

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

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

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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., :  
:

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**RECEIVER’S RESPONSE TO SENIOR HEALTH INSURANCE COMPANY  
OF PENNSYLVANIA’S LOCAL RULE 56.1 STATEMENT OF  
UNDISPUTED AND MATERIAL FACTS IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

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Pursuant to Local Civil Rule 56.1, Plaintiff Melanie L. Cyganowski, as Receiver (the “Receiver”) respectfully submits the following Response to Senior Health Insurance Company of Pennsylvania’s (“SHIP”) Local Rule 56.1 Statement of Undisputed and Material Facts in Support of Motion for Summary Judgment (“Response”), as well as her own Counter-Statement of Undisputed and Material Facts in Opposition to SHIP’s Motion for Summary Judgment (“CSOF”).

**I. The Parties**

**A. SHIP**

1. **SHIP is a long-term care insurance company domiciled in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana. Exh. 1, Platinum Partners Credit Opportunities’s (“PPCO”) First Amended Complaint dated March 29, 2019 [ECF No. 209] (“FAC”) ¶ 50; Exh. 2, Answer of Senior Health Insurance Company of Pennsylvania [ECF No. 390] (“SHIP Ans.”) ¶ 50; Exh. 3, Deposition Transcript of Marc Kirschner (“Kirschner Tr.”) at 234:15-18.<sup>1</sup>**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. As SHIP concedes at footnote 2 of the SOF, according to an order issued by the Commonwealth Court of Pennsylvania on January 29, 2020, (the “Rehabilitation Order”) annexed as Exhibit 74 to the Declaration of Aidan M. McCormack, dated February 14, 2020 (“McCormack Dec.”) 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 and annexed as Exhibit 28 to the Declaration of Erik B. Weinick in Opposition to

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

SHIP's Motion for Summary Judgment ("Weinick Dec."), Mr. Patrick Cantilo has been designated as the Special Deputy Rehabilitator ("Rehabilitator").

3. **The Oversight Trust was created specifically for the purpose of managing the run-off of SHIP's long-term care insurance business. Exh. 5, Hampton Tr. at 23:22-24:16.<sup>2</sup>**

**Response:**

No issue of fact.

**B. Platinum Partners and the PPCO Funds**

4. **Platinum Partners, an affiliated group of funds, was founded by Mark Nordlicht, Murray Huberfeld, and David Bodner (the "Platinum Founders") in 2003, with the formation of the Platinum Partners Value Arbitrage Fund, L.P. and its related funds (collectively, "PPVA") in 2003. Exh. 3, Kirschner Tr. at 96:13-97:6; Exh. 6, BW-SHIP-00826755 at 758; Exh. 7, CNOCSL\_00268913 at 932; Exh. 8, Deposition Transcript of David Bodner ("Bodner Tr.") at 61:12-62:19; Exh. 9, Deposition Transcript of Murray Huberfeld ("Huberfeld Tr.") at 36:22-37:18.**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. The referenced pages of the document do not use the terms "flagship fund of a family of funds" nor the words "single strategy." The Receiver respectfully refers the Court to the document itself for the complete contents thereof.

6. **The PPCO Funds were organized in a "Master-Feeder" structure, whereby investors initially would contribute capital to an intermediate "feeder fund" that would then contribute the investors' capital to PPCO Master Fund. Exh. 11, Deposition**

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

**Transcript of Trey Rogers (“Rogers Tr.”) at 237:9-239:13; Exh. 12, BW-SHIP-00138306; Exh. 3, Kirschner Tr. at 201:20-202:21.**

**RESPONSE:**

Issue of fact. The summary provided above is not accurate. For example, Mr. Rogers testified that foreign investors’ money went into a feeder funds, then a blocker fund, and then into the master fund. Rogers Tr. at 239:14-19 (Weinick Dec. Ex. 27). *See also*, CSOF ¶ 35.

**7. Each such feeder fund was constructed for different classes of investors, namely:**

- a. Platinum Partners Credit Opportunities Fund LLC (“PPCO Fund LLC”) was organized for investors based in the United States and contributed investors' capital directly to PPCO Master Fund in exchange for limited partnership interests in PPCO Master Fund;**
- b. Platinum Partners Credit Opportunities Fund (TE) LLC (“PPCO Fund (TE)”) was organized for tax-exempt investors based in the United States; and**
- c. Platinum Partners Credit Opportunities Fund International Ltd. and Platinum Partners Credit Opportunities Fund International (A) Ltd. (collectively, the “International Funds”) were organized for investors based outside of the United States.**

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. While Mr. Rogers described investors' initial contributions as equity, SOF No. 9 inaccurately portrays the description of investors status at all times and for all purposes. Mr. Rogers' cited testimony does *not* state that investors are still considered to be “equity” once they have made a redemption request that has not yet been paid. For example, Mr. Rogers described redemption requests (aka “Capital Withdrawals Payable”) as a *liability* of PPCO Master Fund. Rogers Tr. 36:17-36:25. 207:10-17 (Weinick Dec. 27). The Receiver also respectfully refers the Court to Section 4.2(a) of the Third Amended and Restated Agreement of Limited Partnership of Platinum Partners Credit Opportunities Master Fund LP dated as of June 3, 2011, attached as the Declaration of Trey Rogers in opposition to SHIP's Motion for Summary Judgment (“Rogers Dec.”) as Ex. C. *See also*, CSOF ¶¶ 41-47.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact as to the first sentence of SOF No. 12. The Receiver will indicate in her response to the SOF, or in her response to SHIP's memorandum of law, her

objection, if appropriate, to limiting the term “PPCO Subsidiaries” to the “direct subsidiaries of PPCO Master Fund which appear as white boxes in the organizational chart.”

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

**RESPONSE:**

Issue of fact. SOF No. 13 is misleading because it combines results from different funds. As a result, the Receiver respectfully refers the Court to the cited document for the full contents thereof.

**14. Platinum Credit Holdings LLC (the “PPCO Managing Member”) served as general partner of PPCO Master Fund. Exh. 7, CNOCSL\_00268913 at 921; Exh. 14, BW-SHIP-00243846 at 848.**

**RESPONSE:**

No issue of fact.

**15. Platinum Credit Management, L.P. (the “PPCO Portfolio Manager”) served as PPCO Master Fund's loan portfolio manager, which was responsible for determining how, when, on what terms, in which contexts, and to whom PPCO lent out money and conducted its investment operations. Ex. 8, Bodner Tr. at 109:10-13; Exh. 3, Kirschner Tr. at 208:12-20; Exh. 7, CNOCSL\_00268913 at 921; Exh. 14, BW-SHIP-00243846.**

**RESPONSE:**

No issue of fact.

**16. At all times relevant to this Action, Mark Nordlicht was a principal of the PPCO Managing Member and the PPCO Portfolio Manager. Exh. 3, Kirschner Tr. at 208:12-18; Exh. 7, CNOCSL\_00268913 at 931; Exh. 14, BW-SHIP-00243846 at BW-SHIP-00243850.**

**RESPONSE:**

No issue of fact.

**C. The PPCO Receiver**

**17. On December 19, 2016, the PPCO Master Fund and certain affiliated entities were placed in receivership following the filing of a complaint by the Securities and Exchange Commission alleging numerous violations of federal securities law by the PPCO**

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. Melanie L. Cyganowski was appointed as PPCO Receiver on July 6, 2017. *See SEC Action*, Dkt. No. 216. SOF No. 18 is correct in noting that the Receivership Order was entered as indicated on October 16, 2017.

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

**RESPONSE:**

No issue of fact that SOF No. 19 contains a description of some of the authority vested to the Receiver pursuant to the Receivership Order. The Receiver respectfully refers the Court to the entirety of the Receivership Order for the full scope of the Receiver’s authority thereunder. *See also*, CSOF ¶¶ 21-24.

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

**RESPONSE:**

Issue of fact. SOF No. 20 is a legal argument, not an issue of fact to which a response is required. Nonetheless, the Receiver responds that pursuant to the

Receivership Order (including, *inter alia*, Paragraph 6 thereof), she is authorized to assert claims concerning property of the Receivership Estate. *See also*, CSOF ¶¶ 22-23.

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

**RESPONSE:**

No issue of fact that SOF No. 21 contains a partial quotation of the Receivership Order, but the Receiver respectfully refers the Court to the entirety of the Receivership Order for the complete contents thereof and the full scope of the Receiver’s authority thereunder. *See also*, CSOF ¶ 24.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact that SOF No. 23 contains a partial quotation of the Receivership Order, but the Receiver respectfully refers the Court to the entirety of the Receivership Order for the complete contents thereof and the full scope of the Receiver’s authority thereunder. *See also*, CSOF ¶ 23.

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

**RESPONSE:**

Issue of fact in so much as SOF No. 24 is a legal argument attempting to conclude that the PPCO Subsidiaries are not Receivership Property over which, and on whose behalf, the Receiver may take action, including, but not limited to, asserting claims. *See also*, CSOF ¶¶ 22-23.

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



**RESPONSE:**

No issue of fact that SOF No. 25 contains a partial quotation of the Receivership Order, but the Receiver respectfully refers the Court to the entirety of the Receivership Order for the complete contents thereof, and the full scope of the Receiver's authority thereunder. *See also*, CSOF ¶¶ 22-23.

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

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact. The Receiver does note however, that Beechwood's CEO Feuer testified that prior to entering into the first IMA, SHIP's CEO Wegner knew that Beechwood's investment side employees were from Platinum, that Wegner met with Beechwood at Platinum's office, and that in their initial meetings, Wegner was trying to solicit Beechwood to utilize Fuzion (*see, e.g.*, Feuer Tr. 13:3-8; 112:25-113:17; 115:4-25; 285:19-286:7 (Weinick Dec. Ex. 21)). In addition, SHIP has 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. (*See* SHIP's Response to Receiver's Request for Admission Nos. 22 and 24, (Weinick Dec. Ex. 36)).

29. **Beechwood was owned and controlled by the Platinum Founders and Levy, with Taylor and Feuer respectively serving as President and CEO of Beechwood. Exh. 1, FAC ¶ 110; Exh. 2, SHIP Ans. ¶ 110; Exh. 18, BW-SHIP-00000801 at BW-SHIP-00000802; Exh. 21, BW-SHIP-00262451. The ownership interests of the Platinum Founders in Beechwood were held in various entities with generic names such as Beechwood Re Investments, LLC and Beechwood Trust Nos. 1-20. Exh. 22, Deposition Transcript of Mark Feuer (“Feuer Tr.”) at 21:8-11, 22:19–22, 73:17-74:11.**

**RESPONSE:**

Issue of fact. While the Platinum Founders held various direct and indirect ownership interests in various Beechwood entities, as SHIP concedes in SOF No. 30 below, testimony from Feuer and Taylor (see, e.g., Feuer Tr. 73:3-74:17) and documents (see, e.g., Ex. 867 (Weinick Dec. Ex. 18)) demonstrate that Feuer and Taylor also had ownership interests. In addition, the ownership interests in Beechwood changed over time (see, e.g. Feuer Tr. 246:19-247:24 (Weinick Dec. Ex. 21)). Moreover, the question of control presents an issue of fact in as much as documents (see, e.g., Ex. 277 (Weinick Dec. Ex. 97)) and testimony (see, e.g., Huberfeld Tr. 514:22-515:3 (Weinick Dec. Ex. 14); Albanese Tr. 311:7-17 (Weinick Dec. Ex. 2); Saks Tr. 174:3–182:24 (Weinick Dec. Ex. 8)), indicate control of Beechwood by Platinum individuals such as Nordlicht, Bodner and Huberfeld, whereas Feuer testified that Nordlicht merely provided advice (see, e.g., Feuer Tr. 24:6-25; 61:7-64:22 (Weinick Dec. Ex. 21)).

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

**RESPONSE:**

No issue of fact as to the first sentence of SOF No. 30, however, the second sentence of SOF No. 30 is unclear in its use of the term “Beechwood’s management team.” As SHIP itself concedes in SOF No. 29, “Taylor and Feuer respectively serv[ed] as President and CEO of Beechwood” and there is no evidence that either individual at “one point or another, were employed by or otherwise affiliated with Platinum.” As noted in the Receiver’s response to SOF No. 29, the question of “management” presents an issue of fact in as much as documents (see, e.g., Ex. 277 (Weinick Dec. Ex. 97)) indicate control by Platinum individuals such as Nordlicht, whereas Feuer testified that Nordlicht merely provided advice (see, e.g., Feuer Tr. 24:6-25; 61:7-64:22 (Weinick Dec. Ex. 21)). Taylor testified that it was not his understanding that Nordlicht would be involved in investment decisions for Beechwood’s clients (Taylor 77:18-22 (Weinick Dec. Ex. 25)) and that Nordlicht provided advice, and did not make decisions for Beechwood (Taylor 594:25-596:20 (Weinick Dec. Ex. 25)).

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

**RESPONSE:**

No issue of fact.

32. **Under the terms of the IMAs, SHIP granted Beechwood authority “to invest and reinvest [SHIP’s] Assets at such time and in such manner as [Beechwood] in its sole discretion shall determine or elect . . . .” Exh. 26 at ¶ 3; Exh. 27 at ¶ 3; Exh. 28 at ¶ 3.**

**RESPONSE:**

No issue of fact that SOF No. 32 contains a partial quotation of the IMAs, but the Receiver respectfully refers the Court to the entirety of the IMAs for the complete contents thereof.

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

**RESPONSE:**

Issue of fact. As he testified, upon joining BAM in January of 2016, Dhruv Narain, who was BAM’s chief investment officer, 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.” (*See, e.g.*, Narain Tr.485:20–487:24 (Weinick Dec. Ex. 11)). Narain further testified that his understanding was that such a general idea came from SHIP. (*See, e.g.*, Narain Tr. 533:17 –534:5 (Weinick Dec. Ex. 11)). He further testified that he understood that Paul Lorentz from SHIP directed the reduction of PPCO LP interests to a level below a certain \$5.5 mm in accordance with stated investment guidelines. (*See, e.g.*, Narain Tr. 584:3 –588:5 (Weinick Dec. Ex. 11)). As Beechwood’s 30(b)(6) witness, Christian Thomas, adopted Narain’s testimony concerning ongoing discussions in January 2016 to divest SHIP’s Platinum assets. (*See, e.g.*, Thomas Tr. 375:25 –376:22 (Weinick Dec. Ex. 6)).

In addition, SHIP’s senior management and Board of Directors monitored (including constant monitoring of the investment yield, specific investments, and looking for investments that would help SHIP), retroactively approved, and ratified all of

Beechwood's investments on SHIP's behalf. (*See, e.g.*, Robison Tr. 75:5-77:5 (Weinick Dec. Ex. 15); Serio Tr. 150:21-151:2; 166:13-20; 167:3-20; 191:2-17 (Weinick Dec. Ex. 13); Feuer Tr. 222:10-223:14; 315:11-316:24; 317:15-23; 390:17-25 (Weinick Dec. Ex. 21)).

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

**RESPONSE:**

No issue of fact.

35. **SHIP lost a significant amount of the funds it invested through the IMAs through overvalued assets and performance fees charged based on the same overvaluations. Exh. 1, FAC ¶ 6; Exh. 2, SHIP Ans. ¶ 6; Exh. 32, Deposition of Timothy Hart ("Hart Tr.") at 88:17-89:10; Exh. 33, Expert Rebuttal Report of Timothy Hart ("Hart Rebuttal Rpt.") ¶ 24.<sup>3</sup> A substantial portion of SHIP's funds were invested in Platinum assets, including numerous PPCO Master Fund assets. Exh. 19, Wegner Tr. at 132:2-16, 212:11-223:12.**

**RESPONSE:**

Issue of fact. Mark Feuer, the CEO of Beechwood, SHIP's counter-party to the IMA's testified that the IMAs "weren't really underwater" at the time of the "friendly recapture." (*See, e.g.*, Feuer Tr. 243:20-244:9 (Weinick Dec. Ex. 21))

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

**RESPONSE:**

Issue of fact. Prior to the execution of the IMAs, SHIP was well aware, or at minimum could readily have been aware of, the substantial connections between Beechwood and Platinum. For example:

(i) Platinum was mentioned quite a bit prior to entering into reinsurance agreements. Levy and other former Platinum employees were introduced as such (Feuer Tr. 99:14-100:12 (Weinick Dec. Ex. 21));

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

(ii) prior to entering into the first IMA, Wegner knew employees on investment side of Beechwood were from Platinum (Feuer Tr. 112:25-113:17; 115:4-25 (Weinick Dec. Ex. 21));

(iii) Feuer recalls that he definitely introduced Wegner to Huberfeld and Nordlicht, although he cannot remember the exact times. (Feuer Tr. 118:13-119:70 (Weinick Dec. Ex. 21));

(iv) Feuer testified that it is possible or highly likely that Wegner met with Beechwood at *Platinum's* office (Feuer Tr. 285:19-286:7 (Weinick Dec. Ex. 21));

(v) Paul Lorentz, SHIP's former CFO, acknowledged at his deposition that SHIP received, but claims he does not remember reading, nor was it his job to read, 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; PGS; PPCO; and Agera. The report also identifies Nordlicht as a managing member. (Lorentz Tr. 152:9-161:20 and Exhibit 231 (Weinick Dec. Exs. 22 & 73));

(vi) By May 2015 SHIP had Duff & Phelps reports that described Desert Hawk issuing \$10 million worth of senior secured notes from DMRJ group, a wholly owned sub of PPVA guaranteed by its managing member, Mark Nordlicht. As a result, SHIP knew by then that it was the managing member of PPVA who signed the side letter for Beechwood. (Robison Tr. 111:25-115:3 (Weinick Dec. Ex. 15));

(vii) In October 2013 SHIP had a document entitled "Beechwood Re Background Information," which describes Levy as having been the Deputy CIO of PPVA, CIO of PPVE (Black Elk) and Director and Controller of Desert Hawk Gold Corp. and Glacial Energy (Agera). (Robison Tr. 196:17-203:25 (Weinick Dec. Ex. 15); Exhibit 247 (Weinick Dec. Ex. 48) and Staldine Tr. 47:8-23 (Weinick Dec. Ex. 3));

(viii) In July, 2015. SHIP had a copy of a document entitled "Participation Agreement (Desert Hawk Gold Corp.)" which is signed by Levy on behalf of DMRJ Group, defined as the "Grantor," and not Desert Hawk defined as the "Borrower," Feuer signed on behalf of Beechwood Re and the same signature (Nordlicht's) appears for PPVA (Robison Tr. 252:15-262:20 (Weinick Dec. Ex. 15) and Exhibit 254 (Weinick Dec. Ex. 48));

(ix) a Duff & Phelps Report dated March 31, 2015, as to which Lorentz as CFO had responsibility to review, 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. (Robison Tr. 221:9-233:19 (Weinick Dec. Ex. 15) and Exhibit 251 (Weinick Dec. Ex. 99));

(x) Before the restructuring in 2015, because Nordlicht signed documents on behalf of Beechwood SHIP “would know he was related to Beechwood Investments. (Staldine Tr. 150:4-152:11 (Weinick Dec. Ex. 3));

(xi) As set forth in January 14, 2015 emails between Lorentz and Beechwood, SHIP knew that BRILLC issued a demand note to the investment advisors for the first two IMAs, BRe LLC and BBIL, “to provide capital on balance sheet and emergency access to capital,” and then the next day executed the side letter for the 3d IMA which guaranteed the 5.85% return by BRILLC, signed for by Nordlicht for N Management on behalf of BRILLC. But SHIP did no due diligence into Nordlicht, N Management or BRILLC. (Staldine Tr. 225:3-231:21 (Weinick Dec. Ex. 3) and Exhibits 140 and 146 (Weinick Dec. Exs. 87 and 88));

(xii) Levy’s prior work at Platinum was a factor in the initial due diligence of Beechwood, and “checked the box” that “[h]e had experience in the industry,” which “was not a negative because, again, Platinum was a respected firm.” But no more due diligence into the Platinum relationship was carried out. (Staldine Tr. 155:19-156:17 (Weinick Dec. Ex. 3));

(xiii) SHIP has 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. (*See* SHIP’s Response to Receiver’s Request for Admission Nos. 22 and 24, (Weinick Dec. Ex. 36)); and

(xiv) a January 15, 2015 letter executed by Wegner was sent to him by Mark Nordlicht, who executed the same on behalf of Beechwood Re Investments, LLC (Weinick Dec. Ex. 140 (Weinick Dec. Ex. 87)).

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

#### **RESPONSE:**

Issue of fact. While Saks testified as indicated in SOF No. 37, and while Beechwood e-mails address keeping Mark Nordlicht’s presence at Beechwood from certain people (*see, e.g.*, Kim 7 (Weinick Dec. Ex. 20)), there is record evidence that such steps were *not* taken, including:

(i) Platinum was mentioned to SHIP “quite a bit” prior to entering into the agreements. Specifically, Levy and other former Platinum employees were introduced as such (Feuer Tr. 99:14-100:12 (Weinick Dec. Ex. 21));



(ii) Feuer recalls that he definitely introduced Wegner to Huberfeld and Nordlicht, although he cannot remember the exact times. (Feuer Tr. 118:13-119:70 (Weinick Dec. Ex. 21));

(iii) Feuer testified that it is possible or highly likely that Wegner met with Beechwood at *Platinum's* office (Feuer Tr. 285:19-286:7 (Weinick Dec. Ex. 21));

(iv) In October 2013 SHIP had a document entitled "Beechwood Re Background Information," which describes Levy as having been the Deputy CIO of PPVA, CIO of PPVE (Black Elk) and Director and Controller of Desert Hawk Gold Corp. and Glacial Energy (Agera). (Robison Tr. 196:17-203:25 (Weinick Dec. Ex. 15); Exhibit 247; Staldine Tr. 47:8-23 (Weinick Dec. Ex. 3));

(v) Before the restructuring in 2015, because Nordlicht signed documents on behalf of Beechwood SHIP "would know he was related to Beechwood Investments. (Staldine Tr. 150:4-152:11 (Weinick Dec. Ex. 3));

(vi) Levy's prior work at Platinum was a factor in the initial due diligence of Beechwood, and "checked the box" that "[h]e had experience in the industry," which "was not a negative because, again, Platinum was a respected firm." But no more due diligence into the Platinum relationship was carried out. (Staldine Tr. 155:19-156:17 (Weinick Dec. Ex. 3)); and

(vii) SHIP has 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. (See SHIP's Response to Receiver's Request for Admission Nos. 22 and 24 (Weinick Dec. Ex. 36)).

**38. SHIP only became aware of any connection between Platinum and Beechwood in July 2016 (following the June 2016 arrest of Platinum Founder Huberfeld on federal bribery charges) through press reports that Beechwood representatives immediately attempted to downplay, assuring SHIP that Beechwood was taking "aggressive action to reduce [SHIP's] exposure to [Platinum-controlled entities] as soon as practicable." Exh. 35; Exh. 19, Wegner Tr. at 180:5-16.**

#### **RESPONSE:**

Issue of fact. *See* the Receiver's responses to SOF Nos. 36 and 37 above, as well as the Receiver's CSOF Nos. 92-95, 103-105, 132.

**39. In fact, as late as July 26, 2016, Beechwood still was representing to SHIP that Beechwood was "currently owned 99% through family trusts of Messrs Feuer and Taylor" and misleadingly stated that "[a]t some point in our history, a set of beneficiary trusts in which relatives of Messrs Nordlicht and Huberfeld . . . were part of a group of 20 minority shareholders in Beechwood Re." Exh. 36. These were lies. The Platinum**

**Founders still held significant ownership interests in Beechwood at the time of the July 26, 2016 letter. Exh. 16, Taylor Tr. at 192:7-194:3; see generally, Exh. 21.**

**RESPONSE:**

Issue of fact. SHIP questioned Mr. Feuer, the signer of the letter, about the cited document at his deposition, but failed to provide that testimony to the Court in support of its motion. If SHIP had done so, the Court would have been advised that Mr. Feuer testified that the letter was accurate and *not* misleading. (Feuer 245:2-246:4 (Weinick Dec. Ex. 21)) This in and of itself creates an issue of material fact.

**III. The December 2015 and March 2016 Loan Transactions**

**A. The December 2015 Loan Transaction**

40. **On December 22, 2015, it was announced internally at Platinum that Mark Nordlicht, on behalf of PPCO Master Fund, had negotiated a loan funding with Beechwood whereby Platinum personnel understood that Beechwood was “going to lend PPCO \$15M[illion] . . .” Exh. 37.**

**RESPONSE:**

No issue of fact that SOF No. 40 contains a partial quotation of the cited document, but the Receiver respectfully refers the Court to the cited document for the complete contents thereof, as well as to the governing transaction documents, all testimony relating thereto for a complete description of the transaction.

41. **On the same day, Beechwood's general counsel, Christian Thomas, sent draft documents to Platinum's general counsel, Suzanne Horowitz, setting forth the terms of the loan that Nordlicht apparently had negotiated ahead of time with Beechwood. Exh. 38. As reflected in the draft promissory note attached to that e-mail, however, the loan would not be funded by Beechwood—it would be funded by SHIP. *Id.* at BW-SHIP-00138277. No person at SHIP was included on this e-mail correspondence.**

**RESPONSE:**

No issue of fact that the email cited in SOF No. 41 was sent as indicated, and included the attachments as indicated, nor that no person at SHIP was overtly included on the e-mail (although, the assertion that no person at SHIP was included on the e-mail is clearly erroneous: (a) given SHIP's admission in SOF No. 43 below that Beechwood was SHIP's agent; and (b) regardless, to the extent that this Court determines Beechwood to have been SHIP's agent as a matter of fact and law, then SHIP was included on the correspondence). However, SHIP provides no evidentiary support for its conclusion that the documents set forth “the terms of the loan that Nordlicht apparently had negotiated ahead of time with Beechwood.” As to the provisions of the attached documents, the



Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact as to the execution of the documents as indicated in SOF No. 43, but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

Issue of fact, as the Receiver requested that SHIP admit both the authenticity and admissibility of Exs. 43 and 44, and while SHIP begrudgingly conceded the authenticity of the documents, it would not admit to the admissibility of the document. *See* SHIP's Responses to Receiver's Request to Admit Nos. 45 and 46, (Weinick Dec. Ex. 36)

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

**RESPONSE:**

Issue of fact. While Ex. 44 at BW-SHIP-01331595 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 SHIP has defined PPCO Master Fund (at SOF No. 5), 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

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

executed; and (ii) SHIP offers no evidence to authenticate the signature on the cited page. Moreover Mr. Taylor's cited testimony is that it was his "impression [ ] that Mr. Nordlicht had pretty broad authorities within the Platinum entities to have them act in a variety of ways." Mr. Taylor did not testify as to anything more than his impression of Mr. Nordlicht's authority (on an unrelated note, this testimony is striking as a recognition by Beechwood, if Mr. Taylor's "impression" was accurate, of duties owed by Mr. Nordlicht to Platinum).

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

**RESPONSE:**

Issue of fact, as stated in the Receiver's response to SOF 44 that the December 2015 SHIP Note was not executed by Nordlicht on behalf of PPCO Master Fund, but rather, on behalf of "Platinum Opportunities Master Fund LP." The Receiver further avers that the PPCO Subsidiaries received no consideration in return for their grant of the security interest in all of their assets. CSOF 221, 222, 224. Finally, the Receiver notes that she requested that SHIP admit both the authenticity and admissibility of Ex. 43, and while SHIP begrudgingly conceded the authenticity of the document, it would not admit to the admissibility of the document. *See* SHIP's Responses to Receiver's Request to Admit Nos. 41 and 42, (Weinick Dec. Ex. 36).

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

**RESPONSE:**

Issue of fact. SHIP offers no evidence to authenticate the signature on the cited page. Moreover Mr. Taylor's cited testimony is that it was his "impression [ ] that Mr. Nordlicht had pretty broad authorities within the Platinum entities to have them act in a variety of ways." Mr. Taylor did not testify as to anything more than his impression of Mr. Nordlicht's authority (on an unrelated note, this testimony is striking as a recognition by Beechwood, if Mr. Taylor's "impression" was accurate, of duties owed by Mr. Nordlicht to Platinum). Finally, as stated in the Receiver's response to SOF No. 45 above, the Receiver notes that she requested that SHIP admit both the authenticity and admissibility of Ex. 43, and while SHIP begrudgingly conceded the authenticity of the document, it would not admit to the admissibility of the document. *See* SHIP's Responses to Receiver's Request to Admit Nos. 41 and 42, (Weinick Dec. Ex. 36)

47. **The PPCO Subsidiaries also executed a guarantee of repayment of the note in the event of a default by PPCO Master Fund (the “December 2015 Subsidiary Guaranty”). Exh. 43 BW-SHIP-01332105 at BW-SHIP-01332108. Specifically, the December 2015 Subsidiary Guaranty provides that the PPCO Subsidiaries guarantee, on a joint and several basis, “the prompt payment when due (whether by acceleration or otherwise) of all present and future obligations and liabilities of any and all kinds of [PPCO Master Fund] . . . arising under, out of, or in connection with” the December 2015 SHIP Note or the Master Security Agreement. *Id.***

**RESPONSE:**

No issue of fact that SOF No. 47 contains a partial quotation of the referenced documents, but the Receiver respectfully refers the Court to the entirety of the cited documents for the complete contents thereof, and also continues to note that SHIP has failed to provide an evidentiary foundation for its submission of the document, after having refused to admit to admissibility in response to the Receiver’s Requests for Admission. *See* SHIP’s Responses to Receiver’s Request to Admit Nos. 41 and 42, (Weinick Dec. Ex. 36)

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

**RESPONSE:**

Issue of fact. SHIP offers no evidence to authenticate the signature on the cited page, and the Receiver once again notes that she requested that SHIP admit both the authenticity and admissibility of Ex. 44, and while SHIP begrudgingly conceded the authenticity of the document, it would not admit to the admissibility of the document. *See* SHIP’s Responses to Receiver’s Request to Admit No. 43 and 44, (Weinick Dec. Ex. 36)

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

**RESPONSE:**

Issue of fact as the referenced cash did not go to PPCO, rather, it went to the Signature Bank account of BAM Administrative Services, as Agent. *See*, McCormack Dec. Ex. 66, Prager Report; Weinick Agency Dec. Ex. 14-2 14-2 (POC) 364-65.

50. **Pursuant to a direction letter issued by PPCO Master Fund to SHIP, c/o B Asset Manager, LP, that exact amount in cash was drawn from SHIP’s account at Wilmington Trust and sent to BAM Admin via wire transfer on December 23, 2015. Exh.**

**44, BW-SHIP-01331549 at BW-SHIP-01331588; Exh. 45, BW-SHIP-00834169; Exh. 46, WT 0000565-574.**

**RESPONSE:**

No issue of fact, however the Receiver objects to any attempt to portray SOF No. 50 as a definitive description of the entirety of the transaction.

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

**RESPONSE:**

Issue of fact, as the words “then used” befit a description of separate transactions, when in fact, the December 2015 fraudulent conveyance (as described in Pars. 225 to 239 of the Receiver’s FAC), was one integrated transaction. *See, e.g.*, Depo. Exs. 433, 437 438, 439, 440 and 445 (emails between Beechwood and Platinum, attaching loan documents for the December 2015 and March 2016 transactions respectively, both before and after funding, and, among other things, referencing the Desert Hawk disbursement letter and assignment which were still being drafted) (attached as Exs. 38, 43, 44 to McCormack Dec.)

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

- a. **Beechwood Re sold its \$4 million participation interest in Desert Hawk debt to PPCO Master Fund for a purchase price of \$4,088,333.34, which represented the \$4 principal amount of the debt plus accrued interest, *see* Exh. 43 at BW-SHIP-01332168;**
- b. **BBIL sold its 50% share of a \$6.65 million participation interest in Desert Hawk debt to PPCO Master Fund for a purchase price of \$3,398,427.08, which represented the \$3.325 million principal amount of the debt plus accrued interest, *see* Exh. 43 at BW-SHIP-01332156; and**
- c. **BBIL sold its 50% share of a \$3.35 million participation interest in Desert Hawk debt to PPCO Master Fund for a purchase price of \$1,711,989.58, which represented the \$1.675 million principal amount of the debt plus accrued interest, *see* Exh. 43 at BW-SHIP-01332165.**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. While “on paper” SHIP held no interest in Desert Hawk at the time these Assignment Agreement transactions took place, in reality, SHIP had transferred its interests to Beechwood a short time earlier and the interests were merely “parked” at Beechwood pending the completion of the Assignment Agreement transactions. Dep. Ex. 492 BW-SHIP-00826916-17 (Weinick Dec. Ex. 52); CTRL7517990 (Weinick Dec. Ex. 53). See also, CSOF ¶¶ 167-68.

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

**RESPONSE:**

Issue of fact as the referenced cash did not go to PPCO, rather, it went to the Signature Bank account of BAM Administrative Services, as Agent. CSOF ¶ 169, 170.

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

**RESPONSE:**

No issue of fact.

56. **The LC Energy indebtedness carried an annual interest rate of 18% and bore a maturity date of December 2, 2015. Exh. 16, Taylor Tr. at 590:21-25; Exh. 50 at 9 (“Termination Date’ means December 2, 2015.”), §§ 2.2(b), 2.3. LC Energy “unconditionally promise[d] to pay,” no later than the December 2, 2015 maturity date, “the then unpaid principal amount of the Note[s],” as well as “any and all accrued but**

**unpaid interest and fees thereon.” Exh. 50 at § 2.2(b). By December 21, 2015, the lender on the LC Energy debt was inquiring about the maturity date, which had already passed. See Exh. 73, CNOCSL00530458.**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact because while PPCO Master Fund drew \$14.2 million in cash as indicated, it was not permitted to either keep the cash or apply the cash as PPCO Master Fund wished. Rather, PPCO Master Fund was required to apply the cash in a manner that benefited SHIP. Specifically, the referenced cash did not go to PPCO, rather, it went to the Signature Bank account of BAM Administrative Services, as Agent. CSOF ¶¶ 165, 166, 167, 169, 170.

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

**RESPONSE:**

Issue of fact, as SHIP has mischaracterized the cited testimony. In the cited testimony, Mr. Prager responded to a hypothetical question about \$10 million in debt, not the particular cash or debt addressed by SHIP in SOF Nos. 55 to 58.

**60. Shortly thereafter, on January 20, 2016, the December 2015 SHIP Note was amended and restated to increase the maximum amount available for withdrawal to \$18 5 million (the “January 2016 A&R SHIP Note”). Exh. 54, BW-SHIP-0167640 at BW-SHIP-0167658. As with the December 2015 SHIP Note, Beechwood executed the January 2016 A&R SHIP Note on SHIP's behalf. *Id.* at BW-SHIP-0167664.**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. The books and records of PPCO demonstrate the receipt of \$2,000,000 as of January 20, 2016 and a simultaneous transfer of \$2,000,000 to an account at Sterling National Bank in the name of Platinum Partners Value Arbitrage Fund. Rogers Dec. ¶ 48.

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

**RESPONSE:**

No issue of fact.

**B. The March 2016 Loan Transaction**

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

**RESPONSE:**

Issue of fact. SOF No. 64 is a vague, general factual conclusion, unsupported by any witness testimony. The Receiver respectfully refers the Court to the cited documents



for the complete contents thereof, and respectfully demands that SHIP present witnesses at trial to offer testimony subject to cross-examination to support its conclusions.

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

**RESPONSE:**

Issue of fact. SOF No. 65 is a vague, general factual conclusion, unsupported by any witness testimony. The Receiver respectfully refers the Court to the cited documents for the complete contents thereof, and respectfully demands that SHIP present witnesses at trial to offer testimony subject to cross-examination to support its conclusions.

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

**RESPONSE:**

No issue of fact that SOF No. 64 contains a partial quotation of Mr. Steinberg’s cited testimony.

67. “Agera” referred to retail energy company Agera Energy LLC, in which PPCO Master Fund held an equity interest through its 45% equity interest in Principal Growth Strategies, LLC (“PGS”); PPVA held the remaining 55% interest in PGS. At the time, PPCO Master Fund's equity interest was encumbered by a pledge of that interest (the “Agera Pledge”) as security for the indebtedness of Northstar GOM Holdings, Inc. (“Northstar”), a PPVA investment. Exh. 52, BW-SHIP-000980925-965 at BW-SHIP-000980980-967; Exh. 66, Expert Report of David Prager (“Prager Rpt.”) at p. 8.<sup>5</sup>

**RESPONSE:**

No issue of fact.

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

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



**RESPONSE:**

Issue of fact. The Receiver notes that she requested that SHIP admit both the authenticity and admissibility of Ex. 67, and while SHIP begrudgingly conceded the authenticity of the document, it would not admit to the admissibility of the document. *See* SHIP's Responses to Receiver's Request to Admit No. 61 and 62, (Weinick Dec. Ex. 36),

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

**RESPONSE:**

Issue of fact. SHIP did *not* loan \$25.7 million in cash and assets to PPCO. Rather, the "assets" PPCO received was \$15.8 million of Northstar debt being valued at par. *See* Prager Report p. 11, Conclusion 2. (McCormack Dec. Ex. 66))

Moreover, the Receiver respectfully demands that SHIP presents evidence that "Beechwood caused SHIP to loan" the funds as alleged in SOF No. 69, without any involvement, direction, oversight or participation by SHIP, because the Receiver has adduced evidence that the described transaction was consistent with SHIP's contemporaneous goals of improving its Risk Based Capital ("RBC") measurement, a critical metric to avoid further regulatory oversight. (*See, e.g.*, Serio Tr. 198:7-199:8; 199:22-200:8; 200:12-21 (Weinick Dec. Ex. 13))

**70. The \$25.7 million in cash and assets contributed from SHIP's accounts to PPCO Master Fund consisted of (i) approximately \$9 9 million in cash; and (ii) a direct holding of \$15.8 million in Northstar debt. Exh. 33, Hart Rebuttal Rpt. ¶ 22, Table 2, App'x Y.1, & App'x Z; Exh. 68.**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. The Northstar Indenture Debt itself combined with the effect of the reduction of the Agera pledge is valued at between 80.4% and 92.9% with a mid-point of 86.1%, *i.e.*, \$25.5 million value compared to \$29.6 million face value. *See* Prager Rpt. at 29 (McCormack Dec. Ex. 66).

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

**RESPONSE:**

Issue of fact. SHIP did *not* transfer \$25.7 million in value to PPCO. *See* Prager Report p. 11, Conclusion 2 (McCormack Dec Ex. 66).

77. As security for PPCO Master Fund's promise to pay under the March 2016 SHIP Note, the parties executed an Amended and Restated Master Security Agreement ("March 2016 A&R MSA"). Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175295. The March 2016 A&R MSA provided that the "liens and security interests granted pursuant to the [December 2015 Security Agreement] shall continue in full force and effect during the term of the [March 2016 A&R MSA] and any renewals or extensions thereof and shall continue to secure Obligations." *Id.* § 1.

**RESPONSE:**

No issue of fact that SOF No. 77 contains partial quotations of the cited documents, but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

78. In addition to reaffirming and ratifying the security interests previously granted, the March 2016 A&R MSA further granted SHIP a security interest in, among other things, PPCO Master Fund's "investment property (including, without limitation, all partnership interests, limited liability company membership interests and all other equity interests owned by" PPCO Master Fund. *Id.* § 2 (emphasis added). Schedule C to the March 2016 A&R MSA, in turn, "lists all of the equity interests owned by" PPCO Master Fund, which are identified as the "Pledged Collateral" in section 4(k) of the March 2016 A&R MSA. *Id.* at BW-SHIP-00175298 § 4(k), Schedule C.

**RESPONSE:**

No issue of fact that SOF No. 78 contains partial quotations of the cited documents, but the Receiver respectfully refers the Court to the cited documents for the complete contents thereof.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact, however the Receiver notes that Narain testified that he was made aware in January 2016 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.” (Narain Tr. 485:20-487:24 (Weinick Dec. Ex. 11)) He further testified that his understanding was that such a general idea came from SHIP. (Narain Tr. 533:17-534:5 (Weinick Dec. Ex. 11)). Finally, Narain testified that he understood that Paul Lorentz (SHIP’s CFO), directed the reduction of PPCO LP interests to a level below a certain \$5.5 million in accordance with stated investment guidelines. (Narain Tr. 584:3-588:5 (Weinick Dec. Ex. 11)). Christian Thomas, Beechwood’s Rule 30(b)(6) witness adopted Narain’s testimony concerning ongoing discussions between Beechwood and SHIP in January 2016 to divest SHIP’s Platinum-related assets. (Thomas Tr. 375:25-376:22 (Weinick Dec. Ex. 6))

**81. The March 2016 SHIP Note ultimately was rolled into a Note Purchase Agreement (the “NPA”), which also covered Secured Term Notes issued by PPCO Master Fund in favor of the BCLIC/WNIC Trusts with an aggregate face value of approximately \$26.2 million. Exh. 67, BW-SHIP-00175289-452 at BW-SHIP-00175344.**

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. First, PPCO Master Fund only received Northstar Debt, not cash in exchange for the NPA Notes. PPVA acquired the Northstar Debt in exchange for a payable, not cash. (Prager Report. 19). Second, PPCO Master Fund’s “directions” were not voluntary. CSOF ¶ 183.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

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

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

**(i) Brian Wegner, SHIP's CEO at the time of the transactions, testified that he had never even seen the documents evidencing the December 2015 and March 2016 Transactions before. Exh. 19, Wegner Tr. at 231:12-237:7.**

(ii) Paul Lorentz, SHIP's CFO at the time of the transactions, similarly testified that he had never seen the documents evidencing the December 2015 and March 2016 Transactions before and was not involved in any contemporaneous communications concerning those transactions. Exh. 31, Lorentz Tr. at 165:3-166:11, 176:3-177:2.

(iii) John Robison, SHIP's Rule 30(b)(6) designee, testified that he was unaware of any information to suggest that anyone at SHIP had knowledge of the transactions at or around the time of their execution. Exh. 29, Robison Tr. at 126:22-140:8.

(iv) Beechwood's Rule 30(b)(6) witness, Christian Thomas, testified that he did not "believe SHIP approved" the December 2015 Transactions documents and was unaware of any communications between SHIP and Beechwood concerning the March 2016 Transaction. Exh. 30, Thomas Tr. at 401:4-7, 401:25-402:17, 405:14-25, 409:18-410:2, 426:8-13, 430:6-13.

(v) Mark Feuer, Beechwood's CEO at the time of the December 2015 and March 2016 Transactions, testified that the December 2015 and March 2016 Transactions were executed at Platinum's behest and that he was unaware of any communications between anyone at SHIP and anyone at Beechwood "requesting in any shape or fashion diversification out of the [Platinum] assets that were purchased with regard to our relationship." Exh. 22, Feuer Tr. at 209:20-212:19, 341:20-25, 342:12-343:16, 367:24-368:4, 381:4-382:25, 462:24-464:11.

(vi) Both of the Receiver's Rule 30(b)(6) designees testified that they could not identify a single piece of evidence even suggesting that anyone at SHIP was aware of either transaction, despite having access to "10 million documents" that the Receiver's counsel "did a very thorough job of vetting." Exh. 3, Kirschner Tr. at 175:7-176:8, 178:6-181:4, 188:6-18; Exh. 11, Rogers Tr. at 122:3-25, 123:20-124:19.

(vii) Documentary evidence shows that no individual from SHIP was included on any contemporaneous e-mail communications concerning the transactions. Exhs. 38-42, 56-64.

#### **RESPONSE:**

Issue of fact (and law) whether SOF No. 88 and the subparts thereof actually support SHIP's conclusion in SOF No. 88 that the referenced transactions were "undertaken without SHIP's knowledge or consent." As a threshold matter, the cited testimony from Wegner and Lorentz is tellingly limited to whether they saw the specific transaction documents or were familiar with the particulars of the transactions, as opposed to the goals and the results. For example, Wegner only testified that he had not seen the documents he was shown at his deposition, and that SHIP had "relied on

Beechwood as our fiduciary - - to do those investments . . .” Wegner Tr. 232:4-11. Notably, Beechwood’s Rule 30(b)(6) witness, Christian Thomas, testified that those documents would have been negotiated by Beechwood’s CIO under the terms of the IMA, not be SHIP (Thomas Tr. 407:14-25 (Weinick Dec. Ex. 6)), so there is nothing unusual about SHIP’s claim in this regard.

In further contrast to SHIP’s contention, Druv Narain testified that upon joining BAM in January of 2016, as its chief investment officer, he 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.” (*See, e.g.*, Narain Tr.485:20–487:24 (Weinick Dec. Ex. 11)). Narain further testified that his understanding was that such a general idea came from SHIP. (*See, e.g.*, Narain Tr. 533:17 –534:5 (Weinick Dec. Ex. 11)). He further testified that he understood that Paul Lorentz from SHIP directed the reduction of PPCO LP interests to a level below a certain \$5.5 mm in accordance with stated investment guidelines. (*See, e.g.*, Narain Tr. 584:3 – 588:5 (Weinick Dec. Ex. 11)). As Beechwood’s 30(b)(6) witness, Christian Thomas adopted Narain’s testimony concerning ongoing discussions in January 2016 to divest SHIP’s Platinum assets. (*See, e.g.*, Thomas Tr. 375:25 –376:22 (Weinick Dec. Ex. 6)).

Moreover, Beechwood’s CEO, Mark Feuer, testified that: (i) it was very possible that he and Wegner spoke about diversifying away from Platinum other than in connection with the Agera deal (Feuer Tr. 341:20-342:11 (Weinick Dec. Ex. 21)); (ii) SHIP absolutely knew what it was invested in, as all Beechwood clients had full disclosure of all documents (Feuer Tr. 359:2-17 (Weinick Dec. Ex. 21)); (iii) he could not definitively state that SHIP did not have knowledge of the December and March transactions in advance (Feuer Tr. 464:7-11 and 467:18-468:4 (Weinick Dec. Ex. 21)); and (iv) he spoke to SHIP (via Wegner) about the plan to divest away from Platinum-related assets (Feuer Tr. 342:2-344:10 (Weinick Dec. Ex. 21)).

Finally, SHIP’s reliance on the lack of correspondence to or from SHIP regarding the particular transactions is not surprising given: (a) its reliance on Beechwood to conduct the specifics and mechanics of its transactions; and (b) Feuer’s testimony that he spoke with SHIP’s CEO Wegner more by phone than by email (Feuer Tr. 288:6-11 (Weinick Dec. Ex. 21)).

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

**RESPONSE:**

No issue of fact.



90. In addition, as described above, Beechwood was committing an ongoing fraud against SHIP at the time of these transactions, as it continued to conceal the true nature of its relationship with the Platinum Founders and other Platinum-related individuals and entities. *See, e.g.*, Exh. 16, Taylor Tr. at 192:7-194:3; Exh. 19, Wegner Tr. at 164:20-165:5, 180:5-16; Exh. 21, BW-SHIP-00262451-263181; Exh. 34, Saks Decl. in 65-75.

**RESPONSE:**

Issue of fact. *See, e.g.*, Receiver's response to SOF No. 36.

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

91. The Receiver's expert report sets forth an analysis of PPCO Master Fund's solvency based on a "balance-sheet test" that compares PPCO Master Fund's assets and liabilities at the time of the December 2015 and March 2016 loan transactions. Exh. 66, Prager Rpt. at 12-16, 42.

**RESPONSE:**

No issue of fact.

92. As part of that analysis, the Receiver's expert states that he was instructed by the Receiver's counsel "to assume" that "[i]nvestors could have asserted rescissionary damage claims ("Rescission Claims") as a result of being fraudulently induced to invest in PPCO." Exh. 66, Prager Rpt. at 12.

**RESPONSE:**

No issue of fact.

93. The Receiver values these "Rescission Claims" at \$220.4 million as of December 2015 and \$232.2 million as of March 2016. *Id.* Mr. Prager then lists the Rescission Claims as liabilities for purposes of his balance-sheet test. Exh. 66, Prager Rpt. at 42.

**RESPONSE:**

No issue of fact.

94. For purposes of his balance-sheet test, Mr. Prager values PPCO Master Fund's assets at between \$218.4 million and \$255.2 million as of December 2015, and at between \$287.3 million and \$321.7 million as of March 2016. *Id.*



**RESPONSE:**

No issue of fact.

95. According to Mr. Prager, without accounting for the “Rescission Claims” as liabilities, PPCO Master Fund's liabilities totaled \$43.1 million as of December 2015 and \$76.4 million as of March 2016. *Id.*

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

No issue of fact.

97. Mr. Prager has confirmed that without the Rescission Claims included as liabilities on PPCO Master Fund's balance sheet, PPCO Master Fund's assets would exceed its liabilities as of December 2015 and March 2016 by a wide margin. Exh. 53, Prager Tr. at 192:7-193:2; Exh. 66, Prager Rpt. at 42-43.

**RESPONSE:**

No issue of fact.

98. Mr. Prager was further instructed by the Receiver's counsel to assume that the “Rescission Claims could be asserted by non-insiders based on the net amount each invested (contributions minus withdrawals) since May 1, 2012.” Exh. 66, Prager Rpt. at 12. Mr. Prager conducted no independent analysis to verify whether the investors identified as “non-insiders” actually qualified as such. *See* Exh. 53, Prager Tr. at 191:3-22.

**RESPONSE:**

No issue of fact.

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

**RESPONSE:**

Issue of fact. SOF No. 99 fails to cite to the entirety of Mr. Rogers' testimony on this topic. In the lines immediately following those that are cited by SHIP, he gave examples of how certain individuals, such as employees were placed on the "insider" list. Rogers Tr. 227:16-228:12. Moreover, following Mr. Rogers' deposition, SHIP made a follow-up request for information, which was promptly responded to on January 24, 2020. That letter explained how the spreadsheet was divided between insiders and non-insiders. *See* Ex. 96 to Weinick Dec.

**100. The Receiver has only provided a spreadsheet containing the names of the "non-insider" investors and the net amount of their purported investments. Exh. 71. The spreadsheet does not provide any supporting detail as to the identity of these investors, nor does it explain how they qualify as "non-insiders" with viable "Rescission Claims."**

**RESPONSE:**

Issue of fact. First, the spreadsheet was provided in advance of the deposition, and SHIP's counsel could have questioned Mr. Rogers on the spreadsheet. Second, as indicated in response to SOF No. 99 above, the Receiver responded to SHIP's post-deposition inquiries regarding the spreadsheet. SHIP's failure to follow-up with any additional questions does not mean it can now claim that the rescission claims are not adequately supported.

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

**RESPONSE:**

Issue of fact. Mr. SanFilippo made the same assertion in connection with a motion for advancement of legal fees in the SEC Action. The Receiver submitted a declaration in response stating that:

From 2012 through October 2015, SanFilippo was an employee of Platinum Management (NY) LLC ("Platinum Management") (the management company managing Platinum Partners Value Arbitrage Master Fund LP ("PPVA")) and on the payroll of a professional employment organization ("PEO") called Ambrose Employer Group ("Ambrose"), which had a co-employment arrangement with Platinum Management. Ambrose's contract terminated at the end of October 2016, at which point all Platinum Management personnel were shifted to the payroll Prestige Employee Administrator ("Prestige"), another PEO which had a co-employment arrangement with Credit Management (the management company managing PPCO). SanFilippo held the title of Chief Financial Officer ("CFO") of

Platinum Management from 2012 through 2014, and, according to his e-mail signature block, the title of Managing Director of Finance of Platinum Management during 2015. In 2016, SanFilippo's e-mail signature block identified him as CFO of "Platinum Partners." Platinum's records identify PPCO's CFO as Naftali Manela from January 8, 2008 to December 31, 2014 and Daniel Mandelbaum from January 1, 2016 to October 16, 2015. Platinum's records are unclear as to who held the title of CFO of PPCO after October 16, 2015. Mr. SanFilippo did not submit a sworn declaration challenging that position, only the argument of his counsel in a brief. SEC Action Dkt. Nos. 411 at Par. 3(a) and 414.

**102. Mr. SanFilippo testified that, based on his knowledge and understanding of PPCO Master Fund's financial condition and the valuation reports prepared by third-party companies that assessed the fund's assets, PPCO Master Fund was solvent both before and after the December 2015 and March 2016 transactions and never sustained any indication of going concern. Exh. 72, SanFilippo Tr. at 375:9-376:18, 377:18-24, 380:25-381:19, 387:6-388:17, 395:16-397:2, 403:12-404:10, 407:15-409:23.**

**RESPONSE:**

Issue of fact. Mr. SanFilippo is not an expert, and his conclusions are contradicted by David Prager, who is an expert on valuation and solvency. *See* Prager Report, Ex. 66 to McCormack Dec. In addition, Mr. SanFilippo's conclusion is simply mistaken because PPCO was having discussions with its auditors during this time period about going concern issues such as valuations. In fact, the auditors eventually resigned and no financial statements were issued. Finally, additional indications of PPCO's financial distress at this time are demonstrated by its inability to pay redemptions when due in April 2016 and its termination of redemptions altogether in June 2016. Rogers Dec. ¶ 47.

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

**RESPONSE:**

Issue of fact. *See* response to SOF No. 102 above.

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

**RESPONSE:**

Issue of fact. Those representations are contradicted by, among other things, Mr. Prager's expert conclusions. *See* Ex. 66 to McCormack Dec.

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

**RESPONSE:**

No issue of fact as to what the cited documents stated, but for the reasons set forth in response to SOF No. 104, there are issues of fact as to the accuracy of those statements.

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

**RESPONSE:**

No issue of fact as to what the cited documents stated, but for the reasons set forth in response to SOF No. 104, there are issues of fact as to the accuracy of those statements.

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

**RESPONSE:**

Issue of fact. The cited documents do not "self-establish" that the representations and warranties were in fact "reviewed and vetted by, among others, Platinum general counsel Suzanne Horowitz." Notably, SHIP cites no testimony to support this assertion.

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

**RESPONSE:**

Issue of fact. Mr. SanFilippo is not an expert and his conclusion is contradicted by the Receiver's expert, David Prager. *See* Prager Report.

Dated: New York, New York  
March 6, 2020

**OTTERBOURG P.C.**

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