Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

May 6, 2019

Mark D. Harris
Member of the Firm
d +1.212.969.3530
f 212.969.2900
mharris@proskauer.com
www.proskauer.com

BY ECF

The Honorable Jed S. Rakoff
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1340
New York, New York 10001

Re: *In re Platinum-Beechwood Litigation*, Case Nos. 1:18-cv-06658-JSR; 1:18-cv-10936-JSR; 1:18-cv-12018-JSR.

Dear Judge Rakoff:

We represent B Asset Manager, L.P., Beechwood Bermuda International, Ltd., Beechwood Re Investments, LLC, Mark Feuer, Scott Taylor, and Dhruv Narain (collectively, "Beechwood") in the above-referenced matter. We write on behalf of the Beechwood Parties in response to the letter motion submitted by the Senior Health Insurance Company of Pennsylvania ("SHIP") on April 29, 2019 seeking an order compelling Beechwood to turn over documents that one of its affiliates produced in response to a subpoena issued by the U.S. Securities and Exchange Commission in June 2016 (the "SEC Production").[1] The Joint Official Liquidators and Receiver in the Trott and Cyganowski actions have joined SHIP's motion to compel, and this letter is intended to respond to those motions as well.

We are puzzled by SHIP's insistence on obtaining this cache of documents as a unit. The SEC Production consists of documents responsive to some 36 different requests. While some of the requests might be relevant to the instant consolidated actions, others (e.g., No. 22, regarding actuarial work; No. 34, regarding charitable donations; No. 35, regarding religious organizations) do not bear any obvious connection to any alleged fraudulent activity—let alone alleged fraudulent activity by Beechwood. That is not surprising. Contrary to SHIP's characterizations, the subpoena did not reveal that the SEC was conducting an "investigation into Beechwood's involvement in Platinum Management['s] fraud scheme" (SHIP Let. at 1), any more than the subpoena SHIP received from the SEC revealed that the latter was conducting an investigation into *SHIP*'s involvement in that fraud. The face of the subpoena stated its subject matter simply as "Matter of Platinum Management." As is typical for a government subpoena, it did not explain why the SEC was seeking any particular categories of documents. And as is apparent from SHIP's letter motion, SHIP does not know either.

[1] Terms not defined herein shall have the meaning ascribed to them in SHIP's letter motion.

Beechwood has already produced nearly 900,000 pages of materials to SHIP that cover the waterfront of its relationship with Platinum and other pertinent topics. We have repeatedly offered to SHIP—and hereby do so again—that out of the contents of the SEC Production, we will produce every single document that is *relevant* to the claims and defenses in the instant actions, so long as SHIP articulates a basis for asserting their relevance. Accordingly, Beechwood has repeatedly asked SHIP to provide it with relevant search terms. Alternatively, Beechwood has asked SHIP to explain how the categories of documents in the SEC Production are relevant to its claims and defenses. SHIP has refused to engage on either request, insisting that whatever documents Beechwood produced to the SEC are *automatically* relevant here. Because that position is plainly wrong, Beechwood has no choice but to oppose SHIP's motion.

I. SHIP Has Not Articulated the Relevance of the Entire SEC Production

Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, parties may obtain discovery pertaining to "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." *See* Fed. R. Civ. P. 26. The touchstone of this standard is relevance.

Here, SHIP seeks to compel Beechwood to produce its entire SEC Production regardless of whether any particular document is relevant. As a number of courts have recognized, it is generally inappropriate for a civil litigant to blindly piggyback on discovery that an opposing party produced to a government agency. *See, e.g., In re Weatherford Int'l Sec. Litig.,* 2013 WL 5788687, at *2 (S.D.N.Y. Oct. 28, 2013) ("Rule 26(b) guides discovery in this case regardless of what was turned over to the SEC, and a balancing analysis indicates that the appropriate scope of document discovery here is more limited than what the plaintiffs request."); *see also In re WorldCom, Inc. Sec. Litig.*, 2003 WL 22953645, at *7 (S.D.N.Y. Dec. 16, 2003) ("While the record generated by the Government's work may ease the burdens of the civil litigation, the civil litigants enjoy those benefits as a matter of convenience, not as of right.... The [requesting parties] are well-represented and can fashion their own document requests without relying upon the government subpoenas."); *Chen v. Ampco Sys. Parking,* 2009 WL 2496729, at *2-3 (S.D. Cal. Aug. 14, 2009) (rejecting plaintiff's "attempt to piggyback on the discovery conducted in [four related] state cases" because "[p]laintiff must specifically ask for the documents he wants and be able to demonstrate that the information he seeks is relevant to his claims in this case").

One of the cases SHIP cites, *Alaska Electrical Pension Fund v. Bank of America Corporation*, is on point. 2017 WL 280816, at *1 (S.D.N.Y. Jan. 20, 2017). The plaintiffs there alleged that the defendants illegally manipulated the U.S. Dollar ISDAfix ("ISDAfix"), a benchmark interest rate incorporated into certain financial derivatives. *Id.* at *1. Initially, the plaintiffs moved to compel production of "documents relating to various regulatory investigations of Defendants' conduct with respect to ISDAfix." *Id.* The court denied this motion, concluding that the plaintiffs' blanket requests "were overbroad and encompassed materials that were plainly irrelevant." *Id.* The plaintiffs subsequently narrowed their requests "to a targeted subset of regulatory materials, including white papers, presentations, written memoranda, or briefs shown or provided to the [Government] about ISDAfix manipulation." *Id.*

On a renewed motion to compel, the court granted the plaintiffs' motion, concluding that this "more tailored request" encompassed documents that were clearly relevant. *Id.* As noted above, Beechwood is committed to producing any responsive documents in the SEC Production and is more than happy to produce documents in response to a "more tailored request."

The manner in which SHIP has attempted to piggyback on the SEC discovery in this case is particularly problematic. SHIP has refused to work with Beechwood to identify relevant documents contained within its SEC Production by providing it with a list of requested search terms. More than that, SHIP has failed to articulate in a non-conclusory manner how documents in the SEC subpoena are reasonably calculated to lead to the discovery of admissible evidence. Indeed, SHIP appears to concede that it cannot articulate a theory of relevance as to certain documents. It writes that "[t]he SEC, no doubt better informed than SHIP and Fuzion, knew precisely what it was about when it" requested information about various religious organizations. (SHIP Let. at 4.) This is pure speculation. Because SHIP seems to acknowledge that it cannot demonstrate that information it seeks is relevant to its claims in this case, its motion to compel should be denied.

SHIP's reliance on the arbitration panel's decision in *Bankers Conseco Life Insurance Company et al. v. Beechwood Re Limited et al*. is misplaced. AAA Case No. 01-16-0004-2510. This court is not bound by an interim ruling from an arbitration panel. Moreover, contrary to SHIP's characterization, the panel recognized that "producing the documents that each party produced to the SEC w[ould] likely also result in production of some irrelevant materials." (Seibert Decl., Ex. 2 ¶ 6.) The panel also acknowledged that it was "not in a position to make relevancy determinations with respect to the subpoenas or similar demands of other government agencies upon the Parties or their affiliates because [it] ha[d] not seen such documents." (*Id.* ¶ 5.) Despite this, the panel compelled production because, unlike a federal court, it was not bound by the Federal Rules of Civil Procedure. Rather, it had "inherent authority, contractual authority and authority under relevant AAA rules to require such production." (*Id.* ¶ 4.)

II. The SEC Production Was Not One of the Discovery Disputes Presented to the Court

In its letter motion, SHIP argues for the first time that Beechwood has already been ordered to produce its SEC Production. That argument, which SHIP has not raised in any discovery correspondence between the parties or during any meet and confer, comes as a complete surprise to Beechwood.

Beechwood has always made clear to SHIP that it would not be producing the entire SEC Production. Before this litigation began, Beechwood voluntarily produced nearly 200,000 pages of documents to SHIP based on broad searches of the SEC Production using SHIP-related search terms.[2] Consequently, after SHIP brought this action, Beechwood agreed to produce additional

[2] Since then, as noted, Beechwood has produced nearly 900,000 pages of documents. These documents include, among other things, documents concerning Beechwood's formation,

documents based on new searches that would be run across the universe of collected documents (which encompassed the SEC Production). (*See* Ex. A.) SHIP agreed to this approach.

In its December 3, 2018 letter outlining outstanding disputes between the parties, SHIP request that Beechwood inform it of the search terms it used to obtain the pre-litigation production. SHIP does not mention Request No. 18—which sought the SEC production—at all. Similarly, the only reference to Request No. 20, through which SHIP now seeks to shoehorn a request for all documents produced to the SEC, related to the number of investments the Beechwood parties would conduct searches for (a dispute that SHIP grouped together with 33 other requests). There was no reference to the SEC Production in that context, and it was never understood that Beechwood would just hand over its entire SEC Production without any consideration of relevance to the case or narrowing through search terms. If SHIP had at any time expressed such an understanding, the Beechwood Parties would have objected.

SHIP not only failed to raise this dispute to Beechwood, it did not submit it to the Court in December 2018. Parroting its December 3 letter, SHIP raised Request No. 20, along with 33 other discovery requests, arguing that Beechwood should be "required to produce the documents SHIP has requested relating to *each* of the investments into which the Defendants invested SHIP's money." (Seibert Decl., Ex. 10 at 8.) In turn, Beechwood argued that it should only have to run searches for documents that SHIP identified as "allegedly problematic," but not necessarily "any of the 47 transactions which [were] not identified in its complaint." (*Id.* at 8-9.)

On January 7, 2019, the Court issued a bottom-line ruling in favor of SHIP on the 34 requests. (*Id.* Ex. 11.) In compliance with the order, Beechwood has since produced documents that hit on 75 search terms related to the work Beechwood performed under the IMAs and the investments identified by SHIP.

SHIP's recently adopted position that the Court compelled Beechwood to produce the entire SEC production comes completely out of left field. Indeed, despite what it now tells the Court, SHIP has acknowledged that it never raised the SEC Production it now seeks to compel for resolution by the Court. On February 4, 2019, counsel for Beechwood responded to a discovery letter from SHIP regarding certain documents that had been produced by Beechwood to the SEC and CNO.[3] Counsel for Beechwood explained that SHIP's request was "simply a reiteration of Request No. 18 of Plaintiff's First Request for Production of Documents." It continued: "Defendants objected to that request and repeatedly informed SHIP that we had only

---

investment strategy, capitalization, as well as deal files and search term hits related to more than 50 investments requested by SHIP.

[3] This subset of documents consisted of non-privileged search-term hits requested by the Black Elk Litigation Trustee in connection with a third-party subpoena issued in *Schmidt v. Nordlicht et al.*, No. 2016-76291 (Harris Co. Tex.) These documents were subsequently produced to the SEC, then to CNO, then to SHIP as part of a "discovery loop" created by the parties' various piggyback requests. *In re Weatherford Int'l Sec. Litig.*, 2013 WL 5788687 at *4.

produced a subset of [the] SEC relevant to SHIP. You did not raise this objection with the court despite seeking judicial intervention regarding defendants' responses and objections to dozens of other requests." (Ex. B.) In response, counsel for SHIP acknowledged the parties' understanding that "Beechwood w[ould] turn over any and all documents from its SEC productions *that relate to SHIP*." (Ex. C.) SHIP reserved its rights as to the "balance of the SEC production," which it now seeks to compel wholesale. (*Id.*)

III. Beechwood's Purported Access to Its Own Documents Prejudices Nobody

Finally, SHIP advances the bizarre notion that it is somehow prejudiced by the fact that CNO purported to produce Beechwood's *own* documents back to *Beechwood* in this litigation. That argument barely makes sense and is wholly unpersuasive. Beechwood expressly informed CNO that it was not seeking its own documents, and it has not even downloaded CNO's production—so the genie is not "out of the bottle." Beechwood has committed to producing all relevant documents contained within SEC production in this litigation. In fact, it has produced many of them already. The only way "chaos" will ensue at depositions is if CNO attempts to use documents from the arbitration—which it should not—when those same documents have already been or soon will be made available in this litigation. In any event, a party always has access to its own documents. The idea that Beechwood is garnering some sort of advantage from looking at its own documents is nonsensical.

There is no basis for SHIP's motion and Beechwood respectfully urges that it be denied. Nevertheless, Beechwood again offers that it will promptly produce any and all documents from the SEC Production that SHIP or any other party shows are relevant to these actions.

Respectfully submitted,

Mark Harris

Mark D. Harris

Enclosures

cc: All Counsel of Record (by ECF)

EXHIBIT A

DLA Piper LLP (US)
1251 Avenue of the Americas
27th Floor
New York, New York 10020-1104
www.dlapiper.com

R. Brian Seibert
brian.seibert@dlapiper.com
T 212.335.4534
F 917.778.8534

By Email and First Class Mail

December 3, 2018

Mark D. Harris, Esq.
Steven H. Holinstat, Esq.
Edward J. Canter, Esq.
Stacey P. Eilbaum, Esq.
Proskauer Rose LLP
Eleven Times Square
New York, New York 10036

John Jureller, Jr., Esq.
Klestadt Winters Jureller Southard & Stevens, LLP
200 West 41st Street, 17th Floor
New York, New York 10036

Re: Senior Health Insurance Company of Pennsylvania v. Beechwood Re, Ltd., et al., No. 18-cv-06658 (JSR) (SDNY)

Dear Counsel:

We write to follow up on our discussions on November 21, 2018 regarding Defendants' Response to Plaintiffs' First Request for Production of Documents. Given that we understand the parties to be at an *impasse* with respect to certain of SHIP's requests and Defendants' objections to the same, please let us know of a time on Thursday, December 6, 2018 for the parties to contact Chambers to discuss the pending discovery disputes, as required by Judge Rakoff's Individual Court Rules.

I. Search Terms Used Relating to Defendants' Document Production to SEC

During our call, you informed us that the 18,303 documents that Defendants previously provided to SHIP, which represent a portion of the documents Defendants have produced to the SEC, may be deemed to have been produced in this action. We asked you to provide the search terms that were used to search for the documents that Defendants have produced to the SEC as well as the terms applied to identify the subset of those documents that were provided to SHIP. You agreed to take this request under advisement and to let us know if you would provide these terms. Please let us know your position on this request by close of business on Wednesday, December 5, 2018.

II. Defendants' Responses to SHIP's First Request for Production of Documents

A. Requests Nos. 1 – 3: You have stated that Defendants stand on their refusal to

produce documents in response to these Requests beyond the period from October 1, 2013 to May 22, 2014 because you have determined that the documents sought by these Requests are only relevant to SHIP's claim for fraudulent inducement. During our call, we discussed that it is improper for Defendants to determine to which claims Plaintiffs' discovery Requests are related and that it is also improper or Defendants to limit their responses to Requests 1 through 3 in this manner. Based on Defendants refusal to reconsider their unduly restrictive objection, we consider this dispute to be ripe for judicial intervention.

B. Request No. 7: You have refused to search for or to produce documents relating to communications with Platinum Partners apart from what may be included in the subset of Defendants' SEC document production that have been provided to SHIP. Defendants have not provided an explanation for this overbroad limitation on SHIP's request for documents. Moreover, as we discussed, SHIP is not a party to the SEC investigation and is not aware of: (1) what requests for documents the SEC made; (2) to which entities or individuals the requests were made; (3) what, if any, objections or limitations were asserted or agreed to; (4) which custodians were included in Defendants' document production to the SEC; (5) what search terms were used to search for and identify responsive documents; and (6) what search terms or other restrictions were applied to identify the subset of the SEC document production that was provided to SHIP. We ask that you provide the complete listing of custodians and search terms used both to produce documents in response to the SEC investigation(s) as well as to provide the search terms, custodians, or other limitations that were applied to the document production to identify the subset that would be provided to SHIP. Please provide the information requested by close of business on Wednesday, December 5, 2018.

C. Request Nos. 8, 9, 10, 11, 12, 13, 14, 19, 20, 22, 23, 24, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 55: You have objected to searching for and producing documents in response to each of these Requests apart from communications or documents which relate to the specific Beechwood IMA Assets that are specifically named in the Complaint. During our discussion on November 21, you stated that you may be willing to produce the transactional or closing file relating to each of the Beechwood IMA Assets identified in our November 14, 2018 letter but that you were unwilling to conduct searches for email or other communications relating to any Beechwood IMA Assets that are not specifically named in the Complaint. As we explained, SHIP has alleged Defendants defrauded SHIP, and repeatedly breached their fiduciary duties to SHIP through their use of SHIP's assets to invest in funds that either inappropriately favored Platinum Partners or the Beechwood Entities, at SHIP's expense. Therefore, documents, including communications, relating to Beechwood's selection, analysis and investigation of each of the Beechwood IMA Assets are directly relevant to SHIP's claims. Given Defendants' continued refusal to search for and produce such documents for investments that Defendants made, using SHIP's assets, apart from those specifically named in the Complaint, we believe this issue is now ripe for judicial intervention.

D. Request No. 49: We discussed that the Defendant entities would produce financial statements for the period from 2013 through 2015 to the extent such statements exist but that

Defendants stand on their objection to producing tax returns for any of the Individual Defendants for any of the years requested (2010 to the present). SHIP has alleged that the Individual Defendants were unjustly enriched by the Defendants' misuse of SHIP's assets and as such the tax returns for the Individual Defendants are relevant to the claims and defenses at issue. Given Defendants' refusal to produce these tax returns, we consider this matter to be ripe for judicial intervention.

We have endeavored to summarize our discussions accurately but please let us know if you have a different understanding regarding the matters addressed in this letter. In the meantime, SHIP reserves all rights and waives none. Thank you for your attention to this matter.

Very truly yours,

R. Brian Seibert

cc: Aidan M. McCormack
Kathleen A. Birrane
James D. Mathias
Mark L. Deckman

162587193

EXHIBIT B

Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

February 4, 2019

Steven H. Holinstat
Senior Counsel
d +1.212.969.3104
f 212.969.2900
sholinstat@proskauer.com
www.proskauer.com

By Email

Ellen E. Dew, Esq.
DLA Piper LLP (US)
6225 Smith Avenue
Baltimore, Maryland 21209

Re: ***Senior Health Insurance Company of Pennsylvania v. Beechwood Re Ltd.*, No. 18-cv-06658 (JSR) (SDNY)**

Dear Ellen:

I write in response to your February 1, 2019 letter concerning discovery issues in the above-captioned action.

First, given that defendants have produced roughly three times as many documents as SHIP, it is disingenuous for you to describe their production as somehow being "limited." In any event, we are in the process of reviewing documents responsive to SHIP's First Request for Production of Documents (including those subject to this Court's January 7, 2019 order), and will continue to produce them on a rolling basis. We expect to produce another batch of documents later this week.

Second, with respect to your assertion that we recently produced documents to CNO in the pending arbitration and to the SEC, please advise how you became aware of this supposed production and on what basis you believe these documents are relevant to SHIP's action. We are obviously concerned that you may have acquired this information potentially in breach of the Confidentiality Order governing the CNO arbitration.

In any event, your recent request is simply a reiteration of Request No 18 of Plaintiff's First Request for Production of Documents. Defendants objected to that request and repeatedly informed SHIP that we had only produced a subset of SEC production relevant to SHIP. You did not raise this objection with the court despite seeking judicial intervention regarding defendants' responses and objections to dozens of other requests.

Third, we have reviewed the three documents you have identified as having allegedly improper redactions. With respect to BW-SHIP-00076009 and BW-SHIP-00145776, the redacted portions of these documents refer or relate to legal-advice from Beechwood's in-house counsel, and thus there is nothing improper about these redactions. As for BW-SHIP-00079563, the redaction was inadvertent. However, you presumably know this because a quick search of defendants' production to you reveals that at least 27 versions of the same document have already been produced in ***unredacted form***. *See*, *e.g.*, BW-SHIP-00079565, BW-SHIP-00079567, BW-SHIP-00079569, BW-SHIP-00079573, BW-SHIP-00079577, BW-SHIP-00025661, BW-SHIP-00079582, BW-SHIP-00079595, BW-SHIP-00025672, BW-SHIP-

00079608, BW-SHIP-00079610, BW-SHIP-000795, BW-SHIP-00025676, BW-SHIP-00079613, BW-SHIP-00079627, BW-SHIP-00025687, BW-SHIP-00079641, BW-SHIP-00079645, BW-SHIP-00025691, BW-SHIP-00079649, BW-SHIP-00079653, BW-SHIP-00079657, BW-SHIP-00025695, BW-SHIP-00079661, BW-SHIP-00079676, BW-SHIP-00079681, BW-SHIP-00079696, BW-SHIP-00025707. Rather than reproduce the document, we simply refer you to one of the two dozen versions you already have.

Finally, we are still awaiting metadata for the balance of SHIP's production, as you had previously agreed. Please advise when you will be supplementing your productions to provide such metadata.

We presume that the foregoing adequately addresses all of the concerns raised in your letter. If not, we are available to meet and confer next week about any remaining issues.

Sincerely,

/s/
Steven H. Holinstat

EXHIBIT C

DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209
www.dlapiper.com

Ellen E. Dew
ellen.dew@dlapiper.com
T 410.580.4127
F 410.580.3127

By Email and First Class Mail

February 8, 2019

Steven H. Holinstat, Esquire
Proskauer Rose LLP
Eleven Times Square
New York, New York 10036

Re: Senior Health Insurance Company of Pennsylvania v. Beechwood Re, Ltd., et al., No. 18-cv-06658 (JSR) (SDNY)

Dear Steven:

We have received today's document production from the Defendants and look forward to receiving the balance of Defendants' document production in response to Plaintiff Senior Health Insurance Company of Pennsylvania's ("SHIP") First Request for Production of Documents. It is critically important that Defendants produce documents on a timely basis so that the parties can move forward with depositions in the above-referenced case as well as in the Consolidated Actions.

In your February 4, 2019 letter, you asked how SHIP became aware that Beechwood produced 300,000 pages of documents to the SEC and to CNO (in the pending arbitration) in December 2018. We became aware of Beechwood's production by reading the reply filed by Bankers Conseco Life Insurance ("BCLIC") in support of its motion to quash the subpoena Beechwood issued to BCLIC in this case that is currently pending before Judge Rakoff.

Indeed, we were surprised that Beechwood itself did not disclose to SHIP that it has produced additional documents to the SEC. As your letter acknowledges, such documents are responsive to SHIP's Request No. 18 in the First Request for Production of Documents. What's more, in light of the existing agreement between SHIP and Beechwood that Beechwood will turn over any and all documents from its SEC productions that relate to SHIP, we expect that, at a minimum, these documents will be included in your next document production to SHIP. With respect to the balance of Beechwood document productions to the SEC, as our previous correspondence has made clear SHIP reserves all rights to raise this matter with the Court along with any other deficiencies in Defendants' responses to SHIP's discovery requests.

DLA PIPER

Very truly yours,

Ellen E. Dew

cc: All Counsel of Record in Consolidated Actions

EAST\164400455.1