

**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
PLATINUM PARTNERS CREDIT OPPORTUNITIES FUND
(BL) LLC, : Civil Action No.
: 1:18-cv-12018

Plaintiffs,

v.

BEECHWOOD RE LTD., et al.,

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

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Pursuant to Local Rule 56.1, Melanie L. Cyganowski (the “**Receiver**”), the Receiver for the above-named Platinum entities, submits the following response to PB Investment Holdings, Ltd.’s (“**PBIHL**”) Rule 56.1 Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment [ECF No. 494].¹

A. STRUCTURE OF PPCO

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

RESPONSE:

No issue of fact.

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

RESPONSE:

Issue of fact. There are two onshore feeder funds and two offshore feeder funds. *Declaration of Trey Rogers in Opposition to SHIP’s Motion for Summary Judgment (“**Rogers Dec.**”) ¶ 9, 15.*

¹ All capitalized terms not defined herein shall have the meaning ascribed to such term in the *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.* (the “**Receiver’s 56.1 Statement**”).

All documents referenced herein are attached to or can be found by reviewing the Receiver’s 56.1 Statement.

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

RESPONSE:

Issue of fact. The summary provided above is not accurate. For example, Mr. Rogers testified that foreign investors' funds were invested into feeder funds, then a blocker fund, and then into the master fund. Weinick Dec. Ex. 27, Rogers Tr., 239:14-19.

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

RESPONSE:

Issue of fact. There are two onshore feeder funds: the second onshore feeder fund is Platinum Partners Credit Opportunities Fund (TE) LLC. Rogers Dec. ¶ 9, 15.

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

RESPONSE:

Issue of fact. Platinum Partners Credit Opportunities Fund (TE) LLC is an onshore feeder fund. Rogers Dec. ¶ 15.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

8. **The Master Fund is a limited partnership organized in Delaware. LPA,**

Recitals.

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

10. **As such, the Onshore Fund and the Blocker Fund are limited partners in the Master Fund (“Limited Partners”). LPA, Preamble; *see id.***

RESPONSE:

No issue of fact.

11. **The Master Fund’s general partner is Platinum Credit Holdings, LLC (“General Partner”). LPA, Preamble.**

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

13. Pursuant to the Master Fund’s Third Amended and Restated Agreement of Limited Partnership Agreement (the “LPA”), all management and operation of the Master Fund was “vested exclusively in the General Partner.” LPA, art. 2.1.

RESPONSE:

No issue of fact.

14. PPCO’s investment manager is Platinum Credit Management, LP (the “Portfolio Manager”). *See* LPA, p. 7; PPM, p. 12.

RESPONSE:

No issue of fact.

15. Mark Nordlicht (“Nordlicht”) was Chairman and Chief Investment Officer (“CIO”) of the Portfolio Manager. PPM, p. 13.

RESPONSE:

No issue of fact.

16. The Portfolio Manager, as the Master Fund’s investment manager, had “the authority to investigate, analyze, structure negotiate and consummate potential investments . . . and take other appropriate action with respect to investments on behalf of the [Master Fund].” LPA, art. 2.5 (a), (a)(i).

RESPONSE:

No issue of fact.

B. PPCO INVESTMENT STRATEGY

17. Each of the Feeder Funds distributed Confidential Private Offering Memorandums (“PPMs”) to potential investors, which disclosed, inter alia, the structure, management, ownership, investment strategy, risks, and conflicts of interests of the Feeder Funds and PPCO, generally. *See generally*, PPM.

RESPONSE:

No issue of fact.

18. **The material terms in each PPM were the same.**

RESPONSE:

No issue of fact.

19. **According to the PPMs, PPCO originated “a variety of high yield, fixed income instruments, including without limitation various types of loans (including loan participations).” PPM, pp. 2, 16.**

RESPONSE:

No issue of fact.

20. **The Portfolio Manager was solely responsible for allocating the Feeder Funds’ and Master Fund’s assets and “determining how, when, on what terms, in which contexts, and with whom the [Feeder Funds and Master Fund] may lend money and conduct its investment operations.” PPM, p. 12.**

RESPONSE:

No issue of fact.

21. **This included “making substantial investments in non-performing or other troubled assets that involve a degree of financial risk.” Id. p. 39.**

RESPONSE:

No issue of fact.

22. **Asset allocation and direct investment decisions were made by the Portfolio Manager “based on the judgment of Mark Nordlicht.” Id., p. 45.**

RESPONSE:

No issue of fact.

23. **PPCO issued several conspicuous warnings regarding its investment strategy, including:**

THE COMPANY'S INVESTMENT PROGRAM IS SPECULATIVE AND ENTAILS SUBSTANTIAL RISKS. . . . THE RISKS OF THE COMPANY'S BUSINESS ARE SUBSTANTIAL AND THE COMPANY COULD REALIZE SUBSTANTIAL LOSSES.

PPM, p. 21 (emphasis in original).

RESPONSE:

No issue of fact.

24. **The PPM warned investors that investments were “illiquid and involve[d] a high degree of risk.” PPM, p. 45**

RESPONSE:

No issue of fact.

25. **PPCO also disclosed that “no liquid market may exist” for the loans and securities in which it invested. PPM, p. 41.**

RESPONSE:

No issue of fact.

26. **The prices of such illiquid loans were “volatile” and “may not be readily ascertainable.” Id.**

RESPONSE:

No issue of fact.

27. **PPCO warned investors that these loans had higher delinquency and default rates and may have had insufficient collateral that, despite PPCO's due diligence in**

estimating the value of pledge collateral, resulted from the “inherent uncertainty of valuation of collateral.” *Id.*, p. 23.

RESPONSE:

No issue of fact.

28. Accordingly, investment into PPCO “[was] suitable only for certain sophisticated investors who [did] not require immediate liquidity for their investment.” *Id.*

RESPONSE:

No issue of fact.

29. Additionally, PPCO disclosed that its General Partner and Portfolio Manager, and their affiliates, could engage in certain activities presenting a “conflict of interest” including, *inter alia*:

- Managing accounts other than the Funds, including Platinum-managed funds;
- Receiving incentive allocations (including performance fees) which could create an incentive for the Portfolio Manager to make investments that are more speculative; and,
- Loaning funds to another Platinum-managed fund on a short-term basis in order to make an investment and repaying any borrowed amounts.

Id. at 52-54.

RESPONSE:

No issue of fact that the PPM sets forth certain actions that the General Partner, the Portfolio Manager and their affiliates could engage in. However, the PPM did not disclose the actual conflicts of interest that existed at the time investors subscribed to the PPCO Funds. PPM 52-54.

30. Under the express terms of the LPA, these actions did not “constitute a breach of any duty owed by any Person to the Limited Partners or the Master Fund.” LPA, art. 2.6

RESPONSE:

Issue of fact. In the context of SOF 30, “these actions” is not defined or appropriately referenced. No issue of fact that the LPA contains a provision providing that certain actions taken by the General Partner and/ or the Portfolio Manager do not “constitute a breach of any duty owed by any Person to the Limited Partners or the Master Fund.” LPA, art. 2.6.

C. VALUATION OF PPCO INVESTMENTS

31. **The General Partner had sole discretion to determine the value for securities for which no market prices are available “in such a manner as determined in good faith by the General Partners, based upon all factors deemed relevant by the General Partner.” LPA, 3.7(c).**

RESPONSE:

Issue of fact. The PPCO Portfolio Manager valued the PPCO’s assets. Rogers Dec. ¶ 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* 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).

32. **The LPA further provided that: “[t]he fair market value of other investments, assets, properties, debts, obligations or liabilities shall be valued as determined in good faith by the General Partner; provided, that to the extent the General Partner deems it appropriate, valuations may be based on quotes from an independent appraiser or other appropriate independent expert appointed by the General Partner.” LPA, art. 3.7(f).**

RESPONSE:

Issue of fact. *See* response to SOF 31.

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

RESPONSE:

No issue of fact.

34. **But, the General Partner's determination of the valuation of securities and other assets was "final and conclusive." LPA, art. 3.11.**

RESPONSE:

Issue of fact. *See* response to SOF 31.

35. **Secured/ collateralized loans are generally "priced at [the] principal loan amount outstanding unless the loan is impaired." PPM, p. 68.**

RESPONSE:

Issue of fact. Secured/ collateralized loans are priced at fair market value. Rogers Dec. ¶ 25.

36. **A loan will generally be considered impaired if, "based on current information and events, it is probable that [PPCO] will be unable to collect the principal and/or interest and the value of the collateral doesn't support the loan." Id.**

RESPONSE:

No issue of fact that the quote set forth in SOF 36 is a small excerpt from the PPM.

37. **The Portfolio Manager “determines the significance of payment delays, payment shortfalls and the amount of payment on a case-by-case basis, taking into consideration the circumstances surrounding the loan and the strength of the borrower and the collateral.” Id.**

RESPONSE:

No issue of fact that the quote set forth in SOF 37 is a small excerpt from the PPM.

D. PPCO RESTRUCTURING

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

RESPONSE:

Issue of fact. While Feuer seems to recall that it was Nordlicht who asked Beechwood to restructure the loans between certain of the Platinum Funds and Beechwood, there is substantial evidence establishing that SHIP was highly motivated to enter into, and requested entry into, such transactions as well. For example:

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.

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.

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.

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

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

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

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.

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.

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

Notwithstanding the forgoing testimony, 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.

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.

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

RESPONSE:

Issue of fact. While Feuer testified that he was involved in the PPCO restructuring “on the periphery,” the facts establish that:

- (i) Feuer served as CEO of Beechwood. SHIP Complaint ¶ 64.
- (ii) Upon joining BAM as CIO in January of 2016, Druhv Narain was made aware, by either Feuer or Taylor, of ongoing discussions and the general idea to “reduce the concentration ... in entities related to Platinum,” and that included “SHIP’s investments.” Weinick Dec. Ex. 11, Narain Tr., 485:20-487:24
- (iii) 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. Weinick Dec. Ex. 11, Narain Tr., 525:17-533:6.
- (iv) 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.
- (v) A Wilmington Trust Statement for the period from March 1, 2016 through March 31, 2016 confirms, in a section entitled “Activity Detail,” BBIHL’s 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. 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.

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

RESPONSE:

Issue of fact. Not only does the cited testimony fail to indicate that Beechwood “substantially divested its investments in Platinum-related entities” but the testimony provides

that the purpose of the diversification was because “[a]fter meeting with CNO, we [Beechwood] wanted to further diversify their portfolio.” Feuer 341:11-13. Indeed, as set forth in detail in the Receiver’s 56.1 Statement, the PPCO Loan Transaction had the effect of further exposing Beechwood, SHIP and the other noteholders to Platinum. Receiver’s 56.1 Statement II.Q.

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

RESPONSE:

Issue of fact. There is extensive evidence establishing that Nordlicht did have control over Beechwood. For example:

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).

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; McCormack Dec. Ex. 18 (Dep. Ex. 867); McCormack Dec. Ex. 23 (BW-SHIP-00835874); Weinick Dec. Ex. 34.

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.

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.

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.

The chart below summarizes the individuals having beneficial ownership interests of BAM Trust I and BAM Trust II as of April 1, 2016:²

² 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
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%
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%

Beneficiary	Identity	Beneficial Ownership of BAM Trust I as of April 1, 2016	Beneficial Ownership of BAM Trust II as of April 1, 2016
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.

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

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.

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

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.

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

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.

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 ..." *Id.* 199:22-200:13.

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.

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*) (ECF No. 603) ¶ 124; (iii) David Ottensoser (*Id.*); (iv) Daniel Small (*Id.*) and (v) Stewart Kim. *Id.*

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 43.

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 44.

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 45.

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

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

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 46.

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 47.

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 48.

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 49.

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

RESPONSE:

Issue of fact. The overlapping ownership interests in the Platinum Funds and Beechwood and the fact that certain Platinum Fund employees and/ or investors had substantial involvement in Beechwood directly contradict the conclusion that Beechwood would not know how Platinum performed its own internal valuations. See Response to SOF 41, *supra*.

Moreover, Eli Rakower, director of valuation at the Platinum Funds, provided valuation services to both Beechwood and the Platinum Funds. Weinick Ex. 8, Saks Tr., at 111:3-10. Based on the forgoing, there is no factual basis to conclude that "Beechwood did not know how Platinum performed its own internal valuation of the underlying collateral."

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

RESPONSE:

No issue of fact that the transcript from Feuer's deposition states as set forth in SOF 51. However, there are additional facts before this Court establishing that Beechwood (and SHIP) had their own motivations for entering into the challenged transactions.

For example, 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.

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.

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.

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.

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

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

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.

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.

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

In or about January of 2016, Dhruv Narain was made aware, by either Feuer or Taylor, of ongoing discussions and the general idea to “reduce the concentration ... in entities related to Platinum,” and that included “SHIP’s investments.” Weinick Dec. Ex. 11, Narain Tr., 485:20-487:24.

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

RESPONSE:

No issue of fact that the transcript from Feuer’s deposition states as set forth in SOF 52.

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

RESPONSE:

Issue of fact. Steinberg went on to testify that by the time he became involved in the transaction, “it seemed to be almost like one of those prearranged marriages, where I was put into a situation where the outcome was already determined prior to my involvement; and Mark was just sending me to basically like usher the transaction to its conclusion.” Weinick Dec. Ex. 10, Steinberg Tr., 357:12-17.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

Issue of fact. Steinberg has no personal knowledge of Nordlicht's motivations for entering into the PPCO Loan Transactions as evidenced by his testimony that:

So it seemed to be almost like one of those prearranged marriages, where I was put into a situation where the outcome was already determined prior to my involvement; and Mark was just sending me to basically like usher the transaction to its conclusion.

Weinick Dec. Ex. 10, Steinberg Tr., 357:12-17.; *see also* response to SOF 51.

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

RESPONSE:

Issue of fact. Steinberg has no personal knowledge of Nordlicht's motivations for entering into the PPCO Loan Transactions. *See* response to SOF 55. Moreover, to the extent Steinberg's testimony is predicated on what Nordlicht may have told him, such testimony is inadmissible heresay.

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

RESPONSE:

Issue of fact. Steinberg has no personal knowledge of Nordlicht's motivations for entering into the PPCO Loan Transactions. *See* response to SOF 55.

Moreover, to the extent Steinberg's testimony is predicated on what Nordlicht may have told him, such testimony is inadmissible heresay.

See also response to SOF 51 (setting forth motivations of other parties).

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

RESPONSE:

Issue of fact. Mr. Steinberg also testified that “[i]n hindsight, it’s hard to know if I was acting in the fund’s best interests or not.” Weinick Dec. Ex. 10, Steinberg Tr., 365:15-16.

1. *The December 2015 Transaction*

59. The first round of transactions were executed on or around December 23, 2015, when the Master Fund executed a Delayed Draw Demand Note for \$15.5 million to SHIP. FAC, 11225.

RESPONSE:

Issue of fact. While the Delayed Draw Demand Note indicates that it is being signed by Mark Nordlicht in his capacity as chief investment officer of Platinum Opportunities Master Fund LP: (i) the document does not include the words “Platinum” or “Credit” in the signature block, and PBIHL has defined Master Fund (at SOF No. 7), to mean Platinum Partners Credit Opportunities Fund LP, not Platinum Opportunities Master Fund LP, the entity on whose behalf the December 2015 SHIP Note was executed; and (ii) PBIHL offers no evidence to authenticate the signature on the cited page.

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

RESPONSE:

Issue of fact. The summary above regarding which of the Master Fund’s subsidiaries is inaccurate. In fact, on or about December 23, 2015, the Master Fund, the thirty-five (35) subsidiaries of the Master Fund specified in the MSA 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.” Weinick Agency Dec. Ex. 14-1 (POC) Schedule 1, p. 1, Schedule 4, pp. 1-2, Schedule 8 ¶ 3; POC 67-96

61. BAM Administrative filed a UCC-1 financing statement concerning the security interests. FAC, 11228.

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited document for the complete contents thereof.

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

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited document for the complete contents thereof.

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

RESPONSE:

Issue of Fact. On or about December 23, 2015, the Master Fund executed 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 the Master Fund 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.

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.

On or about December 23, 2015, the Master Fund 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.” Weinick Agency Dec. Ex. 14-2 (POC) 364-65.

The Master Fund 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.

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. Weinick Ex. 53 (November 18, 2015 Assignment and Assumption Agreement). 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).

On or about December 30, 2015, the Master Fund 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.” Weinick Agency Dec. Ex. 14-2 (POC) 366-67.

The Master Fund used that cash to repay all indebtedness owing by LC Energy, a wholly owned subsidiary of the Master Fund, under four Secured Term Notes originally issued to BRE WNIC 2013 Primary, BRE WNIC 2013 LTC Sub, BRE BCLIC Primary, and BRE BCLIC Sub on June 3, 2014. SHIP Rule 56.1 Statement (ECF No. 500) ¶ 55.

On or about December 31, 2015, a total of \$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.

2. *The March 2016 Transaction*

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

RESPONSE:

Issue of Fact. On March 21, 2016, the Master Fund, 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.*

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

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

Id., BW-SHIP-00175375; FAC, ¶ 240.

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

66. In conjunction with the March NPA, the Master Fund entered into an Amended and Restated Master Security Agreement on March 21, 2016 (the “Amended Security Agreement”). *Id.*, BW-SHIP-00175295-175309.

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

RESPONSE:

Issue of fact. Section 1 of the Amended Security Agreement expressly provided as follows:

On the Closing Date, the Existing Security Agreement shall be amended and restated in its entirety by this Master Security Agreement except for the liens and security interest granted pursuant to the Existing Security Agreement, which liens and security interests shall continue in full force and effect during the term of this Master Security Agreement and any renewals or extensions thereof and shall continue to secure the Obligations (as such term is defined below).

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

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

RESPONSE:

Issue of fact. On or about March 21, 2016, the Master Fund 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” Weinick Agency Dec. Ex. 14-2 (POC) 375.

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

RESPONSE:

Issue of fact. See the March 21, 2016 Disbursement Letter. Weinick Agency Dec. Ex. 14-2 (POC) 375.

In exchange for an approximate increase of \$26.8 million in the principal amount previously owed to SHIP under the A&R Delayed Draw Demand Note, SHIP loaned \$25.7 million in additional cash and assets to the Master Fund. SHIP Rule 56.1 Statement (ECF No. 500) ¶ 69.

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) at BW-SHIP-00175440.

On or about March 21, 2016, SHIP entered into an “Assignment Agreement” with the Master Fund 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 the Master Fund for a total purchase price of \$11,400,600.00, consisting of \$19,000.00 in principal indebtedness purchased plus \$600,000.00 in accrued and unpaid interest purchased, and BRe WNIC 2013 LTC Primary assigned “Entirety of that 12% Senior Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to BRe WNIC 2013 LTC Primary in the initial principal amount of

\$19,000,000” to the Master Fund 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); McCormack Dec., Ex. 30; Weinick Dec. Ex. 6, Thomas Tr., at 424:15-426:13.

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

RESPONSE:

Issue of fact. The Receiver’s response to SOF 72 properly sets forth the consideration exchanged for the Northstar Notes.

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

RESPONSE:

No issue of fact but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

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

See Id.

RESPONSE:

Issue of fact. The Receiver’s response to SOF 72 properly sets forth the consideration exchanged for the Northstar Notes.

76. **Previously, the Master Fund, having certain equity interests in Northstar, agreed to pledge its interest in Agera as additional collateral securing the Northstar Note (when SHIP and BRe WNIC 2013 Primary originally purchased the Northstar Note in 2014). See Prager Report, p. 33.**

RESPONSE:

Issue of fact. “Agera” referred to retail energy company Agera Energy LLC, in which PPCO Master Fund held an equity interest through its 45% equity interest in Principal Growth Strategies, LLC (“PGS”); PPVA held the remaining 55% interest in PGS. PPCO Master Fund’s equity interest was encumbered by a pledge of that interest (the “Agera Pledge”) as security for the indebtedness of Northstar GOM Holdings, Inc. (“Northstar”), a PPVA investment. McCormack Dec., Ex. 66; Prager Report at 8.³

77. **As a result of the March 2016 Transaction, SHIP and BRe WNIC 2013 Primary terminated their liens on the Master Fund’s direct and indirect equity in Agera. See Id.**

RESPONSE:

Issue of fact. Under the December 23, 2015, the Master Fund, thirty-five (35) subsidiaries of the Master Fund, including PGS, and BAM Administrative as “Agent” for SHIP and BRe WNIC 2013 Primary, among others, entered into a “Master Security Agreement” addressed to BAM, “as Agent” Weinick Agency Dec., Ex. 14-1 (POC) at Schedule 1 p.1, Schedule 4 pp. 1-2 & Schedule 8 ¶ 3. Pursuant to the MSA, PGS’s assets were pledged as security for repayment of the loans made in or about December 2015. *Id.*

E. PBIHL

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

RESPONSE:

No issue of fact.

³ At his deposition, Mr. Prager adopted the conclusions in the Prager report and stated that he did not want to make any changes. Prager Transcript at 14:16-15:4.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

Issue of fact. Taylor actually testified that David Lessing was a senior executive within the Beechwood companies and --and nominally -- nominally headed -- headed the -- the [BBIHL] investments business. Weinick Dec. Ex. 25, Taylor Tr., 657:24-25-658:1-10.

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

RESPONSE:

Issue of fact. While Feuer testified that he did not know who they [BBIHL] was, he went on to testify that to him, BBIHL was a part of BBIL, which he did know. Weinick Dec. Ex. 21, Feuer Tr., 776:10-25-777:1-15. And Taylor testified that BBIHL was a subsidiary of BBIL. Weinick Dec. Ex. 25, Taylor Tr., 678:11-14.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

Issue of fact. The cited testimony in support of the purported fact does not support such fact. In the excerpted testimony, Mr. Taylor is merely providing his understanding of what a segregated account is:

A segregated account in Bermuda is a -- nominally a subsidiary of -- of a company. However, it maintains a distinct legal identity from its -- its parent, and, therefore, is segregated in both assets and liabilities, generically speaking.

I believe there are a lot of specifics around how they are set up, but that is the general idea based on my understanding.

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

RESPONSE:

No issue of fact.

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

RESPONSE:

No issue of fact.

F. THE RECEIVER'S ALLEGATIONS

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

RESPONSE:

No issue of fact. The Receiver's allegations are widely accepted. *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.").

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

RESPONSE:

Issue of fact. There is substantial evidence establishing that there were a number of factors which drove each of the parties to consummate the March 2016 Transactions. As for the motivations of the Portfolio Manager and Nordlicht, those include the fact that Nordlicht used the Master Fund's NAV - and his ability to overvalue the PPCO Funds' assets - to enrich himself at the expense of the funds. SHIP Crossclaims ¶ 245. Indeed, when Platinum employees attempted to address the overvaluation of assets, Nordlicht admonished them: "make sure you don't affect my returns too badly." Weinick Dec. Ex. 19, Mandelbaum Criminal Trial Test. at 4268:1-4269:11.

SHIP concedes that

Platinum was able to perpetuate these investments [the investments made by Beechwood into Platinum related assets using SHIP's funds] and prolong the Platinum-Beechwood Scheme only for as long as Beechwood attracted new investors or diverted funds from existing investors to structure and restructure the investments and thereby continued to use them to funnel cash, fees, and payments to Beechwood, the Beechwood Insiders, Platinum, and the related parties and Co-Conspirators

SHIP Crossclaims ¶ 245.

Based on the forgoing, Nordlicht was highly incentivized to compel the Master Fund into the PPCO Loan Transactions.

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

RESPONSE:

No issue of fact that the transcript from Kirchner's deposition states as set forth in SOF 94.

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

RESPONSE:

No issue of fact that the transcript from Kirchner’s deposition states as set forth in SOF 95.

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

RESPONSE:

No issue of fact that the transcript from Kirchner’s deposition states as set forth in SOF 96.

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

RESPONSE:

Issue of fact. The term “first part” of the March 2016 Transaction is unclear and undefined.

In response to the question of whether he [Feuer] knew whether anybody was acting on behalf of BBIHL during that transaction [the March 2016 Transaction] Feuer testified: “Our people acted on behalf of all the entities that we were part of. So absolutely they were being -- they looked at our overall company and were taking care of our whole company. Weinick Dec. Ex. 21, Feuer Tr. 784:21-785:4.

BAM Administrative was a party to the March 2016 Transaction. See Response to SOF 64, supra. BAM acted as agent for BBIHL in the March 2016 Transactions as established by the disbursement letter accompanying the transaction which provided:

In accordance with the NPA, on or about March 21, 2016, the Master Fund 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. [BBIHL], for its Segregated Accounts” (the “March 21, 2016 Disbursement Letter”). Weinick Agency Dec., Ex. 14-2 (POC) at 375.

Moreover, the ownership in and ultimate control of the various Beechwood Entities was held by, among others, Feuer and Taylor. *See, e.g.*, Weinick Dec. Ex. 21, Feuer Tr. 73:3-74:17. Documents (*See, e.g.*, Weinick Dec. Ex. 39, Dep. Ex. 867) also demonstrate that Feuer and Taylor had ownership interests in Beechwood through trusts bearing their respective last names. McCormack Dec. Ex. 23; Weinick Dec. Ex. 34.

Feuer and Taylor were directors of PBIHL. Weinick Dec. Ex. 21, Feuer Tr., 780:4-8.

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

RESPONSE:

Issue of fact. *See* response to SOF 97.

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

RESPONSE:

Issue of fact. *See* response to SOF 97.

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

RESPONSE:

Issue of fact. *See* response to SOF 97, setting forth that BAM acted as agent for BBIHL, and the fact that in accordance with the NPA, on or about March 21, 2016, the Master Fund 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”). McCormack Dec., Ex. 67. Pursuant to the A&R MSA, BAM Administrative was granted a lien on substantially all of the Master Fund’s assets.

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

RESPONSE:

No issue of fact.

102. **BBIHL's identification as a principal of BAM Administrative on direction letters, and; (2) a certain Wilmington Trust account statement from March 2016, that purports to show that BBIHL's segregated client accounts received approximately \$2.1 million. See Kirschner Dep., 55:6-56:10; See Reed Dec., Ex. M.**

RESPONSE:

The Receiver requests a restatement of SOF 102 because as written, it is unclear what fact PBIHL seeks to establish.

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

RESPONSE:

Issue of fact. Section II D. of the Receiver's 56.1 Statements sets forth in detail the proper and precise nature of the relationship between PPCO, Nordlicht and the Portfolio Manager.

104. **Second, this agency with PPCO is evidenced by the relevant agreements. The Portfolio Manager's agency was expressed through the LPA. LPA, art. 2.5.**

RESPONSE:

Issue of fact. Section II D. of the Receiver's 56.1 Statements sets forth in detail the proper and precise nature of the relationship between PPCO, Nordlicht and the Portfolio Manager.

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

RESPONSE:

Issue of fact. PBIHL misstates Kirchner's testimony. In fact, in response to the question of whether he knew "who at PPCO negotiated the March 2016 transactions?" Kirchner responded "I assume it was Nordlicht."

106. The Receiver's valuation expert, David Prager ("Prager") finds that PPCO received between \$47 million to \$50.5 million in gross value as a result of the March 2016 Transaction. Prager Dep., 219:12-220:3, 220:14-16; Prager Report, p. 37.

RESPONSE:

No issue of fact.

107. This includes: a \$23.3 million increase in its loan to PPVA; a release on PPCO's Agera Pledge that Prager values between \$23.8 million to \$9.6 million, and: as much as \$17.7 million reflecting Prager's valuation of Northstar's collateral. See Prager Report, 37.

RESPONSE:

No issue of fact.

108. According to Prager, the March 2016 Transaction resulted in a net increase in PPCO's investment portfolio, as "[a]pplying appropriate confidence intervals to the midpoints of investment values calculated above," the value of PPCO's investments increased from \$182.6 million - \$219.3 million to \$226.2 million - \$260.6 million immediately following the March 2016 Transaction. Prager Report, p. 41.

RESPONSE:

Issue of fact. In the Prager Report, Mr. Prager actually concluded that "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." McCormack Dec. Ex. 66, Prager Report at 11.

109. Prager prepared a table reflecting his opinions as to the "fair value and liabilities of [] PPCO" showing PPCO's financial condition from the March 2016 Transaction:

(\$MM)	Dec-15			Mar-16		
	Low	Mid	High	Low	Mid	High
Balance Sheet Test						
Total Assets	218.4	238.0	255.2	287.3	305.6	321.7
Total Liabilities	263.5	263.5	263.5	308.6	308.6	308.6
<i>Surplus / (Deficit)</i>	(46.0)	(25.5)	(8.3)	(21.4)	(3.0)	13.0
Adequate Capitalization Test						
Total Assets	176.4	201.6	226.7	235.3	261.6	287.8
Total Liabilities	263.5	263.5	263.5	308.6	308.6	308.6
<i>Surplus / (Deficit)</i>	(87.0)	(61.8)	(36.8)	(73.4)	(47.0)	(20.8)
CCAR Test						
Total Assets	191.2	207.8	222.5	253.4	268.9	282.6
Total Liabilities	263.5	263.5	263.5	308.6	308.6	308.6
<i>Surplus / (Deficit)</i>	(72.3)	(55.6)	(41.0)	(55.3)	(39.7)	(26.0)

See Prager Report, p. 16; Prager Dep., 201:15-24.

RESPONSE:

No issue of fact.

110. According to Prager's report, Agera was PPCO's most valuable asset.

Prager Report, p. 39.

RESPONSE:

Issue of fact. Prager's report never states that Agera was PPCO's most valuable asset. The chart PBIHL cites to for that proposition speaks for itself regarding the numerical value of PPCO's assets.

111. Prager opined that Agera was "operational and profitable" and "projected aggressive revenue and earnings growth" at that point. *Id.*, p. 35.

RESPONSE:

No issue of fact.

112. When SHIP and BRe WNIC 2013 LTC Primary assigned the Northstar Indenture Debt to PPCO and PPVA in the March 2016 Transaction, this terminated the

Agera pledge, which PPCO pledged as additional security backing up the Northstar Indenture Debt. Prager Report, p. 35.

RESPONSE:

No issue of fact.

Dated: New York, New York
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