UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION	Master Docket No. 1:18-cv-6658-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 RECEIVER'S LOCAL RULE 56.1 COUNTERSTATEMENT OF MATERIAL AND UNDISPUTED FACTS IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT

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Pursuant to Local Civil Rule 56.1(b) of the United States District Court for the Southern District of New York, Defendant Senior Health Insurance Company of Pennsylvania ("SHIP") hereby responds as follows to the Receiver's[SHIP-1] Counterstatement of Material and Undisputed Facts in Opposition to Motions for Summary Judgment, dated March 6, 2020 ("Receiver's Counterstatement") [ECF No. 777].[SHIP-2] This Response is submitted in support of SHIP's Motion for Summary Judgment.

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

SHIP's motion for summary judgment (ECF No. 498) is limited to the PPCO Receiver's remaining claims against SHIP for fraudulent conveyance, unjust enrichment, and declaratory judgment. Those claims relate solely to two secured loan transactions that occurred in December 2015 and March 2016. Rather than confine the Counterstatement of Material and Undisputed Facts In Opposition to SHIP's Motion for Summary Judgment to the facts asserted in SHIP's own Local Rule 56.1 Statement (ECF No. 777, the "Receiver's Counterstatement"), the Receiver devotes the majority of her Counterstatement to statements mischaracterized as "facts" that are largely unsubstantiated, not supported by the citations offered, and, in any event, irrelevant to the December 2015 and March 2016 secured loan transactions and thus not material to SHIP's motion for summary judgment. For example, the Receiver's Counterstatement devotes an inordinate amount of space to attacking Brian Wegner's credibility, trying to paint a picture of him as a self-interested individual who was motivated by greed, deceived his own Board, and willfully failed to

[SHIP-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.

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

conduct (or allow) meaningful diligence of Beechwood. That is a false image and, as addressed below, the Receiver's citations do not support it. But it is equally offensive and an abuse of practice because Wegner's character is simply not at issue here. The issues before this Court are whether the Receiver has adduced admissible evidence sufficient to prove the elements of its remaining causes of action. SHIP is not relying solely, or even primarily, on Wegner or his character or his credibility in establishing the Receiver's inability to prove the allegations of her ill-conceived complaint. Consequently, SHIP objects to the Receiver's Counterstatement to the extent it purports to expand the matters before this Court rather than to refute SHIP's Local Rule 56.1 Statement of Material and Undisputed Facts. "The purpose of Local Rule 56.1 is to streamline the consideration of summary judgment motions by freeing district courts from the need to hunt through voluminous records without guidance from the parties." *Holtz v. Rockefeller & Co.,* 258 F.3d 62, 74 (2d Cir. 2001).

1. SHIP objects to the Receiver's Counterstatement to the extent it is argumentative and consists of legal conclusions.

2. SHIP objects to the Receiver's Counterstatement 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 citations to evidence which would be admissible[.]" Local Civil Rule 56.1(d). Where a party's Local Rule 56.1 statement does not contain citations to admissible evidence or where the cited materials do not support the purported undisputed fact, the assertions must be disregarded. *Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 74 (2d Cir. 2001); *Van Dunk v. Brower*, 11-cv-4564, 2013 WL 5970172, at *2, n.3 (S.D.N.Y. Nov. 7, 2013).

3. SHIP objects to the Receiver's reliance on Trent Rogers' declaration (ECF No. 781) as it fails to include or cite to evidence that would be admissible at trial. The Rogers Declaration is not admissible as it is not based on Rogers' personal knowledge, and indeed Rogers previously testified in this action that he does not have personal knowledge of the negotiation of the December 2015 or March 2016 secured loan transactions, or with the representations and warranties made by PPCO in connection with those transactions. *See* McCormack Reply Dec. Exh. 1, Rogers Tr. at 152:19-153:15 (disclaiming personal knowledge of PPCO's motivation for the transactions); 179:6-180:11 (disclaiming personal knowledge of or involvement in December 2015 transaction); 182:24-183:13 (disclaiming personal knowledge of representations of asset valuation). Moreover, Rogers was deposed in the Consolidated Actions in both his personal capacity and in his capacity as the Receiver's Rule 30(b)(6) designee. PPCO should not be permitted to submit a *post hoc* declaration for the purpose of muddying the records and creating disputes of facts for the purpose of opposing summary judgment.

4. SHIP's agreement that a fact is undisputed is not an agreement that the Receiver's citations support that 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 Counterstatement are denied. Subject to and without waiver of the foregoing general objections, SHIP responds to the Receiver's Counterstatement as follows:

I. SUMMARY OF THE FACTS

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

RESPONSE: Undisputed.

2. Specifically, dating as far back as 2012, Nordlicht overvalued the assets held by the Platinum Funds in an effort to (i) continue selling limited partnership interests in the PPCO Funds and (ii) maintain his ability to charge management fees calculated on the PPCO Funds' net asset value. SHIP Crossclaims ¶ 245.

RESPONSE: Undisputed, however the Receiver's citation does not support this assertion, as ¶ 245 of SHIP's Crossclaims and Third Party Complaint makes no reference to Mark Nordlicht.

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

RESPONSE: Undisputed, however the Receiver's citation does not support the Receiver's assertions in Paragraph No. 3. Specifically, the cited testimony represents a portion of trial testimony from the Criminal Action wherein the witness describes surface level information about "Island Breeze" and "Black Elk" investments. Weinick Dec. Exh. 19, Mandelbaum Crim. Trial Test. at 4268:1-4269:11. The cited testimony does not mention Mark Nordlicht and does not address his authority with respect to the valuation of Platinum Funds assets.

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of this assertion and instead relies on the Rogers' Declaration. As demonstrated by Rogers' sworn deposition testimony, he has no personal knowledge of events occurring at Platinum prior to mid-2014 as he was not even employed at Platinum at the time. In addition, Saks' statements regarding what Nordlicht told him are inadmissible hearsay.

5. Beechwood was a family of reinsurance companies, investment managers, administrative companies and holding companies organized for the purpose of gaining access to hundreds of millions of dollars in insurance assets. Weinick Dec. Ex. 14, Huberfeld Tr., 269:8-23; McCormack Dec. Ex. 17 (CTRL3748840); McCormack Dec. Ex. 18 (BW-SHIP-00000801); Weinick Dec. Ex. 20, Kirschner Tr., 157:10-158:10.

RESPONSE: Undisputed, however the Receiver's citation does not support this assertion as the documents and testimony cited reference the organizational structure of Beechwood and not the purpose for which it was created.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed, however the Receiver has not cited to admissible evidence in support of this assertion and as required by Local Rule 56.1. Instead, the Receiver references broad sections within her own Rule 56.1 Counterstatement rather than identifying admissible evidence in support of her contentions, directing the Court to scour the record for the facts asserted.

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

(i) In or about the time of the PPCO Loan Transaction SHIP directed the reduction of its interests in Platinum to a level below $5.5 million in accordance with stated investment guidelines, Weinick Dec. Ex. 11, Narain Tr., 485:20-487:24, 533:17-534:5, 584:3-588:5; *see also* Weinick Dec. Ex. 6, Thomas Tr., 375:25-376:22 (Beechwood's 30(b)(6) witness adopting Narain's testimony concerning ongoing

discussions in and January 2016 to divest SHIP's Platinum assets at SHIP's request).

(ii) SHIP was actively seeking to increase its risk based capital by exiting unrated loans and investing in rated loans. Weinick Dec. Ex. 13, Serio Tr., 181:11-15.

(iii) Despite having admitted that encumbering all of the assets of the PPCO Fund would place a stranglehold on it, Nordlicht nevertheless compelled PPCO to enter into the PPCO Loan Transaction to appease SHIP (to avoid regulatory takeover) so that its money remained with Platinum. *See* ¶ 154 and Section II.L, *infra*. Left holding the bag: the creditors and investors of PPCO, whose interests were never considered by Nordlicht when he negotiated the PPCO Loan Transaction.

RESPONSE: Disputed. The cited testimony and documentary evidence do not support the Receiver's assertions in Paragraph No. 8. The Receiver broadly cites to paragraphs within her own Rule 56.1 Counterstatement rather than identifying admissible evidence in support of her assertions. SHIP further disputes the facts asserted in Paragraph No. 8 because that paragraph contains an erroneous legal conclusion that "SHIP, through its agent, embarked on negotiating, documenting and consummating an integrated transaction designed to restructure the parties' relationship."

SHIP further disputes the Receiver's allegations that the transactions at issue were intended to "reduce SHIP's exposure to Platinum related assets and certain other unrated assets which were nonperforming," and that "there was no intended, or realized, benefit to PPCO." These allegations are refuted by the record in this case. McCormack Dec., Exh. 43, BW-SHIP-01332105 at BW-SHIP-01332159, § 1(a); Exh. 44, BW-SHIP-01331549 at BW-SHIP-01331588; Exh. 45, BW-SHIP-00834169; Exh. 46, WT 0000565-574; Exh. 43 at BW-SHIP-01332156-58, 65-70; Exh. 11, Rogers Tr. at 126:2-4, 130:13-25; Exh. 30, Thomas Tr. at 387:15-390:20, 396:14-397:4, 399:15-400:9; Exh. 33, Hart Rebuttal Rpt. ¶ 19; Exh. 47, WT 0000565-574; Exh. 48, WT 0001257-272;

Exh. 44 at BW-SHIP-01331586; Exh. 49, BW-SHIP-01333660; Exh. 44 at BW-SHIP-01331549; Exh. 50.

The cited testimony and documentary evidence do not support the Receiver's assertions in Paragraph No. 8(i). The Receiver cites to the deposition testimony of Narain for the proposition that SHIP "directed the reduction of its interests in Platinum to a level below $5.5 million in accordance with stated investment guidelines," in order to give the impression to the Court that SHIP "directed" the execution of the December 2015 Transactions. In reality, the uncontroverted record demonstrates that SHIP did not make any such direction prior to the December 2015 or March 2016 secured loan transactions. McCormack Dec. 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; 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; McCormack Reply Dec Exh. 2, Narain Tr. 582:10-588:15.

SHIP does not dispute the Receiver's assertions in Paragraph 8(ii).

The Receiver has also failed to identify admissible evidence in support of her assertions in Paragraph 8(iii). There exists no evidence in the record that "Nordlicht…compelled PPCO to enter into the PPCO Loan Transaction to appease SHIP." To the contrary, the evidence demonstrates that SHIP was not aware of the December 2015 Transactions until well after the fact and that it had nothing to do with their execution. McCormack Dec. 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; 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. SHIP further states that cited evidence in support of Paragraph No. 8(i)-(iii) is inadmissible for the truth of the facts asserted.

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

RESPONSE: Disputed. Paragraph 9 consists entirely of legal conclusions, which are objectionable and not permitted under Rule 56.1.

II. THE FACTS UNDERLYING THE RECEIVER'S ACTION

A. Procedural History

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

(i) SHIP. Fraudulent conveyance claims, unjust enrichment and declaratory judgment.

(ii) BAM Administrative: Aiding and abetting breach of fiduciary duty and fraud, fraudulent conveyance claims and declaratory judgment.

(iii) Beechwood Re, BBIL, BBL and PBIH: Aiding and abetting breach of fiduciary duty and fraud.

RESPONSE: Undisputed.

B. The SEC and Criminal Actions

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

17. The SEC's complaint alleges "a multi-pronged fraudulent scheme by [the PPVA Portfolio Manager] and [the PPCO Portfolio Manager], the managers of hedge funds Platinum Partners Value Arbitrage Fund L.P. (collectively with its feeder funds, "**PPVA**") and Platinum Partners Credit Opportunities Master Fund L.P. (collectively with its feeder funds, the "**PPCO Funds**"), respectively, led by Nordlicht." SEC Action, ECF No. 1, ¶ 8.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

19. On December 19, 2016, the SEC also applied in the EDNY for the immediate appointment of a receiver over (i) the PPCO Portfolio Manager, (ii) Platinum Partners Credit Opportunities Master Fund LP ("**PPCO**"), (iii) Platinum Partners Credit Opportunities Fund LLC ("**PPCO Fund**"), (iv) Platinum Partners Credit Opportunities Fund (TE) LLC ("**PPCO TE**") and (v) Platinum Partners Credit Opportunities Fund (BL) LLC ("**PPCO Blocker Fund**"), as well as

(vi) Platinum Liquid Opportunity Management (NY) LLC and (vii) Platinum Partners Liquid Opportunity Fund (USA) L.P. (collectively with the PPCO Portfolio Manager, PPCO, PPCO Fund, PPCO TE and PPCO Blocker Fund, the "**Initial Receivership Entities**"). ECF No. 5. The defendants in the SEC Action consented to the relief requested. *Id.* Min. Entry 12/19/16.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

22. Pursuant to the Receivership Order, the Receiver is empowered to "manage, control, operate and maintain the Receivership Entities" and is given the "right to sue for and collect ... from third parties all Receivership Property." Receivership Order ¶¶ 6.C and 6.B. In addition, the Receiver is empowered, among other things, "[t]o bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the Receiver's duties as Receiver" and "[t]o pursue ... all suits, actions, claims and demands which may now be pending or which may be brought by ... the Receivership Estate." Receivership Order ¶¶ 6J & K.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

24. Pursuant to a December 29, 2017 Order, the EDNY expanded the receivership to include (i) Platinum Partners Liquid Opportunity Master Fund L.P. (collectively with Platinum Partners Liquid Opportunities Fund (USA) L.P. and Platinum Partners Liquid Opportunities Fund (International) Ltd., "**PPLO**"), (ii) Platinum Partners Credit Opportunities Fund International Ltd.

("**PPCO Fund International**") and (iii) Platinum Partners Credit Opportunities Fund International (A) Ltd. ("**PPCO Fund International A**," and collectively with the entities referred to in this paragraph in (i) and (ii) and the Initial Receivership Entities, the "**Receivership Entities**"). SEC Action, ECF No. 297.

RESPONSE: Undisputed.

25. On or about March 28, 2019, BAM Administrative Services LLC ("**BAM Administrative**") filed a proof of claim against PPCO and certain of its affiliates, which has since been assigned claim no. 145, asserting a single secured claim against PPCO in the amount of $95 million as agent for, among others, SHIP. https://dm.epiq11.com/case/ptm/claims.

RESPONSE: Undisputed.

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

RESPONSE: Disputed in part. SHIP does not dispute that it filed several secured claims in the PPCO Receivership but disputes that its claims are duplicative. SHIP also disputes the relevance of the fact that SHIP has asserted claims in the Receivership Action (as it was required to do by the Receivership Order) to SHIP's motion for summary judgment in this Action.

C. The Parties to this Action

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

30. In or about 2008, the ownership of SHIP was transferred from CNO to the Senior Healthcare Trust, which was then merged into the Senior Healthcare Oversight Trust (the "**Oversight Trust**"), and the company's name was changed to the "Senior Health Insurance Company of Pennsylvania." *Id.* The Trustees of the Oversight Trust served as SHIP's Directors and are primarily former insurance regulators. *Id.*

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

32. Other defendants in this action who filed motions for summary judgment, include:

(i) Beechwood Re Ltd. ("**Beechwood Re**"), a stock life reinsurance company domiciled in the Cayman Islands with its principal place of business in New York, New York. FAC ¶ 32; SHIP Answer ¶ 32.

(ii) B Asset Manager LP ("**BAM**"), a Delaware limited partnership with its principal place of business in New York, New York. FAC ¶ 34; SHIP Answer ¶ 34.

(iii) B Asset Manager II LP ("**BAM II**"), a Delaware limited partnership with its principal place of business in New York, New York. FAC ¶ 35; SHIP Answer ¶ 35.

(iv) Beechwood Bermuda International Ltd. ("**BBIL**"), a reinsurance company domiciled in Bermuda with its principal place of business in New York, New York. FAC ¶ 37; SHIP Answer ¶ 37.

(v) PBIH, as successor-in-interest to Beechwood Bermuda Investment Holdings Ltd. ("**BBIHL**"), a Beechwood Entity organized under Bermuda law, with its principal place of business in Bermuda. *Memorandum of Law of Defendant PB Investment Holdings, Ltd. in Support of its Motion for Summary Judgment*, (ECF. No. 492) ("**PBIH MOL**") p. 8.

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

RESPONSE: Undisputed.

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

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

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

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

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

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

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

RESPONSE: Undisputed.

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

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

(ii) During that time, they executed written resolutions regarding BBIHL and participated board meetings. Weinick Dec. Ex. 29, Boug Dep. Ex. 12; Weinick Dec. Ex. 30, Boug Dep. Ex. 15.

(iii) Feuer and Taylor executed a "Custody Agreement" on behalf of PPCO for the BBIHL Segregated Account. Weinick Dec. Ex. 33, Boug Dep. Ex. 18.

(iv) Feuer, Taylor and several other individuals each had joint signing authority for BBIHL's U.S. operating account and the segregated accounts. Weinick Dec. Ex. 30, Boug Dep. Ex. 15.

RESPONSE: Undisputed.

D. The Platinum Funds

1. The PPCO Master-Feeder Structure

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

> PPCO serves as a Master Fund in a master-feeder structure. Three feeder funds, Platinum Partners Credit Opportunities Fund International, Ltd., Platinum Partners Credit Opportunities Fund International (A), Ltd., and Platinum Partners Credit Opportunities Fund (TE) LLC invest substantially all of their capital in Platinum

> Partners Credit Opportunities Fund (BL) LLC (the "Blocker Company") which, in turn, invests substantially all of its capital in PPCO. A fourth feeder fund, Platinum Partners Credit Opportunities Fund LLC, invests substantially all its capital directly in PPCO. . . .

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

RESPONSE: SHIP does not dispute that the PPCO Master Fund's audited financial statements for 2014 contain the quoted language, but disputes that this language supports the Receiver's assertion that "at the time of the relevant transactions, each of the PPCO Funds was a distinct entity, serving a distinct role." The transactions that are the subject of the Receiver's claims were completed in December 2015 and March 2016, and as such statements from the 2014 audited financial statements cannot support the Receiver's assertion.

2. The PPCO Funds

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

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

RESPONSE: Disputed. Paragraph 41 asserts legal and accounting conclusions rather than facts and as such are not properly included in the Receiver's Local Rule 56.1 Counterstatement.

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

Eff. Date	Feeder	Investor	Capital Activity Type	Redemption Amount	Amount Due 12_19_2016

3/31/2016	PPCO	CONFIDENTIAL	Partial Withdrawal	(1,250,000.00)	(1,250,000.00)
3/31/2016	PPCO	CONFIDENTIAL	Partial Withdrawal	(200,000.00)	(200,000.00)
3/31/2016	PPCO	CONFIDENTIAL	Partial Withdrawal	(3,000,000.00)	(3,000,000.00)
3/31/2016	PPCO	CONFIDENTIAL	Full Withdrawal	(577,597.56)	(519,837.80)
3/31/2016	PPCO	CONFIDENTIAL	Full Withdrawal	(106,564.34)	(95,907.91)
3/31/2016	PPCO	CONFIDENTIAL	Full Withdrawal	(2,382,003.17)	(2,143,802.86)
3/31/2016	PPCO TE	CONFIDENTIAL	Full Withdrawal	(2,228,464.71)	(2,005,618.24)
3/31/2016	PPCO TE	CONFIDENTIAL	Full Withdrawal	(17,320,239.05)	(15,588,215.14)
Total				**(27,064,868.83)**	**(24,803,381.95)**

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of this assertion regarding capital withdrawals at PPCO and instead relies on the Rogers Declaration. As demonstrated by Rogers' sworn deposition testimony he lacks personal knowledge regarding these events. Furthermore, the Receiver has not identified any admissible evidence in support of this assertion or in support of the listing of purported capital withdrawals as of December 19, 2016.

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

RESPONSE: Undisputed.

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

30 days following the application withdrawal effective date. See LPA Section 4.2(a). *Id* at ¶ 19 (citing LPA).

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

46. PPCO's books and records reflect that:

(1) PPCO owed PPCO Blocker Fund and the PPCO Fund $4,216,247.30 and $12,647,973.14, respectively, in unpaid capital withdrawals as of December 23, 2015.

(2) PPCO owed PPCO Fund $1,172,800.40 in unpaid capital withdrawals as of March 21, 2016.

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

Id at ¶ 20.

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of this summary of PPCO's books and records and instead relies on the Rogers' Declaration, who has no personal knowledge of any alleged redemption requests. The Receiver fails to cite to any admissible documentary evidence that confirms that any such redemption requests were actually received notwithstanding that the Receiver is in control of the full contents of PPCO's document

and electronic data. If the PPCO's books and records support the Receiver's assertions regarding redemption requests, the Receiver should produce the best evidence of those redemption requests which would be the documents themselves. *See* Fed. R. Evid. 1001.

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

> Within a reasonable period of time following the occurrence of a Dissolution Event, ... distributions from the Partnership shall be applied and distributed in the following manner and order of priority:
>
> (a) *the claims of all creditors of the Partnership (including Partners except to the extent not permitted by law)* **shall be paid and discharged other than liabilities for which reasonable provision for payment has been made; and**
> **(b) thereafter, to the Partners in accordance with their respective Capital Accounts.**

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

RESPONSE: Disputed. SHIP does not dispute the accuracy of the Receiver's quotation of the LPA but disputes that it is evidence of what interests were actually held by the limited partners in the PPCO Fund at any time relevant to the disposition of SHIP's motion for summary judgment. Contrary to the declaration prepared for purposes of opposing SHIP's motion for summary judgment, Rogers previously testified under oath that the interests held in PPCO Master Fund by PPCO Blocker Fund and PPCO Fund were "equity." McCormack Dec. Exh. 11, Rogers Tr. at 240:21-231:3.

4. The PPCO Portfolio Manager

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

RESPONSE: Disputed. Contrary to the Receiver's assertion, based on Rogers' unsupported declaration, that the PPCO Portfolio Manger's "individual officers, directors, and employees" conducted its investment activities and cash management activities, the Receiver's Rule 30(b)(6) witness, Marc Kirschner, testified that "Platinum Credit Management, was one of the entities controlled by Nordlicht, and Nordlicht had total discretion on his investments." McCormack Dec. Exh. 3, Kirschner Tr. at 208:12-208:18.

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

RESPONSE: Disputed. SHIP does not dispute that the language cited in PPCO's 2014 audited financial statements was quoted accurately, but this language is contradicted by the sworn testimony of the Receiver's corporate designees who testified that Mark Nordlicht had "total discretion" over the investments in the platinum portfolio, including the purported valuation of those assets. Both Kirschner and Rogers testified that Mark Nordlicht controlled decision making and valuations relating to Platinum's investments, including PPCO's investments and valuations. *See* McCormack Dec. Exh. 3, Kirschner Tr. at 208:12-208:18; McCormack Reply Dec., Exh. 1, Rogers Tr. at 182:12-183:3.

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

RESPONSE: Undisputed, however Paragraph 50 states an accounting principle rather than a fact that is supported by evidence that would be admissible, as required by Local Rule 56.1.

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

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of the assertion that the PPCO Portfolio Manager undertook "[v]irtually all meaningful activities" on behalf of PPCO and instead relies on the Rogers Declaration. As demonstrated by Rogers' sworn deposition testimony, he has no personal knowledge of the assertions made in Paragraph 54, and his conclusory statement is not supported by citation to any admissible evidence in the record.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

5. The Feeder Funds

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of the assertion that PPCO Fund International was managed by a board of independent directors and instead relies on the Rogers' Declaration. As demonstrated by Rogers' sworn deposition testimony, he did not join Platinum until June 2014 and has no personal knowledge of events occurring at PPCO prior to his tenure. McCormack Reply Dec., Exh. 1, Rogers Tr. at 244:18-19. Rogers has also not cited any admissible evidence in support of his conclusory statement regarding the management of the PPCO Fund International.

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

RESPONSE: Disputed. The Receiver cites no admissible evidence that there were independent directors on the board of PPCO Fund International and relies on the Rogers' Declaration which is not based on personal knowledge and does not cite to any admissible evidence in support of that assertion. Further, whether a duty is non-delegable is a legal conclusion.

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of the assertion that PPCO Fund International A was managed by a board of independent directors and instead relies on the Rogers' Declaration. As demonstrated by Rogers' sworn deposition testimony, he did not join Platinum until June 2014 and has no personal knowledge of events occurring at Platinum or PPCO prior to his tenure. McCormack Reply Dec., Exh. 1, Rogers Tr. at 244:18-19. Rogers has also not cited any admissible evidence in support of his conclusory statement regarding the management of the PPCO Fund International A.

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

RESPONSE: Disputed. SHIP disputes the Receiver's legal conclusion that the independent directors owed nondelegable fiduciary duties to PPCO Fund International A. The Receiver also has not cited to admissible evidence in support of this assertion and instead relies on the Rogers' Declaration, which, in turn does not cite to any admissible evidence in support of the legal conclusion.

6. The PPVA and PPLO Funds

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

E. Ownership of Certain Platinum Funds and Related Entities

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

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

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

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

Name	Status	Partnership %	Underlying Beneficiary
Mark Nordlicht	Managing Member	20%	
Gilad Kalter	Member	5%	

Mark Nordlicht Grantor Trust II	Limited Partner	75%	See Note 1 below

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

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

Rogers Dec. ¶ 39.

RESPONSE: Undisputed, although the Receiver fails to support these assertions with admissible evidence.

65. Prior to the SEC Action, Bodner and Huberfeld obtained releases from PPCO. Chase Dec. Ex. 9.

RESPONSE: Undisputed.

F. Beechwood's Creation

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

RESPONSE: Undisputed, although the cited portion of Propper's testimony addresses his preliminary work with Platinum-related individuals and Propper's knowledge of whether Alpha Re was a predecessor to Beechwood. Weinick Dec. Ex. 17, Propper Tr. at 14:8-24:15.

67. Beechwood was a family of reinsurance companies, investment managers, administrative companies and holding companies organized for the purpose of gaining access to hundreds of millions of dollars in insurance assets. Weinick Dec. Ex. 14, Huberfeld Tr., 269:8-23; McCormack Dec. Ex. 17 (CTRL3748840); McCormack Dec. Ex. 18 (BW-SHIP-00000801); Weinick Dec. Ex. 20, Kirschner Tr., 157:10-158:10; Weinick Dec. Ex. 17, Propper Tr., 40:23-41:9.

RESPONSE: Undisputed, although the Receiver's citations do not support these assertions.

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

RESPONSE: Undisputed, but Daniel Saks' deposition testimony does not support this fact.

1. Ownership of Certain Beechwood Funds

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

[2] A very small percentage of Beechwood ownership also was given to Kerry Propper ("**Propper**"), an investment consultant who in 2012 introduced and walked through with Nordlicht, Feuer and Taylor the outlines of the idea that ultimately became Beechwood. Weinick Dec. Ex. 17, Propper Tr., 14:8-24:15; 37:22-38:10; 47:20-53:10; 64:7-65:21; Weinick Dec. Ex. 93, Dep. Ex. 714; Weinick Dec. Ex. 94, Dep. Ex. 719. Propper was granted the ownership interest only after Propper learned that he was intentionally cut out of his own idea, that Beechwood was created behind his back, and only after he confronted Nordlicht. *Id*.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed, although the Receiver's citation does not support the exact percentages stated: the Platinum Insider Family Members held a total of 61.96901% of the beneficial interests in the BAM Trust I and a total of 44.9% of the beneficial interests in BAM Trust II. *See* McCormack Dec. Exh. 18.

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

RESPONSE: Undisputed.

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

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

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

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

McCormack Dec. Ex. 18; Weinick Dec. Ex. 6, Thomas Tr., 87:22-90:18; Weinick Dec. Ex. 1, Northwood Tr., 186:15-16, 295:12-16; Weinick Dec. Ex. 7, Kalter Tr., 11:19-21, 11:22-12:9,

Weinick Dec. Ex. 4, Bodner Tr., 21:1-25, 22:5-6, 22:8-9, 21:6-8, 22:2-3, 312:20-22; Weinick Dec. Ex. 14, Huberfeld Tr., 11:18-12:4, 11:5-17, 12:5-13.

RESPONSE: Undisputed, although the Receiver's citations do not support each of the percentages as stated. Moshe Bodner's actual "Beneficial Ownership of BAM Trust I as of April 1, 2016" was 2.58620% and Tzipporah Rottenberg's actual "Beneficial Ownership of BAM Trust II as of April 1, 2016" was 1.8750%. *See* McCormack Dec. Ex. 18.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Disputed. The Receiver's citations do not support these facts. Eleven, not seven, of those trusts owned a total of 7,150 of the 10,000 common voting shares in BBL. *See* McCormack Dec. Ex. 18.

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

RESPONSE: Undisputed.

2. The Platinum Founders Influence Over Beechwood

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: SHIP does not dispute that Daniel Saks made these statements in his deposition, but disputes any inference that Saks was referring to SHIP as a client to whose wishes Beechwood acceded with respect to any investment decisions. The admissible evidence is overwhelming and uncontradicted that the Beechwood Advisers had no obligation to consult with, and did not consult SHIP before making investments under the IMAs and did not consult with SHIP about either the December 2015 or March 2016 transactions that are the only transactions that are at issue in this case. Further, Mr. Saks resigned before the March 2016 transaction. *See* 18-cv-06658, ECF No. 783 at ¶¶ 8-13, 57 ("SHIP CAMF").

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

RESPONSE: Undisputed, but irrelevant.

83. Beechwood's management team was largely comprised of personnel employed by or otherwise connected to the Platinum Funds, including: (i) Levy, as "Chief Investment Officer"

(SHIP Complaint ¶ 64); (ii) Will Slota (*Amended Crossclaims and Third-Party Complaint of Senior Health Insurance Company of Pennsylvania* ("**SHIP Crossclaims**")) (ECF No. 603) ¶ 124; (iii) David Ottensoser (*Id.*); (iv) Daniel Small (*Id.*) and (v) Stewart Kim. *Id*. Feuer testified that Beechwood's people acted for all the entities "we were part of" and that they were "absolutely" taking care of our whole company. Feuer Tr. 784:21-785:4.

RESPONSE: Undisputed.

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

(i) Beechwood marketed Levy to potential clients as a member of its management team and specifically highlighted Levy's eight years of experience with the PPVA Portfolio Manager as key to Beechwood's future success. Levy, the co-Chief Investment Officer of the PPVA Portfolio Manager together with Nordlicht, served as chief financial officer and secretary of Beechwood Re and Beechwood Bermuda. He was also BAM I's Chief Investment Officer and Chief Financial Officer until the end of 2014, when he was replaced by Daniel Saks, a PPVA Portfolio Manager executive. SHIP Crossclaims ¶ 10 ("Levy is a Beechwood Founder and, together with Feuer and Taylor, presented the public face of the Beechwood Entities.") and Weinick Ex. 8, Saks Tr., 42:11-17.

(ii) Daniel Saks, a former PPVA employee, served as BAM I's Chief Investment Officer of Structured Products after Levy "resigned" beginning in September 2014. Weinick Ex. 8, Saks Tr., 97:14-17.

(iii) Ezra Beren, Huberfeld's son-in-law, was hired in or about January 2016 to be a portfolio manager at Beechwood after serving in a similar capacity at the PPVA Portfolio Manager. Weinick Ex. 12, Beren Tr., 133:23-25, 116:17-21, 130:4-5.

(iv) Naftali Manela, then CFO of the PPCO Portfolio Manager, performed services for Beechwood related to general operations while still employed by the PPCO Portfolio Manager. Weinick Ex. 8, Saks Tr., 111:3-5.

(v) Eli Rakower, director of valuation at the Platinum Funds, provided valuation services to both Beechwood and the Platinum Funds. Weinick Ex. 8, Saks Tr., 111:3-10.

(vi) Stewart Kim, an employee of the PPVA Portfolio Manager, was subsequently engaged by Beechwood but paid by Platinum for some time, after which he became Beechwood's full time Chief Risk Officer. Weinick Ex. 18, Kim Tr., 186:9-17.

(vii) At its founding, Beechwood initially operated out of Platinum Partners' offices (SHIP Crossclaims ¶ 103) and the Platinum Funds and Beechwood shared office space for a period of time. SHIP Complaint ¶ 89.

RESPONSE: Disputed. SHIP does not dispute the accuracy of the assertions made in (i) through (vii) except for the characterization in (i) that Levy's experience Platinum was "highlighted" and "marketed." SHIP does dispute the Receiver's unsupported and unsubstantiated

argumentative conclusion that these circumstances demonstration that "Beechwood made no effort to hide its deep ties to the Platinum Funds from SHIP." The Receiver cites no admissible evidence that SHIP was aware of any of the circumstances described in (i) – (vii) and, with the exception of SHIP's receipt of Levy's prior employment with Platinum being noted in descriptions of Levy, there is no such evidence. Further, Beechwood's former chief investment officer Daniel Saks confirmed his understanding was that the ties between Platinum and Beechwood were not to be revealed. Weinick Dec. Ex. 5, Wegner Tr. 164:20-165:5; McCormack Dec. Exh. 34, Saks Decl. ¶¶ 65-75. .

G. SHIP's Introduction to Beechwood

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

RESPONSE: Undisputed, although Marc Kirschner's deposition testimony does not support this fact.

86. SHIP was aware of Beechwood generally and Beechwood Re specifically because former SHIP affiliates BCLIC and WNIC had entered into certain so-called Reinsurance Agreements with Beechwood Re through SHIP's affiliate, Fuzion, which acts as a third-party policy and claims administrator for policies of long-term care business issued by various insurers, including SHIP. SHIP Complaint ¶ 12.[5] *See also* Weinick Dec. Ex. 5, Wegner Tr., 30:3-10; 142:24-143:15; 151:4-13.

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

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

As part of the Reinsurance Agreements transactions, Beechwood Re assumed control over claims administration for the ceded long-term care insurance policies, and BCLIC and

RESPONSE: SHIP does not dispute that Fuzion is an affiliate of SHIP and that in 2013 Fuzion administered long-term care business on behalf of insurers like SHIP. SHIP also does not dispute that Fuzion was retained by Beechwood to administer the long term case blocks of business that BCLIC and WNIC reinsured with Beechwood. SHIP disputes that BCLIC and WNIC were "SHIP affiliates" at that time and disputes that BCLIC or WNIC entered into those reinsurance agreements with Beechwood "through" Fuzion. The citations do not support those assertions and are patently untrue.

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

RESPONSE: Undisputed.

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

RESPONSE: SHIP does not dispute that Fuzion entered into such an agreement with Beechwood Re. The actual date of the agreement was December 23, 2013. McCormack Reply Dec. Exh. 3

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

RESPONSE: Disputed. The deposition testimony does not support the assertion that SHIP's financial position was "precarious" in 2014 or that SHIP "came up with a plan" to secure

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WNIC transferred almost $600 million, largely in cash, into reinsurance trusts for each of BCLIC and WNIC, respectively, to be invested and managed by Beechwood Re and its agents, BAM and BAM Administrative. *Answer, Cross-Claims and Third-Party Complaint of Bankers Conseco Life Insurance Company and Washington National Insurance Company* (ECF No. 204) ¶ 594.

a higher investment yield through Beechwood. Rather, Paul Lorentz testified that "SHIP was not actively, at that time, out searching for higher yield," and investing with Beechwood "was a proposal made by Beechwood to SHIP." Weinick Dec. Ex. 22, Lorentz Tr. at 52:11-13.

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

RESPONSE: Disputed. The deposition testimony does not support these assertions. Wegner testified that SHIP "was still averaging 6 percent" on its existing corporate bond investments with Conning, "but the new money was going in at about 2 percent." McCormack Reply Dec., Exh. 4, Wegner Tr. at 169:20-25. Further, the characterization of SHIP's investments with Beechwood through the IMAs as turning a "significant amount" of its reserve assets over to Beechwood is a false and misleading characterization. First, SHIP invested funds with Beechwood gradually over time and as Beechwood reported positive returns. Second, as Lorentz testified and as simple math show, SHIP invested less than 10% of its reserve assets with Beechwood. Weinick Dec. Ex. 22, Lorentz Tr. at 131:16-132:3.

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

RESPONSE: Undisputed.

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

RESPONSE: Disputed. The deposition testimony does not support these assertions. Although Feuer testified that he shared information regarding Beechwood team members and their backgrounds, he also testified that he could not identify a specific conversation where "anyone from Beechwood told anyone related to SHIP anything about Beechwood's connections to Platinum." Weinick Dec. Ex. 21, Feuer Tr. at 114:8-15, 116:10-117:15. Contrary to the Receiver's assertion, the admissible evidence shows that 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. *See* SHIP CAMF ¶ 16-17.

93. While Wegner testified at his deposition that any relationship between Beechwood's Levy and Platinum would not have raised any flags because "[w]e never heard of Platinum before" (Weinick Dec. Ex. 5, Wegner Tr., 46:16-25), his testimony is contradicted by an October 3, 2016 email that Wegner wrote, [redacted] Weinick Dec. Ex. 5, Wegner Tr., Dep. Ex. 74; 135:13-137:14. SHIP's 30(b)(6) witness Barry Staldine also corroborated this knowledge when he testified that it was then widely known that "Platinum Partner funds were pretty strong, darlings of Wall Street." Weinick Dec. Ex. 3, Staldine Tr., 47:8-23. It is also inconsistent with Staldine's testimony that SHIP saw Levy's experience with Platinum as a positive in 2014 because "Platinum was a respected firm." Weinick Dec. Ex. 3, Staldine Tr., 155:19-156:17.

RESPONSE: Disputed. The Receiver's citation to the deposition testimony and exhibits of Brian Wegner do not support the conclusions the Receiver asks this Court to draw from them. The referenced language from Wegner Dep. Ex. 74, comes from an email i[redacted] Weinick Dec. Ex. 5, Dep. Exh. 74. Wegner further states that [redacted] Weinick Dec. Ex. 5, Dep. Exh. 74 at SHIP0039883. Similarly, the deposition testimony of Barry Staldine does not support the Receiver's assertion. Staldine did not testify that

SHIP knew of Platinum at the time of the IMAs. Rather, Staldine made clear that he was not testifying about what SHIP knew at the time. Right after the section of Staldine's testimony cited by the Receiver, Staldine testified that "I can't know if they knew back then or not." Weinick Dec. Exh. 3, Staldine Tr. at 48:8-9. He also made clear that his remark about Platinum being the "darling of Wall Street" was "from personal experience outside of this role." Weinick Dec. Exh. 3, Staldine Tr. at 48:15-20.

94. Moreover, in October 2013 SHIP had possession of a document entitled [redacted]. Weinick Dec. Ex. 15, Robison Tr., 196:17-203:25.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: SHIP does not dispute that this was the deposition testimony of Greg Serio, Julie Bowler, and Brian Wegner.

97. Feuer subsequently arranged for an investment by Beechwood into Trilliant, [redacted] Weinick Dec. Ex. 5, Wegner Tr., 74:23-76:17; 192:19-193:20; 209:13-212:10; Weinick Dec. Ex. 37, Dep. Ex. 80.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: SHIP does not dispute that SHIP did not commission third-party due diligence prior to entering into the first two IMAs. However, SHIP disputes that SHIP failed to conduct any review or that SHIP was not relying on the assessment of Beechwood by third-parties. SHIP reviewed documents, financials, and audits by KPMG related to Beechwood and was "reassured by CNO's due diligence." Weinick Dec. Ex. 5, Wegner Tr. at 176:24-177:6; 178:6-12. In addition, SHIP was aware that both the State of Indiana and the State of New York had approved Beechwood as an entity with sufficient financial strength to reinsure the substantial books of long term care business ceded to Beechwood by BCLIC and WNIC. McCormack Reply Dec. Exh. 22, Lorentz Tr. at 46:20-47:11.

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

RESPONSE: Undisputed.

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

RESPONSE: Disputed. The Receiver's citations do not support this unsubstantiated supposition. For example, the Receiver cites to sections of Wegner's deposition transcript that address a November 2015 Vanbridge presentation to SHIP's board in which Vanbridge wrote that Beechwood was owned by family trusts of Feuer, Taylor, and Levy and 19 other trusts. Vanbridge did not report that any of these trusts were controlled by "family members of Platinum's principals" nor would one infer that from what Vanbridge reported. Mr. Wegner testified at his deposition that he "was never aware of the Platinum[-Beechwood] relationship" until sometime in 2016. Further, Beechwood's former chief investment officer Daniel Saks confirmed his understanding was that the ties between Platinum and Beechwood were not to be revealed. . McCormack Reply Dec., Exh. 4, Wegner Tr. at 164:20-165:5; McCormack Dec. Exh. 34, Saks Decl. ¶¶ 65-75.

103. In early 2015, Wegner engaged the internal auditing team from Protiviti to begin a diligence review into Beechwood, as he reported to the Board that he would. As a result, Protiviti generated a draft report [redacted]
Weinick Dec. Ex. 40, Dep. Ex. 64; Weinick Dec. Ex. 5, Wegner Tr., 87:9-91:19, 206:7-208:25.

RESPONSE: Disputed. First, the undisputed evidence is that Wegner engaged Protiviti in late 2014, not 2015. Second, the February 2015 draft memorandum clearly states t[redacted], as is suggested by Paragraph No. 103. Weinick Dec. Ex. 40; Dep. Ex. 64. The cited testimony of Brian Wegner does not demonstrate why Protiviti was engaged; rather, it provides that "at some point Mark [Feuer] provided

documentation that said…he and Scott owned 99 percent of [Beechwood]. I can't recall when that was." Weinick Dec. Ex. 5, Wegner Tr. at 89:1-90:10. In addition, Barry Staldine, SHIP's Rule 30(b)(6) witness, explained at his deposition that Protiviti was engaged to evaluate potential transactions designed to increase SHIP's RBC, such as "collateralized loans from Beechwood to SHIP" that were never executed. McCormack Reply Dec., Exh. 5, Staldine Tr. at 71:15-23; 73:22-74:22.

104. Specifically, [redacted] *Id.* But rather than have Protiviti finalize the report and submit it to the Board, Wegner buried the draft Protiviti report. Weinick Dec. Ex. 3, Staldine Tr., 80:16-83:13, 235:21-237:19; Weinick Dec. Ex. 41, Dep. Ex. 132; Weinick Dec. Ex. 84, Dep. Ex. 149. SHIP's Board only found out about the buried report after Wegner was terminated. Weinick Dec. Ex. 84, Dep. Ex. 149.

RESPONSE: Disputed. Regardless of what some of them may not have recalled years later, it is clear from contemporaneous documentary evidence that S[redacted]. McCormack Reply Dec., Exh. 6, Wegner Dep. Ex. 63. Further, [redacted] McCormack Reply Dec., Exh. 7, Dep. Ex. 775; McCormack Reply Dec., Exh. 8, Bowler Tr. at 61:4-18.

105. Wegner testified at his deposition that Protiviti undertook a third party due diligence review for SHIP *prior to* entering into the IMAs. Weinick Dec. Ex. 5, Wegner Tr., 59:10-21; 82:25-87:7. However, Wegner subsequently admitted this third party due diligence review was never done before entering into the IMAs. Weinick Dec. Ex. 5, Wegner Tr., 176:15177:15.

RESPONSE: Disputed. Wegner never testified that Protiviti was engaged for due diligence prior to the execution of IMAs. In fact, in response to repeated questioning about when and why Protiviti was engaged, Wegner testified that he did not "recall specifically" when SHIP engaged Protiviti and he did not recall the specific transactions Protiviti was brought in to evaluate. Weinick Dec. Exh. 5, Wegner Tr. at 82:19-24; 86:7-14. Again, with respect to SHIP's due diligence prior to entering into the IMAs, Wegner testified that SHIP reviewed Beechwood's documents, financials, and audits by KPMG as part of its due diligence. Weinick Dec. Exh. 5, Wegner Tr. at 176:24-177:6. Wegner also testified that SHIP was "reassured by CNO's due diligence. They certainly had more resources than we did to do due diligence. We were working with people who had strong pedigrees from Merrill Lynch and Mash that we confirmed that they had those backgrounds. There was no suggestion that these people were going to do anything but work with us on a good faith basis." McCormack Reply Dec., Exh. 4, Wegner Tr. at 178:6-12.

H. The SHIP Investment Management Agreements

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

RESPONSE: Undisputed except to the extent that the Receiver suggests that SHIP made a single transfer of $270 million to the Beechwood Advisors. SHIP transferred incremental amounts of its funds ultimately totaling approximately $270 million to Beechwood over many months. FAC ¶ 168 and SHIP Answer ¶ 168.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

(i) $100 Million Demand Note dated August 30, 2013. Weinick Dec. Ex. 42, Dep. Ex. 364.
(ii) Amended and Restated Limited Liability Company Agreement for Beechwood Re Investments, LLC dated December 30, 2013. Weinick Dec. Ex. 43, J. Beren Dep. Ex. 11.
(iii) Pledge Agreement dated May 15, 2014. Weinick Dec. Ex. 44, M. Fox Dep. Ex. 2.
(iv) $25 Million Amended and Restated Demand Note dated May 16, 2014. Weinick Dec. Ex. 45, Dep. Ex. 369.
(v) $75 Million Amended and Restated Demand Note dated May 16, 2014. Weinick Dec. Ex. 46, Dep. Ex. 572.
(vi) Pledge Agreement dated February 19, 2015. Weinick Dec. Ex. 47, Dep. Ex. 66.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

114. The BAM IMA permitted BAM to retain a "Performance Fee" that was calculated in a slightly different manner from those under the BBIL IMA and the BRe IMA. Weinick Agency Dec. Ex. 4 (BAM IMA) Ex. B ¶ 1; SHIP Complaint ¶ 136.

RESPONSE: Undisputed.

115. Pursuant to the BBIL IMA, SHIP deposited approximately $80 million into a custody account at Wilmington Trust for investment by BBIL on SHIP's behalf (the "**BBIL-SHIP Custody Account**"). FAC ¶ 165(i) and SHIP Answer ¶ 165.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

118. By signing the IMAs, Beechwood accepted the undertakings therein, and did in fact undertake to invest assets for SHIP under the terms of the IMAs. Weinick Agency Dec. Ex. 2-4 (BBIL IMA, BRe IMA, BAM IMA). In accordance with their appointment under the IMAs, the three Beechwood Advisers acted as agent for SHIP at all times from the inception of the IMAs through at least November 2016. SHIP Amended Complaint ¶¶ 271-72.

RESPONSE: Undisputed.

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

known and understood counterparty risk, and liquid/valuable collateral to secure any ... loan." SHIP Complaint ¶¶ 108 and 126.

RESPONSE: Disputed. The IMA clearly and specifically vested the Beechwood Advisors with complete discretionary authority to invest the funds deposited into the IMA Accounts. While that discretion was required to be exercised to invest consistently with SHIP's investment guidelines, SHIP had no right to direct any investment. The IMAs granted Beechwood the 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**..." McCormack Dec. Exhs. 26-28 at ¶ 3 (emphasis added). Further, the quoted language is from the investment guidelines for **BBIL** and **Beechwood Re**, not SHIP, and in fact, S[redacted] McCormack Reply Dec., Exh. 9, [redacted], BW-SHIP-00070431

120. John Robison, former Chief Investment Officer of SHIP (and one of SHIP's 30(b)(6) witnesses) testified during his deposition that: (i) Beechwood was an "outside manager who had discretionary authority" to manage SHIP's assets (Weinick Dec. Ex. 15, Robison Tr., 12:7-8; 132:4-10), (ii) SHIP had to monitor Beechwood's investments in the Platinum related assets because they were subject to a limitation of 5% of assets (Weinick Dec. Ex. 15, Robison Tr., 44:2-20) and (iii) Beechwood's discretion to execute transactions in the IMAs was discretionary subject to SHIP's investment guidelines. Weinick Dec. Ex. 15, Robison Tr., 87:823.

RESPONSE: Disputed. The Receiver mischaracterizes Robison's testimony. At his deposition, Robison testified that he believed there was a restriction on the investments of SHIP's assets not to exceed 5% concentration with a single counterparty. McCormack Reply Dec., Exh. 10, Robison Tr. at 41:24-42:16. Then, in response to a hypothetical question posed to him as to whether Beechwood's investment of SHIP's monies into various Platinum portfolio companies

would violate that 5% concentration restriction, Robison testified that "if we were over five percent" in a single counterparty, it would violate the restriction. McCormack Reply Dec., Exh. 10, Robison Tr. at 44:15-20.

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

RESPONSE: Undisputed.

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

RESPONSE: Disputed. Mr. Staldine did not testify that Beechwood did not have full discretion over SHIP's investments. Rather, he confirmed that the IMA's created in Beechwood the contractual obligation to invest SHIP's monies as permitted by its corporate guidelines and any regulatory restrictions imposed upon SHIP by the Pennsylvania Department of Insurance, its statutorily prescribed regulator. Weinick Dec. Exh. 3, Staldine Tr. at 54:4-23.

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

RESPONSE: Disputed. The citations do not support this conclusion. As chief financial officer, general oversight of investments fell to Lorentz, but the suggestion that he was specifically charged with verifying compliance with regulatory concerns in not supported by the record.

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

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

RESPONSE: SHIP does not dispute the first sentence. Nor does SHIP dispute the second sentence. SHIP disputes, however, the inference that Feuer's testimony related to the Beechwood's investment of SHIP's IMA deposits in Platinum Funds. Rather, Feuer's cited testimony addressed Beechwood's 2016 transaction with Platinum involving Agera. Weinick Dec. Exh. 21, Feuer Tr. at 647:16-650:18.

125. Specifically, the Beechwood Advisors deployed SHIP's money in loans or other investments in which the Platinum Funds, Beechwood and their owners had direct or indirect interests, including investments into PPCO and PPVA, and loans to companies in which various Platinum Funds had taken large stakes through equity or debt investments. SHIP Crossclaims ¶ 238. For example, [redacted]. Weinick Ex. 70, Hart Report, ¶ 16.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of the facts asserted in Paragraph No. 128, and instead, relies on the Rogers' Declaration. As demonstrated by Rogers' sworn deposition testimony, he has no personal knowledge of the facts asserted in Paragraph No. 128 and his conclusory statement is not supported by citation to any evidence in the record.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed, but the Receiver's citation does not support this allegation, and the Receiver fails to cite to any admissible evidence in the record to support these allegations.

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

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

(i) Feuer, former CEO of BBIL and other Beechwood Entities, testified at his deposition that:

(a) SHIP did in fact monitor Beechwood's investments and knew what assets had been invested on its behalf "[b]ecause they had access to the same data that CNO had, every one of our clients had, which is full disclosure of all documents, anything the file had, they had access to." Weinick Dec. Ex. 21, Feuer Tr., 359:14-17. Thus, to the extent that SHIP was invested through Beechwood into Desert Hawk, for example, SHIP would have had access to that information. Weinick Dec. Ex. 21, Feuer Tr., 359:14-17.

(b) He did not recall "any communications between anyone at Beechwood and anyone at SHIP where Beechwood failed to answer a question asked by SHIP." Weinick Dec. Ex. 21, Feuer Tr., 266:13-17; 307:13-22. According to Feuer, "our clients were given whatever they asked and sometimes where the contracts or agreements provided for more, they got it proactively." Weinick Dec. Ex. 21, Feuer Tr., 680:5-8.

RESPONSE: Disputed. While the Receiver has accurately quoted Feuer, his self-serving testimony does not reflect what SHIP knew and only contends that SHIP had access to the same data as CNO and that Beechwood responded to questions by its clients. That does not establish that SHIP "had contemporaneous knowledge of how its funds were deployed by Beechwood." Further, 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. McCormack Reply Dec. Exh. 11Thomas Tr. 401:4-402:19, 405:2-25. SHIP's former chief financial officer, Paul Lorentz, explained at his deposition that SHIP did not "monitor[] investments by Beechwood and "didn't pass on investments" because Beechwood was "free to invest in accordance with the terms of the investment policy guidelines statement." McCormack Dec. Exh. 31, Lorentz Tr. 201:9-202:10.

(ii) SHIP was provided with, and retained, a list of investments that Beechwood made on its behalf. Weinick Dec. Ex. 5, Wegner Tr., 384:13-16.

RESPONSE: Disputed. SHIP disputes the fact asserted in Paragraph No. 132(ii), and the Receiver's citation does not support the assertion. When asked whether SHIP kept a list of all of the investments that Beechwood had made on its behalf, Wegner replied "[w]e **should** have had that". Weinick Dec. Exh. 5, Wegner Tr. at 384:13-16.

(iii) SHIP visited Beechwood's offices "once a quarter" to discuss investments in the IMAs, including Platinum related investments. Weinick Dec. Ex. 5, Wegner Tr., 261:21-262:19. On these occasions, Wegner brought a team of approximately "15 or so people" to do a "quarterly review" of "the various things that they were involved with regard to [Beechwood]." Weinick Dec. Ex. 21, Feuer Tr., 254:1124.

The "general agenda" at those "quarterly reviews" included "how [SHIP's] block [of investments with Beechwood] fared the prior quarter." Weinick Dec. Ex. 21, Feuer Tr., 315:11-316:18. Those reviews lasted for "days" and included conversations regarding SHIP's investments. Weinick Dec. Ex. 21, Feuer Tr., 317:15-23. SHIP also requested valuations of the Beechwood investments, and received them, from Beechwood's outside valuation professionals, Duff & Phelps or subsequently Lincoln (defined below). Weinick Dec. Ex. 5, Wegner Tr., 182:6-18.

RESPONSE: Disputed. The Receiver grossly mischaracterizes Feuer's testimony. He clearly testified that the quarterly meetings at Beechwood's offices were for the purpose of **Fuzion employees informing Beechwood** as to how Beechwood's block of reinsurance business fared in the preceding quarter. Weinick Dec. Exh. 21, Feuer Tr. at 315:14-316:8. Since Beechwood lacked internal policy or claim administration infrastructure and capabilities, Fuzion acted as its administrator, and Feuer himself clarified that the Fuzion representatives would provide updates as to its claims administration work vis-à-vis its business for CNO and SHIP. *Id.* When counsel for the Receiver pressed Feuer for details about any of SHIP's investments being discussed at these meetings, Feuer answered, "[t]o answer your question directly, I don't recall specifically going over or being in the room while [SHIP's] investments were going over." Weinick Dec. Exh. 21, Feuer Tr. at 317:10-14. No good faith, reasonable reading of Feuer's deposition testimony could lead someone to think that there were quarterly meetings between SHIP and Beechwood officials where SHIP's investments were discussed. Indeed, his testimony is precisely the opposite.

(iv) SHIP had in its possession a March 31, 2015 report prepared by Duff & Phelps as to which Lorentz concedes that as CFO he had responsibility to review, which includes numerous references to the relationship between Platinum and the assets being held in the IMAs, including: Montsant Partners; NYSYRL Capital; ALS Capital Ventures; Credit Strategies LLC; Northstar; Principal Growth Strategies; PPCO; Agera; New Bradley House Ltd. Weinick Dec. Ex. 15, Robison Tr., 221:9-233:19.

RESPONSE: Disputed. The Receiver does not cite to any evidence in the record that stands for the proposition that Lorentz conceded that he "had responsibility to review" the March 21, 2015 Duff & Phelps report. When counsel for the Receiver asked Lorentz, "wouldn't it have been your job to review this [Duff & Phelps report]?" Lorentz replied unequivocally, "no." Weinick Dec. Exh. 22, Lorentz. Tr. at 156:20-22. Lorentz further testified that it would not have been the responsibility of his staff to review the Duff & Phelps reports. Weinick Dec. Exh. 22, Lorentz Tr. at 157:16-18. When questioned why Lorentz and his staff did not have responsibility to review the Duff & Phelps reports, Lorentz responded, "[t]hat's why we hire asset managers." Weinick Dec. Exh. 22, Lorentz Tr. at 157:19-23.

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

RESPONSE: Disputed. The testimony does not support the Receiver's allegation. The Receiver's citation refers to an exchange where counsel for the Receiver walked SHIP's 30(b)(6) witness, John Robison, through portions of a June 24, 2015 Duff & Phelps report addressing Beechwood's investment in Desert Hawk on SHIP's behalf. In that exchange, Robison never testified as to when SHIP received this report, who at SHIP reviewed this report, and whether SHIP was aware of its contents on or about June 24, 2015. Weinick Dec. Ex. 15, Robison Tr. at 111:25-115:3.

(vi) In July of 2015, SHIP had a copy of a document entitled "Participation Agreement (Desert Hawk Gold Corp.)" which is signed by (i) Levy on behalf of DMRJ Group, defined as the "Grantor," and Desert Hawk defined as the "Borrower", (ii) Feuer on behalf of Beechwood Re and (iii) Nordlicht for PPVA. Weinick Dec. Ex. 15, Robison Tr., 252:15-262:20.

RESPONSE: Undisputed; however, the Receiver's citation does not evidence this assertion as it refers to seven pages of Robison's testimony where he discussed the transfer of interests in Agera Energy LLC and not Desert Hawk.

(vii) SHIP received the June 24, 2015 Duff & Phelps report that describes Platinum relationship with the following assets held by SHIP: ALS; Desert Hawk; Golden Gate Oil; Implant Science; Kennedy RH Holdings; Montsant Partners; NYSYRL Capital; Northstar; Principal Growth Strategies ("PGS") (which was jointly owned by PPCO and PPVA); PPCO; and Agera. The report also identifies Nordlicht as a managing member. Weinick Dec. Ex. 22, Lorentz Tr., 152:9-161:20.

RESPONSE: Disputed. There is no evidence that SHIP "received" the June 24, 2015 Duff & Phelps report contemporaneously to when it was created. At his deposition, Lorentz was asked several times whether he recalled receiving the June 24, 2015 Duff & Phelps report in 2015, and he replied, "I don't remember," "I don't have any specific recollection of that," and "I can't remember." Weinick Dec. Ex. 22, Lorentz Tr. at 152:18-23; 153:5-7; 154:8-9. At one point, Lorentz was asked whether he recalled reading the contents of the June 24, 2015 report in 2015, and he responded, "[n]o, I don't." Weinick Dec. Ex. 22, Lorentz Tr. at 155:11-12.

(viii) Lorentz and his team would monitor the investments by Beechwood for compliance with SHIP's investment guidelines by use of a spreadsheet format to compare the investments to the policy. Thus, Lorentz and other SHIP employees would not only have seen the investments into PPCO and PPVA but were tasked with analyzing the investments to confirm that they were made in accordance with SHIP's investment guidelines. Weinick Dec. Ex. 15, Robison Tr., 75:5-77:5.

RESPONSE: Disputed. While Robison (who joined SHIP in late 2016) testified to his believe that SHIP used a spreadsheet to track investments, SHIP's former chief financial officer, Paul Lorentz, explained at his deposition that SHIP did not "monitor[] investments by Beechwood and "didn't pass on investments" because Beechwood was "free to invest in accordance with the terms of the investment policy guidelines statement." McCormack Dec. Exh. 31,Lorentz Tr. at 201:9-202:10.

(ix) Specific investments were discussed during quarterly SHIP-Beechwood meetings Weinick Dec. Ex. 21, Feuer Tr., 315:11-316:24; 317:15-23.

RESPONSE: Disputed for the reasons addressed in response to Paragraph No. 132(iii).

(x) Lorentz and his team were tasked with monitoring investments. They communicated with Beechwood by telephone and face-to-face meetings and would review investment documents including valuation reports. Weinick Dec. Ex. 15, Robison Tr., 98:12-99:6.

RESPONSE: Disputed. While Robison (who joined SHIP in late 2016) made the general statements about how Beechwood and SHIP communicated or what materials SHIP might have generally reviewed, SHIP's former chief financial officer, Paul Lorentz, explained at his deposition that SHIP did not "monitor[] investments by Beechwood and "didn't pass on investments" because Beechwood was "free to invest in accordance with the terms of the investment policy guidelines statement." McCormack Dec. Exh. 31, Lorentz Tr. at 201:9-202:10. Lorentz's testimony is consistent with other facts in the record that suggest that SHIP did not monitor Beechwood's investments on its behalf because of Beechwood's authority "to invest and reinvest [SHIP's] Assets at such time and manner as [Beechwood] in its sole discretion shall determine or elect." McCormack Dec. Exhs. 26-28 at ¶ 3. With respect to SHIP's alleged review of valuation reports, again, when counsel for the Receiver asked Lorentz at his deposition, "[w]ouldn't it have been your job to review [the contents of a Duff & Phelps report]?" Lorentz replied, "no." Weinick Dec. Exh. 22, Lorentz. Tr. at 156:20-22. Lorentz further testified that it would not have been the responsibility of his staff to review the Duff & Phelps reports. Weinick Dec. Exh. 22, Lorentz Tr. at 157:16-18. When questioned why he and his staff did not have responsibility to review the Duff & Phelps reports, Lorentz responded, "[t]hat's why we hire asset managers." Weinick Dec. Exh. 22, Lorentz Tr. at 157:19-23.

(xi) Lorentz presented to the Board of Trustees SHIP's purchases and sales in the IMAs, including the Beechwood transactions at quarterly meetings, which the Board would then vote to approve. Weinick Dec. Ex. 22, Lorentz Tr., 202:11-203:10.

RESPONSE: Undisputed. However, SHIP disputes that this fact supports the Receiver's assertion that the Board's quarterly after-the-fact "approval" of Beechwood's purchases and sales amounted to SHIP's involvement in or contemporaneous knowledge of the investment transactions Beechwood was making on its behalf.

(xii) From 2014 through all of 2015 SHIP's CFO, its audit committee and its Board of Directors reviewed the investments Beechwood was making with SHIP's assets in the IMAs and would discuss the investments in quarterly meetings. Sometime in 2016 an investment committee was formed by SHIP to perform more oversight over the investments, which involved meetings every other week, which at some time devolved into monthly meetings. Weinick Dec. Ex. 15, Robison Tr., 190:3-194:9.

RESPONSE: SHIP does not dispute that Mr. Robison provided such testimony as to SHIP's general approach to reviewing investments in its nearly 3 billion portfolio, of which the Beechwood IMA investments ultimately represented less than 10%. However SHIP disputes the Receiver's contention that that approach evidences (a) any involvement by SHIP in the making of those investment, a task undertaken by Beechwood in its complete discretion – or – (b) and contemporaneous knowledge by SHIP the investments Beechwood was making on its behalf.

(xiii) Beechwood reported to SHIP "what their buys and sells were..." Weinick Dec. Ex. 16, Bowler, Tr., 82:17-19.

RESPONSE: Disputed. At her deposition, Ms. Bowler did not testify that "Beechwood reported to SHIP 'what their buys and sells were." A fair reading of the Receiver's cited testimony in support of the asserted facts in Paragraph No. 132(xiii) indicates that at the SHIP Board's quarterly meeting on February 29, 2016, the Board accepted or acknowledged that it received a report of what Beechwood's prior investments were for the previous quarter. Weinick Dec. Exh. 16, Bowler Tr. at 82:20-83:9. When prompted, Ms. Bowler continued that no one would have

described or walked the Board through each of Beechwood's investments from the prior quarter, and the Board would not review these transactions because "[i]t's just not something that the board did." *Id*.

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

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

M. THE CIRCULAR SURPLUS NOTE SCHEME TO INCREASE SHIP'S RBC

137. By late 2014 to early 2015, SHIP was in danger of falling below its required regulatory RBC percentage. This put SHIP in danger of having to endure the "negative event" of

having to answer to its regulator, the Pennsylvania Department of Insurance, with a company action plan. Weinick Dec. Ex. 3, Staldine Tr., 25-20:13.

RESPONSE: Disputed. SHIP disputes the Receiver's contention that SHIP was in "danger" in 2014 and 2015 regarding its required regulatory RBC ratio. SHIP further disputes the Receiver's characterization of the referenced deposition testimony of Barry Staldine. The cited testimony of Staldine does not reference any such event but rather explains that, in the event an insurer's RBC ratio dropped below 100 percent, it would be required to work with the Department of Insurance to develop an action plan. Weinick Dec., Exh. 3, Staldine Tr. at 19:24-20:13.

138. SHIP set out to strengthen its RBC by entering into a certain surplus note transaction for $50 million with Beechwood (the "**Surplus Note**"), which constituted a "big increase" to SHIP's RBC percentage, and thereby removed SHIP from such regulatory concern. Weinick Dec. Ex. 5, Wegner Tr., 78:2-81:22. The plan involved SHIP borrowing $50 million from an entity that Beechwood created, called Beechwood Re Investments LLC ("**BRILLC**"), evidenced by the Surplus Note dated February 20, 2015. This immediately improved SHIP's RBC. Weinick Dec. Ex. 15, Robison Tr., 94:7-95:2.

RESPONSE: SHIP does not dispute that (1) SHIP and BRILLC executed a $50 million Surplus Note dated February 20, 2015, and (2) the Surplus Note transaction was a product of constant and consistent communications between SHIP and the Pennsylvania Department of Insurance who carefully vetted the transaction, considered its implications, worked together with SHIP to ensure its compliance with all applicable statutory and related regulatory prescriptions, and ultimately approved every aspect of the transaction. *See* McCormack Reply Dec., Exh. 12, SHIP0118691; McCormack Reply Dec., Exh. 13, SHIP0118897; McCormack Reply Dec., Exh. 14, SHIP0118642; McCormack Reply Dec., Exh. 15, SHIP0118774; McCormack Reply Dec., Exh. 16, SHIP0118883; McCormack Reply Dec., Exh. 17, Dep. Exh. 392, SHIP0036975; McCormack Reply Dec., Exh. 18, SHIP0118986; McCormack Reply Dec., Exh. 23, SHIP0118659.

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

RESPONSE: Disputed. As an initial matter, SHIP disputes the relevance of the surplus note transaction to the December 2015 and March 2016 transactions that form the basis of the Receiver's claims against SHIP. SHIP further disputes the alleged quotation attributed to Mark Feuer (which is inadmissible hearsay). *See* Weinick Dec. Exh. 25, Taylor Tr. at 171:15-25; Weinick Dec. Exh. 22, Lorentz Tr. at 128:9-15. Contrary to the unsupported assertion by the Receiver, Lorentz actually testified that he does not recall Wegner ever suggesting that SHIP would provide $50 million to Beechwood for the Surplus Note transaction. Weinick Dec. Exh. 22, Lorentz Tr. at 128:16-20.

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

RESPONSE: Disputed. SHIP disputes the contention that it "concealed" any information regarding the Surplus Note transaction from the Pennsylvania Department of Insurance and disputes that the Surplus Note was "a circular transaction." The Surplus Note was approved by the Pennsylvania Department of Insurance with full knowledge of the transaction. Weinick Dec. Exh. 50, Dep. Exh. 391; Weinick Dec. Exh. 51, Dep. Exh. 430; *See also* McCormack Reply Dec., Exh. 12, SHIP0118691; McCormack Reply Dec., Exh. 13, SHIP0118897; McCormack Reply Dec., Exh. 14, SHIP0118642; McCormack Reply Dec., Exh. 15, SHIP0118774; McCormack Reply Dec., Exh. 16, SHIP0118883; McCormack Reply Dec., Exh. 17, Dep. Exh 392, SHIP0036975 McCormack Reply Dec., Exh. 18, SHIP0118986. [redacted]

[redacted] McCormack Reply Dec., Exh. 23, SHIP0118659. SHIP further disputes the allegations in paragraph 140 because they are not supported by any evidence, let alone by "citation to evidence which would be admissible." Local Civil Rule 56.1(d).

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

RESPONSE: SHIP does not dispute that on February 18, 2015, SHIP wired $60 million to the BBIL Account, and on February 19, 2015, $50 million was wired from the BBIL Account to BRILLC. SHIP does dispute, however, the Receiver's characterization that SHIP, itself, directed the wire. The Receiver offers no evidence in support of that assertion. Moreover, the evidence in the record is clear from Beechwood's own Rule 30(b)(6) witness, Christian Thomas, that Beechwood's standard practice did not involve SHIP's input in any decision-making, which would include the wire described above. *See* McCormack Dec. 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.

142. SHIP sent two letters to its regulator, the Pennsylvania Department of Insurance, on the same day, January 30, 2015, one seeking approval of the Surplus Note to be purchased by BRILLC (the "**Surplus Note Letter**") (Weinick Dec. Ex. 50, Dep. Ex. 391), the other for the purpose of discussing SHIP's intention to enter into a third IMA with Beechwood with a 5.85% return to be guaranteed by BRILLC and describing its intention to recharacterize the first two IMAs as loans (the "**IMA Letter**"). Weinick Dec. Ex. 51, Dep. Ex. 430; Weinick Dec. Ex. 22, Lorentz Tr., 12:25-128:20.

RESPONSE: Undisputed.

143. While each letter discusses the purchase of the Surplus Note by BRILLC, and while the IMA Letter (Weinick Dec. Ex. 51, Dep. Ex 430) claims no improper "circular transaction" would take place, neither letter describes the actual details of the wiring of funds within a day from

SHIP to BBIL to BRILL back to SHIP together with the corresponding note instruments evidencing the borrowing of those funds. Further, Lorentz acknowledged he failed to do so. Weinick Dec. Ex. 89, Dep. Ex. 394; Weinick Dec. Ex. 22, Lorentz Tr., 112:25-128:20.

RESPONSE: Disputed. While SHIP acknowledges that the letters do not recite wiring instructions, SHIP disputes that the absence of such information has any relevance to the legal question of whether the transaction would be considered circular under the statutory accounting standards applicable to SHIP. The Receivers offers no testimony or evidence that any facts other than those actually addressed by SHIP in its letter were relevant to its regulator. Lorentz testified that SHIP sent a "comprehensive" letter to PID, "including not only the surplus note, but the other transactions" and that SHIP disclosed to PID that money for the surplus note came "from SHIP through BBIL." Weinick Dec. Ex. 22, Lorentz Tr. at 125:16-127:4.

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

RESPONSE: Undisputed; however, the Receiver fails to cite to any evidence in the record to support this assertion.

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

RESPONSE: SHIP does not dispute Wegner at one point expressed his personal view that Beechwood "literally saved the company when they gave us the 50 million surplus note," but the Receiver's citation does evidence that. *See* McCormack Reply Dec., Exh. 19, Dep. Exh 73 (SHIP0076754).

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

146. In or about November and/ or December 2015, SHIP's RBC was at a level that put it in danger of regulatory action. Weinick Dec. Ex. 13, Serio Tr., 153:13-17. And so, the SHIP Board discussed how to get SHIP back to a 200 RBC, the level where no regulatory action would

be taken. Weinick Dec. Ex. 13, Serio Tr., 170:2-12. Solutions include (i) discussions on changing the IMAs in a manner to benefit RBC (Weinick Dec. Ex. 13, Serio Tr., 170:13-171:9), (ii) how to liquidate investments to improve RBC (Weinick Dec. Ex. 13, Serio Tr., 179:17-181:10) and (iii) a move from unrated to rated investments. Weinick Dec. Ex. 13, Serio Tr., 181:11-15.

RESPONSE: Disputed. SHIP disputes the Receiver's mischaracterization and misleading reordering of the timeline of events as described in Paragraph No. 146. The referenced discussion by the SHIP Board about a "path to 200 percent RBC" refers to a management presentation made at the Board's **August 2015** meeting, not "in or about November and/or December 2015" because of a "danger of regulatory action," as is suggested by the Receiver. Weinick Dec. Exh. 13, Serio Tr. at 168:5-170:8. SHIP further disputes the "solutions" described in Paragraph No. 146 because Serio testified that with respect to specifics about that Board meeting, he "[didn't] recall specifically what our conversation was around that, so I don't know what – what the particulars were." Weinick Dec. Exh. 13, Serio Tr. at 170:25-171:9. In fact, when asked directly about whether one of the potential "solutions" was "converting an unsecured investment position to a secured investment position," Serio replied, "I can't make that determination just by reading [the document]." Weinick Dec. Exh. 13, Serio Tr. at 171:10-15.

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

RESPONSE: Disputed.

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

RESPONSE: Disputed. The Receiver's sole citation is a reference to a November 6, 2015 e-mail in which [redacted]

[redacted] McCormack Reply Dec., Exh. 20, Dep. Exh. 528. When asked about the language in that email, Feuer testified that he did not know what the reference to "PA" is, and that he only understood Vanbridge to be "some consultants that Wegner brought on to help him structure his balance sheet and deals around his balance sheet." Weinick Dec. Exh. 21, Feuer Tr. at 364:2-365:6. Feuer offered no testimony on the basis for his knowledge or any sort of intent on SHIP's part to "avoid further regulatory action." The Receiver has not offered any admissible evidence to support of the allegations made in Paragraph No. 148.

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

RESPONSE: Disputed. The Receiver overstates Mr. Serio's testimony that holding rated as opposed to unrated assets could have a positive impact on RBC.

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

RESPONSE: Undisputed, although the Receiver's citation does not support that assertion. The Receiver's citation refers to the deposition testimony of Daniel Saks wherein he was examined about a November 18, 2015 e-mail he did not recognize from Jeremy Apfel at Egan Jones. In the cited portion of the testimony, Saks explained that Egan Jones rated securities, and that he did not recall what investments "SHIP specifically had," nor did he know whether or why Egan Jones may have been involved in rating a list of investments that included Desert Hawk. Weinick Dec. Exh. 8, Saks Tr. at 273:16-277:24.

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

RESPONSE: Undisputed; although the Receiver's citation does not support this assertion. To the contrary, Saks never mentioned the Northstar investment in the testimony cited by the

Receiver. Indeed, Saks testified that he did not recall what investments "SHIP specifically had" and whether or why Egan Jones may have been involved in rating those investments. Weinick Dec. Exh. 8, Saks Tr. at 273:16-277:24.

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

RESPONSE: Undisputed; although the Receiver's citation does not support this assertion. To the contrary, Saks never mentioned the LC Energy investment in the testimony cited by the Receiver. Indeed, Saks testified that he did not recall what investments "SHIP specifically had" and whether or why Egan Jones may have been involved in rating those investments. Weinick Dec. Exh. 8, Saks Tr. at 273:16-277:24.

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

RESPONSE: Undisputed. SHIP does not dispute that Saks made these statements, but disputes that they are evidence of SHIP's intent or purpose.

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

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

(i) Paul Lorentz from SHIP had directed the reduction of Platinum interests to a level below a certain $5.5 mm in accordance with stated investment guidelines, Weinick Dec. Ex. 11, Narain Tr., 485:20-487:24, 533:17-534:5, 584:3-588:5; *see also* Weinick Dec. Ex. 6, Thomas Tr., 375:25-376:22 (Beechwood's 30(b)(6) witness adopting Narain's testimony concerning ongoing discussions in January 2016 to divest SHIP's Platinum assets at SHIP's request).

RESPONSE: Disputed. SHIP disputes the Receiver's characterization of the referenced deposition testimony of Narain and Thomas to the extent that such characterization improperly ties certain requirements for SHIP assets with the December 2015 and March 2016 loan transactions. Notably, the cited testimony by Narain relates to events that occurred at least a month *after* the December 2016 and March 2016 transactions that are the subject of the Receivers claims. *See* Weinick Dec. Exh. 11, Narain Tr. at 584:3-588:5 (testifying regarding the June 2016 Agera transaction). And the testimony cited by the Receiver from pages 485 to 487 of Narain's deposition relates to directions that Narain received from ***CNO*** and not from ***SHIP*** regarding diversifying its portfolio away from investments in the Platinum entities. Weinick Dec. Exh. 11, Narain Tr., 485:20-487:24.

(ii) Contrary to SHIP's assertions that it had no involvement in the PPCO Loan Transaction, Feuer could not testify that SHIP did not have knowledge of the December 2015 Transaction. Feuer affirmatively stated, "I can't say that. I don't know." Weinick Dec. Ex. 21, Feuer Tr., 464:7-12. In fact, it is possible that Feuer spoke to Wegner about Platinum issues. Weinick Dec. Ex. 21, Feuer Tr., 408:7-20. It is also possible that he spoke to Wegner specifically about diversifying away from Platinum other than in connection with Agera. Weinick Dec. Ex. 21, Feuer Tr., 341:20-342:11.

RESPONSE: Disputed. SHIP disputes the Receiver's characterization of the referenced deposition testimony of Feuer to suggest that this Court should infer that SHIP had knowledge or involvement in the December 2015 and March 2016 loan transactions. Feuer testified that he lacked personal knowledge regarding whether SHIP was aware of the December 2015 PPCO transaction. Weinick Dec. Exh. 21, Feuer Tr., 464:7-12. The Receiver may not use a witness' lack of personal knowledge or disclaimer of personal knowledge to create a dispute of fact for purposes of opposing SHIP's motion for summary judgment. Moreover, the Receiver's citation to Feuer's testimony that he may have discussed "Platinum issues" with SHIP is disingenuous at

best. Feuer testified that "the only definitive conversation that [he] remember[s] talking to Wegner about, trying to solve for some of these Platinum issues concretely was with the Agera transaction." Weinick Dec. Exh. 21, Feuer Tr., 464:7-12. The Agera transaction closed in June 2016, months after both the December 2015 and March 2016 transactions that form the basis of the Receiver's claims against SHIP. As set forth in SHIP's CAMF, 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.

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

155. Prior to consummation of the PPCO Loan Transaction, SHIP was aware that the Platinum Funds needed liquidity because [redacted]" Weinick Dec. Ex. 86, Dep. Ex. 411; Weinick Dec. Ex. 22, Lorentz Tr., 299:10-301:8.

RESPONSE: Disputed. The Receiver's assertion is wholly unsupported by admissible evidence or even by evidence that is relevant to the December 2015 or March 2016 transactions. The Receiver's support for this contention is [redacted] does not support the Receiver's assertion that SHIP was aware that Platinum Funds needed liquidity.

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

365:12-23. At his deposition, he also questioned whether the deal was actually in Platinum's best interest. *Id.*

RESPONSE: Disputed. SHIP disputes the Receiver's use of the referenced deposition testimony of Feuer and Steinberg to suggest that this Court should infer that SHIP had knowledge or involvement in the December 2015 and March 2016 loan transactions. The Receiver has not cited to any admissible evidence to support an assertion that SHIP had any knowledge of, let alone, involvement in the December 2015 or March 2016 transactions. As set forth in SHIP's CAMF, 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.

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

RESPONSE: Undisputed.

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

RESPONSE: SHIP does not dispute Nordlicht's role at the Platinum Funds, but disputes the admissibility of this testimony as it is inadmissible hearsay and moreover includes hearsay within hearsay by referencing Nordlicht's out of court unsworn statements.

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

RESPONSE: Undisputed.

160. Similarly, Saks' replacement, Narain claimed he did not understand the purpose of the March 2016 transaction, despite the fact that he could remember it was after a lot of negotiation in which he was involved, along with Feuer and Taylor. He further claimed he did not spend a lot

of time on the agreements comprising the PPCO Loan Transaction (defined below) even though he signed certain of them. And he said he does not remember now why PPCO would have provided as security all of its assets, but he said that he did have an understanding at the time. Weinick Dec. Ex. 11, Narain Tr., 525:17-533:6.

RESPONSE: Disputed. SHIP disputes the Receiver's use of Narain's testimony to suggest this Court should infer that SHIP had knowledge or involvement in the December 2015 and March 2016 loan transactions. Narain has not testified that he "did not understand the purpose of the March 2016 transaction." Rather, Narain testified repeatedly that he "did not recall" why the December 2015 and March 2016 transactions "came about" and likewise did not recall the details of the transactions. Weinick Dec. Exh. 11, Narain Tr. at 525:17-533:6.

Q. The PPCO Loan Transaction

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

RESPONSE: Disputed. SHIP disputes the allegations in Paragraph 161 because the Receiver relies only on the unproven allegations of the FAC and does not support the allegations with "citation[s] to evidence which would be admissible." Local Civil Rule 56.1(d). SHIP further disputes the allegations in Paragraph 161 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.

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

RESPONSE: Undisputed.

163. BAM Administrative is a "Beechwood entity" and "served as the administrative agent for all Beechwood-related debt investments that Beechwood acquired for the account of SHIP." SHIP Complaint ¶ 248.

RESPONSE: Disputed. SHIP disputes the contention in Paragraph 163 to the extent that it states the legal conclusion that BAM acted as the agent for SHIP at all times in connection with the December 2015 and March 2016 loan transactions. *See* SHIP CAMF ¶¶ 57-59.

1. Step 1: The December 2015 Transactions

164. On or about December 23, 2015, PPCO executed a "Delayed Draw Demand Note" (the "**Delayed Draw Demand Note**"), in the principal amount of $15,500,000.00, in favor of SHIP. McCormack Dec. Ex. 43 and 44. BAM executed this document on behalf of SHIP under the words "ACCEPTED AND AGREED TO" as "its [SHIP's] investment manager." *Id.* The Delayed Draw Demand Note stated that BAM Administrative, for the benefit of SHIP, had been granted a "security interest" by PPCO and its direct and indirect subsidiaries in certain of their assets as more fully described in a "Master Security Agreement" dated as of December 23, 2015 and that the outstanding obligations under the Delayed Draw Demand Note were "guaranteed" by those subsidiaries as more fully described in a "Subsidiary Guaranty" dated as of December 23, 2015. *Id.* ¶ 15; *see also* Weinick Dec. Ex. 92, Dep. Ex. 234; Weinick Dec. Ex. 6, Thomas Tr., 378:12-380:7.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

166. On or about December 23, 2015, PPCO issued a letter addressed to "Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager," regarding the disbursement of $9,198,750.00 under the Delayed Draw Demand Note to BAM Administrative, "as agent" (the "**December 23, 2015 Disbursement Letter**,). Weinick Agency Dec. Ex. 14-2 (POC) 364-65.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

168. As part of the PPCO Loan Transaction, on or about November 18, 2015, SHIP had sold its remaining right, title and interest in the Desert Hawk loan to BBIL, consisting of a $1,675,000 participation in notes issued by Desert Hawk to BBIL, which in turn assigned that participation interest in the Desert Hawk notes to PPCO on December 23, 2015, as part of the PPCO Transactions. Weinick Dec. Ex. 53 (November 18, 2015 Assignment and Assumption Agreement/ CTRL 7517990). This assignment was recognized in the December 23, 2015 "Assignment Agreement" discussed below wherein it stated that "on or about November 18, 2015, SHIP sold its remaining right, title and interest in the Participation to Assignor [BBIL]." Weinick Dec. Ex. 54 (December 23, 2015 Assignment Agreement/ CTRL 7616325).

RESPONSE: Undisputed.

169. On or about December 30, 2015, PPCO issued a letter dated December 23, 2015 addressed to "Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager," directing the disbursement under the Delayed Draw Demand Note of $5,000,000.00 to BAM Administrative "as agent" (the "**December 30, 2015 Disbursement Letter**"). Weinick Agency Dec. Ex. 14-2 (POC) 366-67.

RESPONSE: Undisputed.

170. The disbursement was used to repay all indebtedness owing by LC Energy, a wholly owned subsidiary of PPCO, under four Secured Term Notes originally issued to BRe WNIC 2013 Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary, and BRe BCLIC Sub on June 3, 2014. SHIP Rule 56.1 Statement (ECF No. 500) ¶ 55.[2]

RESPONSE: SHIP does not dispute the facts in Paragraph 170, but disputes the Receiver's use of these facts to suggest that this Court should infer that SHIP received any monies in connection with the December 2015 and March 2016 loan transactions.

171. The December 2015 transaction documents – which included the Delayed Draw Demand Note, the Master Security Agreement, the Subsidiary Guaranty, the disbursement letters indicating that the loaned proceeds were to be used to fund the assignment of $9.2 million of Desert Hawk notes and to discharge $5 million of notes issued by LC Energy, and three "Assignment Agreements" for the Desert Hawk notes – were negotiated, executed and exchanged as an integrated transaction. Weinick Dec. Ex. 55, Dep. Ex. 433, Ex. 56, Dep. Ex. 437, Ex. 57, Dep. Ex. 438.

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

RESPONSE: Disputed. SHIP disputes the allegations in Paragraph 171 insofar as they improperly aggregate the December 2015 loan transaction documents and improperly treat all of the entities involved as if they are one and the same. SHIP further disputes that the Receiver accurately summarizes the terms and conditions of the Delayed Draw Demand Note, the Master Security Agreement, the Subsidiary Guaranty, and the disbursement letters.

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

RESPONSE: Undisputed that PPCO Master Fund, the PPCO Subsidiaries, and BAM Administrative executed the MSA on or about December 23, 2015.

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

RESPONSE: Disputed. SHIP disputes the allegations in Paragraph No. 173 insofar as they improperly treat all of the entities involved in the December 2015 and March 2016 loan transactions as if they are one and the same.

174. On or about December 23, 2015, the PPCO Subsidiaries purportedly executed a "Subsidiary Guaranty" dated as of December 23, 2015 (the "**MSA Subsidiary Guaranty**"), and BAM Administrative executed the MSA Subsidiary Guaranty under the words "AGREED AND ACKNOWLEDGED" "as Agent" for SHIP and its "successors and assigns." Weinick Agency Dec. Ex. 14-1 (POC) Schedule 8 ¶ 2; POC 37-66.

RESPONSE: Undisputed.

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

RESPONSE: Disputed. SHIP disputes that it received any monies in connection with the December 2015 and March 2016 loan transactions.

176. On or about January 20, 2016, PPCO executed an "Amended and Restated Delayed Draw Demand Note" (the "**A&R SHIP Note**"), in the principal amount of $18,500,000.00, in favor of SHIP, dated as of January 20, 2016. McCormack Dec. Ex. 54. Taylor executed this note as an "Authorized Signatory" of BAM, as "investment manager" of SHIP, under the words "ACCEPTED AND AGREED TO." *Id.*

RESPONSE: SHIP does not dispute that PPCO executed the A&R SHIP Note on or about January 20, 2016, but disputes the Receiver's use of the A&R SHIP Note to suggest that this Court infer that BAM acted as the agent for SHIP at all times in connection with the December 2015 and March 2016 loan transactions.

177. The A&R SHIP Note stated that BAM Administrative, for the benefit of SHIP, had been granted a "security interest" by PPCO and its direct and indirect subsidiaries in certain of their assets as more fully described in a "Master Security Agreement" dated as of January 20, 2016, and that the outstanding obligations under the A&R SHIP Note were "guaranteed" by those subsidiaries as more fully described in a "Subsidiary Guaranty" dated as of January 20, 2016. *Id.* ¶ 15.

RESPONSE: SHIP does not dispute that PPCO executed the A&R SHIP Note on or about January 20, 2016, but disputes the Receiver's use of the A&R SHIP Note to suggest that BAM acted as the agent for SHIP at all times in connection with the December 2015 and March 2016 loan transactions.

178. On or about January 20, 2016, PPCO and the PPCO Subsidiaries executed a "Reaffirmation and Ratification Agreement" dated as of January 20, 2016 (the "**Ratification and Reaffirmation Agreement**"), and BAM Administrative executed that that agreement "as Agent" for SHIP. Weinick Agency Dec. Ex. 18 (Ratification and Reaffirmation Agreement); *see also* Weinick Dec. Ex. 90, Dep. Ex. 84.

RESPONSE: Disputed. SHIP does not dispute that PPCO and the PPCO Subsidiaries executed the Ratification and Reaffirmation Agreement on or about January 20, 2016. SHIP disputes the Receiver's use of the Ratification and Reaffirmation Agreement to suggest that this

Court should infer that BAM acted as the agent for SHIP at all times in connection with the December 2015 and March 2016 loan transactions.

2. Step 2: The March 2016 Transactions

179. On or about March 21, 2016, PPCO, as the "Company"; SHIP, BRe BCLIC Primary, BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and BRe WNIC 2013 LTC Sub, as "Purchasers" (together with the other purchasers from time to time thereunder, each a "**Purchaser**," and collectively, the "**Purchasers**"); and BAM Administrative, as "Agent" for the Purchasers, entered into a Note Purchase Agreement (the "**NPA**"), in which the parties thereto agreed, among other things, that "Company shall sell to each Purchaser, and each Purchaser shall purchase from Company, the applicable Notes listed on Schedule 1 under the heading 'Notes' and set forth opposite such Purchaser's name, in the original aggregate principal amount of Seventy Million Dollars ($70,000,000)...." McCormack Dec. Ex. 67. BAM executed the NPA on behalf of SHIP "as investment manager." *Id.* Dhruv Narain executed the NPA as an "Authorized Signatory" of BAM. *Id.*

RESPONSE: Disputed. SHIP does not dispute that PPCO and BAM Administrative executed a Note Purchase Agreement on March 21, 2016. SHIP disputes the allegations in Paragraph No. 179 to the extent that they state the legal conclusions that BAM Administrative was acting as SHIP's agent in executing the NPA as 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.

180. The NPA stated that attached to it as Exhibit "A" was a "Form of Term Note" and provided that "[t]he Notes shall be substantially in the form attached hereto as Exhibit A and shall include such notations, legends or endorsements set forth therefor or required by law." McCormack Dec. Ex. 67 ¶ 1.

RESPONSE: Undisputed that the NPA contains the text described in Paragraph No. 180.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

183. The first sentence of Section 2 of the NPA provides: "Prior to the Closing Date, Company shall issue to each Purchaser a disbursement letter (the "**Disbursement Letter**") setting forth the Purchase Price payable by such Purchaser at such Closing Date and the recipients to receive such proceeds on behalf of Company." McCormack Dec. Ex. 67.

RESPONSE: Undisputed.

184. Section 10.16 of the NPA, entitled "Agency Agreement," provides "Each Purchaser has pursuant to an Administrative and Collateral Agency Agreement designated and appointed Agent as the administrative and collateral agent of such Purchaser under this Agreement and the Related Agreements." McCormack Dec. Ex. 67 ¶ 10.16.

RESPONSE: Undisputed.

185. On or about March 21, 2016, SHIP, BRe WNIC 2013 LTC Primary, BRe WNIC 2013 LTC Sub, BRe BCLIC Primary and BRe BCLIC Sub, as "Noteholders," and "BAM Administrative Services LLC, as "Agent," executed an "Agency Agreement" (the "**Agency Agreement**"). Weinick Agency Dec. Ex. 14-1 (POC) Schedule 2 ¶ 18; Weinick Agency Dec. Ex. 14-2 (POC) 352-362. Dhruv Narain executed the Agency Agreement as an Authorized signatory by BAM, which thereby executed the Agency Agreement on behalf of SHIP. Weinick Agency Dec. Ex. 14-2 (POC) 362.

RESPONSE: Disputed. SHIP disputes that it executed the "Agency Agreement" identified in paragraph 185 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. SHIP further states that Narain cannot authorize himself to act as SHIP's agent**.** The Agency Agreement was executed by Narain without SHIP's knowledge. *See* SHIP CAMF ¶ 57 (citing McCormack Dec. Exh. 19, Wegner Tr. at 231:12-237:7; McCormack Dec. Exh. 31, Lorentz Tr. at 165:3-166:11, 176:3-177:2; McCormack Dec. Exh. 29, Robison Tr. at 126:22-140:8; McCormack Dec. 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; McCormack Dec. 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; McCormack Dec. 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). Based on documentary evidence, no individual from SHIP was included on any contemporaneous e-mail communications concerning the transactions and SHIP disputes the statements in Paragraph 185 to the extent that it implies SHIP had knowledge of Narain's actions. *See* SHIP CAMF ¶ 57 (citing McCormack Dec. Exhs. 38-42, 56-64).

186. In the Agency Agreement, SHIP appointed another Beechwood entity, BAM Administrative, to act on SHIP's behalf, and BAM Administrative entered into certain of the agreements on behalf of SHIP in connection with the PPCO Loan Transaction. Weinick Agency Dec. Ex. 14-2 (POC) 352-362.

RESPONSE: Disputed. SHIP disputes that it appointed BAM Administrative to action on SHIP's behalf. The Agency Agreement was executed by BAM, purportedly on SHIP's behalf, without SHIP's knowledge and SHIP disputes the Receiver's use of BAM's execution of the Agency Agreement to suggest that this Court should infer SHIP's knowledge of BAM's actions. To the contrary, the evidence amply demonstrates that SHIP had no such knowledge. *See* SHIP CAMF ¶ 57 (citing McCormack Dec. Exh. 19, Wegner Tr. at 231:12-237:7; McCormack Dec. Exh. 31, Lorentz Tr. at 165:3-166:11, 176:3-177:2; McCormack Dec. Exh. 29, Robison Tr. at 126:22-140:8; McCormack Dec. 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; McCormack Dec. 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; McCormack Dec. 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).

187. The transaction documents underlying the March 2016 portion of the PPCO Loan Transaction were exchanged and executed as an integrated transaction, with the Note Purchase Agreement, the five term notes, the Amended and Restated Security Agreement, the Subsidiary

Guaranty, the Post-Closing Letter, and the two Northstar Assignment Agreements being executed simultaneously. Weinick Dec. Ex. 63, Dep. Ex. 445.

RESPONSE: SHIP does not dispute that the transaction documents underlying the March 2016 NPA were intended as part of one March 2016 transaction, but disputes the Receiver's characterization of the transactions to suggest that the Court should collapse the December 2015, January 2016 and March 2016 transactions into a single loan transaction.

188. On or about March 21, 2016, PPCO issued a "Second Amended and Restated Secured Term Note" (the "**Second A&R SHIP PPCO Note**" or "**NPA Note 1**"), in the principal amount of $42,963,949.04, in favor of "the SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA," with an address of c/o B Asset Manager, LP, 1370 Avenue of the Americas, 32nd Fl, New York, New York 10019." Weinick Agency Dec. Ex. 14-2 (POC) Schedule 5 p. 1 & Schedule 8 ¶ 9; POC 230-240; POC 216. Section 1.1 of NPA Note 1 provides, in part,

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

Rating	Interest Rate
AA-	7.00%
A+	7.50%
A	8.00%
A-	8.50%

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

192. On or about March 21, 2016, PPCO issued a "Secured Term Note" ("**NPA Note 5**"), in the principal amount of $700,000, in favor of "BRE WNIC 2013 LTC SUB, with an address of c/o B Asset Manager, LP, 1370 Avenue of the Americas, 32nd Fl, New York, New York 10019," dated as of March 21, 2016. Weinick Agency Dec. Ex. 14-2 (POC) Schedule 5 p. 1 & Schedule 8 ¶ 13; POC 277-87; POC 216.

RESPONSE: Undisputed.

193. On or about March 21, 2016, PPCO issued a disbursement letter dated March 21, 2016, addressed to "Senior Health Insurance Company of Pennsylvania, c/o B Asset Manager," directing the disbursement of $26,590,877.78 to BAM Administrative under NPA Note 1 to BAM Administrative, "as Agent for each of [SHIP], BRe WNIC 2013 LTC Primary, BBIL and Beechwood Bermuda Investment Holdings, Ltd., for its Segregated Accounts" (the "**March 21, 2016 Disbursement Letter**"). Weinick Agency Dec. Ex. 14-2 (POC) 375.

RESPONSE: Undisputed.

194. The $15,500,000 Delayed Draw Demand Note issued by PPCO in on December 23, 2015, was rolled into the $18,500,000 A&R SHIP Note issued by PPCO on January 20, 2016, which was then rolled into five "Secured Term Notes" totaling $69,153,626 issued by PPCO as part of a $70,000,000 credit facility established on March 21, 2016. McCormack Dec. Ex. 67.

RESPONSE: SHIP does not dispute that PPCO issued SHIP a December 2015 Delayed Draw Demand Note for $15,500,000, a January A&R SHIP Note for $18,500,000, and PPCO issued five Secured Term Notes totaling approximately $69.1 million, but disputes the Receiver's citation of these documents to suggest that this Court should infer that the December 2015 through March 2016 loan transactions with SHIP and other entities constitute a single transaction.

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

by Feuer as an "Authorized Signatory" of BAM, as "investment manager" of SHIP – which PBIH's 30(b)(6) witness testified was "unusual." Weinick Dec. Ex. 64, Boug Dep. Ex. 21.

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

197. A Wilmington Trust Statement (Wilmington Trust held funds on behalf of PBIH) for the period from March 1, 2016 through March 31, 2016 confirms, in a section entitled "Activity Detail," BBIHL's (now PBIH) transfer of the BBIHL Northstar Participation on March 25, 2016 and receipt of $2,111,222.22 by "CASH RECEIPT WIRE FROM BAM ADMINISTRATIVE SERVICES ...," and, in the section of that statement entitled "Investment Detail" that, as of March 31, 2016, BBIHL no longer has any Northstar notes. Weinick Dec. Ex. 66, Dep. Ex. 426; Weinick Dec. Ex. 24, Boug Tr., 61:11. Feuer is also reflected as the recipient of an email forwarding an "Available Cash Report" dated as of March 29, 2016, which referred to a payment of $2,111,222.22 to BBIHL, a payment of $10,767,233.33 to "BBIL Custody," and $8,233,766.67 to "BBIL SHIP," in a row entitled "Northstar Payment." Weinick Dec. Ex. 67, Boug Dep. Ex. 25.

RESPONSE: Undisputed.

198. In exchange for an approximate increase of $26.8 million in the principal amount previously owed to SHIP under the A&R SHIP Note, PPCO took an assignment of the Northstar debt as set forth below. Specifically, on or about March 21, 2016, SHIP entered into an "Assignment Agreement" dated as of March 21, 2016 with PPVA Oil & Gas, LLC (the "**SHIP-PPVA Northstar Assignment Agreement**"), in which SHIP assigned "Entirety of that 12% Second Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to the Senior Health Insurance Company of Pennsylvania in the initial principal amount of $20,200,000" to PPVA Oil & Gas, LLC, for a total purchase price of $21,323,344.44, including principal indebtedness outstanding under the instrument of $20,200,000.00 and accrued unpaid interest purchased of $21,323,344.44. Narain executed that agreement as an "Authorized Signatory" of BAM, on behalf of SHIP, as "its investment manager." Weinick Agency Dec. Ex. 16 (SHIP-PPVA Northstar Assignment Agreement).

RESPONSE: Disputed. SHIP disputes the statements in Paragraph No. 198 that PPCO's receipt of an assignment of the Northstar debt was "[i]n exchange for an approximate increase of

$26.8 million in the principal amount previously owed to SHIP under the A&R SHIP Note." *See* SHIP CAMF ¶¶ 47-49 (citing McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 22 & Table 2). SHIP further disputes paragraph 198's suggestion that SHIP directly entered into the SHIP-PPVA Northstar Assignment Agreement, which was executed by Narain as "Authorized Signatory" of BAM without SHIP's knowledge. Based on the testimony and documentary evidence, no individual from SHIP was included on any contemporaneous e-mail communications concerning the transactions and SHIP disputes the statements in Paragraph 198 to the extent that it implies SHIP had knowledge of Narain's actions. *See* McCormack Dec. Exh. 19, Wegner Tr. at 231:12-237:7; McCormack Dec. Exh. 31, Lorentz Tr. at 165:3-166:11, 176:3-177:2; McCormack Dec. Exh. 29, Robison Tr. at 126:22-140:8; McCormack Dec. 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; McCormack Dec. 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; McCormack Dec. 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.

199. On or about March 21, 2016, SHIP entered into an "Assignment Agreement" with PPCO and BRe WNIC 2013 LTC Primary dated as of March 21, 2016 (the "**Tri-Party Northstar PPCO Assignment Agreement**"), in which SHIP assigned "Entirety of that 12% Second Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to the Senior Health Insurance Company of Pennsylvania in the initial principal amount of $10,800,000.00" to PPCO for a total purchase price of $11,400,600.00, consisting of $10,800,000.00 in principal indebtedness purchased plus $600,600.00 in accrued and unpaid interest purchased, and BRe WNIC 2013 LTC Primary assigned "Entirety of that 12% Senior Priority Senior Secured Notes due September 18, 2019 issued by Northstar GOM Holdings Group LLC to BRe WNIC 2013 LTC Primary in the initial principal amount of $19,000,000" to PPCO for a total purchase price of $20,056,611.11, consisting of $19,000,000 in principal indebtedness outstanding plus $1,056,611.11 in accrued and unpaid interest purchased of $20,056,611.11. Dhruv Narain executed that agreement as an "Authorized Signatory" of BAM on behalf of SHIP, as "its investment manager." Weinick Agency Dec. Ex. 17 (Tri-Party Northstar PPCO Assignment Agreement) at 5; Weinick Dec. Ex. 6, Thomas Tr., 424:15-426:13.

RESPONSE: SHIP does not dispute that SHIP is party to the Tri-Party Northstar PPCO Assignment Agreement, but SHIP disputes the Receiver's use of the Tri-Party Northstar PPCO Assignment Agreement to suggest that this Court should infer 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* McCormack Dec. Exh. 19, Wegner Tr. at 231:12-237:7; McCormack Dec. Exh. 31, Lorentz Tr. at 165:3-166:11, 176:3-177:2; McCormack Dec. Exh. 29, Robison Tr. at 126:22-140:8; McCormack Dec. 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; McCormack Dec. 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; McCormack Dec. 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).

200. In accordance with the NPA, on or about March 21, 2016, numerous subsidiaries of PPCO purportedly executed a "Subsidiary Guaranty" dated as of March 21, 2016 (the "**A&R MSA Subsidiary Guaranty**"), and BAM Administrative executed that the A&R MSA Subsidiary Guaranty under the words "Agreed and Acknowledged." Weinick Agency Dec. Ex. 19 (A&R MSA Subsidiary Guaranty). 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. Weinick Dec. Ex. 11, Narain Tr., 532:6-20.

RESPONSE: SHIP does not dispute that the PPCO Subsidiaries and BAM Admin executed the A&R MSA Subsidiary Guaranty on or about March 21, 2016, but disputes the Receiver's use of the execution of the A&R MSA Subsidiary Guaranty to suggest that SHIP had any knowledge of Narain's actions.

201. In accordance with the NPA, on or about March 21, 2016, PPCO and BAM Administrative, "as Agent" for, among other parties, SHIP, entered into an "Amended and Restated Master Security Agreement" dated as of March 21, 2016 (the "**A&R MSA**"). Weinick Agency Dec. Ex. 20. Dhruv Narain executed the A&R MSA as an "Authorized Signatory" of BAM Administrative, "as Agent" for the "Purchasers" under the NPA, including SHIP. *Id.*

RESPONSE: Disputed. SHIP does not dispute that the PPCO Master Fund and BAM Administrative executed the A&R MSA on or about March 21, 2016. SHIP does not dispute that Narain executed the A&R MSA, but disputes the suggestion that Narain executed the document as "Authorized Signatory" of BAM and as agent for SHIP with SHIP's knowledge.

3. Agreements Consummated Post PPCO Loan Transaction

202. After the PPCO Loan Transaction was consummated, BAM executed two participation agreements on behalf of SHIP in which SHIP sold participation interests in portions of NPA Note 1 to BBIL. Weinick Agency Dec. Ex. 14-3 (POC) Schedule 8 ¶¶ 29-30; POC 424347.

RESPONSE: Undisputed.

203. On or about May 23, 2016, BBIL and SHIP entered into a "Participation Agreement" dated as of and effective as of May 23, 2016, in which SHIP sold a $7,000,000 participation interest in NPA Note 1 to BBIL (the "**SHIP to BBIL Participation Agreement**"). Weinick Agency Dec. Ex. 14-3 (POC) Schedule 8 ¶ 29; POC 424-435. Narain executed both the SHIP to BBIL Participation Agreement and the "Annex" thereto as "President" of BAM, which thereby executed the SHIP to BBIL Participation Agreement on two separate pages on behalf of SHIP, as "its [SHIP's] investment adviser." Weinick Agency Dec. Ex. 14-3 (POC) 431, 435.

RESPONSE: Undisputed.

204. On or about May 23, 2016, Old Mutual (Bermuda) Ltd. ("**Old Mutual**") and SHIP entered into a "Participation Agreement" dated as of and effective as of May 23, 2016, in which SHIP sold a $14,600,000 participation interest in the NPA Note 1 to Old Mutual (the "**SHIP to Old Mutual Bermuda Participation Agreement**"). Weinick Agency Dec. Ex. 14-3 (POC) Schedule 8 ¶ 30; POC 436-447. Narain executed both the SHIP to Old Mutual Bermuda Participation Agreement and the "Annex" thereto as "President" of BAM, which thereby executed the SHIP to Old Mutual Bermuda Participation Agreement on two separate pages on behalf of SHIP, as "its [SHIP's] investment adviser." Weinick Agency Dec. Ex. 14-3 (POC) 443, 447.

RESPONSE: Undisputed.

205. Effective May 23, 2016, BBIL, "for the benefit of its 'BBIL-SHIP' account," purchased participation interests in notes that had been issued by PPCO to BRe BCLIC Sub and BRe WNIC 2013 LTC Sub as part of the PPCO Loan Transaction, and effective November 29, 2016, those participations were elevated to assignments. Weinick Agency Dec. Exs. 14-2 - 14-3 (POC) Schedule 8 ¶¶ 25-28; POC 385-423.

RESPONSE: Undisputed.

206. On or about May 23, 2016, BBIL, "for the benefit of its 'BBIL-SHIP' account" (i.e., for the benefit of the BBIL-SHIP Custody Account), entered into a "Participation Agreement" with BRe BCLIC Sub effective as of May 23, 2016, in which, as described by SHIP in the POC, "BRE BCLIC Sub, sold to BBIL for the benefit of its BBIL-SHIP account [i.e., the BBIL-SHIP Custody Account], a $250,000 participation in interest in NPA Note 3" (the "**BRe BCLIC Sub to SHIP Participation Agreement**"). Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 25; POC 385-396. Feuer executed this "Participation Agreement" and an "Annex" to it as "Authorized Signatory" of BAM II, which thereby executed them on behalf of BBIL, as "its investment adviser." Weinick Agency Dec. Ex. 14-2 (POC) 392, 396.

RESPONSE: Undisputed.

207. On or about November 29, 2016, BRe BCLIC Sub, as "Assignor," and BBIL "(for its BBIL-SHIP account)" (i.e., for the benefit of the BBIL-SHIP Custody Account), as "Assignee" entered into an "Elevation Assignment Agreement," effective as of November 1, 2016 (the "**BRE BCLIC Sub Elevation Assignment Agreement**") (Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 26; POC 397-404), in which, as described by SHIP in the POC, "BRE BCLIC Sub assigned to BBIL for its BBIL-SHIP account, a $261,335.80 interest in NPA Note 3, thereby elevating the NPA Note 3 participation interest held in the BBIL-SHIP account to an assignment effective as of November 1, 2016." Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 25; POC 397-404. Feuer executed the BRE BCLIC Sub Elevation Assignment Agreement as "Authorized Signatory" of BAM II, which thereby executed the BRE BCLIC Sub Elevation Assignment Agreement on behalf of BBIL, as "its [BBIL's] investment adviser." Weinick Agency Dec. Ex. 14-2 (POC) 400.

RESPONSE: Undisputed.

208. On or about May 23, 2016, BBIL, "for the benefit of its 'BBIL-SHIP' account" (i.e., for the benefit of the BBIL-SHIP Custody Account), and BRe WNIC 2013 LTC Sub entered into a "Participation Agreement" effective as of May 23, 2016, in which, as described by SHIP in the POC, "BRE WNIC 2013 LTC Sub, sold to BBIL for the benefit of its BBIL-SHIP account [i.e., the BBIL-SHIP Custody Account], a $350,000 participation in interest in NPA Note 5" (the "**BRe WNIC 2013 LTC Sub to SHIP Participation Agreement**"). Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 27; POC 405-414. Feuer executed this participation agreement and an "Annex" to it as "Authorized Signatory" of BAM II, which thereby executed BRe WNIC 2013 LTC Sub to SHIP Participation Agreement on two separate pages on behalf of BBIL, as "its investment adviser." Weinick Agency Dec. Ex. 14-2 (POC) 410, 414.

RESPONSE: Undisputed.

209. On or about November 29, 2016, BRe WNIC 2013 LTC Sub, as "Assignor," and BBIL "(For its BBIL-SHIP Account)," (i.e., for the BBIL-SHIP Custody Account), as "Assignee," entered into an "Elevation Assignment Agreement," dated as of November 29, 2016, for effectiveness as of November 1, 2016 (the "**BRE BCLIC Sub Elevation Assignment Agreement**") (Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 26; POC 415-423), in which,

as stated by SHIP in the POC, BRE WNIC 2013 LTC Sub assigned to BBIL for its BBIL-SHIP account, a $365,331.02 interest in NPA Note 5, thereby elevating the NPA Note 5 participation interest held in the BBIL-SHIP account to an assignment effective as of November 1, 2016." Weinick Agency Dec. Ex. 14-2 (POC) Schedule 8 ¶ 27; POC 415-423. Feuer executed the BRE WNIC 2013 LTC Sub Elevation Assignment Agreement as "Authorized Signatory" of BAM II, which thereby executed the BRE WNIC 2013 LTC Sub Elevation Assignment Agreement on behalf of BBIL, as "its [BBIL's] investment adviser." Weinick Agency Dec. Ex. 14-2 (POC) 418.

RESPONSE: Undisputed.

R. Wegner is Terminated by the SHIP Board for Cause

210. [redacted] Weinick Dec. Ex. 68, Dep. Ex. 790.[73]

RESPONSE: Undisputed.

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

(i) SHIP's Board sent a letter to the PA Insurance Company Department [redacted] Weinick Dec. Ex. 15, Robison Tr., 276:19283:10. Specifically, SHIP explained t[redacted] Weinick Dec. Ex. 49, Dep. Ex. 259; Weinick Dec. Ex. 15, Robison Tr., 276:19-283:10. SHIP further described t[redacted] *Id.* Finally, the letter stated: [redacted]

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

[redacted] *Id.*

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

RESPONSE: Disputed. SHIP does not dispute that Wegner was terminated "for Cause" but disputes the relevance of that termination to SHIP's motion for summary judgment that relates solely to the December 2015 and March 2016 secured transactions. Wegner was terminated more than nine months after the latest transaction that the Receiver is challenging in her claims and the December 2015 and March 2016 loan transactions had nothing to do with his for Cause termination. *See* Weinick Dec. Exh. 68, Dep Exh. 790. SHIP also disputes the Receiver's characterization of the correspondence that is quoted in support of this assertion. For example, t[redacted] *See* ¶ 211(i). The evidence cited in support of this assertion does not implicate Wegner in this incident however. To the contrary, [redacted]. Weinick Dec. Exh. 49, Dep. Exh. 259.

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

RESPONSE: Undisputed.

213. Vanbridge subsequently sent an email to Beechwood personnel, i[redacted]

[redacted] Weinick Dec. Ex. 69, Dep. Ex. 396; Weinick Dec. Ex. 22, Lorentz Tr., 135:12-141:8.

RESPONSE: Undisputed.

214. On or about the day Vanbridge sent its due diligence request to Beechwood, [redacted] *Id.*

RESPONSE: Disputed. SHIP does not dispute the authenticity of the correspondence between Wegner and Vanbridge, but disputes the Receiver's unsubstantiated characterization of the correspondence.

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

RESPONSE: Disputed. SHIP disputes that "Wegner had Taylor intervene in the due diligence efforts that may uncover the uncomfortable relationship between Beechwood and its Platinum-related owners." The Receiver's assertion is not supported by Lorentz' testimony nor is this a logical inference to be drawn from the testimony. The Receiver's counsel asked Lorentz to speculate as to what potential subtext there could be behind Wegner's email to Taylor. *See* Weinick Dec. Exh. 22, Lorentz Tr., 139:24-141:8. In response, Lorentz testified that he did not know whether or why Wegner could have been concerned that Beechwood would think that Vanbridge's due diligence requests were overbearing. *Id.* at 141:3-8. And far from testifying that Wegner had Taylor "intervene" in any due diligence efforts, Lorentz actually testified that he did not have *any* discussions with Wegner about "going easy on Beechwood when it comes to due diligence." *Id.* at 141:9-13.

Rather, the unrefuted testimony shows that, as of October 2015, neither Wegner nor SHIP was aware of the relationship between Beechwood and Platinum or the fact that they shared common ownership. 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. *See* SHIP Statement of Material Facts, ECF No. 765, ¶ 36-38 ("SHIP SMF") (citing McCormack Dec. Exh. 19, Wegner Tr. at 164:20–165:5, 180:5-16). 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. McCormack Dec. Exh. 34, Saks Decl.¶¶ 65-75. SHIP only became aware of any connection between Platinum and Beechwood in July 2016 (following the June 2016 arrest of Platinum Founder Huberfeld on federal bribery charges) through press reports that Beechwood representatives immediately attempted to downplay, assuring SHIP that Beechwood was taking "aggressive action to reduce [SHIP's] exposure to [Platinum-controlled entities] as soon as practicable." McCormack Dec. Exh. 35; McCormack Dec. Exh. 19, Wegner Tr. at 180:5-16.

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

RESPONSE: Undisputed.

S. Facts Supporting Receiver's Actual Fraud Claims

217. On or about November 14, 2019, SHIP produced the expert report of Timothy Hart, pursuant to which he reviewed and assessed the following investments made with SHIP's funds

or assets by Beechwood or Platinum individuals acting on Beechwood's behalf: (1) Montsant Partners Note; (2) various investments in Agera Energy LLC, Agera Holdings LLC and AGH Parent, LLC; (3) PPVA fund investments; (4) PPCO fund investments; (5) Milberg Hamilton Capital Credit Facility; (6) Equipment Finance I & V Notes; (7) PEDEVCO Note; (8) BRILLC Note; (9) Black Elk Energy; and (10) Golden Gate Oil. Weinick Ex. 70, Hart Report, ¶ 1.

RESPONSE: Undisputed.

218. Hart concluded that "[redacted] Weinick Ex. 70, Hart Report, ¶ 18. According to Hart, [redacted]:

Table 1: Investments with Red Flags of Fraud:

[redacted]

Weinick Ex. 70, Hart Report at 15.

RESPONSE: Undisputed.

219. As set forth in the Hart Report:

[redacted]

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

RESPONSE: Undisputed.

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

(i) [redacted]

Weinick Ex. 70, Hart Report, ¶ 105.

(ii) S[redacted] *See supra*, ¶ 122
.

(iii) Highly complex transactions or complex trading strategies. Beechwood's CEO testified that the PPCO Loan Transaction "were highly complex." Weinick Dec. Ex. 21, Feuer Tr., 394:8-9.

(iv) The need to obtain additional debt or equity financing. The evidence establishes that PPCO needed cash at the time of the PPCO Loan Transaction.

- Feuer described to SHIP's CFO Paul Lorentz that Platinum was a "motivated seller who much needs the money" because the fund had substantial investments in oil interests. The price of oil had dropped. They had redemption provisions that were fairly generous, and they were having some trouble meeting the redemption obligations. Weinick Dec. Ex. 86, Dep. Ex. 411; Weinick Dec. Ex. 22, Lorentz Tr., 299:10-301:8.

- Narain, who replaced Saks as CIO for BAM in January of 2016, testified that the "Platinum Restructuring" (the PPCO Loan Transaction) came about because the collapse of oil prices damaged holdings in oil and gas companies, which were facing liquidity issues in late 2015 – early 2016. Weinick Dec. Ex. 11, Narain Tr., 79:2-81:2.

- Despite exercising the put of Desert Hawk assets in September 2015 to PPVA, Platinum did not pay it. Saks testified he became aware of liquidity problems at Platinum, which would explain the failure to pay the put. Weinick Dec. Ex. 8, Saks Tr., 246:10-250:17. Rather, Beechwood, as nominee for SHIP, assigned the Desert Hawk loan participation to BBIL. Weinick Dec. Ex. 73, Dep. Ex. 235; Weinick Dec. Ex. 6, Thomas Tr., 387:15-390:25. Neither Beechwood's General Counsel nor Lorentz could explain why at their deposition. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 6, Thomas Tr., 431:7-432:20; Weinick Dec. Ex. 22, Lorentz Tr., 152:9-153:7, 166:12-167:14.

- On November 18, 2015, Beechwood sent an email in response to a capital call stating: We are assigning Desert Hawk today, which will avail cash for this call. Weinick Dec. Ex. 71, Dep. Ex. 491; Weinick Dec. Ex. 8, Saks Tr., 270:19-273:2. Beechwood as nominee for SHIP subsequently assigned the Desert Hawk participation not to PPVA pursuant to the put option, as intended, but rather to BBIL (SHIP's Third IMA agent). Weinick Dec. Ex. 73, Dep. Ex. 235; Weinick Dec. Ex. 6, Thomas Tr., 387:15-390:25.

Beechwood's 30(b) (6) witness Thomas confirmed that the Desert Hawk assets that were the subject of that PPVA put option then went from BBIL to PPCO, but claimed he did not know why. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 6, Thomas Tr., 431:7-432:20. SHIP CFO Paul Lorentz claimed he had no information about why PPCO received the Desert Hawk participations in the December 2015 transactions instead of PPVA via the put option. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 22, Lorentz Tr., 152:9-153:7, 166:12-167:14.

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

(vi) Inadequate record keeping or lack of timely and appropriate documentation of transactions. [redacted]

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

(vii) Excessive interest by management in maintaining or increasing the stock price or earnings. As established above, the Platinum insiders were heavily reliant on the earnings and NAV of the PPCO Funds in order to generate management and incentive fees. *See supra*.

(viii) History of violation of laws. The evidence establishes that:

(a) Nordlicht invested in "a consumer finance company repeatedly fined for predatory lending before and after Platinum's involvement, a pair of investments that turned out to be Ponzi schemes, and two energy companies that later went bankrupt and are facing criminal charges." SHIP Crossclaims ¶ 57.

(b) Another fund that Nordlicht owned, Optionable Inc., collapsed in 2007 in a trading scandal involving one of its co-founders, Kevin Cassidy. For his role in the scheme, Cassidy was arrested in 2010 and charged with two counts each of securities fraud and wire fraud, one count of conspiracy to commit wire fraud and make false bank entries, and one count of aiding and abetting the making of false bank entries. Pursuant to a plea deal, he was sentenced to 30 months in prison in August 2011. When he was later released in 2014, Cassidy was installed as the managing director of Agera at Nordlicht's behest, and would later receive a multi-million dollar windfall for no consideration in connection with Agera's sale. SHIP Crossclaims ¶ 58.

(c) In 1990, Huberfeld and Bodner both pled guilty to criminal charges of false identification with intent to defraud after they were shown to have hired impostors to take the Series 7 securities broker examination in their place. SHIP Crossclaims ¶ 59.

(d) Huberfeld also was the target of SEC administrative proceedings stemming from various violations of federal securities laws in 1996. In those proceedings, Huberfeld and his then firm, Broad Capital Associates, Inc., were accused of buying unregistered shares of a Canadian company at a discount and misrepresenting the purchase as a loan. Huberfeld ultimately entered into a consent order with the SEC pursuant to which Huberfeld was found to have violated Section 5 of the Securities Act and was ordered to disgorge over $425,000 in profits and interest. The consent order identifies Bodner as Broad Capital's other founder and shareholder, along with Huberfeld. SHIP Crossclaims ¶ 60.

(e) Broad Capital, Huberfeld, and Bodner again were in the SEC's crosshairs, this time for approximately 513,000 shares of restricted stock they had received as collateral for a loan, which shares they then sold for a profit of $3.7 million. In connection with that transaction, the SEC filed a complaint in federal district court in Los Angeles, alleging a laundry list of violations

of federal securities laws. Rather than contest the SEC's allegations, Huberfeld and Bodner agreed to a settlement pursuant to which they disgorged all profits from the sale plus interest, for a total of $4,694,125, along with individual civil penalties of $15,000. SHIP Crossclaims ¶ 61.

(f) A federal grand jury sitting in the Eastern District of New York returned a Criminal Indictment against Nordlicht for securities fraud, advisor fraud, and wire fraud in connection with his role in the Platinum-Beechwood Scheme. On May 25, 2018, Huberfeld pled guilty to the charge of conspiracy to commit wire fraud. On February 12, 2019, Huberfeld was sentenced to 30 months in prison, three years of supervised release, and ordered to pay restitution of $19 million. SHIP Crossclaims ¶ 61.

(g) The Criminal Defendants were named as defendants in both the Criminal Action and the SEC Action.

RESPONSE: Disputed. SHIP disputes the Receiver's kitchen sink approach to establishing "indicators of fraud" relating to the PPCO Transactions in Paragraph 221. As an initial matter, there is no indication, that even if true, any of the facts cited in this Paragraph were known to SHIP at the time of the December 2015 or March 2016 transactions. To the contrary, this information, particularly regarding the related party status of Platinum and Beechwood was actively concealed from SHIP at the time. SHIP SMF ¶¶ 26-29; McCormack Dec. Exh. 19, Wegner Tr. at 164:20–165:5, 180:5-16; McCormack Dec. Exh. 34, Saks Decl. ¶¶ 65-75. In addition, any fraud associated with the relevant transactions worked to the benefit of Beechwood and Platinum and to the detriment of SHIP.

SHIP also disputes the relevance of any of the so-called indicators of fraud regarding the December 2015 or March 2016 PPCO Transactions where such indicators post-dated the transactions themselves. For example, Huberfeld's 2018 arrest and 2019 prosecution could not possibly have been an indicator of fraud to SHIP for a transaction that closed in 2015 and 2016, respectively.

T. Facts Supporting Receiver's Constructive Fraud Claim

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

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

[redacted]

McCormack Dec. Ex. 66, p. 11.

RESPONSE: Disputed. SHIP disputes that Receiver's allegation that PPCO did not receive "fair consideration" as that is a legal conclusion that requires no response. SHIP further disputes the accuracy of each of the quoted statements in Paragraph No. 221. SHIP disputes that Prager's opinions would be admissible at trial as they are based, in large part on unsupported and factually inaccurate assumptions which, in turn, undermine the reliability of Prager's conclusions.[4] Contrary to Prager's unsupported conclusions, *first*, in connection with the December 2015 Transactions, PPCO received the fair equivalent of the value it exchanged in the Transactions. SHIP SMF ¶103 (citing McCormack Dec. Exh. 43 at BW-SHIP-01332112). SHIP transferred approximately $9.9 million in cash in connection with the December 2015 transactions, and assets

[4] In accordance with the pre-trial scheduling order in place in this Action, SHIP expects that it will file a motion to exclude Prager's report and testimony at the appropriate time.

for which SHIP had paid cash. *See* SHIP SMF ¶ 48 (McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 22, Table 2, App'x Y.1, & App'x Z; Exh. 68). Importantly, SHIP did not even possess the Desert Hawk asset in its accounts as of the date of the December 23, 2015 transactions. SHIP CAMF ¶ 53 (citing McCormack Dec. Exh. 30, Thomas Tr. 387:15-390:20, 396:14-397:4, 399:15-400:9; McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 19; McCormack Dec. Exh. 46; McCormack Dec. Exh. 47, WT 0000565-574; McCormack Dec. Exh. 48, WT 0001257-272). *Second*, PPCO received the fair equivalent of the value it contributed to the March 2016 Transaction, as it provided a mere obligation to pay in exchange for tangible assets received from SHIP. SHIP CAMF ¶¶ 37, 47 (citing McCormack Dec. Exhs. 44-46, 48-49; McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 22 & Table 2). PPCO further benefited in several ways, including but not limited to its release of the Agera pledge. SHIP CAMF ¶ 49, Exh. 33, Hart Rebuttal Rpt. ¶ 23. Third, SHIP was not enriched in connection with the December 2015 Transactions; to the contrary, SHIP was harmed. In fact, PPCO has failed to perform on its outstanding note to SHIP, failing to pay SHIP nearly $14 million of the amount due. SHIP CAMF ¶¶ 46, 56 (citing McCormack Dec. 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)).

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

(i) [redacted];

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

(iv) [redacted]

McCormack Dec. Ex. 66, p. 28.

RESPONSE: Disputed. SHIP disputes that Receiver's allegation that PPCO did not receive, and Beechwood and SHIP did not provide, "fair consideration" as that is a legal conclusion that requires no response. SHIP further states that the Receiver has not cited to admissible evidence in support of her assertion that PPCO did not receive fair consideration. Prager's opinions are unlikely to be admissible at trial as they are based, in large part on unsupported and factually inaccurate assumptions which, in turn, undermine the reliability of Prager's conclusions. SHIP likewise disputes the accuracy of the Receiver's assertions in paragraph 222. As explained in detail in response to the Receiver's assertion in Paragraph No. 221, *supra*, the documents and testimony in this action establish conclusively that the Receiver received fair consideration for the December 2015 and March 2016 PPCO transactions. *See* SHIP CAMF ¶¶ 37, 47, 48 (citing McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 22, Table 2, App'x Y.1, & App'x Z; Exh. 68; McCormack Dec. Exhs. 44-46, 48-49); McCormack Reply Dec. Exh. 21, Prager Tr. 171:7-172:7.

223. Consequently, according to the Prager Report, [redacted]. McCormack Dec. Ex. 66, 11, 29.

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[6] The Northstar PPCO Assignment Agreement reflects that the total purchase price (at face value) of the notes was $31,457,211.11. However, because PPCO's books and records

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of this assertion. Prager's opinions are unlikely to be admissible at trial as they are based, in large part on unsupported and factually inaccurate assumptions which, in turn, undermine the reliability of Prager's conclusions. SHIP likewise disputes that PPCO incurred $67 million of debt to purchase assets having a value of $47.7 to $48.8 million. To the contrary, and even accepting Prager's opinions as true for purposes of this response, and without conceding their admissibility, Prager testified that the PPCO Master Fund received between $47 million and $50.5 million in exchange for its promises to pay which represent between 89% and 96% of the value that PPCO Master Fund transferred when the various March 2016 transactions. McCormack Dec. Exh. 53, Prager Tr. at 221:8–222:2.

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

RESPONSE: Disputed. SHIP disputes the notion that it "benefitted from the PPCO Loan Transaction[s]." [redacted] SHIP SMF ¶ 87; McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 26; McCormack Dec. Exh. 70, WT 0000787-800 at WT 0000794 (listing two assets identified as "PPMF 2016 Secured Term Note" valued at a total of $13,755,144.50).

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

(i) SHIP received Duff & Phelps reports that described significant losses in the Platinum related entities at issue in the PPCO Loan Transaction. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 15, Robison Tr., 111:25122:24.

(ii) Desert Hawk. SHIP's expert conceded that if the Platinum Funds were paying the interest accruing under Desert Hawk's loan, that in and of itself would be a red flag for fraud. Weinick Dec. Ex. 26, Hart Tr., 115:25-116:25. And indeed, Daniel Saks, who left Platinum to become CIO for BAM, conceded that:

(a) certain emails giving "Position Updates" in December 2015 demonstrated that the Northstar business and the Desert Hawk business were not healthy. Weinick Dec. Ex. 75, Dep. Ex. 493; Weinick Dec. Ex. 8, Saks Tr., 279:24-284:6; and

(b) the fact PPVA was paying the interest on the Desert Hawk debt was an indicator that the company did not have cash flow and was not faring well. Weinick Dec. Ex. 8, Saks Tr., 214:17-219:12; Exhibit 447 (in or about September 2015, Saks had signed a Notice of Exercise, on behalf of BAM Administrative and Beechwood by B Asset Manager, exercising a Put Agreement it had with PPVA in connection with a participation in Desert Hawk). In so doing, Saks acknowledges that the Put reflected the understanding that Desert Hawk's future success was "not good." Weinick Dec. Ex. 77, Dep. Ex. 454; Weinick Dec. Ex. 8, Saks Tr., 243:11-244:21. Indeed, SHIP had previously received Duff & Phelps reports that described the put option to PPVA. Weinick Dec. Ex. 71, Dep. Ex. 231; Weinick Dec. Ex. 15, Robison Tr., 111:25-116:13; Weinick Dec. Ex. 22, Lorentz Tr., 152:9-153:7.

(iii) BAM has admitted that interest on the transferred assets in the PPCO Loan Transaction was not likely paid yet were purchased for full price (Weinick Dec. Ex. 6, Thomas Tr., 376:23-433:18) while Feuer conceded that the inability of a borrower to make interest payments can negatively impact value. Weinick Dec. Ex. 21, Feuer Tr., 660:10-661:8.

(iv) Shortly after PPCO acquired the Desert Hawk debt, it received the following emails from Desert Hawk management:

(a) On January 8, 2016, Levy received an email from the operator of Desert Hawk claiming that Desert Hawk was "an absolute living hell ... It is not possible to run ... without proper capitalization." January 8, 2016 Desert Hawk email. *Trott v. PMNY (NY) LLC*, No. 18-cv-10936, ECF No. 1-1, Ex. 8 (S.D.N.Y.).

(b) On February 18, 2016, a Desert Hawk representative emailed Levy that the company could not complete its audit because of insufficient funding. Feb. 18, 2016 Desert Hawk email filed in *Trott v. PMNY (NY) LLC*, No. 18-cv-10936, ECF No. 1-1, Ex. 9 (S.D.N.Y.).

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

- Northstar.
  - (vi) On January 16, 2015, Beechwood informed Lincoln International LLC ("**Lincoln International**") and/ or Lincoln Partners Advisors LLC (together with Lincoln International, "**Lincoln**") that it would need three separate reports: a "Beechwood Re CNO report, a BBIL ULICO report and a Beechwood re/BBIL Ship report." Ridgeway Dec. Ex. 59 (LINCOLNSUB-00022487).
  - (vii) On January 19, 2015, Lincoln issued to Beechwood the three reports requested, including a report that valued Beechwood's investments in the SHIP custody accounts. Ridgeway Dec. Ex. 60 (LINCOLNSUB-00000006); Ridgeway Dec. Ex. 61 (LINCOLNSUB-00000332); Ridgeway Dec. Ex 9 (LINCOLNSUB00001291).
  - (viii) In the report, Lincoln valued debt investments in four companies— MYSYRL Capital, New Bradley House, Northstar, and San Gold Corp. LLC. Ridgeway Dec. Ex. 9 (LINCOLNSUB-00001291 at 00001297.)
  - (ix) Lincoln valued below par two of the debt investments (Northstar and San Gold), which constituted nearly 40% of the total value of the investments that Lincoln valued. *Id.*

RESPONSE: SHIP disputes the Receiver's statements in Paragraph No. 225. SHIP disputes the Receiver's characterization of the referenced testimony and exhibits in support of Paragraph No. 225. Many of the documents cited are or contain hearsay which is unlikely to be admissible at trial. Moreover, nowhere in Paragraph 225 does the Receiver assert or cite to any portion of the record that would indicate that SHIP had any knowledge of these facts at the time of the December 2015 or March 2016 Transactions. SHIP likewise disputes that these facts support of establish any fraudulent conveyance claim being asserted by the PPCO Receiver. For example,

[redacted]

[redacted] SHIP SMF ¶ 53; McCormack Dec. Exh. 30, Thomas Tr. 387:15-390:20, 396:14-397:4, 399:15-400:9; McCormack Dec. Exh. 33, Hart Rebuttal Rpt. ¶ 19; McCormack Dec. Exh. 46; McCormack Dec. Exh. 47, WT 0000565-574; McCormack Dec. Exh. 48, WT 0001257-272. Moreover, regarding the Lincoln Partners and Duff & Phelps reports that are referenced in support of the Receiver's assertions, there is no evidence at all, let alone admissible evidence, that

these reports (except for one report dated April 9, 2015) were received by SHIP at or around the time that they were prepared.

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

226. The Receiver's expert, David Prager, prepared a report (the "**Prager Report**") in which he found that, *inter alia*:[8]

(i) [redacted]

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

RESPONSE: Disputed. SHIP disputes the notion that PPCO was insolvent. As the PPCO Funds' chief financial officer, Joseph SanFilippo testified, the PPCO Master Fund was solvent both before and after the December 2015 and March 2016 transactions. McCormack Dec. Exh. 72, SanFilippo Tr. at 375:9–376:18, 377:18–24, 380:25–381:19, 387:6–388:17, 395:16–397:2, 403:12–404:10, 407:15–409:23. In contrast to this sworn testimony of Sanfilippo, a witness with personal knowledge of the financial solvency of the PPCO Funds, the Receiver has not cited to

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

admissible evidence in support of its assertion that the PPCO Funds were insolvent at the time of the transactions. Prager's opinions are unlikely to be admissible at trial as they are based, in large part on unsupported and factually inaccurate assumptions which, in turn, undermine the reliability of Prager's conclusions. Specific to the solvency of PPCO at the time of the transactions, Prager testified that his opinions were based on several assumptions and that he was instructed by counsel for the Receiver to make such assumptions in support of his analysis rather than conducting a full analysis. For example, the Prager assumed [redacted] McCormack Dec. Exh. 66, Prager Rpt. at 12. The Receiver values t[redacted] *Id.* P[redacted]. *Id.* at 42. For purposes of his balance-sheet test, [redacted]. *Id.* According to Prager, [redacted]. *Id.* Prager has also confirmed that w[redacted] McCormack Reply Dec. Exh. 21, Prager Tr. at 190:15-17; 192:7-193:2; McCormack Dec. Exh. 66, Prager Rpt. at 42-43.

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

(i) [redacted] McCormack Dec. Ex. 66, p. 12.

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of its assertions in each and every one of the subparagraphs in Paragraph 227. Prager's opinions are unlikely to be admissible at trial as they are based, in large part on unsupported and factually inaccurate assumptions which, in turn, undermine the reliability of Prager's conclusions. Indeed, the very language of the Receiver's assertions of "fact" in Paragraph 227 indicate that they are based on hypotheticals, assumptions, and speculation, not anything that had actually occurred at the time of the December 2015 or March 2016 transactions. To the contrary, at the time of those transactions, both PPCO's Corporate Designee and Prager confirmed that no Rescission Claims had been asserted by any investor against the PPCO Master Fund. McCormack Dec. Exh. 11, Rogers Tr. at 214:22–215:10; McCormack Dec. Exh. 53, Prager Tr. at 194:11-24.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed that Nordlicht made the valuations of PPVA assets himself.

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

RESPONSE: Disputed. The Receiver has not cited to admissible evidence in support of its contentions regarding PPCO's cash balances on the dates of the December 2016 and March 2016 transactions, and instead relies on the Roger's Declaration which conclusorily states the cash balances listed above but provides no documentary support for his assertion.

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

RESPONSE: SHIP does not dispute that PPCO could not satisfy redemption requests and suspended redemption requests by June 30, 2016, but disputes the relevance of PPCO's failure to satisfy redemption requests in June 2016 to SHIP's motion for summary judgment that relates solely to the December 2015 and March 2016 secured loan transactions. The requests for redemptions that the PPCO Funds were unable to satisfy were not received until *after* the December 2015 and March 2016 transactions had closed.

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

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

RESPONSE: SHIP does not dispute that Beechwood and Platinum's deals in connection with Desert Hawk, LC Energy and Northstar involving SHIP were not made at "arm's-length" but in fact were related-party transactions between Beechwood and Platinum, who shared common ownership and other deep ties. However, SHIP disputes the Receiver's use of the fact that the transactions were not made at "arm's-length" to suggest that this Court should infer that

SHIP knew that the transactions were not at "arm's-length" or that SHIP directed such transactions. To be sure, SHIP states that the undisputed testimony shows that SHIP lacked knowledge of the related-party nature of these transactions—or that Platinum and Beechwood shared ownership—until late in 2016. *See* SHIP SMF ¶ 36-38. 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. McCormack Dec. Exh. 19, Wegner Tr. at 164:20–165:5, 180:5-16. To the contrary, 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. McCormack Dec. Exh. 34, Saks Decl. at ¶¶ 65-75.

233. SHIP knew that:

(i) i[redacted]t. Weinick Dec. Ex. 78, Dep. Ex. 229; Weinick Dec. Ex. 95, Exhibit 230; Weinick Dec. Ex. 15, Robison Tr., 108:4-109:21; Weinick Dec. Ex. 22, Lorentz Tr., 167:15-170:16.

(ii) by January 19, 2016 [redacted]. Weinick Dec. Ex. 79, Dep. Ex. 232; Weinick Dec. Ex. 15, Robison Tr., 117:24-121:14.

RESPONSE: Disputed. SHIP does not dispute the contents of the documents cited in Paragraph No. 233 but disputes the Receiver's use of the contents of these documents to suggest that SHIP knew of the status of its Northstar investments. Contrary to the Receiver's assertion that SHIP had any knowledge of the status of the Northstar investment in or around April 2015 or January 2016, Lorentz testified that he does not "recall knowing in 2015 that the Northstar investment was becoming 'uneconomic.'" Weinick Dec. Exh. 22, Lorentz Tr. at 170:13-16. Similarly, Robison testified that he was not aware of any communications between SHIP personnel

or between SHIP and Beechwood concerning Platinum being Northstar's equity sponsor. Weinick Dec. Exh. 15, Robison Tr., 117:24-121:14. Rather, Robison testified that the information contained in the January 2016 Duff & Phelps report (for which there is no indication SHIP received the report in real time) did not indicate to him that the note was not performing. *See* McCormack Reply Dec. Exh 10 , Robison Tr.at 122:9-24.

234. Wegner was in constant communication with Beechwood about SHIP's investment yield, and that such communication was primarily in-person or by telephone, not by email. According to SHIP's own expert this was in accordance with expected communications patterns in a discretionary account such as this, not to mention that those engaged in a fraud usually take pains to avoid documenting their actions. Weinick Dec. Ex. 21, Feuer Tr., 222:15-223:10, 289290, 295, 316:9-24, 405, 407-408; Weinick Ex. 70, Hart Report at 66; Weinick Dec. Ex. 26, Hart Tr., 66:8-67:10; *see also* Weinick Dec. Ex. 25, Taylor Tr., 555:13-556:2 (SHIP received regular holdings reports that showed all of the assets held in SHIP's accounts).

RESPONSE: Disputed. SHIP disputes that "Wegner was in constant communication with Beechwood about SHIP's investment yield, and that such communication was primarily in-person or by telephone, not by email." The testimony from Feuer and Taylor does not support this assertion. Contrary to the Receiver's suggestion that Feuer testified that Wegner was in "constant communication with Beechwood regarding SHIP's investment yield," Feuer testified that "we ***weren't*** in constant talks with Brian [Wegner]." Weinick Dec. Ex. 21, Feuer Tr. 222:15-223:2 (emphasis added). Feuer also testified that, to the extent there were meetings to discuss SHIP's investments with SHIP's personnel, he likely did not attend or "would have stepped out" of those meetings and did not recall specifically attending meetings where individual investments of SHIP's were discussed. Weinick Dec. Ex. 21, Feuer Tr. 316:17-317:14. In fact, the unrefuted testimony shows otherwise. In light of its broad discretionary authority, Beechwood managed SHIP's investments and made decisions regarding adjustments to those investments without necessarily even informing SHIP. McCormack Dec. Exh. 29, Robison Tr. at 87:8-11; McCormack

Dec. Exh. 30, Thomas Tr. at 430:6-13; McCormack Dec. Exh. 31, Lorentz Tr. at 156:20-157:23, 172:15-173:3, 201:7-203:10; McCormack Dec. Exh. 19, Wegner Tr. at 232:2-234:4.

U. The Platinum Funds Revelations and the Criminal Trial

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed that in August 2016, Beechwood withdrew $11,118,981 from the IMA accounts after representing to SHIP that SHIP owed this amount in performance fees.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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

RESPONSE: Undisputed.

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