr., 34:3-9; Weinick Dec. Ex. 31, Boug Dep. Ex. 11; Weinick Dec. Ex. 32, Boug Dep. Ex.16.

- (ii) During that time, they executed written resolutions regarding BBIHL and participated board meetings. Weinick Dec. Ex. 29, Boug Dep. Ex. 12; Weinick Dec. Ex. 30, Boug Dep. Ex. 15.
- (iii) Feuer and Taylor executed a “Custody Agreement” on behalf of PPCO for the BBIHL Segregated Account. Weinick Dec. Ex. 33, Boug Dep. Ex. 18.
- (iv) Feuer, Taylor and several other individuals each had joint signing authority for BBIHL’s U.S. operating account and the segregated accounts. Weinick Dec. Ex. 30, Boug Dep. Ex. 15.

D. The Platinum Funds

1. The PPCO Master-Feeder Structure

35. At the time of the relevant transactions, each of the PPCO Funds was a distinct entity, serving a distinct role, within one of the three master-feeder hedge fund structures operated by commonly controlled managers operating under the name “Platinum Partners.” Audited financial statements describe the structure as follows:

PPCO serves as a Master Fund in a master-feeder structure. Three feeder funds, Platinum Partners Credit Opportunities Fund International, Ltd., Platinum Partners Credit Opportunities Fund International (A), Ltd., and Platinum Partners Credit Opportunities Fund (TE) LLC invest substantially all of their capital in Platinum Partners Credit Opportunities Fund (BL) LLC (the “Blocker Company”) which, in turn, invests substantially all of its capital in PPCO. A fourth feeder fund, Platinum Partners Credit Opportunities Fund LLC, invests substantially all its capital directly in PPCO. . . .

*Declaration of Trey Rogers in Opposition to SHIP’s Motion for Summary Judgment (“**Rogers Dec.**”) ¶ 9.* The other two master-feeder fund structures were PPVA and PPLO. *Id.* at ¶ 10.

2. The PPCO Funds

36. Each of the PPCO Funds was a pooled investment vehicle for holding assets acquired by using funds from numerous individual investors. *Id.* at ¶ 11. Investors in the funds (either limited partners, shareholders or members, depending on the fund’s form) owned a pro rata interest in the fund’s net asset value (“**NAV**”), which pro rata interest the investor was entitled to redeem in whole or part, but could not sell, assign or otherwise transfer without the fund’s consent in its sole discretion. *Id.*

37. PPCO was an asset-based investment fund originating loans and/or making equity investments in markets in various industries, including but not limited to, consumer finance, litigation, metals and mining, oil and gas, alternative energy, retail energy, life settlements and asset-based finance. *Id.* at ¶ 12.

38. PPCO was a Delaware limited partnership, the general partner of which was Platinum Credit Holdings LLC (the “**General Partner**”) and the limited partners of which were PPCO Fund and PPCO Blocker Fund. *Id.* at ¶ 13.

39. The General Partner was a Delaware limited liability company, whose members were Nordlicht, a Nordlicht trust and Gilad Kalter; Nordlicht was its managing member. *Id.* at ¶ 14 (citing *Third Amended and Restated Operating Agreement of Centurion Credit Holdings, LLC*).

40. PPCO Fund accepted minimum initial capital contributions of \$1,000,000 (and additional contributions of a minimum of \$250,000) from qualified investors, and invested substantially all of its capital in PPCO. *Id.* at ¶ 15. PPCO Fund was a Delaware LLC, the managing member of which was the General Partner. *Id.* Each of PPCO TE, PPCO Fund International and PPCO Fund International A also accepted minimum initial capital contributions of \$1,000,000 (and additional contributions of a minimum of \$250,000) from qualified investors, but invested substantially all of its capital in PPCO Blocker Fund, which, in turn, invested substantially all of

its capital in PPCO. *Id.* PPCO TE was a Delaware LLC, the managing member of which was the General Partner. *Id.* Each of PPCO Fund International and PPCO Fund International A was a Cayman Islands exempted company, registered pursuant to the Cayman Island Mutual Funds Law. *Id.*

3. Unpaid Redemptions and Other Claims Held by Certain PPCO Funds

41. PPCO recognizes capital withdrawals payable in conjunction with Accounting Standards Codification “ASC 480, Distinguishing Liabilities from Equity”. *Id.* at ¶ 16. Capital withdrawals are recognized as liabilities when the amount specified in the capital withdrawal notice becomes fixed. *Id.* This generally may occur either at the time of the notice, or on the last day of a fiscal period. *Id.* Pursuant to PPCO’s governing documents, capital withdrawals payable are treated as capital for purposes of allocations of profits and losses through the effective date of withdrawal, at which point the withdrawal becomes a liability. *Id.*

42. As of on or about December 19, 2016, the date of the commencement of the receivership, PPCO reported a liability for capital withdrawals of approximately \$24.8 million. *Id.* at ¶ 17. As set forth below, the balance of capital withdrawals payable is comprised of the following.

Eff. Date	Feeder	Investor	Capital Activity Type	Redemption Amount	Amount Due 12_19_2016
3/31/2016	PPCO	CONFIDENTIAL	Partial Withdrawal	(1,250,000.00)	(1,250,000.00)
3/31/2016	PPCO	CONFIDENTIAL	Partial Withdrawal	(200,000.00)	(200,000.00)
3/31/2016	PPCO	CONFIDENTIAL	Partial Withdrawal	(3,000,000.00)	(3,000,000.00)
3/31/2016	PPCO	CONFIDENTIAL	Full Withdrawal	(577,597.56)	(519,837.80)
3/31/2016	PPCO	CONFIDENTIAL	Full Withdrawal	(106,564.34)	(95,907.91)
3/31/2016	PPCO	CONFIDENTIAL	Full Withdrawal	(2,382,003.17)	(2,143,802.86)
3/31/2016	PPCO TE	CONFIDENTIAL	Full Withdrawal	(2,228,464.71)	(2,005,618.24)
3/31/2016	PPCO TE	CONFIDENTIAL	Full Withdrawal	(17,320,239.05)	(15,588,215.14)

Eff. Date	Feeder	Investor	Capital Activity Type	Redemption Amount	Amount Due 12_19_2016
Total				(27,064,868.83)	(24,803,381.95)

43. Per the governing documents of PPCO, upon at least 90 days prior written notice, a limited partner (either PPCO Fund or PPCO Blocker Fund) may redeem all or a part of an Interest as of any Withdrawal Date, subject to certain restrictions. *Id* at ¶ 18 (citing *Third Amended and Restated Agreement of Limited Partnership of Platinum Partners Credit Opportunities Master Fund LP* (“**LPA**”)), Section 4.2.

44. For a limited partner requesting a full withdrawal of its interest, PPCO will endeavor to pay 90% of its good faith estimate of the Withdrawal Price to the limited partner within 30 days following the applicable Withdrawal Effective Date, with the balance of such amount (i) remaining in PPCO but not participating in the gains or losses of PPCO (provided that in the event that all other assets of PPCO have been exhausted, such balance will be at full risk of loss) and (ii) subject to any necessary adjustments, endeavored by PPCO to be paid within 30 days of the completion and receipt of PPCO’s annual audit. For a limited partner requesting a partial withdrawal of its interest, PPCO shall attempt in good faith to fulfill the withdrawal request within 30 days following the application withdrawal effective date. See LPA Section 4.2(a). *Id* at ¶ 19 (citing LPA).

45. The LPA provides that PPCO intends to make all withdrawal payments in cash, but in the sole discretion of the General Partner, such payments may be made in kind, in whole or in part, pro rata or non-pro rata among the partners. *Id* at ¶ 20.

46. PPCO’s books and records reflect that:

- (1) PPCO owed PPCO Blocker Fund and the PPCO Fund \$4,216,247.30 and \$12,647,973.14, respectively, in unpaid capital withdrawals as of December 23, 2015.
- (2) PPCO owed PPCO Fund \$1,172,800.40 in unpaid capital withdrawals as of March 21, 2016.
- (3) As of both December 23, 2015, and March 21, 2016, PPCO knew that (a) redemption requests of approximately \$7.2 million that had been placed by investors with PPCO Fund no later than September 30, 2015, with an effective date of March 31, 2016, and a payment date of April 30, 2016, and (unless withdrawn) payment of that amount would be due from PPCO to PPCO Fund as of April 30, 2016, and (b) redemption requests of approximately \$17.6 million that had been placed by investors in Platinum Partners Credit Opportunities Fund (TE) LLC, by no later than September 30, 2015, with an effective date of March 31, 2016, and a payment date of April 30, 2016, and (unless withdrawn) payment of that amount would be due from PPCO to the PPCO Blocker Fund as of April 30, 2016. Those amounts remain outstanding as of today. As a result, capital withdrawals in the amount of \$7.2 million remain outstanding from PPCO to PPCO Fund under the LPA, and capital withdrawals of \$17.6 million are outstanding from PPCO to PPCO Blocker Fund under the LPA.

Id at ¶ 20.

47. A limited partner in PPCO – such as PPCO Blocker Fund and PPCO Fund – may hold both debt and equity in PPCO pursuant to the express terms of PPCO’s LPA:

Within a reasonable period of time following the occurrence of a Dissolution Event, ... distributions from the Partnership shall be

applied and distributed in the following manner and order of priority:

(a) *the claims of all creditors of the Partnership (including Partners except to the extent not permitted by law) shall be paid and discharged other than liabilities for which reasonable provision for payment has been made; and*

(b) *thereafter, to the Partners in accordance with their respective Capital Accounts.*

Id at ¶ 22 (citing LPA § 9.2(b)) (emphasis added).

4. The PPCO Portfolio Manager

48. All of the PPCO Funds' business operations – their investment activities, their marketing activities, their investor relations activities, their cash management activities, their bookkeeping activities, their preparation of financial statements, etc. – were conducted by the PPCO Portfolio Manager, whose individual officers, directors and employees performed such tasks. *Id* at ¶ 23.

49. Among the activities that the PPCO Portfolio Manager carried out on behalf of the PPCO Funds was the valuation of the funds' assets, including difficult-to-value, Level 3 assets. *Id* at ¶ 24 (citing *Platinum Partners Credit Opportunities Master Fund LP and Subsidiaries (A Limited Partnership) Consolidated Financial Statements and Independent Auditor's Report December 31, 2014* ("**PPCO Financial Statements**") p. 11, 15) ("The *Portfolio Manager* values all investments at fair value The *Portfolio Manager* establishes valuation processes and procedures to ensure that the valuation techniques for investments that are categorized within Level 3 of the fair value hierarchy are fair, consistent and verifiable.") (emphasis added).

50. Secured/ collateralized loans are priced at fair market value. *Id* at ¶ 25.

51. In return for its services, PPCO paid a monthly management fee to the PPCO Portfolio Manager of 1/12 of 2% per annum of PPCO's total month-end partners' capital before

deductions of the incentive allocation and before any distributions or redemptions made during the month. *Id* at ¶ 26.

52. Each of the PPCO Funds entered into a separate Portfolio Management Agreement (“**PMA**”) with the PPCO Portfolio Manager, pursuant to which each fund contracted with the PPCO Portfolio Manager to have the PPCO Portfolio Manager perform all business functions on its behalf on an independent contractor basis. *Id* at ¶ 27 (citing (i) Second Amended and Restated Portfolio Management Agreement between Centurion Credit Group Master Fund L.P. (now known as PPCO) and Centurion Credit Management L.P. (now known as Platinum Credit Management L.P.), dated as of February 1, 2011, (ii) Second Amended and Restated Portfolio Management Agreement between Centurion Credit Group LLC (now known as PPCO Fund) and the Portfolio Manager, dated as of February 1, 2011, (iii) Second Amended and Restated Portfolio Management Agreement between Centurion Credit Group (TE) LLC (now known as the PPCO TE) and the Portfolio Manager, dated as of February 1, 2011, (iv) Second Amended and Restated Portfolio Management Agreement between Centurion Credit Group International Ltd. (now known as the PPCO Fund International) and the Portfolio Manager, dated as of February 1, 2011) and (v) Second Amended and Restated Portfolio Management Agreement between Centurion Credit Group International (A) Ltd. (now known as the PPCO Fund International A) and the Portfolio Manager, dated as of February 1, 2011).

53. The PPCO Portfolio Manager is an independent contractor to each of the PPCO Funds under the relevant PMA. *Id* at ¶ 28 (citing PMA § 7 (“For all purposes of this Agreement, the Portfolio Manager shall be an independent contractor and not an agent, employee, partner or joint venturer of the Company ...”)).

54. Virtually all meaningful activities undertaken by the PPCO Portfolio Manager – e.g., investment and asset valuation decisions – were undertaken on behalf of PPCO, which acquired, disposed of and held assets (rather than the feeder funds, which merely directly or indirectly invested in PPCO). *Id* at ¶ 29 (citing LPA).

55. PPCO’s LPA vested sole management authority, including the authority to hire or fire the PPCO Portfolio Manager, in the Nordlicht-controlled General Partner. *Id* at ¶ 30 (citing LPA).

56. The operating agreements for PPCO Fund and PPCO TE vested sole authority to manage the funds – including authority to hire or fire the PPCO Portfolio Manager in the Managing Member, i.e., the Nordlicht-controlled General Partner. *Id* at ¶ 31.

57. During all relevant periods, Nordlicht was the Managing Member and CIO of the PPCO Portfolio Manager (*Id* at ¶ 32), which Feuer knew. Weinick Dec. Ex. 21, Feuer Tr., 45:25-46:3.

5. The Feeder Funds

58. For all relevant periods, PPCO Fund International was managed by a board of independent directors, none of whom are named defendants in the consolidated actions brought before this Court or in the Criminal or SEC Actions brought by the United States Government. *Id* at ¶ 33.

59. The independent directors owed nondelegable fiduciary duties to PPCO Fund International. *Id*. If the independent directors had detected any fraud they would have had a nondelegable duty to stop that fraud by, among other things, reporting that fraud to the proper regulatory and/or governmental authorities. *Id* at ¶ 34.

60. For all relevant periods, PPCO Fund International A was managed by a board of independent directors, none of whom are named defendants in the consolidated actions brought before this Court or in the Criminal or SEC Actions brought by the United States Government. *Id* at ¶ 35.

61. The independent directors owed nondelegable fiduciary duties to PPCO Fund International A. *Id*. If the independent directors had detected any fraud they would have had a nondelegable duty to stop that fraud by, among other things, reporting that fraud to the proper regulatory and/or governmental authorities. *Id* at ¶ 36.

6. The PPVA and PPLO Funds

62. PPVA was the flagship fund within the Platinum Funds. In contrast to PPCO, which was created to originate loans and/ or originate equity investments, PPVA was a multi-strategy fund created to invest and trade in U.S. and non U.S. equities, public and private debt securities, currencies, futures, forward contracts, other commodity interests, options, swap contracts, other derivative instruments and other investments. *Id* at ¶ 37.

63. The Platinum Funds also included a smaller fund called Platinum Partners Liquid Opportunity Fund LP or PPLO. *Id* at ¶ 38. The investment objective of the PPLO Master Fund was to invest and trade in U.S. and non-U.S. equity and debt securities (both public and private), currencies, futures, forward contracts, and other commodity interests, options, swap contracts and other derivative instruments and investments. *Id*.

E. Ownership of Certain Platinum Funds and Related Entities

64. According to the Platinum Funds' books and records, ownership of certain funds or entities related to the Platinum Funds was as follows:

Platinum Credit Management LP Ownership as of on or about January 26, 2011

Name	Status	Partnership %	Underlying Beneficiary
Platinum Credit Mgt LLC	General Partner	1%	Mark Nordlicht
Mark Nordlicht	Limited Partner	19%	
Gilad Kalter	Limited Partner	5%	
Mark Nordlicht Grantor Trust II	Limited Partner	75%	See Note 1 below

Platinum Credit Holdings LLC ownership as of on or about January 25, 2011

Name	Status	Partnership %	Underlying Beneficiary
Mark Nordlicht	Managing Member	20%	
Gilad Kalter	Member	5%	
Mark Nordlicht Grantor Trust II	Limited Partner	75%	See Note 1 below

Note 1 – Mark Nordlicht Grantor Trust II as of on or about January 2011

Name	Status	Partnership %	Underlying Beneficiary
Manor Lane Management LLC	General Partner	31.67%	Murray and Laura Huberfeld
Grosser Lane Management LLC	Limited Partner	31.67%	David and Naomi Bodner
Jerome Management LLC	Limited Partner	0%	Dahlia Kalter
Trenor Associates LLC	Limited Partner	11.67%	Unknown

Rogers Dec. ¶ 39.

65. Prior to the SEC Action, Bodner and Huberfeld obtained releases from PPCO.

Chase Dec. Ex. 9.

F. Beechwood’s Creation

66. In or about 2013, several Platinum insiders, including Nordlicht, Murray Huberfeld and David Bodner (the “**Platinum Founders**”) along with David Levy, joined with Feuer and Taylor to establish a collection of corporate entities doing business under the trade name “Beechwood.” Weinick Dec. Ex. 25, Taylor Tr. 14:13-19:21; *see also* Weinick Dec. Ex. 14, Huberfeld Tr., 440:4-20 (Beechwood was set up after Feuer was introduced to Nordlicht) and Weinick Dec. Ex. 17, Propper Tr., 14:8-24:15.

67. 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. Weinick Dec. Ex. 14, Huberfeld Tr., 269:8-23; McCormack Dec. Ex. 17 (CTRL3748840); McCormack Dec. Ex. 18 (BW-SHIP-00000801); Weinick Dec. Ex. 20, Kirschner Tr., 157:10-158:10; Weinick Dec. Ex. 17, Propper Tr., 40:23-41:9.

68. Beechwood was specifically created to attract institutional investors that the Platinum Funds itself could not attract directly. SHIP Complaint ¶ 59. Specifically, Nordlicht told Saks that Platinum would have capital from an insurance company he was starting called Beechwood. Weinick Dec. Ex. 8, Saks Tr., 36:14-43:2.

1. Ownership of Certain Beechwood Funds

69. Platinum and Beechwood were initially integrated (Weinick Dec. Ex. 2, Albanese Tr., 260:14-18) as Beechwood was owned and controlled by, among others, the Platinum Founders and Levy, with Taylor and Feuer respectively serving as President and CEO of Beechwood. SHIP Ans. ¶ 110; McCormack Dec. Ex. 18 (BW-SHIP-00000801-802); McCormack Dec. Ex. 21 (BW-SHIP-00262451).

70. Feuer and Taylor had ownership interests in Beechwood through trusts bearing their respective last names. Weinick Dec. Ex. 21, Feuer Tr., 73:3-74:17; Weinick Dec. Ex. 39, Dep. Ex. 867; McCormack Dec. Ex. 23 (BW-SHIP-00835874); Weinick Dec. Ex. 34 (BW-SHIP-00835424).²

² A very small percentage of Beechwood ownership also was given to Kerry Propper (“**Propper**”), an investment consultant who in 2012 introduced and walked through with Nordlicht, Feuer and Taylor the outlines of the idea that ultimately became Beechwood. Weinick Dec. Ex. 17, Propper Tr., 14:8-24:15; 37:22-38:10; 47:20-53:10; 64:7-65:21;

71. B Asset Manager L.P. owned 100% of the equity in BAM Administrative Services, LLC. McCormack Dec. Ex. 18 and Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18.

72. As of April 1, 2016, the 20 family members of Nordlicht, Bodner and Huberfeld, including primarily their children (the “**Platinum Insider Family Members**”) held a total of 61.87% of the beneficial interests in the Beechwood Asset Management Trust I (“**BAM Trust I**”) and a total of 44.4% of the beneficial interests in Beechwood Asset Management Trust II (“**BAM Trust II**”). McCormack Dec. Ex. 18; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18.

73. BAM Trust I held 99.9% of the Class A limited partnership interests and held 99.99% of the Class B limited partnership interests in both BAM and BAM II, while the general partners in BAM I and BAM II held the other 0.01% of the ownership interests. McCormack Dec. Ex. 18.

74. The chart below summarizes the individuals having beneficial ownership interests of BAM Trust I and BAM Trust II as of April 1, 2016:³

Beneficiary	Identity	Beneficial Ownership of BAM Trust I as of April 1, 2016	Beneficial Ownership of BAM Trust II as of April 1, 2016
Scott Taylor	Officer of numerous Beechwood Entities	10,34481%	16.6670%
Mark Feuer	Officer of Numerous Beechwood Entities	20,68964%	33.3330%
Dahlia Kalter	Wife of Nordlicht	4.99000%	4.9900%
Rachel Goldie Nordlicht	Child of Nordlicht (age 22)	2.61661%	1.6680%

Weinick Dec. Ex. 93, Dep. Ex. 714; Weinick Dec. Ex. 94, Dep. Ex. 719. Propper was granted the ownership interest only after Propper learned that he was intentionally cut out of his own idea, that Beechwood was created behind his back, and only after he confronted Nordlicht. *Id.*

³ The beneficial ownership by Platinum Insider Family Members is reflected in boldface.

Beneficiary	Identity	Beneficial Ownership of BAM Trust I as of April 1, 2016	Beneficial Ownership of BAM Trust II as of April 1, 2016
Noah Morris Nordlicht	Child of Nordlicht (age 20)	2.61661%	1.6680%
Emma Bailey Nordlicht	Child of Nordlicht (age 17)	2.61661%	1.6680%
Sarah Paulina Nordlicht	Child of Nordlicht (age 15)	2.61661%	1.6680%
Jack Henry Nordlicht	Child of Nordlicht (age 11)	2.61661%	1.6690%
Ava Ruth Nordlicht	Child of Nordlicht (age 9)	2.61662%	1.6690%
Moshe Bodner	Son or brother of David Bodner	2.38620%	1.8750%
Aaron Bodner	Son or brother of David Bodner	2.58621%	1.8750%
Eliezer Bodner	Son of David Bodner	2.58621%	1.8750%
Tzipporah Rottenberg	Son of David Bodner	2.58621%	1.2750%
Rochel Fromowitz	Daughter of David Bodner	2.58621%	1.8750%
Yissochar Bodner	Son of David Bodner	2.58621%	1.8750%
Yaakov Bodner	Son of David Bodner	2.58621%	1.8750%
Mordechai Bodner	Son of David Bodner	2.58621%	1.8750%
Jessica Huberfeld. Beren	Daughter of Murray Huberfeld; Wife of Ezra Beren	4.13793%	3.0000%
Rachel M. Jacobs	Daughter of Murray Huberfeld	4.13793%	3,0000%
Alexander J. Huberfeld	Son of Murray Huberfeld (interned at Beechwood)	4.13793%	3.0000%
Ariella D. Huberfeld	Son of Murray Huberfeld	4.13794%	3.0000%
Jacob E. Huberfeld	Son of Murray Huberfeld	4.13794%	3.0000%
David I Levy	Son of Murray Huberfeld's sister; former CIO of PPVA Portfolio Manager prior to becoming CFO and secretary of Beechwood Re and Beechwood Bermuda Ltd. and BAM's CIO	6.89654%	5.0000%

McCormack Dec. Ex. 18; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18; Weinick Dec. Ex. 1, Northwood Tr., 186:15-16, 295:12-16; Weinick Dec. Ex. 7, Kalter Tr., 11:19-21, 11:22-12:9, Weinick Dec. Ex. 4, Bodner Tr., 21:1-25, 22:5-6, 22:8-9, 21:6-8, 22:2-3, 312:20-22; Weinick Dec. Ex. 14, Huberfeld Tr., 11:18-12:4, 11:5-17, 12:5-13.

75. As of July 1, 2016, 20 trusts in which the Platinum Insider Family Members were the sole beneficiaries (the “**20 Platinum Insider Family Trusts**”) owned 100,080 of the 107,833 outstanding non-voting common shares in Beechwood Re Holdings, Inc. (“**BRe Holdings**”) (which, owned 100% of the common stock of BRe). McCormack Dec. Ex. 18; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18

76. As of July 1, 2016, a trust of which David Levy (son of Murray Huberfeld’s sister, former CIO of the PPVA Portfolio Manager, who became CFO and secretary of Beechwood Re and Beechwood Bermuda Ltd. and BAM’s CIO) was the sole beneficiary owned 6,120 of those non-voting common shares in BRe Holdings and 5,000 voting common shares in BRe Holdings.

77. As of July 1, 2016, the 20 Platinum Insider Family Trusts owned a total of 54,298 of the 90,000 of the voting and non-voting common shares in BBL (which owned 100% of the common shares of BBIL) and seven of those trusts owned a total of 7,150 of the 10,000 common voting shares in BBL. McCormack Dec. Ex. 18; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18

78. As of July 1, 2016, the David I. Levy Beechwood Trust owned 950 voting common shares and 5,878 voting and non-voting common shares in BBL. McCormack Dec. Ex. 18; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18

2. The Platinum Founders Influence Over Beechwood

79. The Platinum Founders exercised influence over Beechwood. Weinick Dec. Ex. 8, Saks Tr., 174:3-182:24.

80. Nordlicht maintained an office at Beechwood and a Beechwood email address. Weinick Dec. Ex. 14, Huberfeld Tr., 462:8-14; Weinick Dec. Ex. 2, Albanese Tr., 304:15-22.

81. Saks, Beechwood's CIO, eventually left his position because, among other reasons, "the influence that certain people at Platinum had on Beechwood..." The certain people he spoke of were the Platinum Founders. Weinick Dec. Ex. 8, Saks Tr., 199:22-200:13. Saks also left because he "was becoming uncomfortable with their client [Beechwood's] relationships and how they treated their clients and how they acceded to their client's wishes..." Weinick Dec. Ex. 8, Saks Tr., 199:22-200:13.

82. Samuel Adler, David Bodner's nephew, (Weinick Dec. Ex. 23, Adler Tr., 104: 19-21) and a Beechwood operations manager, appeared as a corporate 30(b)(6) witness for a number of Beechwood entities, including B Asset Manager, LP and Beechwood Re Ltd. Weinick Dec. Ex. 23, Adler Tr., 47:22-25. He was confronted with a table setting forth Beechwood's ownership interests by Taylor, Feuer, Levy, Nordlicht, Huberfeld, Bodner and Propper, but denies remembering if it is accurate. Nor does he remember who the owners were. Weinick Dec. Ex. 23, Adler Tr., 127:17-131:9.

83. Beechwood's management team was largely comprised of personnel employed by or otherwise connected to the Platinum Funds, including: (i) Levy, as "Chief Investment Officer" (SHIP Complaint ¶ 64); (ii) Will Slota (*Amended Crossclaims and Third-Party Complaint of Senior Health Insurance Company of Pennsylvania* ("**SHIP Crossclaims**")) (ECF No. 603) ¶ 124; (iii) David Ottensoser (*Id.*); (iv) Daniel Small (*Id.*) and (v) Stewart Kim. *Id.* Feuer testified that Beechwood's people acted for all the entities "we were part of" and that they were "absolutely" taking care of our whole company. Feuer Tr. 784:21-785:4.

84. Beechwood made no effort to hide its deep ties to the Platinum Funds from SHIP.

For example:

- (i) Beechwood marketed Levy to potential clients as a member of its management team and specifically highlighted Levy's eight years of experience with the PPVA Portfolio Manager as key to Beechwood's future success. Levy, the co-Chief Investment Officer of the PPVA Portfolio Manager together with Nordlicht, served as chief financial officer and secretary of Beechwood Re and Beechwood Bermuda. He was also BAM I's Chief Investment Officer and Chief Financial Officer until the end of 2014, when he was replaced by Daniel Saks, a PPVA Portfolio Manager executive. SHIP Crossclaims ¶ 10 ("Levy is a Beechwood Founder and, together with Feuer and Taylor, presented the public face of the Beechwood Entities.") and Weinick Ex. 8, Saks Tr., 42:11-17.
- (ii) Daniel Saks, a former PPVA employee, served as BAM I's Chief Investment Officer of Structured Products after Levy "resigned" beginning in September 2014. Weinick Ex. 8, Saks Tr., 97:14-17.
- (iii) Ezra Beren, Huberfeld's son-in-law, was hired in or about January 2016 to be a portfolio manager at Beechwood after serving in a similar capacity at the PPVA Portfolio Manager. Weinick Ex. 12, Beren Tr., 133:23-25, 116:17-21, 130:4-5.
- (iv) Naftali Manela, then CFO of the PPCO Portfolio Manager, performed services for Beechwood related to general operations while still employed by the PPCO Portfolio Manager. Weinick Ex. 8, Saks Tr., 111:3-5.
- (v) Eli Rakower, director of valuation at the Platinum Funds, provided valuation services to both Beechwood and the Platinum Funds. Weinick Ex. 8, Saks Tr., 111:3-10.
- (vi) Stewart Kim, an employee of the PPVA Portfolio Manager, was subsequently engaged by Beechwood but paid by Platinum for some time, after which he became Beechwood's full time Chief Risk Officer. Weinick Ex. 18, Kim Tr., 186:9-17.
- (vii) At its founding, Beechwood initially operated out of Platinum Partners' offices (SHIP Crossclaims ¶ 103) and the Platinum Funds and Beechwood shared office space for a period of time. SHIP Complaint ¶ 89.

G. SHIP's Introduction to Beechwood

85. SHIP was formally introduced to Beechwood Re in late 2013. Weinick Dec. Ex. 5, Wegner Tr., 29:25-32:4;⁴ Weinick Dec. Ex. 82 (SHIP0019117); Weinick Dec. Ex. 20, Kirschner Tr., 142:25-143:5.

⁴ Wegner and Lorentz testified pursuant to Separation Agreements with SHIP. Weinick Dec. Ex. 5, Wegner Tr., 13:15-22:19; Weinick Dec. Ex. 22, Lorentz Tr., 16:5-22:13.

86. SHIP was aware of Beechwood generally and Beechwood Re specifically because former SHIP affiliates BCLIC and WNIC had entered into certain so-called Reinsurance Agreements with Beechwood Re through SHIP's affiliate, Fuzion, which acts as a third-party policy and claims administrator for policies of long-term care business issued by various insurers, including SHIP. SHIP Complaint ¶ 12.⁵ See also Weinick Dec. Ex. 5, Wegner Tr., 30:3-10; 142:24-143:15; 151:4-13.

87. Fuzion and SHIP share the same employees. SHIP Complaint ¶ 54.

88. On or about February 1, 2014, Fuzion entered into a Master Services Agreement with Beechwood Re pursuant to which Fuzion agreed to administer the long-term care insurance policies that had been reinsured with Beechwood Re by former SHIP affiliates BCLIC and WNIC with the approval of their respective regulators. SHIP Complaint ¶ 54.

89. Given SHIP's precarious financial position at the time, it came up with a plan to address its long-term care investment shortfalls by seeking a higher yield through Beechwood. Weinick Dec. Ex. 22, Lorentz Tr., 52:8-19, 221:24-223:6; Weinick Ex. 3, Staldine Tr., 30:6-33:15.

⁵ Effective in or about October 2013, CNO subsidiaries, BCLIC and WNIC, ceded a substantial portion of their legacy, runoff long-term care business to Beechwood Re pursuant to an (i) Indemnity Reinsurance Agreement by and between Washington National Insurance Company and Beechwood Re Ltd, as amended by Amendment No.1 to Indemnity Reinsurance Agreement and (ii) New York Indemnity Reinsurance Agreement by and between Bankers Consec Life Insurance Company and Beechwood Re Ltd (together, the "**Reinsurance Agreements**"). SHIP Crossclaims ¶ 129

As part of the Reinsurance Agreements transactions, Beechwood Re assumed control over claims administration for the ceded long-term care insurance policies, and BCLIC and WNIC transferred almost \$600 million, largely in cash, into reinsurance trusts for each of BCLIC and WNIC, respectively, to be invested and managed by Beechwood Re and its agents, BAM and BAM Administrative. *Answer, Cross-Claims and Third-Party Complaint of Bankers Consec Life Insurance Company and Washington National Insurance Company* (ECF No. 204) ¶ 594.

90. SHIP's plan involved turning a significant amount of SHIP's reserve assets over to Beechwood pursuant to certain IMAs that guaranteed a return of 5.85% by certain Beechwood entities. The guarantee of 5.85% in the IMAs with Beechwood, as investment advisor, was far greater than the 2% returns SHIP had been realizing from its other corporate bond investments. Weinick Dec. Ex. 5, Wegner Tr., 171:8-173:8.

91. SHIP CEO Brian Wegner considered this deal with Beechwood "an achievement." *Id.*; Weinick Dec. Ex. 5, Wegner Tr., 26:20-21. Indeed, SHIP's 30(b)(6) witness (and CEO of SHIP after Wegner) Barry Staldine, stated that SHIP was "happy with" the "good rate of return," which it viewed as a "nice return" captured from "higher risk." Weinick Ex. 3, Staldine Tr., 153:3-154:17.

92. Prior to entering into the first IMA, SHIP's CEO, Wegner, knew that Beechwood's investment side employees were from the Platinum Funds. Weinick Dec. Ex. 21, Feuer Tr., 13:3-8, 112:25-113:17, 115:4-25, 285:19-286:7. Indeed, Wegner met with Beechwood at Platinum's office, and in their initial meetings, Wegner was trying to solicit Beechwood to utilize Fuzion. Weinick Dec. Ex. 21, Feuer Tr., 13:3-8, 112:25-113:17, 115:4-25, 285:19-286:7.

93. While Wegner testified at his deposition that any relationship between Beechwood's Levy and Platinum would not have raised any flags because "[w]e never heard of Platinum before" (Weinick Dec. Ex. 5, Wegner Tr., 46:16-25), his testimony is contradicted by an October 3, 2016 email that Wegner wrote, stating that in 2013 it was known by SHIP that "Platinum was a respected hedge fund at that time." Weinick Dec. Ex. 5, Wegner Tr., Dep. Ex. 74; 135:13-137:14. SHIP's 30(b)(6) witness Barry Staldine also corroborated this knowledge when he testified that it was then widely known that "Platinum Partner funds were pretty strong, darlings of Wall Street." Weinick Dec. Ex. 3, Staldine Tr., 47:8-23. It is also inconsistent with

Staldine's testimony that SHIP saw Levy's experience with Platinum as a positive in 2014 because "Platinum was a respected firm." Weinick Dec. Ex. 3, Staldine Tr., 155:19-156:17.

94. Moreover, in October 2013 SHIP had possession of a document entitled "Beechwood Re Background Information," which describes Levy as having been the Deputy CIO of PPVA, CIO of PPBE (BlackElk) and Director and Controller of Desert Hawk Gold Corp. and Glacial Energy (Agera). Weinick Dec. Ex. 15, Robison Tr., 196:17-203:25.

95. SHIP has even admitted "that Beechwood represented to SHIP in an April 2014 PowerPoint presentation that David Levy served as the former Deputy Chief Investment Officer at Platinum Partners Value Arbitrage Fund, L.P. Weinick Dec. Ex. 36 (*SHIP's Response to Receiver's Request for Admission*), Nos. 22 and 24.

96. In addition to the forgoing, in the midst of SHIP's negotiations with Beechwood, SHIP's CEO, Wegner, sought \$1 million for his personal venture, Trilliant (a data analytics, family-owned business of Wegner), from Beechwood. Weinick Dec. Ex. 13, Serio Tr., 95:3-8 (While Wegner stated that Feuer approached him in wanting to invest in Trilliant, it was the opposite.) Wegner solicited Feuer, and this solicitation was initially done much earlier than the IMAs, around 2013 early 2014); Weinick Dec. Ex. 16, Bowler Tr., 88:9-24. Wegner subsequently admitted that upon entering into the IMAs, "[w]e [SHIP] did not do a deep dive into the ownership of the company [Beechwood]." Weinick Dec. Ex. 5, Wegner Tr., 176:15-177:15.

97. Feuer subsequently arranged for an investment by Beechwood into Trilliant, which was comprised of \$250,000 of "friend money," which could probably be increased to \$250,000 more if it was needed – as to which Wegner wrote: "It's nice to have friends like that." Weinick Dec. Ex. 5, Wegner Tr., 74:23-76:17; 192:19-193:20; 209:13-212:10; Weinick Dec. Ex. 37, Dep. Ex. 80.

98. Despite Feuer telling Wegner that the investment in Wegner's family business came from Beechwood, Wegner testified he later learned that in fact the source of those funds actually came from CNO's reinsurance trust being invested by Beechwood. Weinick Dec. Ex. 5, Wegner Tr., 356:10-362:23.

99. Wegner's actions in connection with soliciting Beechwood's investment into Trilliant eventually led, in part, to his termination for cause from SHIP. *See, e.g.*, Weinick Dec. Ex. 16, Bowler Tr., 86:24-88:8 (Wegner was placed on leave because he was not truthful relative to the Trilliant investment).

100. SHIP has conceded that no third-party due diligence review was ever done before entering into the IMAs. Weinick Dec. Ex. 5, Wegner Tr., 176:15-177:15.

101. Paul Lorentz, SHIP's CFO and Treasurer, had emailed Wegner that certain members of the Board would want to see "formal documentation of our due diligence" and specifically recommended it be carried out by a third party. Weinick Dec. Ex. 83, Dep. Ex. 58; Weinick Dec. Ex. 5, Wegner Tr., 54:2-11.

102. Had a fulsome review of Beechwood's ownership been properly carried out it would have revealed that 63% of Beechwood's ownership was held in trusts controlled by family members of Platinum's principals. Weinick Dec. Ex. 38, Dep. Ex. 67; Weinick Dec. Ex. 5, Wegner Tr., 99:18-103:16; Weinick Dec. Ex. 39, Dep. Ex. 867; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18.

103. In early 2015, Wegner engaged the internal auditing team from Protiviti to begin a diligence review into Beechwood, as he reported to the Board that he would. As a result, Protiviti generated a draft report that specifically flagged the fact that by then (February 2015), Beechwood

had not disclosed its ownership structure and that such disclosure should be “non-negotiable.” Weinick Dec. Ex. 40, Dep. Ex. 64; Weinick Dec. Ex. 5, Wegner Tr., 87:9-91:19, 206:7-208:25.

104. Specifically, the draft Protiviti report states: “Typical due diligence information about the counterparties, financial statements, ownership structures, biographies, and/or background checks of the principals, were not made available to us for this review.” *Id.* But rather than have Protiviti finalize the report and submit it to the Board, Wegner buried the draft Protiviti report. Weinick Dec. Ex. 3, Staldine Tr., 80:16-83:13, 235:21-237:19; Weinick Dec. Ex. 41, Dep. Ex. 132; Weinick Dec. Ex. 84, Dep. Ex. 149. SHIP’s Board only found out about the buried report after Wegner was terminated. Weinick Dec. Ex. 84, Dep. Ex. 149.

105. Wegner testified at his deposition that Protiviti undertook a third party due diligence review for SHIP *prior to* entering into the IMAs. Weinick Dec. Ex. 5, Wegner Tr., 59:10-21; 82:25-87:7. However, Wegner subsequently admitted this third party due diligence review was never done before entering into the IMAs. Weinick Dec. Ex. 5, Wegner Tr., 176:15-177:15.

H. The SHIP Investment Management Agreements

106. In or after 2014, SHIP transferred \$270 million to BBIL, Beechwood Re and BAM (collectively, the “**Beechwood Advisors**”) to be managed on SHIP’s behalf pursuant to three investment management agreements. FAC ¶ 168 and SHIP Answer ¶ 168. SHIP entered into those investment management agreements with the Beechwood Advisors as a means of earning a guaranteed rate of return on a small portion of its investment portfolio. SHIP Answer ¶ 8.

107. On or about May 22, 2014, SHIP and BBIL executed an Investment Management Agreement dated as of May 22, 2014 (the “**BBIL IMA**”). FAC ¶¶ 162, 165(i) and SHIP Answer ¶¶ 162, 165; Weinick Agency Dec. Ex. 2 (BBIL IMA).

108. On or about June 13, 2014, SHIP and Beechwood Re executed an Investment Management Agreement dated as of June 13, 2014 (the “**BRe IMA**”). FAC ¶¶ 162, 165(ii) and SHIP Answer ¶¶ 162, 165; Weinick Agency Dec. Ex. 3 (BRe IMA).

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

110. On or about January 15, 2015, SHIP also entered into a side letter with Beechwood Re Investments, LLC dated as of January 15, 2015, with respect to the BAM IMA (the “**BAM IMA Side Letter**”). Weinick Agency Dec. Ex. 4 (BAM IMA). *See also* Weinick Dec. Ex. 87, Dep. Ex. 140; Weinick Dec. Ex. 3, Staldine Tr., 150:4-152:11, 225:3-231:21; Weinick Dec. Ex. 88, Dep. Ex. 146; Weinick Dec. Ex. 15, Robison Tr., 88:24-91:25. The BAM IMA Side Letter was executed on behalf of Beechwood Re Investments, LLC by Mark Nordlicht as the Managing Member of Beechwood Re Investments, LLC’s Manager, N Management LLC. *Id.* Wegner executed the same BAM IMA Side Letter. *Id.*

111. Documents by and between Beechwood Re Investments, LLC and the Beechwood Entities in which Nordlicht signed on behalf of Beechwood Re Investments, LLC on behalf of its Manager, N Management LLC, include:

- (i) \$100 Million Demand Note dated August 30, 2013. Weinick Dec. Ex. 42, Dep. Ex. 364.
- (ii) Amended and Restated Limited Liability Company Agreement for Beechwood Re Investments, LLC dated December 30, 2013. Weinick Dec. Ex. 43, J. Beren Dep. Ex. 11.

- (iii) Pledge Agreement dated May 15, 2014. Weinick Dec. Ex. 44, M. Fox Dep. Ex. 2.
- (iv) \$25 Million Amended and Restated Demand Note dated May 16, 2014. Weinick Dec. Ex. 45, Dep. Ex. 369.
- (v) \$75 Million Amended and Restated Demand Note dated May 16, 2014. Weinick Dec. Ex. 46, Dep. Ex. 572.
- (vi) Pledge Agreement dated February 19, 2015. Weinick Dec. Ex. 47, Dep. Ex. 66.

112. The BBIL IMA permitted BBIL to retain investment returns above a 5.85% guaranteed investment return as a “Performance Fee.” Weinick Agency Dec. Ex. 4 (BAM IMA) Ex. B ¶ 1; SHIP Complaint ¶ 101.

113. The BRe IMA permitted BRe to retain investment returns above a 5.85% guaranteed investment return as a “Performance Fee.” Weinick Agency Dec. Ex. 3 (BRe IMA) Ex. B ¶ 1; SHIP Complaint ¶ 119.

114. 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. Weinick Agency Dec. Ex. 4 (BAM IMA) Ex. B ¶ 1; SHIP Complaint ¶ 136.

115. 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) and SHIP Answer ¶ 165.

116. 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) and SHIP Answer ¶ 165.

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

118. 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. Weinick Agency Dec. Ex. 2-4 (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.

119. While BAM was generally given authority to invest SHIP's funds as it saw fit, BBIL's, Beechwood Re's and BAM I's "*Adviser Investment Policy, Guidelines and Restrictions*" and "*Guidelines for Senior Secured Credit Opportunities*" provide that Beechwood was required to invest in a manner permitted by SHIP's corporate investment guidelines. SHIP Complaint ¶¶ 105, 123 and 141; SHIP Answer 167; Weinick Dec. Ex. 11, Narain Tr., 585:24-586:3. SHIP thus reserved the right to make certain its funds were invested in "transactions in which there is a well-known and understood counterparty risk, and liquid/valuable collateral to secure any ... loan." SHIP Complaint ¶¶ 108 and 126.

120. John Robison, former Chief Investment Officer of SHIP (and one of SHIP's 30(b)(6) witnesses) testified during his deposition that: (i) Beechwood was an "outside manager who had discretionary authority" to manage SHIP's assets (Weinick Dec. Ex. 15, Robison Tr., 12:7-8; 132:4-10), (ii) SHIP had to monitor Beechwood's investments in the Platinum related assets because they were subject to a limitation of 5% of assets (Weinick Dec. Ex. 15, Robison Tr., 44:2-20) and (iii) Beechwood's discretion to execute transactions in the IMAs was discretionary subject to SHIP's investment guidelines. Weinick Dec. Ex. 15, Robison Tr., 87:8-23.

121. SHIP's expert, Timothy Hart, confirmed at his deposition that "the Beechwood people agreed to follow those [SHIP's] investment policies." Weinick Dec. Ex. 26, Hart Tr., 30:3-6.

122. Barry Staldine, SHIP's former Chief Operating Officer and current president and CEO, conceded that Beechwood was not granted absolute discretion to invest in SHIP's funds but rather, the investments it made were subject to, *inter alia*, regulatory restrictions. Weinick Dec. Ex. 3, Staldine Tr., 54:4-23.

123. Paul Lorentz, who was the Chief Financial Officer of SHIP, was appointed to ensure that Beechwood satisfied those "regulatory concerns." Weinick Dec Ex. 3, Staldine Tr., 54:4-21; Weinick Dec. Ex. 22, Lorentz Tr., 13:20-23.

I. Beechwood's Use of PPCO and SHIP's Funds

124. Upon receipt of SHIP's funds, Beechwood immediately began investing into the Platinum Funds and/ or their portfolio companies through a series of debt and equity transactions. SHIP Crossclaims ¶ 235. Feuer subsequently commented that Beechwood did so without taking enough collateral. Weinick Dec. Ex. 21, Feuer Tr., 649:18-650:14.

125. Specifically, the Beechwood Advisors deployed SHIP's money in loans or other investments in which the Platinum Funds, Beechwood and their owners had direct or indirect interests, including investments into PPCO and PPVA, and loans to companies in which various Platinum Funds had taken large stakes through equity or debt investments. SHIP Crossclaims ¶ 238. For example, the funds were used to make direct loans to PPVA portfolio companies and the purchases of PPVA portfolio companies, including, among others, Black Elk, Golden Gate Oil, PEDEVCO Corp., Northstar Offshore Group, LLC ("Northstar Offshore"), Montsant Partners

LLC, Desert Hawk Gold Corp. (“**Desert Hawk**”) and China Horizon Investments Group. Weinick Ex. 70, Hart Report, ¶ 16.

126. PPCO’s records also reflect that on or about July 7, 2014, PPCO borrowed from PPBE \$3,335,000 in Black Elk bonds to sell them short to Beechwood on July 7, 2014. Rogers Dec., ¶ 44 (citing CTRL5055189-90; CTRL5829700, CTRL 5829700 – Nomura Statement, PPCO Financial Statements).

127. PPCO’s financial statements also refer to that transaction, but did not identify Beechwood by name, instead stating that “[i]n July 2014, the Company borrowed BEEEOO corporate bonds with a face value of \$3,335,000 from PPBE, an affiliate of the Company [referring to Beechwood], and sold them to an investor in the fund [referring to Beechwood] for a cash payment of \$3,351,327, which included \$49,678 of accrued interest, equivalent to 99 percent of par.” Rogers Dec., ¶ 45.

J. Payments Made to the PPCO Portfolio Manager and General Partner

128. Between 2014 and 2016, PPCO paid the PPCO Portfolio Manager approximately \$24 million in management fees, of which approximately \$2.9 million was distributed to its owners or various charities on behalf of its owners. (Mark Nordlicht, Murray Huberfeld, David Bodner, Gilad Galter, Uri Landesman and Bernie Fuchs). Rogers Dec. ¶ 41.

129. The General Partner was also entitled to an incentive fee at the end of each fiscal year equal to 20% of the net income that would otherwise be credited to the capital account of limited partners.” *Id.* at ¶ 42 (citing PPCO Financial Statements p. 21).

130. Between 2014 and 2016, PPCO paid approximately \$6 million of incentive fees to the General Partner, Platinum Credit Holdings, LLC. *Id.* at ¶ 43.

131. At the same time, many of the Platinum insiders were profiting from the performance fees charged by Beechwood, which charged over \$30 million in such fees pursuant to the IMAs. SHIP Complaint ¶ 37.

K. SHIP's Knowledge of the Investments Made by Beechwood Into the Platinum Funds

132. SHIP had contemporaneous knowledge of how its funds were deployed by Beechwood on its behalf. For example:

- (i) Feuer, former CEO of BBIL and other Beechwood Entities, testified at his deposition that:
 - (a) 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." Weinick Dec. Ex. 21, Feuer Tr., 359:14-17. Thus, to the extent that SHIP was invested through Beechwood into Desert Hawk, for example, SHIP would have had access to that information. Weinick Dec. Ex. 21, Feuer Tr., 359:14-17.
 - (b) He did not recall "any communications between anyone at Beechwood and anyone at SHIP where Beechwood failed to answer a question asked by SHIP." Weinick Dec. Ex. 21, Feuer Tr., 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." Weinick Dec. Ex. 21, Feuer Tr., 680:5-8.
- (ii) SHIP was provided with, and retained, a list of investments that Beechwood made on its behalf. Weinick Dec. Ex. 5, Wegner Tr., 384:13-16.

- (iii) SHIP visited Beechwood's offices "once a quarter" to discuss investments in the IMAs, including Platinum related investments. Weinick Dec. Ex. 5, Wegner Tr., 261:21-262:19. On these occasions, Wegner 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]." Weinick Dec. Ex. 21, Feuer Tr., 254:11-24. The "general agenda" at those "quarterly reviews" included "how [SHIP's] block [of investments with Beechwood] fared the prior quarter." Weinick Dec. Ex. 21, Feuer Tr., 315:11-316:18. Those reviews lasted for "days" and included conversations regarding SHIP's investments. Weinick Dec. Ex. 21, Feuer Tr., 317:15-23. SHIP also requested valuations of the Beechwood investments, and received them, from Beechwood's outside valuation professionals, Duff & Phelps or subsequently Lincoln (defined below). Weinick Dec. Ex. 5, Wegner Tr., 182:6-18.
- (iv) SHIP had in its possession a March 31, 2015 report prepared by Duff & Phelps as to which Lorentz concedes that as CFO he had responsibility to review, which includes numerous references to the relationship between Platinum and the assets being held in the IMAs, including: Monstant Partners; NYSYRL Capital; ALS Capital Ventures; Credit Strategies LLC; Northstar; Principal Growth Strategies; PPCO; Agera; New Bradley House Ltd. Weinick Dec. Ex. 15, Robison Tr., 221:9-233:19.
- (v) By May 2015 SHIP knew that it was the managing member of PPVA who signed the side letter to the IMA for Beechwood because SHIP had in its possession Duff & Phelps reports that described Desert Hawk issuing \$10 million worth of senior

secured notes from DMRJ group, a wholly owned subsidiary of PPVA guaranteed by its managing member, Mark Nordlicht. Weinick Dec. Ex. 15, Robison Tr., 111:25-115:3.

- (vi) In July of 2015, SHIP had a copy of a document entitled “Participation Agreement (Desert Hawk Gold Corp.)” which is signed by (i) Levy on behalf of DMRJ Group, defined as the “Grantor,” and Desert Hawk defined as the “Borrower”, (ii) Feuer on behalf of Beechwood Re and (iii) Nordlicht for PPVA. Weinick Dec. Ex. 15, Robison Tr., 252:15-262:20.
- (vii) SHIP received the June 24, 2015 Duff & Phelps report that describes Platinum relationship with the following assets held by SHIP: ALS; Desert Hawk; Golden Gate Oil; Implant Science; Kennedy RH Holdings; Monstant Partners; NYSYRL Capital; Northstar; Principal Growth Strategies (“PGS”) (which was jointly owned by PPCO and PPVA); PPCO; and Agera. The report also identifies Nordlicht as a managing member. Weinick Dec. Ex. 22, Lorentz Tr., 152:9-161:20.
- (viii) Lorentz and his team would monitor the investments by Beechwood for compliance with SHIP’s investment guidelines by use of a spreadsheet format to compare the investments to the policy. Thus, Lorentz and other SHIP employees would not only have seen the investments into PPCO and PPVA but were tasked with analyzing the investments to confirm that they were made in accordance with SHIP’s investment guidelines. Weinick Dec. Ex. 15, Robison Tr., 75:5-77:5.
- (ix) Specific investments were discussed during quarterly SHIP-Beechwood meetings Weinick Dec. Ex. 21, Feuer Tr., 315:11-316:24; 317:15-23.

- (x) Lorentz and his team were tasked with monitoring investments. They communicated with Beechwood by telephone and face-to-face meetings and would review investment documents including valuation reports. Weinick Dec. Ex. 15, Robison Tr., 98:12-99:6.
- (xi) Lorentz presented to the Board of Trustees SHIP's purchases and sales in the IMAs, including the Beechwood transactions at quarterly meetings, which the Board would then vote to approve. Weinick Dec. Ex. 22, Lorentz Tr., 202:11-203:10.
- (xii) From 2014 through all of 2015 SHIP's CFO, its audit committee and its Board of Directors reviewed the investments Beechwood was making with SHIP's assets in the IMAs and would discuss the investments in quarterly meetings. Sometime in 2016 an investment committee was formed by SHIP to perform more oversight over the investments, which involved meetings every other week, which at some time devolved into monthly meetings. Weinick Dec. Ex. 15, Robison Tr., 190:3-194:9.
- (xiii) Beechwood reported to SHIP "what their buys and sells were..." Weinick Dec. Ex. 16, Bowler, Tr., 82:17-19.

L. SHIP's Financial Condition and Attempts to Improve Its RBC

133. Because SHIP is a solvent run-off that no longer writes new business, SHIP's access to capital and sources of income are limited to policyholder premiums and investment income. SHIP Complaint ¶ 55. SHIP's ability to preserve its asset base thus is essential. *Id.* However, SHIP has continued to experience adverse loss experience, which has negatively affected its surplus. *Id.* If a U.S. domiciled insurance company's surplus falls below a certain amount in relation to its risk, its domestic regulators may exercise enforcement powers, including placing the company into receivership and ordering liquidation. *Id.*

134. “**RBC**,” or risk-based capital, has been a focus for SHIP and its Board. RBC is a metric used by insurance regulators related to solvency. Weinick Dec. Ex. 49, Dep. Ex. 259; Weinick Dec. Ex. 15, Robison Tr., 46:4-18.

135. It is better to have a higher RBC because a regulator will take action if RBCs fall below a certain point. Weinick Dec. Ex. 13, Serio Tr., 71:4-13. And while most insurance companies need to stay above the RBC mandatory control level of 200%, because SHIP was in run-off its regulator permitted a reduced RBC percentage of 100%. Weinick Dec. Ex. 3, Staldine Tr., 17:25-20:13.

136. RBC was always a concern for SHIP and a topic of discussion and diligence. Weinick Dec. Ex. 13, Serio Tr., 71:14-72:14, 77:2-6, 140:4-141:7. For example, at an August 26, 2015 meeting of the SHIP Board of Directors (just four months before the December tranche of the PPCO Loan Transaction), “SHIP’s Strategy Update” stated that its “[p]rocess to convert BRe and BBIL IMAs to notes [wa]s continuing.” Weinick Dec. Ex. 91 at SHIP0096641.

M. The Circular Surplus Note Scheme to Increase SHIP’s RBC

137. By late 2014 to early 2015, SHIP was in danger of falling below its required regulatory RBC percentage. This put SHIP in danger of having to endure the “negative event” of having to answer to its regulator, the Pennsylvania Department of Insurance, with a company action plan. Weinick Dec. Ex. 3, Staldine Tr., 25-20:13.

138. SHIP set out to strengthen its RBC by entering into a certain surplus note transaction for \$50 million with Beechwood (the “**Surplus Note**”), which constituted a “big increase” to SHIP’s RBC percentage, and thereby removed SHIP from such regulatory concern. Weinick Dec. Ex. 5, Wegner Tr., 78:2-81:22. The plan involved SHIP borrowing \$50 million from an entity that Beechwood created, called Beechwood Re Investments LLC (“**BRILLC**”),

evidenced by the Surplus Note dated February 20, 2015. This immediately improved SHIP's RBC. Weinick Dec. Ex. 15, Robison Tr., 94:7-95:2.

139. When Beechwood was first approached by Wegner about abetting this circular transaction, Beechwood was not in a position to be of help. In fact, Feuer responded by saying, "Brian we love you but we don't have \$50 million to loan you." SHIP then arranged to get Beechwood the money – from SHIP itself. With that Beechwood agreed. Weinick Dec. Ex. 25, Taylor Tr., 171:3-172:4; Weinick Dec. Ex. 6, Thomas Tr., 358:11-359:4; Weinick Dec. Ex. 22, Lorentz Tr., 128:9-20.

140. Although SHIP had to obtain regulatory approval for the Surplus Note, it concealed from its regulators the details in connection with the fact that the source of the \$50 million loan investment proceeds came not from Beechwood, but rather from SHIP itself, in a circular transaction whereby SHIP effectively raised its RBC ratio by improperly investing in itself.

141. On February 18, 2015, SHIP wired \$60 million into its first IMA account, which was being invested by BBIL and then the next day, February 19, 2015, SHIP had another wire sent from that same account in the amount of \$50 million to BRILLC, which then used those funds to purchase the Surplus Note. Weinick Dec. Ex. 85, Dep. Ex. 393; Weinick Dec. Ex. 22, Lorentz Tr., 103:10-123:14.

142. SHIP sent two letters to its regulator, the Pennsylvania Department of Insurance, on the same day, January 30, 2015, one seeking approval of the Surplus Note to be purchased by BRILLC (the "**Surplus Note Letter**") (Weinick Dec. Ex. 50, Dep. Ex. 391), the other for the purpose of discussing SHIP's intention to enter into a third IMA with Beechwood with a 5.85% return to be guaranteed by BRILLC and describing its intention to recharacterize the first two

IMAs as loans (the “**IMA Letter**”). Weinick Dec. Ex. 51, Dep. Ex. 430; Weinick Dec. Ex. 22, Lorentz Tr., 12:25-128:20.

143. While each letter discusses the purchase of the Surplus Note by BRILLC, and while the IMA Letter (Weinick Dec. Ex. 51, Dep. Ex. 430) claims no improper “circular transaction” would take place, neither letter describes the actual details of the wiring of funds within a day from SHIP to BBIL to BRILL back to SHIP together with the corresponding note instruments evidencing the borrowing of those funds. Further, Lorentz acknowledged he failed to do so. Weinick Dec. Ex. 89, Dep. Ex. 394; Weinick Dec. Ex. 22, Lorentz Tr., 112:25-128:20.

144. Corresponding note instruments further demonstrate that on February 19, 2015, BRILLC borrowed \$50 million from BBIL (1st IMA investment advisor) evidenced by a note and security agreement dated that day, and then the next day, February 20, 2015, SHIP executed the Surplus Note in favor of BRILLC in exchange for \$50 million.

145. Wegner observed that Beechwood “literally saved the company when they gave us the 50 million surplus note.” Weinick Dec. Ex. 5, Wegner Tr., 134:17-135:5.

N. SHIP’s RBC Just Prior to the PPCO Loan Transaction

146. In or about November and/ or December 2015, SHIP’s RBC was at a level that put it in danger of regulatory action. Weinick Dec. Ex. 13, Serio Tr., 153:13-17. And so, the SHIP Board discussed how to get SHIP back to a 200 RBC, the level where no regulatory action would be taken. Weinick Dec. Ex. 13, Serio Tr., 170:2-12. Solutions include (i) discussions on changing the IMAs in a manner to benefit RBC (Weinick Dec. Ex. 13, Serio Tr., 170:13-171:9), (ii) how to liquidate investments to improve RBC (Weinick Dec. Ex. 13, Serio Tr., 179:17-181:10) and (iii) a move from unrated to rated investments. Weinick Dec. Ex. 13, Serio Tr., 181:11-15.

147. In December 2015, if SHIP's RBC fell further, the regulators could have removed SHIP's then current management (which included Wegner). Weinick Dec. Ex. 13, Serio Tr., 155:22-156:3.

148. In the time leading up to the PPCO Loan Transaction, SHIP was restructuring its balance sheet to avoid further regulatory action. Weinick Dec. Ex. 21, Feuer Tr., 364:2-365:6.

149. SHIP's desire to improve its RBC could be accomplished by changing its investments in unrated assets to rated. Weinick Dec. Ex. 13, Serio Tr. 180-181, 199-200.

150. SHIP's investment in Desert Hawk was unrated. Weinick Dec. Ex. 52, Dep. Ex. 492; Weinick Dec. Ex. 8, Saks Tr., 273:16-277:24.

151. SHIP's investment in Northstar was unrated. Weinick Dec. Ex. 52, Dep. Ex. 492; Weinick Dec. Ex. 8, Saks Tr., 273:16-277:24.

152. SHIP's investment in LC Energy Holdings LLC ("LC Energy") was unrated. Weinick Dec. Ex. 52, Dep. Ex. 492; Weinick Dec. Ex. 8, Saks Tr., 273:16-277:24.

153. Saks also testified about an email on November 18, 2015, from his assistant stating, "We should talk about what to send next to solve the SHIP issue. These are the loans in SHIP. Maybe next we should send Implant, LC Energy, and Desert Hawk. I think we need to keep this rolling if we're going to get this done by year-end." Saks explained that the "SHIP issue" involved the urgency of having certain SHIP assets rated by a rating agency before year end: "I know that SHIP required, for certain loans, for there to be ratings on those loans. I'm not sure for what reason, but they needed ratings on some of the loans." Weinick Dec. Ex. 52, Dep. Ex. 492; Weinick Dec. Ex. 8, Saks Tr., 273:16-277:24.

O. SHIP Seeks to Reduce its Concentration in Platinum Fund Assets

154. In or about 2016 Beechwood was actively seeking to reduce SHIP's investments in the Platinum Funds:

- (i) Paul Lorentz from SHIP had directed the reduction of Platinum interests to a level below a certain \$5.5 mm in accordance with stated investment guidelines, Weinick Dec. Ex. 11, Narain Tr., 485:20-487:24, 533:17-534:5, 584:3-588:5; *see also* Weinick Dec. Ex. 6, Thomas Tr., 375:25-376:22 (Beechwood's 30(b)(6) witness adopting Narain's testimony concerning ongoing discussions in January 2016 to divest SHIP's Platinum assets at SHIP's request).
- (ii) Contrary to SHIP's assertions that it had no involvement in the PPCO Loan Transaction, Feuer could not testify that SHIP did not have knowledge of the December 2015 Transaction. Feuer affirmatively stated, "I can't say that. I don't know." Weinick Dec. Ex. 21, Feuer Tr., 464:7-12. In fact, it is possible that Feuer spoke to Wegner about Platinum issues. Weinick Dec. Ex. 21, Feuer Tr., 408:7-20. It is also possible that he spoke to Wegner specifically about diversifying away from Platinum other than in connection with Agera. Weinick Dec. Ex. 21, Feuer Tr., 341:20-342:11.

P. The PPCO Funds' Motivations for Consummating the PPCO Loan Transaction

155. Prior to consummation of the PPCO Loan Transaction, SHIP was aware that the Platinum Funds needed liquidity because Feuer described PPCO to SHIP's CFO Paul Lorentz as a "motivated seller who much needs the money." Weinick Dec. Ex. 86, Dep. Ex. 411; Weinick Dec. Ex. 22, Lorentz Tr., 299:10-301:8.

156. As set forth below, pursuant to the PPCO Loan Transaction, PPCO pledged liens on substantially all of its assets even though prior to the transactions, Nordlicht expressed to Feuer that liens encumbering PPCO's assets were placing a "stranglehold" on the funds, and were otherwise "detrimental"; and thus, a significant transaction with Beechwood was required. Weinick Dec. Ex. 21, Feuer Tr., 392:3-14; 393:14-19. Nordlicht's point person for the PPCO Loan Transactions described the deal "like one of those prearranged marriages where I was put into a situation where the outcome was already determined prior to my involvement, and [Nordlicht] was just sending me basically like usher the transaction to its conclusion." Steinberg Tr. 357:12-17; 365:12-23. At his deposition, he also questioned whether the deal was actually in Platinum's best interest. *Id.*

157. Nordlicht used PPCO's NAV - and his ability to overvalue the PPCO Funds' assets - to enrich himself at the expense of the funds. SHIP Crossclaims ¶ 245.

158. As the Chief Investor Officer of the Platinum Funds, Nordlicht had exclusive authority to value the funds' assets and when Platinum employees attempted to address the evident overvaluation of assets, Nordlicht admonished them: "make sure you don't affect my returns too badly." Weinick Ex. 19, Mandelbaum Crim. Trial Test., 4268:1-4269:11.

159. When Saks was asked at his deposition about the December 2015 fraudulent conveyance transactions he claimed to have no memory of the deal, even though he signed the documents, was a former lawyer from a large well-respected firm, and at that moment in his deposition just finished demonstrating a fulsome knowledge of a similarly structured transaction. Weinick Dec. Ex. 8, Saks Tr., 284:11-319:7. But Saks had recently settled SHIP's third-party claims against him before testifying at his deposition. Weinick Dec. Ex. 8, Saks Tr., 284:11-319:7.

160. Similarly, Saks' replacement, Narain claimed he did not understand the purpose of the March 2016 transaction, despite the fact that he could remember it was after a lot of negotiation in which he was involved, along with Feuer and Taylor. He further claimed he did not spend a lot of time on the agreements comprising the PPCO Loan Transaction (defined below) even though he signed certain of them. And he said he does not remember now why PPCO would have provided as security all of its assets, but he said that he did have an understanding at the time. Weinick Dec. Ex. 11, Narain Tr., 525:17-533:6.

Q. The PPCO Loan Transaction

161. The Receiver's fraudulent conveyance claims against SHIP and the Beechwood Entities, including PBIH, arise out of a single integrated transaction which occurred in two primary steps: the first in late 2015 and the second in March 2016 (the "**PPCO Loan Transaction**"). FAC, Section VI.G.

162. In connection with the PPCO Loan Transaction, Nordlicht was the point person and executed all of the documents that were executed by PPCO, PPVA Oil & Gas, LLC, and all of the PPCO Subsidiaries (defined below). See Weinick Dec. Ex. 21, Feuer Tr., 375:15-376:11 and agreements cited *infra*.

163. 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 Complaint ¶ 248.

1. Step 1: The December 2015 Transactions

164. On or about December 23, 2015, PPCO executed a "Delayed Draw Demand Note" (the "**Delayed Draw Demand Note**"), in the principal amount of \$15,500,000.00, in favor of SHIP. McCormack Dec. Ex. 43 and 44. BAM executed this document on behalf of SHIP under

the words “ACCEPTED AND AGREED TO” as “its [SHIP’s] investment manager.” *Id.* The Delayed Draw Demand Note stated that BAM Administrative, for the benefit of SHIP, had been granted a “security interest” by PPCO 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. *Id.* ¶ 15; *see also* Weinick Dec. Ex. 92, Dep. Ex. 234; Weinick Dec. Ex. 6, Thomas Tr., 378:12-380:7.

165. The Delayed Draw Demand Note indicate that “[o]n December 23, 2015 ... [t]he Holder shall fund \$9,198,750.00 hereunder to the Issuer ... pursuant to such distribution instructions delivered by Issuer to Holder on the First Funding Date.” *Id.* ¶ 1.

166. On or about December 23, 2015, PPCO issued a letter 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**”). Weinick Agency Dec. Ex. 14-2 (POC) 364-65.

167. PPCO used these loan proceeds to purchase participation interests in \$9.2 million of secured debt owed by Desert Hawk, a PPVA investment, to DMRJ Group I LLC, the PPVA subsidiary through which PPVA held its investment in Desert Hawk. SHIP Rule 56.1 Statement (ECF No. 500) ¶ 51.

168. As part of the PPCO Loan Transaction, on or about November 18, 2015, SHIP had sold its remaining right, title and interest in the Desert Hawk loan to BBIL, consisting of a \$1,675,000 participation in notes issued by Desert Hawk to BBIL, which in turn assigned that participation interest in the Desert Hawk notes to PPCO on December 23, 2015, as part of the

PPCO Transactions. Weinick Dec. Ex. 53 (November 18, 2015 Assignment and Assumption Agreement/ CTRL 7517990). This assignment was recognized in the December 23, 2015 “Assignment Agreement” discussed below wherein it stated that “on or about November 18, 2015, SHIP sold its remaining right, title and interest in the Participation to Assignor [BBIL].” Weinick Dec. Ex. 54 (December 23, 2015 Assignment Agreement/ CTRL 7616325).

169. On or about December 30, 2015, PPCO 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**”). Weinick Agency Dec. Ex. 14-2 (POC) 366-67.

170. The disbursement was used to repay all indebtedness owing by LC Energy, a wholly owned subsidiary of PPCO, under four Secured Term Notes originally issued to BRe WNIC 2013 Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary, and BRe BCLIC Sub on June 3, 2014. SHIP Rule 56.1 Statement (ECF No. 500) ¶ 55.⁶

171. The December 2015 transaction documents – which included the Delayed Draw Demand Note, the Master Security Agreement, the Subsidiary Guaranty, the disbursement letters indicating that the loaned proceeds were to be used to fund the assignment of \$9.2 million of Desert Hawk notes and to discharge \$5 million of notes issued by LC Energy, and three “Assignment Agreements” for the Desert Hawk notes – were negotiated, executed and exchanged as an

⁶ On April 1, 2015, SHIP had purchased an \$880,000 participation in a note issued by LC Energy from BRe BCLIC Primary, and assigned \$40,000 of that participation to LC Energy on September 25, 2015. Weinick Dec. Ex. 62 (BW-SHIP-00664535 to 664543 and BW-SHIP-00703168-00703).

integrated transaction. Weinick Dec. Ex. 55, Dep. Ex. 433, Ex. 56, Dep. Ex. 437, Ex. 57, Dep. Ex. 438.

172. On or about December 23, 2015, PPCO, thirty-five (35) subsidiaries of PPCO (collectively, the “**PPCO Subsidiaries**”), including PGS, which owned a convertible note due from Agera Energy Holdings LLC, and BAM Administrative as “Agent” for SHIP (the “holder” of the Delayed Draw Demand Note), entered into a “Master Security Agreement” addressed to BAM, “as Agent” (the “**MSA**”). Weinick Agency Dec. Ex. 14-1 (POC) 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.” Weinick Agency Dec. Ex. 14-1 (POC) Schedule 1, p. 1, Schedule 4, pp. 1-2, Schedule 8 ¶ 3; POC 67-96.

173. Substantially all of the PPCO Subsidiaries are majority owned by PPCO, with ultimate corporate authority belonging to PPCO. Rogers Dec. ¶ 40.

174. On or about December 23, 2015, the PPCO Subsidiaries 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.” Weinick Agency Dec. Ex. 14-1 (POC) Schedule 8 ¶ 2; POC 37-66.

175. On or about December 31, 2015, a total of at least \$912,073 (including \$840,000 in principal and \$72,073 in interest) was paid by BAM to SHIP and applied as payment for a participation in the loans to LC Energy owned by SHIP. Weinick Dec. Exs. 58-64.

176. On or about January 20, 2016, PPCO executed an “Amended and Restated Delayed Draw Demand Note” (the “**A&R SHIP Note**”), in the principal amount of \$18,500,000.00, in

favor of SHIP, dated as of January 20, 2016. McCormack Dec. Ex. 54. Taylor executed this note as an “Authorized Signatory” of BAM, as “investment manager” of SHIP, under the words “ACCEPTED AND AGREED TO.” *Id.*

177. The A&R SHIP Note stated that BAM Administrative, for the benefit of SHIP, had been granted a “security interest” by PPCO 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 SHIP Note were “guaranteed” by those subsidiaries as more fully described in a “Subsidiary Guaranty” dated as of January 20, 2016. *Id.*

¶ 15.

178. On or about January 20, 2016, PPCO and the PPCO Subsidiaries 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. Weinick Agency Dec. Ex. 18 (Ratification and Reaffirmation Agreement); *see also* Weinick Dec. Ex. 90, Dep. Ex. 84.

2. **Step 2: The March 2016 Transactions**

179. On or about March 21, 2016, PPCO, 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 (the “**NPA**”), 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)....” McCormack Dec. Ex. 67. BAM executed the NPA on behalf of SHIP “as investment manager.” *Id.* Dhruv Narain executed the NPA as an “Authorized Signatory” of BAM. *Id.*

180. The NPA stated that attached to it as Exhibit “A” was 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.” McCormack Dec. Ex. 67 ¶ 1.

181. The NPA stated that attached to it as Exhibit “B” was a form of “Security Agreement.” McCormack Dec. Ex. 67.

182. The NPA stated that attached to it as Exhibit “C” was a form of “Guaranty Agreement.” McCormack Dec. Ex. 67.

183. 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.” McCormack Dec. Ex. 67.

184. 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.” McCormack Dec. Ex. 67 ¶ 10.16.

185. 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**”). Weinick Agency Dec. Ex. 14-1 (POC) Schedule 2 ¶ 18; Weinick Agency Dec. Ex.

14-2 (POC) 352-362. Dhruv Narain executed the Agency Agreement as an Authorized signatory by BAM, which thereby executed the Agency Agreement on behalf of SHIP. Weinick Agency Dec. Ex. 14-2 (POC) 362.

186. 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 Transaction. Weinick Agency Dec. Ex. 14-2 (POC) 352-362.

187. The transaction documents underlying the March 2016 portion of the PPCO Loan Transaction were exchanged and executed as an integrated transaction, with the Note Purchase Agreement, the five term notes, the Amended and Restated Security Agreement, the Subsidiary Guaranty, the Post-Closing Letter, and the two Northstar Assignment Agreements being executed simultaneously. Weinick Dec. Ex. 63, Dep. Ex. 445.

188. On or about March 21, 2016, PPCO 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." Weinick Agency Dec. Ex. 14-2 (POC) Schedule 5 p. 1 & Schedule 8 ¶ 9; POC 230-240; POC 216. Section 1.1 of NPA Note 1 provides, in part,

As used in this Note, the term "Applicable Interest Rate" means: (i) for the period commencing on the date of this Note through June 30, 2016, seven percent (7.00%) and (ii) thereafter, the Applicable Interest Rate shall equal the interest rate based upon the applicable Rating then in effect under the table below:

<u>Rating</u>	<u>Interest Rate</u>
AA-	7.00%
A+	7.50%

A	8.00%
A-	8.50%

189. On or about March 21, 2016, PPCO issued a “Secured Term Note” (“**NPA Note 2**”), in the principal amount of \$10,000,000.00, in favor of BRe BCLIC Primary. Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 10; POC 241-252.

190. On or about March 21, 2016, PPCO issued a “Secured Term Note” (“**NPA Note 3**”), in the principal amount of \$500,000, in favor of BRe BCLIC Sub. Weinick Agency Dec. Ex. 14-2 (POC) Schedule 5 p. 1 & Schedule 8 ¶ 11; POC 253-264; POC 216.

191. On or about March 21, 2016, PPCO issued a “Secured Term Note” (“**NPA Note 4**”), in the principal amount of \$14,989,677.78, in favor of BRe WNIC LTC Sub. Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 12; POC 265-276; POC 216.

192. On or about March 21, 2016, PPCO 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. Weinick Agency Dec. Ex. 14-2 (POC) Schedule 5 p. 1 & Schedule 8 ¶ 13; POC 277-87; POC 216.

193. On or about March 21, 2016, PPCO 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**”). Weinick Agency Dec. Ex. 14-2 (POC) 375.

194. The \$15,500,000 Delayed Draw Demand Note issued by PPCO in on December 23, 2015, was rolled into the \$18,500,000 A&R SHIP Note issued by PPCO on January 20, 2016,

which was then rolled into five “Secured Term Notes” totaling \$69,153,626 issued by PPCO as part of a \$70,000,000 credit facility established on March 21, 2016. McCormack Dec. Ex. 67.

195. Prior to the consummation of the March 2016 transactions, on or about December 21, 2015, BBIHL had entered into a “Participation Agreement” with SHIP (the “**BBIHL-SHIP Participation Agreement**”), “for the benefit of its “BRE-SHIP account” in which SHIP sold a \$2 million participation (the “**BBIHL-Northstar Participation**”) to BBIHL in a \$20,200,000.00 note issued by Northstar to SHIP designated as “No. 003.” Weinick Dec. Ex. 64, Boug Dep. Ex. 21. The BBIHL-SHIP Participation Agreement reflects that (a) it was executed by Feuer himself as an “Authorized Signatory” of BAM II, as “investment manager” of BBIHL, and (b) it was executed by Feuer as an “Authorized Signatory” of BAM, as “investment manager” of SHIP – which PBIH’s 30(b)(6) witness testified was “unusual.” Weinick Dec. Ex. 64, Boug Dep. Ex. 21.

196. A statement issued by Wilmington Trust for December 2015 reflects the purchase of the BBIHL-Northstar Participation for a “CASH DISBURSEMENT” of \$2,050,666.67 on December 22, 2015, and reflects that, at the end of the month, the BBIHL Custody Account included “OTHER ASSETS” as of December 31, 2015” that included: “NORTHSTAR GOM HOLDINGS GROUP PARTICIPATION AGREEMENT BBIHL-SEG-COPY CUSIP 99Y800HG5.” Weinick Dec. Ex. 65, Boug Dep. Ex. 22 at BW-SHIP-00906505 and BW-SHIP-00906505.

197. A Wilmington Trust Statement (Wilmington Trust held funds on behalf of PBIH) for the period from March 1, 2016 through March 31, 2016 confirms, in a section entitled “Activity Detail,” BBIHL’s (now PBIH) transfer of the BBIHL Northstar Participation on March 25, 2016 and receipt of \$2,111,222.22 by “CASH RECEIPT WIRE FROM BAM ADMINISTRATIVE SERVICES ...,” and, in the section of that statement entitled “Investment Detail” that, as of March

31, 2016, BBIHL no longer has any Northstar notes. Weinick Dec. Ex. 66, Dep. Ex. 426; Weinick Dec. Ex. 24, Boug Tr., 61:11. Feuer is also reflected as the recipient of an email forwarding an “Available Cash Report” dated as of March 29, 2016, which referred to a payment of \$2,111,222.22 to BBIHL, a payment of \$10,767,233.33 to “BBIL Custody,” and \$8,233,766.67 to “BBIL SHIP,” in a row entitled “Northstar Payment.” Weinick Dec. Ex. 67, Boug Dep. Ex. 25.

198. In exchange for an approximate increase of \$26.8 million in the principal amount previously owed to SHIP under the A&R SHIP Note, PPCO took an assignment of the Northstar debt as set forth below. Specifically, 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.” Weinick Agency Dec. Ex. 16 (SHIP-PPVA Northstar Assignment Agreement).

199. On or about March 21, 2016, SHIP entered into an “Assignment Agreement” with PPCO 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 for a total purchase price of \$11,400,600.00, consisting of

\$10,800,000.00 in principal indebtedness purchased plus \$600,600.00 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 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.” Weinick Agency Dec. Ex. 17 (Tri-Party Northstar PPCO Assignment Agreement) at 5; Weinick Dec. Ex. 6, Thomas Tr., 424:15-426:13.

200. In accordance with the NPA, on or about March 21, 2016, numerous subsidiaries of PPCO 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.” Weinick Agency Dec. Ex. 19 (A&R MSA Subsidiary Guaranty). Dhurv 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. Weinick Dec. Ex. 11, Narain Tr., 532:6-20.

201. In accordance with the NPA, on or about March 21, 2016, PPCO 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**”). Weinick Agency Dec. Ex. 20. Dhurv Narain executed the A&R MSA as an “Authorized Signatory” of BAM Administrative, “as Agent” for the “Purchasers” under the NPA, including SHIP. *Id.*

3. Agreements Consummated Post PPCO Loan Transaction

202. After the PPCO Loan Transaction was consummated, BAM executed two participation agreements on behalf of SHIP in which SHIP sold participation interests in portions of NPA Note 1 to BBIL. Weinick Agency Dec. Ex. 14-3 (POC) Schedule 8 ¶¶ 29-30; POC 424-347.

203. 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**”). Weinick Agency Dec. Ex. 14-3 (POC) Schedule 8 ¶ 29; POC 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.” Weinick Agency Dec. Ex. 14-3 (POC) 431, 435.

204. 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**”). Weinick Agency Dec. Ex. 14-3 (POC) Schedule 8 ¶ 30; POC 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.” Weinick Agency Dec. Ex. 14-3 (POC) 443, 447.

205. Effective May 23, 2016, BBIL, “for the benefit of its ‘BBIL-SHIP’ account,” purchased participation interests in notes that had been issued by PPCO to BRe BCLIC Sub and BRe WNIC 2013 LTC Sub as part of the PPCO Loan Transaction, and effective November 29,

2016, those participations were elevated to assignments. Weinick Agency Dec. Exs. 14-2 - 14-3 (POC) Schedule 8 ¶¶ 25-28; POC 385-423.

206. 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**”). Weinick Agency Dec. Ex. 14-2 (POC) 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.” Weinick Agency Dec. Ex. 14-2 (POC) 392, 396.

207. 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**”) (Weinick Agency Dec. Ex. 14-2 (POC) 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.” Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 25; POC 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.” Weinick Agency Dec. Ex. 14-2 (POC) 400.

208. 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**”). Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 27; POC 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.” Weinick Agency Dec. Ex. 14-2 (POC) 410, 414.

209. 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**”) (Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 26; POC 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.” Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 27; POC 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.” Weinick Agency Dec. Ex. 14-2 (POC) 418.

R. Wegner is Terminated by the SHIP Board for Cause

210. Wegner was terminated by the SHIP Board “for Cause” in or about December 2016. Weinick Dec. Ex. 68, Dep. Ex. 790.⁷

211. Among other things, Wegner misled the Board regarding his relationship with Beechwood and Feuer, failed to share his personal dealings with Beechwood regarding Trilliant and used Beechwood to solve for many of the financial challenges facing SHIP. Wegner was terminated because, among other things, Board members became concerned he was too close to Beechwood, including discussing a Beechwood board position and Beechwood investing in his family business. Weinick Dec. Ex. 15, Robison Tr., 58:2-21. Specifically:

- (i) SHIP’s Board sent a letter to the PA Insurance Company Department in which it stated that: (a) its audit committee and counsel did not have adequate facts from Wegner concerning Beechwood investing in Trilliant; (b) an internal investigation revealed Wegner actually solicited that investment and had discussions before bringing it to the Board; (c) an outside law firm hired to assist with the drafting of the IMAs made a number of recommendations about the investments that were not followed by Wegner; and (d) management engaged Protiviti to review the IMA process, which revealed numerous deficiencies that were never brought to the attention of the audit committee. Weinick Dec. Ex. 15, Robison Tr., 276:19-283:10. Specifically, SHIP explained that Wegner “had actually lied” about the facts concerning his relationship with Beechwood, specifically including “the investment from Beechwood in his family business. . .” Weinick Dec. Ex. 49, Dep.

⁷ Subsequently, Lorentz was allowed to resign because he had a fiduciary obligation to bring certain information to SHIP’s board and failed to do so, particularly with respect to the failure to due diligence Beechwood. Weinick Dec. Ex. 16, Bowler Tr., 118:15-119:4.

Ex. 259; Weinick Dec. Ex. 15, Robison Tr., 276:19-283:10. SHIP further described that Wegner also failed to follow “a number of recommendations about the investments” from an outside law firm brought in by SHIP’s general counsel in connection with drafting the IMAs with Beechwood. *Id.* Finally, the letter stated: “It was also discovered that Management had hired SHIP’s Internal Auditor, Protiviti, to review the IMA process. The auditor identified numerous deficiencies in the IMA process, but these deficiencies were not disclosed to the Audit Committee.” *Id.*

- (ii) Serio, a SHIP Board member, was concerned (i) about Wegner’s lack of objectivity when it came to Beechwood (Weinick Dec. Ex. 13, Serio Tr., 97:25-98:10) and (ii) that any time an issue arose, Wegner’s solution would be to enter into some type of transaction with Beechwood rather than exploring alternative market based solutions. Weinick Dec. Ex. 13, Serio Tr., 109:23-110:3. In addition, Serio did not feel that Wegner had a sufficient level of skepticism when it came to Beechwood. Weinick Dec. Ex. 13, Serio Tr., 112:14-22.

212. In or about October 2015, at a time when SHIP and Beechwood had unsuccessfully discussed the prospect of entering into a reinsurance agreement (Weinick Dec. Ex. 22, Lorentz Tr., 133:4-134:17), SHIP engaged Vanbridge to pursue reinsurance opportunities with other entities. *Id.*

213. Vanbridge subsequently sent an email to Beechwood personnel, including Taylor, and copying Wegner and other SHIP personnel, to obtain information about Beechwood, including its ownership information. Weinick Dec. Ex. 69, Dep. Ex. 396; Weinick Dec. Ex. 22, Lorentz Tr., 135:12-141:8.

214. On or about the day Vanbridge sent its due diligence request to Beechwood, Wegner emailed Taylor only to make clear that it was not a request from SHIP but rather, Vanbridge. Wegner stated: “Scott: This list came from Vanbridge. If there’s anything overbearing or difficult please let me know and we will adjust.” *Id.*

215. Wegner had Taylor intervene in the due diligence efforts that may uncover the uncomfortable relationship between Beechwood and its Platinum related owners, which in turn could have disrupted the ongoing SHIP-Beechwood relationship and all of Wegner’s achievements. Weinick Dec. Ex. 22, Lorentz Tr., 139:24-141:8.

216. In November of 2015 – prior to entering into the PPCO Loan Transaction – the Board saw the final presentation from Vanbridge, and in the presentation it specifically stated that 37% of Beechwood was owned by family trusts of Feuer, Taylor and Levy and that the remaining 63% was owned by 19 trusts, but did not include any information as to the ownership of those trusts being related to Platinum. Weinick Dec. Ex. 38, Dep. Ex. 67; Weinick Dec. Ex. 5, Wegner Tr., 99:18-103:16.

S. Facts Supporting Receiver’s Actual Fraud Claims

217. On or about November 14, 2019, SHIP produced the expert report of Timothy Hart, pursuant to which he reviewed and assessed the following investments made with SHIP’s funds or assets by Beechwood or Platinum individuals acting on Beechwood’s behalf: (1) Montsant Partners Note; (2) various investments in Agera Energy LLC, Agera Holdings LLC and AGH Parent, LLC; (3) PPVA fund investments; (4) PPCO fund investments; (5) Milberg Hamilton Capital Credit Facility; (6) Equipment Finance I & V Notes; (7) PEDEVCO Note; (8) BRILLC Note; (9) Black Elk Energy; and (10) Golden Gate Oil. Weinick Ex. 70, Hart Report, ¶ 1.

218. Hart concluded that “Beechwood’s activities with these investments demonstrated red flags of fraud in the decisions made in initiating the particular investment and management of the investments of SHIP’s funds.” Weinick Ex. 70, Hart Report, ¶ 18. According to Hart, “[m]any of the investments contain red flags of fraud” and he then summarized the red flags identified in each of the investments assessed in Section 4.3.10 of his report in the following chart:

Table 1: Investments with Red Flags of Fraud

Red Flags	Montsant	Agera/ AGH Parent Transactions	PPVA Fund	PPCO Fund	Milberg	Equipment Finance	PEDEVCO	BRILLC-DRU	Black Elk	Golden Gate Oil
Non-repayment of principal and/or interest										
Use of cash for related party's use										
Self-dealing										
Reclassification of assets without proper documentation and/or cash transfer										
Complex trading strategies										
Various amendments to agreements										
No evident investment purpose for SHIP/ No financial benefit to SHIP										
Evidence of financial distress										
Legend: All transactions										

Weinick Ex. 70, Hart Report at 15.

219. As set forth in the Hart Report:

Per the AICPA and the ACFE, the following actions are certain indicators of heightened risk of fraud:

- i. History of violation of laws;
- ii. Management failing to correct known deficiencies;
- iii. Excessive interest by management in maintaining or increasing the stock price or earnings;
- iv. Inadequate record keeping or lack of timely and appropriate documentation of transactions;
- v. Significant related party transactions;

- vi. High turnover of senior management or board members;
- vii. Adverse legal circumstances;
- viii. The need to obtain additional debt or equity financing;
- ix. Round number payments, duplicate payments, or unexplained payments, among others; and
- x. Highly complex transactions or complex trading strategies.

The AICPA also lists incentives or pressures that are risk factors relating to misstatements arising from fraudulent reporting. These include, among others, threatened financial stability or profitability indicated by declining margins, operating losses, and recurring negative cash flows from operations.

Weinick Ex. 70, Hart Report at 54-55.

220. The PPCO Loan Transaction evidence many of the badges of fraud used by SHIP's expert:

- (i) Threatened financial stability or profitability. As SHIP's expert concedes, and in his own words:

As discussed above in Section 3.2.1, it was reported that from the start of 2015 through September 2015, Platinum received redemption requests on PPVA in excess of the inflows of cash by more than \$61 million and that over this same period Platinum borrowed about \$72 million at high rates of interest. Further, as noted in Section 3.1.3, in June 2016, Platinum suspended redemptions and stopped providing performance updates on PPVA. Platinum moved to liquidate PPVA as well as the rest of Platinum's funds. Platinum's financial distress was evident and it appears that its related parties, the Beechwood entities, were used to funnel investors' funds to Platinum in order to assist with the companies' financial problems.

Weinick Ex. 70, Hart Report, ¶ 105.

- (ii) Significant related party transactions. The investments of SHIP's funds resulted in investments into a Beechwood related party, Platinum. *See* Hart ¶ 121. Indeed, the Duff and Phelp's reports provided to SHIP indicated many transactions made by Beechwood for SHIP with the Platinum Funds and/ or their affiliates. *See supra*, ¶ 122.
- (iii) Highly complex transactions or complex trading strategies. Beechwood's CEO testified that the PPCO Loan Transaction "were highly complex." Weinick Dec. Ex. 21, Feuer Tr., 394:8-9.

- (iv) The need to obtain additional debt or equity financing. The evidence establishes that PPCO needed cash at the time of the PPCO Loan Transaction.
- Feuer described to SHIP’s CFO Paul Lorentz that Platinum was a “motivated seller who much needs the money” because the fund had substantial investments in oil interests. The price of oil had dropped. They had redemption provisions that were fairly generous, and they were having some trouble meeting the redemption obligations. Weinick Dec. Ex. 86, Dep. Ex. 411; Weinick Dec. Ex. 22, Lorentz Tr., 299:10-301:8.
 - Narain, who replaced Saks as CIO for BAM in January of 2016, testified that the “Platinum Restructuring” (the PPCO Loan Transaction) came about because the collapse of oil prices damaged holdings in oil and gas companies, which were facing liquidity issues in late 2015 – early 2016. Weinick Dec. Ex. 11, Narain Tr., 79:2-81:2.
 - Despite exercising the put of Desert Hawk assets in September 2015 to PPVA, Platinum did not pay it. Saks testified he became aware of liquidity problems at Platinum, which would explain the failure to pay the put. Weinick Dec. Ex. 8, Saks Tr., 246:10-250:17. Rather, Beechwood, as nominee for SHIP, assigned the Desert Hawk loan participation to BBIL. Weinick Dec. Ex. 73, Dep. Ex. 235; Weinick Dec. Ex. 6, Thomas Tr., 387:15-390:25. Neither Beechwood’s General Counsel nor Lorentz could explain why at their deposition. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 6, Thomas Tr., 431:7-432:20; Weinick Dec. Ex. 22, Lorentz Tr., 152:9-153:7, 166:12-167:14.
 - On November 18, 2015, Beechwood sent an email in response to a capital call stating: We are assigning Desert Hawk today, which will avail cash for this call. Weinick Dec. Ex. 71, Dep. Ex. 491; Weinick Dec. Ex. 8, Saks Tr., 270:19-273:2. Beechwood as nominee for SHIP subsequently assigned the Desert Hawk participation not to PPVA pursuant to the put option, as intended, but rather to BBIL (SHIP’s Third IMA agent). Weinick Dec. Ex. 73, Dep. Ex. 235; Weinick Dec. Ex. 6, Thomas Tr., 387:15-390:25. Beechwood’s 30(b) (6) witness Thomas confirmed that the Desert Hawk assets that were the subject of that PPVA put option then went from BBIL to PPCO, but claimed he did not know why. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 6, Thomas Tr., 431:7-432:20. SHIP CFO Paul Lorentz claimed he had no information about why PPCO received the Desert Hawk participations in the December 2015 transactions instead of PPVA via the put option. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 22, Lorentz Tr., 152:9-153:7, 166:12-167:14.
- (v) Little repayment of principal or interest. No principal or interest was payable by PPCO under the PPCO Loan Transaction for one year following the consummation

thereof. Weinick Agency Dec. Ex. 20; *see also* Weinick Ex. 70, Hart Report at 63) (using this factor as another indicator of fraud).

- (vi) Inadequate record keeping or lack of timely and appropriate documentation of transactions. At the time the March 2016 transaction was consummated, the parties recognized that a number of conditions precedent to the transaction had not taken place. Specifically, in a March 21, 2016 letter from BAM Administrative to PPCO, the deadline for these conditions to be satisfied was adjourned to May 21, 2016:
1. Amendments to the Limited Liability Company Agreements for each Subsidiary so that each membership interest shall be considered a security under Article 8 of the UCC;
 2. Original Membership Certificate evidencing Company's membership interest in each Subsidiary;
 3. Original membership powers for each membership interest held by Company in each Subsidiary; and
 4. A control acknowledgment letter executed by each Subsidiary as respects Company's membership interest therein.
 5. Following consultation with the Company, to cause such additional Subsidiaries of the Company as designated by Agent that not party to the Subsidiary Guaranty to join the Subsidiary Guaranty via a joinder agreement in form and substance reasonably satisfactory to Agent.

Weinick Ex. 74 (March 21, 2016 Post Closing Letter) (BW-SHIP-00162285).

- (vii) Excessive interest by management in maintaining or increasing the stock price or earnings. As established above, the Platinum insiders were heavily reliant on the earnings and NAV of the PPCO Funds in order to generate management and incentive fees. *See supra*.
- (viii) History of violation of laws. The evidence establishes that:
- (a) Nordlicht invested in "a consumer finance company repeatedly fined for predatory lending before and after Platinum's involvement, a pair of investments that turned out to be Ponzi schemes, and two energy companies that later went bankrupt and are facing criminal charges." SHIP Crossclaims ¶ 57.
 - (b) Another fund that Nordlicht owned, Optionable Inc., collapsed in 2007 in a trading scandal involving one of its co-founders, Kevin Cassidy. For his role in the scheme, Cassidy was arrested in 2010 and charged with two

counts each of securities fraud and wire fraud, one count of conspiracy to commit wire fraud and make false bank entries, and one count of aiding and abetting the making of false bank entries. Pursuant to a plea deal, he was sentenced to 30 months in prison in August 2011. When he was later released in 2014, Cassidy was installed as the managing director of Agera at Nordlicht's behest, and would later receive a multi-million dollar windfall for no consideration in connection with Agera's sale. SHIP Crossclaims ¶ 58.

- (c) In 1990, Huberfeld and Bodner both pled guilty to criminal charges of false identification with intent to defraud after they were shown to have hired impostors to take the Series 7 securities broker examination in their place. SHIP Crossclaims ¶ 59.
- (d) Huberfeld also was the target of SEC administrative proceedings stemming from various violations of federal securities laws in 1996. In those proceedings, Huberfeld and his then firm, Broad Capital Associates, Inc., were accused of buying unregistered shares of a Canadian company at a discount and misrepresenting the purchase as a loan. Huberfeld ultimately entered into a consent order with the SEC pursuant to which Huberfeld was found to have violated Section 5 of the Securities Act and was ordered to disgorge over \$425,000 in profits and interest. The consent order identifies Bodner as Broad Capital's other founder and shareholder, along with Huberfeld. SHIP Crossclaims ¶ 60.
- (e) Broad Capital, Huberfeld, and Bodner again were in the SEC's crosshairs, this time for approximately 513,000 shares of restricted stock they had received as collateral for a loan, which shares they then sold for a profit of \$3.7 million. In connection with that transaction, the SEC filed a complaint in federal district court in Los Angeles, alleging a laundry list of violations of federal securities laws. Rather than contest the SEC's allegations, Huberfeld and Bodner agreed to a settlement pursuant to which they disgorged all profits from the sale plus interest, for a total of \$4,694,125, along with individual civil penalties of \$15,000. SHIP Crossclaims ¶ 61.
- (f) A federal grand jury sitting in the Eastern District of New York returned a Criminal Indictment against Nordlicht for securities fraud, advisor fraud, and wire fraud in connection with his role in the Platinum-Beechwood Scheme. On May 25, 2018, Huberfeld pled guilty to the charge of conspiracy to commit wire fraud. On February 12, 2019, Huberfeld was sentenced to 30 months in prison, three years of supervised release, and ordered to pay restitution of \$19 million. SHIP Crossclaims ¶ 61.
- (g) The Criminal Defendants were named as defendants in both the Criminal Action and the SEC Action.

T. Facts Supporting Receiver's Constructive Fraud Claim

1. PPCO Did Not Receive Fair Consideration in the PPCO Loan Transaction

221. In the Prager Report, the Receiver's expert concludes that:

1. PPCO did not receive the fair equivalent of the value it exchanged in the Dec 15 Transactions

- The Desert Hawk Notes and the LC Energy Note each had no appreciable value, due to, *inter alia*, the high costs that would be required to commence operations, while PPCO paid disproportionately more (\$14.2 MM) for those assets

2. PPCO did not receive the fair equivalent of the value it contributed in the Mar 16 Transaction

- The fair value of the Purchased Securities in the Mar 16 Transaction was disproportionately small compared to (*i.e.*, \$2.3 MM - \$5.8 MM less than) the debt incurred by PPCO

3. SHIP and Beechwood were enriched by \$14.2 MM as a result of the Dec 15 Transactions

- As the counterparty to these transactions, SHIP and Beechwood benefited to the same extent that PPCO was harmed

McCormack Dec. Ex. 66, p. 11.

222. Specifically, the Prager Report establishes that PPCO did not receive, and SHIP and Beechwood did not give, fair consideration for the transfers made by PPCO in the PPCO Loan Transaction because:

- (i) PPCO issued \$67.0 million in notes to SHIP, purportedly secured by a lien against all of PPCO's and the PPCO Subsidiaries' assets;⁸
- (ii) PPCO received \$9.2 million in face value notes issued by Desert Hawk having no value;

⁸ Although the total amount of the notes was \$69.2 million, this included an increase in the loan balance of approximately \$2 million in January 2016, for which PPCO received cash.

- (iii) PPCO discharged \$5.0 million in face value notes issued by LC Energy, which were of no value;
- (iv) PPCO received secured notes issued by Northstar having a face value of \$29.6 million, which, as set forth in the Prager Report, were worth only \$25.5 million.⁹
- (v) PPCO reflects an increase of \$23.2 million in the loan balance payable to it by PPVA.¹⁰ On August 29, 2016, the Grand Court, Cayman Islands, placed PPVA in provisional liquidation and it has been subject to liquidation proceedings ever since that time. PPVA Chapter 15 Petition ¶ 33, Dkt. No. 16-12925-SCC, ECF No. 1). PPVA was subsequently placed into insolvency six months later on September 27, 2016.

McCormack Dec. Ex. 66, p. 28.

223. Consequently, according to the Prager Report, in the PPCO Loan Transaction PPCO incurred \$67 million of debt, secured by all of the PPCO Subsidiaries' assets, in order to purchase assets having a value of \$47.7 to \$48.8 million. McCormack Dec. Ex. 66, 11, 29.

224. At the same time, SHIP benefitted from the PPCO Loan Transaction because those transactions improved SHIP's position from holding interests in unrated and distressed assets to holding a first priority secured lien on all of PPCO's assets and in all of the PPCO Subsidiaries' assets. Weinick Dec. Ex. 52, Dep. Ex. 492; Weinick Dec. Ex. 8, Saks Tr., 273:16-277:24.

⁹ The Northstar PPCO Assignment Agreement reflects that the total purchase price (at face value) of the notes was \$31,457,211.11. However, because PPCO's books and records reflect a payment of approximately \$29.6 million for this assignment, the Prager Report uses that amount.

¹⁰ However, because PPCO's books and records reflect a payment of approximately \$23.2 million as the purchase price of that assignment, the Prager Report uses that amount.

225. The assets transferred to PPCO in the PPCO Loan Transaction were not worth the amounts paid for them by PPCO. For example, and in addition to certain facts discussed above:

- (i) SHIP received Duff & Phelps reports that described significant losses in the Platinum related entities at issue in the PPCO Loan Transaction. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 15, Robison Tr., 111:25-122:24.
- (ii) Desert Hawk. SHIP's expert conceded that if the Platinum Funds were paying the interest accruing under Desert Hawk's loan, that in and of itself would be a red flag for fraud. Weinick Dec. Ex. 26, Hart Tr., 115:25-116:2-5. And indeed, Daniel Saks, who left Platinum to become CIO for BAM, conceded that:
 - (a) certain emails giving "Position Updates" in December 2015 demonstrated that the Northstar business and the Desert Hawk business were not healthy. Weinick Dec. Ex. 75, Dep. Ex. 493; Weinick Dec. Ex. 8, Saks Tr., 279:24-284:6; and
 - (b) the fact PPVA was paying the interest on the Desert Hawk debt was an indicator that the company did not have cash flow and was not faring well. Weinick Dec. Ex. 8, Saks Tr., 214:17-219:12; Exhibit 447 (in or about September 2015, Saks had signed a Notice of Exercise, on behalf of BAM Administrative and Beechwood by B Asset Manager, exercising a Put Agreement it had with PPVA in connection with a participation in Desert Hawk). In so doing, Saks acknowledges that the Put reflected the understanding that Desert

Hawk's future success was "not good." Weinick Dec. Ex. 77, Dep. Ex. 454; Weinick Dec. Ex. 8, Saks Tr., 243:11-244:21. Indeed, SHIP had previously received Duff & Phelps reports that described the put option to PPVA. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 15, Robison Tr., 111:25-116:13; Weinick Dec. Ex. 22, Lorentz Tr., 152:9-153:7.

- (iii) BAM has admitted that interest on the transferred assets in the PPCO Loan Transaction was not likely paid yet were purchased for full price (Weinick Dec. Ex. 6, Thomas Tr., 376:23-433:18) while Feuer conceded that the inability of a borrower to make interest payments can negatively impact value. Weinick Dec. Ex. 21, Feuer Tr., 660:10-661:8.
- (iv) Shortly after PPCO acquired the Desert Hawk debt, it received the following emails from Desert Hawk management:
 - (a) On January 8, 2016, Levy received an email from the operator of Desert Hawk claiming that Desert Hawk was "an absolute living hell ... It is not possible to run ... without proper capitalization." January 8, 2016 Desert Hawk email. *Trott v. PMNY (NY) LLC*, No. 18-cv-10936, ECF No. 1-1, Ex. 8 (S.D.N.Y.).
 - (b) On February 18, 2016, a Desert Hawk representative emailed Levy that the company could not complete its audit because of insufficient funding. Feb. 18, 2016 Desert Hawk email filed in *Trott v. PMNY (NY) LLC*, No. 18-cv-10936, ECF No. 1-1, Ex. 9 (S.D.N.Y.).

(v) Moreover, Saks agreed that emails sent in or about December 2015 demonstrated Northstar's business and the Desert Hawk business was not a pretty picture. Weinick Dec. Ex. 75, Dep. Ex. 493; Weinick Dec. Ex. 8, Saks Tr., 279:24-284:6.

- Northstar.

(vi) On January 16, 2015, Beechwood informed Lincoln International LLC ("Lincoln International") and/ or Lincoln Partners Advisors LLC (together with Lincoln International, "Lincoln") that it would need three separate reports: a "Beechwood Re CNO report, a BBIL ULICO report and a Beechwood re/BBIL Ship report." Ridgeway Dec. Ex. 59 (LINCOLNSUB-00022487).

(vii) On January 19, 2015, Lincoln issued to Beechwood the three reports requested, including a report that valued Beechwood's investments in the SHIP custody accounts. Ridgeway Dec. Ex. 60 (LINCOLNSUB-00000006); Ridgeway Dec. Ex. 61 (LINCOLNSUB-00000332); Ridgeway Dec. Ex. 9 (LINCOLNSUB00001291).

(viii) In the report, Lincoln valued debt investments in four companies—MYSYRL Capital, New Bradley House, Northstar, and San Gold Corp. LLC. Ridgeway Dec. Ex. 9 (LINCOLNSUB-00001291 at 00001297.)

(ix) Lincoln valued below par two of the debt investments (Northstar and San Gold), which constituted nearly 40% of the total value of the investments that Lincoln valued. *Id.*

2. PPCO was Insolvent, or Rendered Insolvent and Not Adequately Capitalized at the Time of the Relevant Transfers

226. The Receiver's expert, David Prager, prepared a report (the "**Prager Report**") in which he found that, *inter alia*:¹¹

- (i) Following both the transactions consummated in or about December 2015, the value of PPCO assets was less than its liabilities;
- (ii) Following the transactions consummated in or about March 2016, the value of PPCO's assets most likely was less than its liabilities;
- (iii) Following both the transactions consummated in or about December 2015, PPCO was not adequately capitalized to survive a liquidation were investors to demand prompt payment of Rescission Claims (defined below) or to survive valuation declines under stress scenarios; and
- (iv) Following the transactions consummated in or about March 2016, PPCO was not adequately capitalized to survive a liquidation were investors to demand prompt payment of Rescission Claims or to survive valuation declines under stress scenarios.
- (v) Following the portion of the PPCO Loan Transaction consummated in December 2015, PPCO was not adequately capitalized to survive valuation declines under stress scenarios.
- (vi) Following the portion of the PPCO Loan Transaction consummated in December 2015, PPCO was not adequately capitalized to survive valuation declines under stress scenarios.

McCormack Dec. Ex. 66, p. 15, 42-44.

¹¹ At his deposition, Mr. Prager adopted the conclusions in the Prager report and stated that he did not want to make any changes. Weinick Dec. Ex. 9, Prager Tr., 14:16-15:4.

227. In connection with valuing PPCO's balance sheet as of the dates of the PPCO Loan Transaction, Mr. Prager assumed:

- (i) investors in PPCO could have successfully asserted rescissionary damage claims ("**Rescission Claims**") as a result of being fraudulently induced to invest in the PPCO Funds;
- (ii) Rescission Claims would rank *pari passu* with other debt obligations;
- (iii) Rescission Claims could be asserted by non-insiders based on the net amount each invested (contributions minus withdrawals) since May 1, 2012; and
- (iv) Rescission Claims total \$220.4 million and \$232.2 million as of December 2015 and March 2016, respectively. McCormack Dec. Ex. 66, p. 12.

228. The Rescission Claims are predicated on the fraudulent misrepresentations made by the PPCO Funds, under the control of the PPCO Portfolio Manager, at the time of initial investment. The fraudulent misrepresentations are the now universally acknowledged overvaluation of PPCO's assets. *See, e.g.*, complaint filed by SEC in SEC Action; complaint filed by Government in Criminal Action; *U.S. v. Seabrook and Huberfeld*, 16-CR-467 (S.D.N.Y.); FAC; SHIP Complaint, ¶ 19, 185; *see also* SHIP Crossclaims ¶ 330 ("Platinum Management was inflating its valuations in order to achieve its desired levels of growth.").

229. Nordlicht made the valuations himself, which he did for positions monthly (Weinick Dec. Ex. 8, Saks Tr., 64:9-67:25) and that PPVA's year-end 2013 audit was delayed because its outside auditor, BDO, could not understand and questioned the valuations of PPVA assets. Weinick Dec. Ex. 8, Saks Tr., 73:3-74:14.

230. PPCO's cash balances as of December 23, 2015 was \$534,345 and its cash balance as of March 21, 2016 was \$156,929. Rogers Dec. ¶ 46.

231. PPCO was facing increasing requests for redemptions that it could not satisfy in a timely manner, and indeed by June 30, 2016, PPCO had suspended redemptions entirely. *Id.* at ¶ 47.

3. Beechwood and SHIP's Lack of Good Faith/ Structuring of the PPCO Loan Transaction

232. SHIP concedes that the Beechwood/ Platinum deals in connection with Desert Hawk, LC Energy and Northstar as they relate to SHIP's assets were not "arm's-length." SHIP Crossclaims ¶ 240.

233. SHIP knew that:

- (i) in or about April 2015 that the outlook of Northstar was becoming "uneconomic," as set forth in a Duff & Phelps report. Weinick Dec. Ex. 78, Dep. Ex. 229; Weinick Dec. Ex. 95, Exhibit 230; Weinick Dec. Ex. 15, Robison Tr., 108:4-109:21; Weinick Dec. Ex. 22, Lorentz Tr., 167:15-170:16.
- (ii) by January 19, 2016 Northstar's debts, including "company obligations, interest and Capex" were being funded by "Platinum, the company's private equity sponsor" as set forth in a Duff & Phelps report. Weinick Dec. Ex. 79, Dep. Ex. 232; Weinick Dec. Ex. 15, Robison Tr., 117:24-121:14.

234. Wegner was in constant communication with Beechwood about SHIP's investment yield, and that such communication was primarily in-person or by telephone, not by email. According to SHIP's own expert this was in accordance with expected communications patterns in a discretionary account such as this, not to mention that those engaged in a fraud usually take pains to avoid documenting their actions. Weinick Dec. Ex. 21, Feuer Tr., 222:15-223:10, 289-290, 295, 316:9-24, 405, 407-408; Weinick Ex. 70, Hart Report at 66; Weinick Dec. Ex. 26, Hart

Tr., 66:8-67:10; *see also* Weinick Dec. Ex. 25, Taylor Tr., 555:13-556:2 (SHIP received regular holdings reports that showed all of the assets held in SHIP's accounts).

U. The Platinum Funds Revelations and the Criminal Trial

235. On June 8, 2016, Huberfeld was arrested for having allegedly bribed union officials to make investments with PPVA. *U.S. v. Seabrook and Huberfeld*, 16-CR-467 (S.D.N.Y.)

236. On July 25, 2016, the Wall Street Journal published an article on the Platinum fraud probe and the ties to Beechwood. Weinick Dec. Ex. 80.

237. SHIP was aware of the Wall Street Journal article shortly after it was published. Weinick Dec. Ex. 5, Wegner Tr., 125:11-20.

238. On August 2, 2016, SHIP paid a final performance fee of \$11,118,981 to Beechwood. Weinick Dec. Ex. 81.

239. On or about July 9, 2019, a federal jury empaneled in the Criminal Trial convicted Mark Nordlicht and David Levy of securities fraud, conspiracy to commit securities fraud and conspiracy to commit wire fraud. Mem. Decision and Order, *United States v. Nordlicht*, 16-cr-640 (E.D.N.Y. Sept. 27, 2019) (ECF Nos. 799, 800).

240. Subsequently, the presiding judge in the Criminal Trial overturned those verdicts, granting Levy an acquittal and Nordlicht a new trial. *Id.*

241. Former Platinum Fund employees Naftali Manela and Andrew Kaplan previously pled guilty in connection with certain of the crimes alleged to have been committed in the indictment unsealed in the Criminal Trial.

Dated: New York, New York
March 6, 2020

OTTERBOURG P.C.

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