

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD
LITIGATION

Master Docket No. 1:18-cv-06658-JSR

MELANIE L. CYGANOWSKI, AS
EQUITY RECEIVER FOR PLATINUM
PARTNERS CREDIT OPPORTUNITIES
MASTER FUND, et al.,

Plaintiff,

v.

BEECHWOOD RE LTD., et al.,

Defendants.

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

**DEFENDANT SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA'S
RESPONSE TO THE RECEIVER'S STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL CIVIL RULE 56.1 AND
COUNTERSTATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Local Civil Rule 56.1(b) of the United States District Court for the Southern District of New York, Plaintiff Senior Health Insurance Company of Pennsylvania ("SHIP") hereby responds as follows to the Receiver's¹ Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 in Support of Her Motion for Partial Summary Judgment against Defendant SHIP, dated February 14, 2020 ("Receiver's SMF") [ECF No. 495].² This Response is submitted in

¹ The "Receiver" refers to Plaintiff, Melanie L. Cyganowski, as Receiver for Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund International Ltd., Platinum Partners Credit Opportunities Fund International (A) Ltd., and Platinum Partners Credit Opportunities Fund (BL) LLC.

² "ECF No." refers to the corresponding docket entries in Case No. 18-cv-12018.

support of SHIP's Opposition to the Receiver's Motion for Partial Summary Judgment against SHIP.

Also included with this Response is SHIP's Counterstatement of Additional Material Facts ("SHIP CAMF"). Documents and other materials cited in this Response that were not previously submitted through the exhibits attached to the February 14, 2020 Declaration of Erik B. Weinick in Support of the Receiver's Motion for Partial Summary Judgment Against SHIP ("Weinick Decl.") [ECF No. 497] or the February 14, 2020 Declaration of Aidan M. McCormack in Support of SHIP's Motion for Summary Judgment ("McCormack Decl.") [ECF No. 501] are being submitted contemporaneously with the filing of this Response Statement as exhibits to the Declaration of R. Brian Seibert in Support of SHIP's Opposition to the Receiver's Motion for Partial Summary Judgment, dated March 6, 2019 ("Seibert Decl.").

GENERAL OBJECTIONS

1. SHIP objects to the Receiver's SMF to the extent it is argumentative and consists of legal conclusions as opposed to facts.
2. SHIP objects to the Receiver's SMF to the extent it does not comply with Local Civil Rule 56.1 of the United States District Court for the Southern District of New York. Specifically, certain paragraphs are not "followed by citation to evidence which would be admissible[.]" Local Civil Rule 56.1(d).
3. SHIP's agreement that a fact is undisputed is not an agreement that the Receiver's citations support such fact or that such a fact is relevant or material to the motions at issue. Except to the extent expressly admitted herein, the statements contained in the Receiver's SMF are denied. Subject to and without waiver of the foregoing general objections, SHIP responds to the Receiver's SMF as follows:

THE PARTIES

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

RESPONSE: SHIP disputes that the Receiver has been the receiver for PPCO Fund International and PPCO Fund International A since July 6, 2017, and otherwise respectfully refers the Court to the October 16, 2017 Second Amended Order Approving Receiver and December 29, 2017 Order Approving Expansion of Receivership for their contents. *See* Weinick Decl. Ex. 1.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

THE RECEIVER’S REMAINING CLAIMS AGAINST SHIP

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

RESPONSE: SHIP does not dispute that the Receiver filed the FAC on March 29, 2019 and that the FAC purports to assert claims against SHIP and other parties, but respectfully refers the Court to the FAC for its content.

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

RESPONSE: Disputed to the extent that paragraph 18 can be read to suggest that SHIP moved to dismiss the FAC in its entirety; SHIP, along with former defendant Fuzion Analytics, Inc., moved to dismiss counts 1-4, 6-7, and 18 of the FAC, but did not move to dismiss the FAC’s fraudulent conveyance claims (counts 8-17) or the FAC’s claim for a declaratory judgment (count 19). *See* ECF No. 156.

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

RESPONSE: Disputed. SHIP originally filed an answer to the FAC and third-party complaint on May 15, 2019, and filed an amended answer on September 11, 2019, after the Court entered a Memorandum Order dismissing the FAC in its entirety as to Fuzion Analytics, Inc., and dismissing counts 1-4 and 6-7 of the FAC as to SHIP. *See* ECF Nos. 195, 380, 384. SHIP otherwise respectfully refers the Court to its amended answer, including the affirmative defenses asserted therein, for its content. ECF No. 384.

FACTS

A. The IMAs

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

RESPONSE: SHIP disputes the facts alleged in paragraph 20 to the extent that paragraph 20 purports to refer to facts alleged "in greater detail below" that conflict with the documentary and testimonial evidence. SHIP otherwise respectfully refers the Court to its amended answer to the FAC for its content.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

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

(BBIL IMA, BRe IMA, Weinick Decl. Exs. 2-3, § 1(a), emphasis added; *see also* BAM IMA¹Weinick Decl. Ex. 4, § 1(a))

RESPONSE: Undisputed that Section 1(a) of the BBIL and BRe IMAs contains the text set forth in paragraph 25 of the Receiver’s SMF without any bolding or italicization. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

The Client will appoint a custodian that maintains a separate account for the Client under the Client's name (the "Custodian") to take and have possession of the securities, cash, and other property held in the Account. The Client will promptly notify the Adviser in writing upon its appointment of a Custodian which meets the requirements set forth above. Any such Custodian utilized by the Client must be approved by the Adviser, such approval not to be unreasonably withheld. It is agreed that the Custodian must meet the NAIC SVO requirements.

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

RESPONSE: Undisputed that Section 2(a) of the BBIL and BRe IMAs contains the text set forth in paragraph 26 of the Receiver's SMF without any bolding or italicization. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

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

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

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

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

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

(v) to arrange for the delivery of and payment for any such investments, including securities, bought and sold for the account of the Client, by providing clear and proper settlement instructions to the Custodian provided that the Adviser shall not have authority to cause the Custodian to deliver securities and other assets

or pay cash to the Adviser other than in settlement of the fees and expenses payable under the terms of this Agreement; and

(vi) in effecting any such investments, reinvestments, purchases and sales, to use and obtain the assistance and services of such brokers, dealers, investment bankers, underwriters and other firms, enterprises and services as the Adviser in its sole discretion shall designate or select. The Client shall advise the Custodian of the Client's retention of the Adviser as provided herein and shall ensure that the Custodian (i) provides the necessary reporting and systems to the Adviser to facilitate the Adviser's activities in connection with the Account, (ii) provides the Adviser with appropriate cash and investment holdings reports, (iii) settles executed transactions where appropriate information is provided to the Custodian by the Adviser, and (iv) otherwise complies with and honors requests and instructions of the Adviser made or given in connection with the exercise of the authority granted to the Adviser hereunder. The Adviser shall conduct reconciliations with the Custodian for purposes of determining that the Custodian arranges for the collection of all moneys receivable in respect of the investments held for the Account, pays interest on credit balances on the accounts maintained with the Custodian and credits such interest periodically in accordance with normal banking practice at the Custodian's prevailing call rates.

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

RESPONSE: Undisputed that Section 3(a) of the BBIL and BRe IMAs contains the text set forth in paragraph 27 of the Receiver's SMF without any bolding or italicization. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

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

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

RESPONSE: Undisputed that Section 3(b) of the BBIL and BRe IMAs contains the text set forth in paragraph 28 of the Receiver’s SMF without any bolding or italicization. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

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

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

RESPONSE: Undisputed that Section 7 of the BBIL and BRe IMAs contains the text set forth in paragraph 29 of the Receiver’s SMF without any bolding or italicization. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: Undisputed that Section 20 of the IMAs contains the text set forth in paragraph 30 of the Receiver’s SMF. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

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

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

RESPONSE: Undisputed that Section 23 of the BBIL and BRe IMAs contains the text set forth in paragraph 31 of the Receiver’s SMF without any bolding or italicization. SHIP further states that the IMAs speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: Undisputed that the BBIL IMA provided for a guaranteed investment return to SHIP of 5.85% and further provided that BBIL generally could retain any investment returns above that guaranteed return. SHIP further states that the BBIL IMA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that the BRe IMA provided for a guaranteed investment return to SHIP of 5.85% and further provided that BRe generally could retain any investment returns

above that guaranteed return. SHIP further states that the BRe IMA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

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

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

RESPONSE: Undisputed that the BAM IMA contains the text set forth in paragraph 34 of the Receiver’s SMF. SHIP further states that the BAM IMA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: SHIP disputes the allegations in paragraph 38 of the Receiver’s SMF because paragraph 38 states legal conclusions and not facts based on documentary or testimonial evidence. For the reasons set forth in SHIP’s Counterstatement of Additional Material Facts and its accompanying memorandum of law in opposition to the Receiver’s partial summary judgment motion, the Beechwood Advisers did not “act as agent for SHIP at all times from the inception of the IMAs through at least November 2016.” The Beechwood Advisers’ scope of authority under the IMAs was limited to “buy[ing], sell[ing] and otherwise deal[ing] in securities and other property and contracts relating to same for the Account.” IMAs § 23. Further, the Beechwood Advisers acted in multiple different capacities at any given time, including on behalf of themselves, Platinum, and other Beechwood clients. *See* SHIP CAMF ¶¶ 20, 57-59.

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

- Timothy Hart, SHIP’s expert, admitted during his deposition that Beechwood was “more than a conduit [for SHIP]. They [Beechwood] were their agent and fiduciary.” (Transcript of Deposition of Timothy Hart, SHIP Expert (“**Hart-SHIP Expert Tr.**”), Weinick Decl. Ex. 5 at 118:8-16)
- John Robison, former Chief Investment Officer of SHIP (and one of SHIP’s 30(b)(6) witnesses, testified during his deposition that Beechwood was an “outside manager who had discretionary authority” to manage SHIP’s assets. (Transcript of Deposition of John Robison, SHIP 30(b)(6) Dep. (“**Robison-SHIP 30(b)(6) Tr.**”), Weinick Decl. Ex. 6 at 12:7-8, 132:4-10)
- Barry Staldine, president and CEO of SHIP following Wegner’s termination for cause (and one of SHIP’s 30(b)(6) witnesses), described Beechwood’s authority under the IMAs as “full discretionary authority on what their [SHIP’s] investments would be.” (Transcript of Deposition of Barry Staldine, SHIP 30(b)(6) Dep. (“**Staldine-SHIP 30(b)(6) Tr.**”), Weinick Decl. Ex. 7 at 10:8-9, 53:21-54:3, 56:22-24)
- Mark Feuer, former CEO of BBIL and other Beechwood Entities, testified at his deposition that he did not recall “any communications between anyone at Beechwood and anyone at SHIP where Beechwood failed to answer a question asked by SHIP.” (Transcript of Deposition of Mark Feuer (“**Feuer Tr.**”), Weinick Decl. Ex. 11 at 266:1317, 307:13-22) According to Feuer, “our clients were given

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

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

RESPONSE: Undisputed that the Beechwood Advisers were granted “complete, unlimited and unrestricted authority” under the IMAs to invest SHIP’s funds in any way that they saw fit, without any input or authorization from SHIP. IMAs § 3(a). SHIP disputes the Receiver’s characterization of the referenced deposition testimony of Mark Feuer and Brian Wegner to the extent that such characterization implies that the Beechwood Advisers sought or obtained SHIP’s input or consent before investing SHIP’s funds at any time relevant to the Receiver’s motion. As set forth in SHIP’s Counterstatement of Additional Material Facts, the Beechwood Advisers had no obligation to, and at all relevant times did not, consult SHIP before making any investments. *See* SHIP CAMF ¶¶ 8-13, 57. SHIP otherwise respectfully refers the Court to the cited deposition testimony for its content.

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

- Hart confirmed at his deposition that “the Beechwood people agreed to follow those [SHIP’s] investment policies.” (Hart-SHIP Expert Tr., Weinick Decl. Ex. 5 at 30:3-6)
- There were caveats regarding Beechwood’s obligation to report back to SHIP, the custodian for the custodial accounts established under the IMAs, the 5.85% “guaranteed” investment return referred to in the IMAs, and compliance with “regulatory concerns” of the Department of Insurance. (Staldine-SHIP 30(b)(6) Tr., Weinick Decl. Ex. 7 at 54:423) Paul Lorentz (“**Lorentz**”), who was the Chief Financial Officer of SHIP, was appointed to ensure that Beechwood satisfied those “regulatory concerns.” (Staldine-SHIP 30(b)(6) Tr. at 54:4-23; Transcript of Deposition of Paul Lorentz (“**Lorentz Tr.**”), Weinick Decl. Ex. 9 at 13:20-23)
- Beechwood’s discretion under the IMAs was subject to SHIP’s investment guidelines as set forth in Exhibit A to that IMA. (Robison-SHIP 30(b)(6) Tr., Weinick Decl. Ex. 6 at 87:12-25; SHIP Answer ¶ 167) “SHIP’s Adviser Investment

Policy, Guidelines, and Restrictions are attached and incorporated into each IMA as Exhibit A to each agreement” and “SHIP’s Guidelines for Senior Secured Credit Opportunities are included in Exhibit A to the BBIL and BRE IMA but are not included in the BAM I IMA.” (SHIP Answer ¶ 167) Those investment guidelines included certain limitations on what type of debt Beechwood was able to invest SHIP assets into. (Transcript of Deposition of Dhruv Narain (“**Narain Tr.**”), Weinick Decl. Ex. 8 at 585:24-586:3)

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

RESPONSE: SHIP disputes the contention in paragraph 40 of the Receiver’s SMF that there were multiple “caveats” to the Beechwood Advisers’ unfettered discretion and authority under the IMAs to invest SHIP’s funds as they saw fit. The only limitation on the Beechwood Advisers’ discretion was its obligation to invest SHIP’s funds pursuant to “investment policy, guidelines, and restrictions” that SHIP and the Beechwood Advisers mutually agreed would apply at the time the IMAs were executed and that could only be revised thereafter with the Beechwood Advisers’ express written consent. IMAs § 3(b). SHIP further disputes the Receiver’s characterization of the referenced deposition testimony of Mark Feuer and Julianne Bowler to the extent that such characterization implies that the Beechwood Advisers sought or obtained SHIP’s input or consent before investing SHIP’s funds at any time relevant to the Receiver’s motion. As set forth in SHIP’s Counterstatement of Additional Material Facts, the Beechwood Advisers had no obligation to, and at all relevant times did not, consult SHIP before making any investments.

See SHIP CAMF ¶¶ 8-13, 57. SHIP otherwise respectfully refers the Court to the cited deposition testimony for its content.

41. SHIP visited Beechwood's offices "once a quarter" to discuss investments in the IMAs, including Platinum related investments. (Wegner Tr., Weinick Decl. Ex. 13 at 261:21-262:19) On these occasions, Brian Wegner ("**Wegner**"), former board member and Chief Executive Office of SHIP, brought a team of approximately "15 or so people" to do a "quarterly review" of "the various things that they were involved with regard to [Beechwood]." (Feuer Tr., Weinick Decl. Ex. 11 at 254:11-24) The "general agenda" at those "quarterly reviews" included "how [SHIP's] block [of investments with Beechwood] fared the prior quarter." (Feuer Tr. at 315:11-316:1) Those reviews lasted for "days" and included conversations regarding SHIP's investments. (Feuer Tr. at 317:15-23) SHIP also requested valuations of the Beechwood investments, and received them, from Lincoln and Duff & Phelps. (Wegner Tr., Weinick Decl. Ex. 13 at 182:6-18)

RESPONSE: SHIP disputes the Receiver's characterization of the referenced deposition testimony of Mark Feuer and Brian Wegner to the extent that such characterization implies that the Beechwood Advisers sought or obtained SHIP's input or consent before investing SHIP's funds at any time relevant to the Receiver's motion. As set forth in SHIP's Counterstatement of Additional Material Facts, the Beechwood Advisers had no obligation to, and at all relevant times did not, consult SHIP before making any investments. See SHIP CAMF ¶¶ 8-13, 57. SHIP otherwise respectfully refers the Court to the cited deposition testimony for its content.

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

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

- BAM, as agent for SHIP, BBIL, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub assigned nonperforming notes issued by Desert Hawk Gold Corp. ("**Desert Hawk**"), LC Energy Holdings LLC ("**LC Energy**") and Northstar GOM Holdings Group LLC ("**Northstar**") for a total of approximately \$67 million at prices that greatly exceeded the value of those notes. (FAC ¶¶ 229-258, 341-416)
- SHIP, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub, through BAM and BAM Administrative as their agent, financed those purchases by lending

approximately \$69 million to PPCO MF, purportedly secured by a security interest in all of PPCO MF's and its subsidiaries' assets. (FAC ¶¶ 240-258, 341-416)

- These transactions resulted in the transfer of tens of millions of value from PPCO MF to BAM Administrative and its principals, including SHIP, because they improved their position from (a) owning loans to nonperforming secured loans to Desert Hawk, LC Energy and Northstar worth at least \$18 million to (b) owning liens against all of PPCO MF's and its subsidiaries' assets. (FAC ¶¶ 240-258, 341-416)

RESPONSE: SHIP disputes the allegations in paragraph 42 because they rely only on the unproven allegations of the FAC and are not supported by “citation[s] to evidence which would be admissible.” Local Civil Rule 56.1(d). SHIP further disputes the allegations in paragraph 42 insofar as they improperly aggregate the December 2015 and March 2016 loan transactions and improperly treat all of the entities involved in the transactions as if they are one and the same. With respect to each bullet point set forth in paragraph 42, SHIP specifically responds as follows:

- SHIP disputes the contention in the first bullet point to the extent that it states the legal conclusion that BAM acted “as agent for SHIP” at all times in connection with the December 2015 and March 2016 loan transactions. SHIP CAMF ¶¶ 57-59. SHIP further disputes the contentions in the first bullet point to the extent that they imply that BAM assigned notes issued by Desert Hawk on SHIP's behalf. SHIP held no interest in any Desert Hawk notes at the time of the December 2015 loan transaction; instead, BAM transferred participation interests in Desert Hawk debt then held by Beechwood Re and BBIL to PPCO Master Fund in exchange for \$9.2 million in SHIP's cash, which PPCO Master Fund had drawn pursuant to the December 23, 2015 Delayed Draw Demand Note. *Id.* ¶¶ 30-31. SHIP further disputes that any LC Energy notes were “assigned” in connection

with the December 2015 loan transaction. Pursuant to the December 23, 2015 Delayed Draw Demand Note, PPCO Master Fund drew \$5 million in cash from SHIP to extinguish \$5 million in debt of LC Energy, a wholly owned subsidiary of PPCO Master Fund, that carried an 18% annual interest rate, was in default at the time, and had been fully guaranteed by PPCO Master Fund in June 2014. *Id.* ¶¶ 34-35. SHIP further disputes that it held all of the Northstar notes transferred in March 2016. *Id.* ¶ 53-54. SHIP further disputes that “the value of those notes” was “greatly exceeded” by the consideration paid for them; PPCO Master Fund received fair consideration in connection with both the December 2015 and March 2016 transactions. *See id.* ¶¶ 37, 39, 47.

- SHIP disputes the contention in the second bullet point to the extent that it states the legal conclusion that BAM and BAM Administrative acted as SHIP’s agent at all times in connection with the December 2015 and March 2016 loan transactions. SHIP further disputes the contention that it “financed” unspecified “purchases by lending approximately \$69 million to PPCO MF.” In connection with the December 2015 transactions, \$14.2 million in SHIP’s cash was drawn by PPCO Master Fund, which PPCO Master Fund used to extinguish the \$5 million LC Energy debt and to acquire from Beechwood Re and BBIL \$9.2 million in Desert Hawk debt participation interests. SHIP CAMF ¶¶ 27-37. Similarly, PPCO Master Fund received nearly \$26 million in cash and assets from SHIP in connection with the March 2016 transactions, which PPCO Master Fund

used to acquire the Northstar debt. *Id.* ¶¶ 44-49. SHIP does not dispute that it received a valid security interest in all assets of PPCO Master Fund and its subsidiaries in exchange for the valuable consideration that PPCO Master Fund received from SHIP.

- SHIP disputes the contention in the third bullet point that it has received any transfer of value or any tangible benefit as a result of the December 2015 and March 2016 loan transactions. SHIP has never been repaid any of the amounts drawn from it by PPCO Master Fund in connection with either transaction, and it has been prevented from enforcing its security interest. SHIP CAMF ¶¶ 46, 56. SHIP further disputes bullet point three insofar as it can be read to imply that SHIP held an interest in Desert Hawk at the time of the December 2015 loan transaction. *Id.* ¶ 31.

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

RESPONSE: Undisputed that Beechwood caused SHIP and others to loan money to PPCO Master Fund in connection with the December 2015 and March 2016 transactions.

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

RESPONSE: SHIP disputes paragraph 44 because it states the legal conclusion that Beechwood was acting solely as an agent in connection with the December 2015 and March 2016 loan transactions. For the reasons set forth in SHIP’s Counterstatement of Additional Material Facts and its accompanying memorandum of law in opposition to the Receiver’s partial summary judgment motion, the Receiver has not established that any of the Beechwood Advisers was acting at all times within the scope of an agency relationship in connection with the negotiation and execution of the December 2015 and March 2016 loan transaction.

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

RESPONSE: SHIP disputes paragraph 45 because it states the legal conclusion that BAM was acting at all times as SHIP's agent in connection with the December 2015 and March 2016 loan transactions. For the reasons set forth in SHIP's Counterstatement of Additional Material Facts and its accompanying memorandum of law in opposition to the Receiver's partial summary judgment motion, the Receiver has not established that any of the Beechwood Advisers was acting at all times within the scope of an agency relationship with SHIP in connection with the negotiation and execution of the December 2015 and March 2016 loan transaction.

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

RESPONSE: Undisputed that PPCO Master Fund executed a Delayed Draw Demand Note dated December 23, 2015. SHIP further states that the Delayed Draw Demand Note speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that PPCO Master Fund issued a December 23, 2015 letter directing BAM to disburse nearly \$9.2 million in SHIP's cash under the Delayed Draw Demand

Note to BAM Administrative. SHIP further states that the December 23, 2015 Disbursement Letter speaks for itself, and respectfully refers the Court to that letter for its content.

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

RESPONSE: Undisputed that PPCO Master Fund issued a December 30, 2015 letter directing BAM to disburse nearly \$5 million in SHIP’s cash under the Delayed Draw Demand Note to BAM Administrative. SHIP further states that the December 30, 2015 Disbursement Letter speaks for itself, and respectfully refers the Court to that letter for its content.

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

RESPONSE: SHIP disputes that paragraph 49 of the Receiver’s SMF accurately summarizes the terms and conditions of the January 20, 2016 A&R Delayed Draw Demand Note, Master Security Agreement, and Subsidiary Guaranty, and respectfully refers the Court to those documents for all of their terms and conditions. SHIP further states that PPCO Master Fund drew \$2 million in cash from SHIP pursuant to the A&R Delayed Draw Demand Note, and the Receiver has been unable to account for the whereabouts of those funds. SHIP CAMF ¶¶ 38-40.

50. On March 21, 2016, PPCO MF, as the “Company”; SHIP, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub, as “Purchasers” (together with the other purchasers from time to time thereunder, each a “Purchaser,” and collectively, the “Purchasers”); and BAM Administrative, as “Agent” for the Purchasers, entered into a Note Purchase Agreement, dated as of March 21, 2016 (the “NPA,” Weinick Decl. Ex. 15, Depo. Ex. 85), in which, the parties thereto agreed, among other things, that “Company shall sell

to each Purchaser, and each Purchaser shall purchase from Company, the applicable Notes listed on Schedule 1 under the heading ‘Notes’ and set forth opposite such Purchaser’s name, in the original aggregate principal amount of Seventy Million Dollars (\$70,000,000)....” which thereby executed the NPA on behalf of SHIP, “as investment manager.” (NPA at 31; Narain Tr., Weinick Decl. Ex. 8 at 506:11-507:11; POC at Schedule 8 ¶ 8, 170-229) Dhruv Narain executed the NPA as an “Authorized Signatory” of BAM.

RESPONSE: Undisputed that PPCO Master Fund and BAM Administrative executed a Note Purchase Agreement on March 21, 2016. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions. SHIP disputes the allegations in paragraph 50 to the extent that they state the legal conclusion that BAM Administrative was acting as SHIP’s agent in executing the NPA. For the reasons set forth in SHIP’s Counterstatement of Additional Material Facts and its accompanying memorandum of law in opposition to the Receiver’s partial summary judgment motion, the Receiver has not established that any of the Beechwood Advisers, or any of their affiliates, was acting at all times within the scope of an agency relationship with SHIP in connection with the negotiation and execution of the December 2015 and March 2016 loan transactions.

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

RESPONSE: Undisputed that the NPA contains the text quoted in paragraph 51 of the Receiver’s SMF. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that the NPA attached as Exhibit B a form of Security Agreement. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that the NPA attached as Exhibit C is a form of Guaranty Agreement. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that Section 2 of the NPA contains the text quoted in paragraph 54 of the Receiver’s SMF. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document all of its terms and conditions.

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

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

such filing, registration or recordation and satisfactory evidence of the payment of any necessary fee, tax or expense relating thereto.

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

RESPONSE: Undisputed that Section 9.1 of the NPA contains the text quoted in paragraph 54 of the Receiver’s SMF. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that Section 10.16 of the NPA contains the text quoted in paragraph 55 of the Receiver’s SMF. SHIP further states that the NPA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

57. In accordance with the NPA, on or about March 21, 2016, SHIP, BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary and BRe BCLIC Sub, as “Noteholders,” and “BAM Administrative Services LLC, as “Agent,” executed an “Agency Agreement” (the “**Agency Agreement**”). (POC at Schedule 2 ¶ 18; POC at 352-362) Dhruv Narain executed the Agency Agreement as an Authorized signatory by BAM, which thereby executed the Agency Agreement on behalf of SHIP. (POC at 362) In the Agency Agreement, SHIP appointed another Beechwood entity, BAM Administrative, to act on SHIP’s behalf, and BAM Administrative entered into certain of the agreements on behalf of SHIP in connection with the PPCO Loan Transactions. (POC at 352-362)

RESPONSE: SHIP disputes that it executed the “Agency Agreement” identified in paragraph 56 on its own behalf on March 21, 2016. SHIP further disputes that it directly “appointed . . . BAM Administrative [] to act on SHIP’s behalf” under the referenced Agency Agreement. The Agency Agreement was executed by BAM on SHIP’s behalf without SHIP’s knowledge. *See* SHIP CAMF ¶ 57. SHIP further states that the Agency Agreement speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

58. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Second Amended and Restated Secured Term Note” (the “**Second A&R SHIP PPCO Note**” or “**NPA Note 1**”), in the principal amount of \$42,963,949.04, in favor of “the SENIOR HEALTH

INSURANCE COMPANY OF PENNSYLVANIA,” with an address of c/o B Asset Manager, LP, 1370 Avenue of the Americas, 32nd Fl, New York, New York 10019,” dated as of March 21, 2016. (POC at Schedule 5 p. 1 & Schedule 8 ¶ 9; POC at 230-240; POC at 216)

RESPONSE: SHIP disputes that the March 21, 2016 Second A&R SHIP PPCO Note was issued “[i]n accordance with the NPA”; the NPA, as its name suggests, was the instrument through which the Second A&R SHIP PPCO Note was “purchased” by PPCO Master Fund. SHIP further states that the NPA and Second A&R SHIP PPCO Note speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: SHIP disputes that NPA Note 2 was issued “[i]n accordance with the NPA”; the NPA, as its name suggests, was the instrument through which NPA Note 2 was “purchased” by PPCO Master Fund. SHIP further states that the NPA and NPA Note 2 speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: SHIP disputes that NPA Note 3 was issued “[i]n accordance with the NPA”; the NPA, as its name suggests, was the instrument through which NPA Note 3 was “purchased” by PPCO Master Fund. SHIP further states that the NPA and NPA Note 3 speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: SHIP disputes that NPA Note 4 was issued “[i]n accordance with the NPA”; the NPA, as its name suggests, was the instrument through which NPA Note 4 was “purchased”

by PPCO Master Fund. SHIP further states that the NPA and NPA Note 4 speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

62. In accordance with the NPA, on or about March 21, 2016, PPCO MF issued a “Secured Term Note” (“**NPA Note 5**”), in the principal amount of \$700,000, in favor of “BRE WNIC 2013 LTC SUB, with an address of c/o B Asset Manager, LP, 1370 Avenue of the Americas, 32nd Fl, New York, New York 10019,” dated as of March 21, 2016. (POC at Schedule 5 p. 1 & Schedule 8 ¶ 13; POC at 277-287; POC at 216)

RESPONSE: SHIP disputes that NPA Note 5 was issued “[i]n accordance with the NPA”; the NPA, as its name suggests, was the instrument through which NPA Note 5 was “purchased” by PPCO Master Fund. SHIP further states that the NPA and NPA Note 5 speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: Undisputed that PPCO Master Fund issued a March 21, 2016 disbursement letter directing BAM to disburse \$26,590,877.78 from SHIP’s accounts to BAM Administrative. SHIP further states that the March 21, 2016 Disbursement Letter speaks for itself, and respectfully refers the Court to that document for its content.

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

RESPONSE: SHIP disputes the allegations in paragraph 64 of the Receiver’s SMF to the extent that they suggest that SHIP directly entered into the SHIP-PPVA Northstar Assignment

Agreement, which was executed by Dhruv Narain as “Authorized Signatory” of BAM without SHIP’s knowledge. *See* SHIP CAMF ¶ 57. SHIP further states that the SHIP-PPVA Northstar Assignment Agreement speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

65. On or about March 21, 2016, SHIP entered into an “Assignment Agreement” with PPCO MF and BRe WNIC 2013 LTC Primary dated as of March 21, 2016 (the “**Tri-Party Northstar PPCO Assignment Agreement**”), in which SHIP assigned “Entirety of that 12% Second Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to the Senior Health Insurance Company of Pennsylvania in the initial principal amount of \$10,800,000.00” to PPCO MF for a total purchase price of \$11,400,600.00, consisting of \$19,000.00 in principal indebtedness purchased plus \$600,000.00 in accrued and unpaid interest purchased, and BRe WNIC 2013 LTC Primary assigned “Entirety of that 12% Senior Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to BRe WNIC 2013 LTC Primary in the initial principal amount of \$19,000,000” to PPCO MF for a total purchase price of \$20,056,611.11, consisting of \$19,000,000 in principal indebtedness outstanding plus \$1,056,611.11 in accrued and unpaid interest purchased of \$20,056,611.11. Dhruv Narain executed that agreement as an “Authorized Signatory” of BAM on behalf of SHIP, as “its investment manager.” (Tri-Party Northstar-PPCO Assignment Agreement, Weinick Decl. Ex. 17, Depo. Ex. 86 at 5; Transcript of Deposition of Christian Thomas (“**Thomas Tr.**”), Weinick Decl. Ex. 10 at 424:15-426:13)

RESPONSE: SHIP disputes the allegations in paragraph 65 of the Receiver’s SMF to the extent that they suggest that SHIP directly entered into the Tri-Party Northstar PPCO Assignment Agreement on its own behalf. That document was executed by Dhruv Narain as “Authorized Signatory” of BAM without SHIP’s knowledge. *See* SHIP CAMF ¶ 57. SHIP further states that the Tri-Party Northstar PPCO Assignment Agreement speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that BAM executed two participation agreements on behalf of SHIP that granted participation interests in portions of NPA Note 1 to BBIL. SHIP further states

that the referenced participation agreements speak for themselves, and respectfully refers the Court to those documents for all of their terms and conditions.

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

RESPONSE: Undisputed that BAM executed the SHIP to BBIL Participation Agreement on behalf of SHIP on or about May 23, 2016. SHIP further states that the “SHIP to BBIL Participation Agreement” speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that BAM executed the SHIP to Old Bermuda Participation Agreement on behalf of SHIP on or about May 23, 2016. SHIP further states that the “SHIP to Old Bermuda Participation Agreement” speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that as of May 23, 2016, BBIL purchased participation interests in notes issued to BRe BCLIC Sub and BRe WNIC 2013 LTC as part of the December 2015 and

March 2016 loan transactions. SHIP further states that the referenced documents speak for themselves, and respectfully refers the Court to those documents for their content.

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

RESPONSE: Undisputed that the POC contains the text quoted in paragraph 70 of the Receiver’s SMF. SHIP further states that the POC speaks for itself, and respectfully refers the Court to that document for its content.

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

RESPONSE: Undisputed that the POC describes the referenced BRE BCLIC Sub Elevation Assignment Agreement. SHIP further states that the POC and the referenced assignment agreement speak for themselves, and respectfully refers the Court to those documents for their content.

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

Signatory” of BAM II, which thereby executed BRe WNIC 2013 LTC Sub to SHIP Participation Agreement on two separate pages on behalf of BBIL, as “its investment adviser.” (POC at 410, 414)

RESPONSE: Undisputed that the POC describes the BRE WNIC 2013 LTC Sub SHIP Participation Agreement. SHIP further states that the POC and the referenced participation agreement speak for themselves, and respectfully refers the Court to those documents for their content.

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

RESPONSE: Undisputed that the POC describes the referenced “BRE BCLIC Sub Elevation Assignment Agreement.” SHIP further states that the POC and the referenced assignment agreement speak for themselves, and respectfully refers the Court to those documents for their content.

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

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

RESPONSE: Undisputed that paragraph 248 of SHIP’s Second Amended Complaint contains the language quoted in paragraph 74 of the Receiver’s SMF. SHIP further states that SHIP’s Second Amended Complaint and the POC speak for themselves, and respectfully refers the Court to those documents for their content.

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

RESPONSE: SHIP disputes the allegations in paragraph 75 of the Receiver’s SMF to the extent that they imply that SHIP itself “agreed” to the quoted language from the referenced Agency Agreement. SHIP further states that the Agency Agreement speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that PPCO Master Fund, the PPCO Subsidiaries, and BAM Administrative executed the MSA on or about December 23, 2015. SHIP further states that the MSA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that the PPCO Subsidiaries and BAM Administrative executed the Subsidiary Guaranty on or about December 23, 2015. SHIP further states that the Subsidiary Guaranty speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that PPCO Master Fund, the PPCO Subsidiaries, and BAM Administrative executed the Ratification and Reaffirmation Agreement on or about January 20, 2016. SHIP further states that the Ratification and Reaffirmation Agreement speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

79. In accordance with the NPA, on or about March 21, 2016, numerous subsidiaries of PPCO MF purportedly executed a “Subsidiary Guaranty” dated as of March 21, 2016 (the “**A&R MSA Subsidiary Guaranty**”), and BAM Administrative executed that the A&R MSA Subsidiary Guaranty under the words “Agreed and Acknowledged.” (A&R MSA Subsidiary Guaranty, Weinick Decl. Ex. 20; Narain Tr., Weinick Decl. Ex. 8 at 532:6-20; POC at Schedule 8 ¶ 14; POC at 288-323) Dhruv Narain executed the A&R MSA Subsidiary Guaranty as an “Authorized Signatory” of BAM Administrative, “as Agent” for the “Purchasers” under the NPA including SHIP. (A&R MSA Subsidiary Guaranty, Weinick Decl. Ex. 19, Depo. Ex. 238; Narain Tr., Weinick Decl. Ex. 8 at 532:6-20; POC at Schedule 5 at 1 & Schedule 8 ¶ 14; POC at 288-323)

RESPONSE: Undisputed that the PPCO Subsidiaries and BAM Administrative executed the A&R MSA Subsidiary Guaranty on or about March 21, 2016. SHIP further states that the A&R MSA Subsidiary Guaranty speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

RESPONSE: Undisputed that the PPCO Master Fund and BAM Administrative executed the A&R MSA on or about March 21, 2016. SHIP further states that the A&R MSA speaks for itself, and respectfully refers the Court to that document for all of its terms and conditions.

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

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

RESPONSE: Undisputed that paragraph 206 of SHIP’s Amended Answer to the FAC contains the language quoted in paragraph 81 of the Receiver’s SMF. SHIP further states that its Amended Answer speaks for itself, and respectfully refers the Court to that document for its content.

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

RESPONSE: Undisputed that the referenced NPA ROR Letter was sent by BAM Administrative on or about October 21, 2016 to PPCO Master Fund. SHIP further states that the NPA ROR Letter speaks for itself, and respectfully refers the Court to that document for its content.

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

RESPONSE: Undisputed that the referenced NPA Acceleration Letter was sent by BAM Administrative on or about November 18, 2016 to PPCO Master Fund. SHIP further states that the NPA Acceleration Letter speaks for itself, and respectfully refers the Court to that document for its content.

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

RESPONSE: Undisputed that R. Craig Martin of DLA Piper LLP (US), counsel for SHIP, sent the April 6, 2018 Letter to the Receiver via e-mail. SHIP further states that the April 6, 2018 Letter speaks for itself, and respectfully refers the Court to that document for its content.

85. On March 29, 2019, SHIP filed the POC in the receivership of the Receivership Entities. In the POC, SHIP purported to assert a secured claim in the amount of \$34,427,980.83 against PPCO MF and 36 of its subsidiaries or affiliates, as well as an unsecured claim in unknown amount. The secured claim asserted in in the POC was based upon the PPCO Loan Transactions, including, among other agreements, the Delayed Draw Demand Note, the A&R Delayed Draw Demand Note and the NPA, which had been entered into and directed by the Beechwood Advisers in accordance with the agency established under the IMAs. (POC at 1, 19, 23-477)

RESPONSE: SHIP disputes paragraph 85 to the extent it states the legal conclusion that the IMAs establish an agency relationship between SHIP and the Beechwood Advisers. As set forth in SHIP’s Counterstatement of Additional Material Facts and the accompanying memorandum of law in opposition to the Receiver’s partial summary judgment motion, the IMAs do not establish an agency relationship as a matter of law. SHIP does not dispute the remaining allegations in paragraph 85, but states that the POC, Delayed Draw Demand Note, A&R Delayed Draw Demand Note, and the NPA speak for themselves, and respectfully refers the Court to those documents for their content.

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

- the Delayed Draw Demand Note;

- the Subsidiary Guaranty;
- the MSA;
- the Reaffirmation and Ratification Agreement;
- the A&R Delayed Draw Demand Note;
- the NPA;
- the NPA Notes;
- the A&R Subsidiary Guaranty;
- the A&R MSA;
- the Agency Agreement;
- the December 23, 2015 Disbursement Letter;
- the December 30, 2015 Disbursement Letter;
- the March 21, 2016 Disbursement Letter;
- the NPA ROR Letter;
- the NPA Acceleration Letter;
- the BRe BCLIC Sub to SHIP Participation Agreement;
- the BRe BCLIC Sub Elevation Assignment Agreement;
- the BRe WNIC 2013 LTC Sub to SHIP Participation Agreement;
- the BRe WNIC 2013 LTC Sub Elevation Assignment Agreement;
- the SHIP to BBIL Participation Agreement;
- the SHIP to Old Mutual Bermuda Participation Agreement; and
- numerous UCC filing statements.

(POC at 23-96, 144-462)

RESPONSE: Undisputed that the POC attaches the documents referenced in paragraph 86 of the Receiver's SMF. SHIP further states that those documents speak for themselves, and respectfully refers the Court to the POC and the attached documents for their content.

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

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

(POC at 12)

RESPONSE: Undisputed that Schedule 2 of the POC contains the language quoted in paragraph 87 of the Receiver's SMF. SHIP further states that the POC speaks for itself, and respectfully refers the Court to that document for its content.

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

Basis for Perfection:

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

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

(POC at 16)

RESPONSE: Undisputed that Schedule 4 of the POC contains the language quoted in paragraph 87 of the Receiver’s SMF. SHIP further states that the POC speaks for itself, and respectfully refers the Court to that document for its content.

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

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

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

RESPONSE: Undisputed that Schedule 8 of the POC contains the language quoted in paragraph 87 of the Receiver’s SMF. SHIP further states that the POC speaks for itself, and respectfully refers the Court to that document for its content.

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

RESPONSE: Undisputed that SHIP filed the SHIP-Beechwood Complaint on July 24, 2018. SHIP further states that the SHIP-Beechwood Complaint speaks for itself, and respectfully refers the Court to that document for its content.

91. On December 28, 2018, SHIP filed its Second Amended Complaint and Demand for Trial by Jury in the SHIP-Beechwood Action. (SHIP Second Amended Complaint, POC at 463-588) Notwithstanding its allegations of massive and persuasive fraud in the Second Amended Complaint, rather than seeking rescission of the IMAs, in the SHIP-Beechwood Complaint, SHIP sought to enforce the IMAs as “contractually binding” agreements in their action against Beechwood. (SHIP Second Amended Complaint, ¶¶ 283, 295, 307; POC at 561, 563, 564)

RESPONSE: Undisputed that SHIP filed its Second Amended Complaint on December 28, 2018. SHIP disputes the Receiver's characterization of the claims asserted in the SHIP Second Amended Complaint, as she disregards Counts Five through Seven for fraudulent inducement, fraud, and constructive fraud, all of which allege that SHIP was fraudulently induced to enter into the IMAs. SHIP further states that its Second Amended Complaint speaks for itself, and respectfully refers the Court to that document for its content.

[REMAINDER INTENTIONALLY LEFT BLANK; SHIP'S COUNTERSTATEMENT OF MATERIAL FACTS FOLLOWS]

SHIP'S COUNTERSTATEMENT OF ADDITIONAL MATERIAL FACTS

A. SHIP Is Fraudulently Induced to Enter Into the IMAs, Which Granted the Beechwood Advisers Virtually Unlimited Discretion to Invest \$270 Million in SHIP's Money.

1. 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, Deposition Transcript of Marc Kirschner ("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 at 61:12–62:19; Exh. 9, Deposition Transcript of Murray Huberfeld ("Huberfeld Tr.") at 36:22–37:18.³

2. 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 organization of "short and medium term, high yield, debt secured by collateral, and/or equity investments." Exh. 10, CTRL8217510 at 4, 11.

3. 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.

4. Beechwood was a family of reinsurance companies, investment managers, administrative companies, and holding companies organized for the purpose of gaining access to

³ "Exh." refers to the exhibits attached to the McCormack Decl. ECF No. 501.

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.

5. SHIP was introduced to Beechwood Re Ltd. (“Beechwood Re”) 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.

6. 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 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.

7. 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.

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

9. 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 ¶ 3; Exh. 27 ¶ 3; Exh. 28 ¶ 3.

10. The IMAs granted the Beechwood Advisers the power to veto requests from SHIP to implement “investment asset allocation restrictions on the investments in the Account” and “permitted [the Beechwood Advisers] to borrow money for the Account or on behalf of the Account . . . upon such terms as the Beechwood Advisers] may deem advisable and proper.” Ex. 26 ¶¶ 3(c)-(d); Exh. 27 ¶¶ 3(c)-(d); Exh. 28 ¶¶ 3(c)-(d).

11. The IMAs prohibited SHIP from “withdraw[ing] any amounts from the Account or contribut[ing] additional amounts to the Account” without the Beechwood Advisers’ prior written consent. Ex. 26 ¶ 5; Exh. 27 ¶ 5; Exh. 28 ¶ 5.

12. 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.

13. In practice, consistent with the IMAs, the Beechwood Advisers did not notify SHIP about investments they planned to make before doing so – much less ask for SHIP’s permission to make any particular investment – as established by the following testimony:

- a. Christian Thomas, Beechwood’s Rule 30(b)(6) witness, testified repeatedly that it was standard practice for Beechwood to make investment decisions without SHIP’s input, specifically nothing that SHIP would not have

reviewed or approved the December 2015 or March 2016 loan transaction documents because the Beechwood Advisers “would have acted under the authority granted to them under” the IMAs in executing those documents. Exh. 30, Thomas Tr. at 401:4-402:19, 405:2-25; Seibert Exh. A, Thomas Tr. 407:23-410:1.⁴ Mr. Thomas also specifically testified that then-chief investment officer of Beechwood Dhruv Narain “would not necessarily have had communications with SHIP” concerning the March 2016 loan transactions because “[h]e had discretion under the IMA.” Exh. 30, Thomas Tr. at 430:6-13.

- b. SHIP’s former CFO, Paul Lorentz, confirmed that SHIP did not “monitor[]” investments made by Beechwood and “didn’t pass on investments” because the Beechwood Advisers “were free to invest in accordance with the terms of the investment policy guidelines statement.” Seibert Exh. B, Lorentz Tr. at 201:9-202:10. He further testified that it was “Beechwood’s responsibility under the IMAs to have independent valuations made” of the investments and that he did not believe SHIP needed to conduct its own valuation in light of the nature of the “arrangement that we had with Beechwood under the IMAs.” *Id.* at 249:21-251:5.
- c. John Robison, SHIP’s Rule 30(b)(6) designee, testified that Beechwood “had full discretion to trade [SHIP’s] account any way it wished” under the IMAs, subject only to the “overall investment guidelines” that the parties agreed to as part of the execution of the IMAs. Seibert Exh. C, Robison Tr.

⁴ “Seibert Exh. ___” refers to the exhibits attached to the Seibert Decl.

at 87:8-20. He also stated that SHIP had no awareness of the January 2016 loan transaction that resulted in the amendment and restatement of the December 2015 SHIP Note. *Id.* at 131:19-132:13.

- d. The Receiver's Rule 30(b)(6) designee also confirmed that Beechwood "had complete discretion to make investments" under the IMAs, subject to the agree-upon "operating guidelines or investment guidelines." Seibert Exh. D, Kirschner Tr. at 176:2-8.
- e. Mark Feuer, Beechwood CEO at all relevant times, explained in his testimony why Beechwood would have viewed its relationship with SHIP differently from a traditional investment adviser relationship, testifying that it was his understanding that each of the IMAs was "structured in the form of some sort of loan" from SHIP to Beechwood, "with a guaranteed rate of return." Seibert Exh. E, Feuer Tr. at 383:25-384:14.

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

15. 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 Transcript of Timothy Hart at 88:17–89:10; Exh. 33, Expert Rebuttal Report of Timothy Hart ("Hart Rebuttal Rpt.") ¶ 24. 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.

16. 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.

17. 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.

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

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

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

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

20. At any given time, the Beechwood Advisers acted in several different capacities beyond their roles as SHIP's investment advisers under the IMAs. For example:

- a. Mark Feuer, Beechwood's CEO at the time of the December 2015 and March 2016 transactions, testified that "Beechwood was acting on behalf of

itself” in connection with the “blocks of [reinsurance business]” that it bought from CNO. Seibert Exh. E, Feuer Tr. at 381:18-383:15. Mr. Feuer further testified that Beechwood thus “distinguished perhaps our role and responsibility with regard to SHIP versus some of our reinsurance contracts.” *Id.* at 383:21-24.

- b. Dhruv Narain testified that Beechwood had several clients for which it managed “investments that were related to reinsurance agreements,” including “BCLIC, WNIC, ULICO, Motorist, Atlantic Coast,” and also managed “segregated accounts associated with [Beechwood entities] Beechwood Omnia and BBIHL.” Seibert Exh. F, Deposition Transcript of Dhruv Narain (“Narain Tr.”) at 36:8-17.
- c. Christian Thomas, Beechwood’s 30(b)(6) witness, testified that Beechwood also held certain investments “for its own account.” Exh. 30, Thomas Tr. at 399:15-400:9.

B. The December 2015 and March 2016 Loan Transactions

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

22. On the same day, [REDACTED] [REDACTED] [REDACTED] [REDACTED] Exh. 38. As reflected in the [REDACTED]

27. 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 at BW-SHIP-01332159, § 1(a).

28. 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 at BW-SHIP-01331588; Exh. 45, BW-SHIP-00834169; Exh. 46, WT 0000565-574.

29. 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, Deposition Transcript of Trey Rogers ("Rogers Tr.") at 130:13-25.

30. 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 million 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.

31. 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.

32. 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.

33. 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.

34. 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, §§ 2.2(b), 2.3. By December 21, 2015, the lender on the LC Energy debt was inquiring about the maturity date, which had already passed. Exh. 73.

35. 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.

36. In fact, the WNIC/BCLIC Trusts were the vehicles through which Beechwood managed the “blocks of business” that Beechwood had acquired from CNO in 2013. Exh. 22, Feuer Tr. at 381:18-383:15.

37. Altogether, therefore, PPCO Master Fund drew approximately \$14.2 million in cash from SHIP’s Wilmington Trust accounts under the December 2015 SHIP Note. Exhs. 44-46, 48-49.

38. 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 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.

39. 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.

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

41. 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 at BW-SHIP-0167641.

42. In or about February 2016, at the request of Mark Nordlicht, Platinum and Beechwood began negotiating a new loan transaction that they referred to as the “PPCO

Restructuring.” This “restructuring” was conceived of by Mark Nordlicht, who was seeking to restructure the relationship between Beechwood and Platinum. He identified several reasons for the restructuring: (i) to foster Platinum’s “ability to operate the fund”; (ii) “to lower interest rates”; and (iii) “to eliminate broad collateral requirements on Platinum’s fund.” Seibert Exh. E, Feuer Tr. at 786:16-787:22.

43. 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.

44. 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, Deposition Transcript of David Steinberg at 360:14-361:3.

45. “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 at BW-SHIP-000980967-988; Exh. 66, Prager Rpt. at p. 8.

46. Ultimately, on March 21, 2016, BAM—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 at BW-SHIP-00175443-452.

47. 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.

48. 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.

49. 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 Rpt. ¶ 23; Exh. 66, Prager Rpt. at 29.

50. 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 at BW-SHIP-00175295. The March 2016 A&R MSA provided that the

[REDACTED]

[REDACTED]

[REDACTED] *Id.* § 1.

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

[REDACTED]

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

[REDACTED] *Id.* at BW-SHIP-00175298.

52. 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 at BW-SHIP-00175310.

53. 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 at BW-SHIP-00175319-335; Exh. 30, Thomas Tr. at 409:18-410:2, 426:8-13, 430:6-13.

54. 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 at BW-SHIP-00175344.

55. The Receiver’s expert opines that PPCO Master Fund received between \$47 million and \$50.5 million in exchange for its promises to pay. Exh. 66, Prager Rpt. at 29.

56. 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 at WT 0000794 (listing two assets identified as “PPMF 2016 Secured Term Note” valued at a total of \$13,755,144.50).

C. SHIP Had No Knowledge of the December 2015 and March 2016 Transactions and Beechwood Acted for Its and Platinum's Benefit in Negotiating Those Transactions.

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

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

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

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

58. The Beechwood Advisers acted in dual roles in connection with the December 2015 and March 2016 loan transactions:

- a. In the December 2015 loan transaction, Beechwood Re and BBIL—both Beechwood Advisers under the Beechwood Re and BBIL IMAs, respectively—offloaded participation interests in debt of Desert Hawk Gold Corporation that they then held for their own accounts in exchange for approximately \$9.2 million that SHIP loaned to PPCO Master Fund under the December 2015 SHIP Note. *See supra* ¶¶ 30-31.

- b. Beechwood Re was also able to obtain repayment of \$5 million in debt of LC Energy Operations LLC originally issued to the BCLIC/WNIC Trusts, through which Beechwood Re managed the “blocks of [reinsurance] business” that it bought from CNO. *See supra* ¶ 34.
- c. The March 2016 transactions similarly involved secured term notes issued not just to SHIP, but also to the BCLIC/WNIC Trusts that Beechwood directly managed “on behalf of itself.” Seibert Exh. E, Feuer Tr. at 381:18-383:15; Seibert Exh. G, Taylor Tr. at 236:6-237:21; Exh. 67 at BW-SHIP-00175387-426.

59. The Beechwood Advisers were acting for themselves and Platinum in negotiating and consummating the December 2015 and March 2016 transactions. For example:

- a. December 2015 e-mail communications indicate that Beechwood and Platinum understood that Beechwood, not SHIP, was “going to lend PPCO \$15 [million].” Exh. 37.
- b. Mark Feuer, Beechwood’s CEO at the time of the December 2015 and March 2016 transactions, testified that the December 2015 transaction was consummated “[b]ecause towards the end of 2015 we had agreed that we were going to restructure all of the loans – all of the transactions that we had done by and between Platinum and Beechwood. Platinum was coming to us and asking us to restructure.” Seibert Exh. E, Feuer Tr. at 209:20-212:19, 381:9-17.
- c. The March 2016 transactions also were the result of a request from Mark Nordlicht, on behalf of Platinum, for a further “restructuring” of the

relationship between Beechwood and Platinum, identifying the specific reasons that Mr. Nordlicht offered for the restructuring. *Id.* at 785:14-787:23.

60. 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.

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

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Dated: New York, New York
March 6, 2020

DLA PIPER LLP (US)

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