

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SENIOR HEALTH INSURANCE COMPANY OF :  
PENNSYLVANIA, :  
: :  
Plaintiff, : Master Case No. 1:18-cv-06658 (JSR)  
: :  
v. : :  
: Case No. 1:19-cv-07137 (JSR)  
LINCOLN INTERNATIONAL LLC and LINCOLN :  
PARTNERS ADVISORS LLC, :  
: :  
Defendants. :  
: :  
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**LOCAL RULE 56.1 STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF  
LINCOLN INTERNATIONAL LLC AND LINCOLN PARTNERS ADVISORS LLC'S  
MOTION FOR SUMMARY JUDGMENT**

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LLC and Lincoln Partners Advisors LLC*

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Court for the Southern and Eastern Districts of New York, Defendants Lincoln International LLC and Lincoln Partners Advisors LLC, in connection with their Motion for Summary Judgment, set forth the following statement of material facts as to which no genuine issue exists.

**A. Description of the Defendants**

1. Lincoln International LLC (“Lincoln International”) and Lincoln Partners Advisors LLC (“Lincoln Partners” or “Lincoln”) are sister companies and wholly-owned subsidiaries of Lincoln International, LP. (Ex. 1 (Fisch Decl.) at ¶ 2.)<sup>1</sup>

2. Lincoln Partners offers a range of valuation services through its Valuations and Opinions Group (“VOG”). (Ex. 1 (Fisch Decl.) at ¶ 3.)

**B. Lincoln Enters Into Beechwood Engagement**

3. In November 2013, Michael Fisch, Managing Director of VOG, received a telephone call from Will Slota, then Chief Operating Officer of Platinum Partners LP (“Platinum”), regarding a potential need for valuation services for Platinum and a newly formed reinsurance entity named Beechwood Re Ltd. (Ex. 2 (Fisch Dep.) at 8:12-8:19, 12:01-13:11; Ex. 3 (Lincoln-00003081) at 00003082.)

4. On February 19, 2014, Lincoln Partners entered into an engagement letter with B Asset Manager, LP, together with its subsidiaries and affiliates (collectively, “Beechwood”). (Ex. 4 (LINCOLNSUB-00012065).)

5. Lincoln International was not a party to the engagement letter. (*Id.*)

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<sup>1</sup> All exhibits are attached to the declaration of William Ridgway, filed herewith.

6. The engagement letter provided that Lincoln would perform quarterly positive assurance valuations, which would:

be used by the Board of Directors of [Beechwood] to assist with its determination of the fair value of the Investments in accordance with the fair measurement principles of the Financial Accounting Standards Board Codification, Topic 820 - Fair Value Measurements and Disclosures, formerly Financial Accounting Standards No. 157 (“ASC-820”); provided, however, the Board of Directors of [Beechwood would] ultimately [be] responsible for such determination.

(*Id.* at 00012065.)

7. “With respect to positive assurance, Lincoln [agreed] to review [Beechwood’s] determination of fair value and provide its opinion as to whether, based on its review, the fair value of each of the Investments is reasonable in accordance with ASC-820.” (*Id.*)

8. Beechwood “acknowledge[d] that providing valuations is not by its nature an exact science and that the conclusions contained in the Valuations will be subject to, and dependent on, the exercise of individual judgment by Lincoln.” (*Id.*)

9. The engagement letter required Beechwood to furnish Lincoln with information and data concerning the investments that was “complete and correct in all material respects and [did] not contain any untrue statement of material fact or omit to state a material fact.” (*Id.* at 00012066.)

10. Beechwood further agreed “that it [would] not permit any Valuation, any summary of or excerpt from any Valuation or any written materials prepared by Lincoln and provided to [Beechwood] in support of any Valuation . . . to be given to anyone who is not a party to this [engagement letter].” (*Id.*)

11. Notwithstanding the foregoing, Beechwood was allowed to provide the valuations “in their entirety once in final form to [Beechwood’s] auditors for information purposes as required in connection with the preparation of the Company’s financial statements” and “to any existing

lenders to and/or investors of [Beechwood] for review purposes only under confidentiality and non-reliance restrictions in form and substance acceptable to Lincoln.” (*Id.* at 00012066-00012067.)

12. Beechwood agreed to compensate Lincoln \$5,500 per portfolio company valued per quarter up to ten portfolio companies, plus \$5,000 per portfolio company valued per quarter between eleven and forty portfolio companies, plus \$4,500 per portfolio company valued per quarter above forty portfolio companies. (*Id.* at 00012067.)

13. Subsequently, Lincoln and Beechwood reached an agreement by which Lincoln would provide monthly “negative assurance” valuations in addition to the quarterly positive assurance conclusions. (Ex. 5 (Fisch 30(b)(6) Dep.) at 23:10-23:23.)

14. In rendering the negative assurance valuations, Lincoln would analyze Beechwood’s fair values for the investments and provide its opinion on whether, based on its review, Beechwood’s fair value estimates were not unreasonable in accordance with ASC 820. (*Id.* at 24:17-25:04; Ex. 6 (LINCOLNSUB-00000570) at 00000570.)

### **C. ASC 820**

15. ASC 820 provides a standard for the fair value measurement of an asset for financial reporting. (Ex. 7 (ASC 820).)

16. The ultimate objective of a fair value measurement is “to estimate the price at which an orderly transaction to sell the asset . . . would take place between market participants at the measurement date under current market conditions.” (*Id.* at 10-05-1B.)

17. To perform the fair value measurement, ASC 820 provides a “fair value hierarchy” that gives the “highest priority to quoted prices . . . in active markets for identical assets” (Level 1 Input), and lower priority to “inputs other than quoted prices . . . that are observable” based on publicly available market data (Level 2 Input). (*Id.* at 10-35-37, 10-35-47.)

18. Lowest priority is assigned to “unobservable inputs,” which constitute “inputs for which market data are not available and that are developed using the best information available” (Level 3 Input). (*Id.* at 10-35-47, 10-20.)

19. ASC 820 does not prescribe a particular method for ascertaining Level 3 Inputs, but cites as examples an “income approach,” such as discounted cash flow analysis, and a “market approach,” such as using quoted prices for similar financial instruments. (*Id.* at 10-55-3A – 10-55-3G.)

20. As ASC 820 contemplates, the fair value measurement of an asset requires the exercise of “judgment, taking into account factors specific to the asset.” (*Id.* at 10-35-37A.)

21. Under ASC 820, the ultimate responsibility for reporting fair value lies with the “reporting entity” (here, Beechwood). (*Id.* at 10-50.)

22. When related parties transact, a reporting entity may still assign value to those assets pursuant to ASC 820. (*Id.* at 10-30-3A; Ex. 8 (Kennelly Rep.) at 31.)

23. The same “fair value hierarchy” described above applies to an asset that was exchanged in related-party transaction. (Ex. 7 (ASC 820) at 10-35-37.)

24. The only difference is whether the transaction price between related parties may be used as an “input to a fair value measurement,” which it can “if the reporting entity has evidence that the transaction was entered into at market terms.” (*Id.* at 10-30-3A.)

#### **D. Lincoln Valuation Process**

25. Lincoln’s role in providing positive and negative assurance of Beechwood’s fair value measurements was limited in scope, a standard arrangement in the industry. (Ex. 1 (Fisch Decl.) at ¶ 6; Ex. 8 (Kennelly Rep.) at 18.)

26. In performing its valuations, Lincoln relied on information from Beechwood, as well as existing economic, financial, and market conditions, to opine whether Beechwood’s fair

value estimates were reasonable (for positive assurance) or not unreasonable (for negative assurance), in accordance with ASC 820. (Ex. 1 (Fisch Decl.) at ¶ 7; Ex. 9 (LINCOLNSUB-00001291) at 00001365-00001366.)

27. Given the scope of Lincoln's engagement, it had no authority or responsibility to audit Beechwood's records, assess its investment strategy, independently appraise the assets and liabilities of any portfolio company, or interview the management of any portfolio company. (Ex. 1 (Fisch Decl.) at ¶ 8; Ex. 9 (LINCOLNSUB-00001291) at 00001293.)

28. Most of the assets that Lincoln valued for Beechwood were illiquid and lacked observable market inputs, so the estimate of fair value depended on unobservable inputs. (Ex. 1 (Fisch Decl.) at ¶ 9; Ex. 10 (Kennelly Dep.) at 72:15-73:14.)

29. Lincoln understood that Beechwood had ties to Platinum, and thus considered any transactions between the two as related-party transactions. (Ex. 2 (Fisch Dep.) at 49:20-50:02, 57:12-57:16.)

30. Related-party transactions are not uncommon and are capable of receiving a fair value measurement. (Ex. 8 (Kennelly Rep.) at 31; Ex. 10 (Kennelly Dep.) at 9:08-9:11, 12:05-12:15.)

31. When identifying an entry price for a Beechwood asset, Lincoln analyzed whether there was evidence the transaction was entered into at market terms, which it corroborated in part using Lincoln's internal proprietary data regarding the terms of similar debt instruments. (Ex. 1 (Fisch Decl.) at ¶ 10; Ex. 10 (Kennelly Dep.) at 52:06-52:19; Ex. 8 (Kennelly Rep.) at 19-20.)

32. The initial transaction price (adjusted based on ensuing market conditions) was merely one input in Lincoln's fair value measurements. (Ex. 1 (Fisch Decl.) at ¶ 11.)

33. Lincoln evaluated several other inputs, relying on the income and market approaches. (*Id.*; Ex. 9 (LINCOLNSUB-00001291) at 00001365-00001366.)

34. Within Lincoln, all valuations undergo several levels of review. (Ex. 1 (Fisch Decl.) at ¶ 12; Ex. 11 (Buck Dep.) at 25:08-25:14.)

35. First, an analyst or associate prepares a valuation model for a particular investment based on information provided by the client (both orally and in writing) and gathered from public sources. (Ex. 1 (Fisch Decl.) at ¶ 12; Ex. 11 (Buck Dep.) at 31:03-31:17; Ex. 12 (Trowbridge Dep.) at 27:02-27:17.)

36. That model is reviewed by an associate and/or project manager and then by VOG's "Technical Review Committee," a group comprised of VOG's managing directors and certain senior advisors. (Ex. 1 (Fisch Decl.) at ¶ 12; Ex. 11 (Buck Dep.) at 31:03-31:17; Ex. 12 (Trowbridge Dep.) at 27:15-28:18; 65:04-65:08.)

37. If the Technical Review Committee approves the valuation model and conclusions, the analyst and associate prepare a draft of the valuation report, which is shared with the client and may undergo additional revisions. (Ex. 1 (Fisch Decl.) at ¶ 12; Ex. 11 (Buck Dep.) at 31:03-31:24; Ex. 12 (Trowbridge Dep.) at 28:19-29:05.)

38. Before a final valuation report is issued, the report is reviewed and approved by one or more of VOG's managing directors. (Ex. 1 (Fisch Decl.) at ¶ 12; Ex. 12 (Trowbridge Dep.) at 28:19-29:05.)

#### **E. SHIP and Beechwood Execute the Investment Management Agreements**

39. SHIP is a long-term care insurance company operating in run-off—i.e., SHIP does not write new business and will cease operating once its remaining policies and obligations have been satisfied. (Ex. 13 (Staldine Dep.) at 11:12-11:22.)

40. In early to mid-2014, SHIP and Beechwood engaged in discussions regarding the prospect of Beechwood providing investment services to SHIP. (Ex. 14 (Wegner Dep.) at 39:17-39:23.)

41. On April 10, 2014, Beechwood emailed Brian Wegner, SHIP's then-CEO, two presentations regarding Beechwood's "asset management capabilities, strategies, and platform." (Ex. 15 (SHIP0019191).)

42. The first presentation contained a slide that stated, "Lincoln Valuation Group evaluates all valuations on a quarterly basis." (*Id.* at 0019198.)

43. The second presentation contained two slides purporting to describe "Lincoln's General Valuation Methodology" and "Lincoln Scope." (*Id.* at 0019225-0019226.)

44. The slide titled "Lincoln Scope" states that: (i) "Valuation conclusions and data [would be] provided by Beechwood," and (ii) Lincoln would conduct "[l]imited procedures" and "[l]imited due diligence" in rendering the positive and negative assurances. (*Id.* at 0019226.)

45. Lincoln neither prepared nor reviewed the presentations, and did not know the presentations were taking place. (Ex. 1 (Fisch Decl.) at ¶ 15.)

46. SHIP subsequently entered into three Investment Management Agreements with certain Beechwood affiliates for the provision of investment management and advisory services (the "IMAs"). (Ex. 16 (SHIP0019746); Ex. 17 (SHIP0019769); Ex. 18 (SHIP0019797).)

47. The first IMA, with Beechwood Bermuda International Ltd., was executed as of May 22, 2014 (the "BBIL IMA"); the second IMA, with Beechwood Re Ltd, was executed as of June 13, 2014 (the "Bre IMA"); and the third IMA, with B Asset Manager LP, was executed as of January 15, 2015 (the "BAM IMA"). (*Id.*)

48. Lincoln did not participate in any sales pitches to SHIP, and at no point prior to entering the IMAs did SHIP communicate with Lincoln. (Ex. 19 (Robison Dep.) at 148:18-148:25; Ex. 20 (Lorentz Dep.) at 256:18-256:24; Ex. 21 (SHIP's Responses to Lincoln's Request for Admissions) at 3-4.)

49. The BBIL IMA and the BRe IMA guaranteed an investment return to SHIP "equal to 5.85% per annum (non-compounded) of the net asset value of the Assets contributed to the Account as of the date of the [IMAs] (the 'Initial NAV')." (Ex. 16 (SHIP0019746) at 0019765; Ex. 17 (SHIP0019769) at 0019788.)

50. Any annual shortfall in the investment return obligated Beechwood to make a "true-up payment." (Ex. 16 (SHIP0019746) at 0019766; Ex. 17 (SHIP0019769) at 0019789.)

51. Conversely, Beechwood was entitled to a "performance fee" equal to 100% of the amount by which the net profit exceeded the investment return of the account for the year. (Ex. 16 (SHIP0019746) at 0019765; Ex. 17 (SHIP0019769) at 0019788.)

52. For purposes of calculating the performance fee, investment return and true-up payment, the value of the account as of January 1 of each year was to be calculated as the "Initial NAV plus any accrued and unpaid Investment Return for such Year." (Ex. 16 (SHIP0019746) at 0019766; Ex. 17 (SHIP0019769) at 0019789.)

53. The BAM IMA did not expressly guarantee an investment return to SHIP. (*See* Ex. 18 (SHIP0019797).)

54. Rather, SHIP entered into a side letter with Beechwood Re Investments LLC, which guaranteed an annual investment return of 5.85% per annum (non-compounded) of the net asset value of the assets contributed by SHIP under the BAM IMA. (Ex. 22 (SHIP\_LP\_0071672).)

55. The IMAs provided that for any investment for which there was no price quotation available, the investment would be “valued by or at the discretion of [Beechwood] in its reasonable discretion in a manner determined in good faith to reflect fair market value.” (Ex. 16 (SHIP0019746) at 0019751; Ex. 17 (SHIP0019769) at 0019774; Ex. 18 (SHIP0019797) at 0019801.)

56. The IMAs further provided that, within 15 days after the end of each fiscal quarter, Beechwood would provide SHIP “valuation reports from an independent third-party valuation company (currently Lincoln International) on all non-public securities.” (Ex. 16 (SHIP0019746) at 0019768; Ex. 17 (SHIP0019769) at 0019792; Ex. 18 (SHIP0019797) at 0019833.)

57. Lincoln had no knowledge of the terms of the IMAs. (Ex. 1 (Fisch Decl.) at ¶ 14.)

58. Wilmington Trust served as the custodian for the IMA accounts. (Ex. 19 (Robison Dep.) at 167:18-168:03.)

#### **F. Lincoln Performs Valuations for Beechwood**

59. Prior to SHIP’s entry into the IMAs, Lincoln issued one positive assurance valuation for the quarter ending March 31, 2014, and two negative assurance letters for the months ending February 28, 2014, and April 30, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, and Bre WNIC 2013 LTC Sub. (Ex. 23 (LINCOLNSUB-00000572) at 00000590, 00000601, 00000610, 00000623, 00000633, 00000642, 00000652, 00000665, 00000667, 00000679, 00000694; Ex. 24 (LINCOLNSUB-00000001) at 00000002; Ex. 25 (LINCOLNSUB-00000003) at 00000004-00000005.)

60. On June 4, 2014, Lincoln issued two negative assurance letters for the month ending May 30, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, and BBIL

ULICO 2014. (Ex. 26 (LINCOLNSUB-00000546) at 00000547-00000548; Ex. 27 (LINCOLNSUB-00000317) at 00000318.)

61. On July 8, 2014, Lincoln issued a positive assurance valuation for the quarter ending June 30, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, and Bre WNIC 2013 LTC Sub. (Ex. 28 (LINCOLNSUB-00000700) at 00000716, 00000727, 00000737, 00000748, 00000757, 00000770, 00000783, 00000793, 00000800, 00000812, 00000823, 00000830, 00000840, 00000853, 00000855, 00000868, 00000883.)

62. On July 18, 2014, Lincoln issued a positive assurance valuation for the quarter ending June 30, 2014, which valued investments in BBIL ULICO 2014. (Ex. 29 (LINCOLNSUB-00000191) at 00000207, 00000216, 00000229, 00000239, 00000241.)

63. On August 5, 2014, Lincoln issued two negative assurance letters for the month ending July 31, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, BBIL Custody, and BBIL ULICO 2014. (Ex. 30 (LINCOLNSUB-00000549) at 00000550-00000551; Ex. 31 (LINCOLNSUB-00000319) at 00000320.)

64. On September 8, 2014, Lincoln issued two negative assurance letters for the month ending August 30, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, BBIL Custody, and BBIL ULICO 2014. (Ex. 32 (LINCOLNSUB-00000553) at 00000554-00000556; Ex. 33 (LINCOLNSUB-00000321) at 00000322.)

65. On October 7, 2014, Lincoln issued a positive assurance valuation for the quarter ending September 30, 2014, which valued investments in Beechwood Bermuda International Ltd.

and BBIL ULICO 2014. (Ex. 34 (LINCOLNSUB-00000252) at 00000268, 00000277, 00000290, 00000300, 00000302, 00000308.)

66. On October 20, 2014, Lincoln issued a positive assurance valuation for the quarter ending September 30, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, and Bre WNIC 2013 LTC Sub. (Ex. 35 (LINCOLNSUB-00000892) at 00000911, 00000921, 00000932, 00000941, 00000950, 00000958, 00000972, 00000985, 00000995, 00001002, 00001014, 00001025, 00001036, 00001043, 00001053, 00001066, 00001068, 00001081, 00001097, 00001108.)

67. On November 5, 2014, Lincoln issued two negative assurance letters for the month ending October 31, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, BBIL Custody, and BBIL ULICO 2014. (Ex. 36 (LINCOLNSUB-00000562) at 00000563-00000565; Ex. 37 (LINCOLNSUB-00000326) at 00000327-00000328.)

68. On December 4, 2014, Lincoln issued two negative assurance letters for the month ending November 30, 2014, which valued investments in the following Beechwood trust accounts: Bre BCLIC Primary, Bre BCLIC Sub, Bre WNIC 2013 LTC Primary, Bre WNIC 2013 LTC Sub, BBIL Custody, and BBIL ULICO 2014. (Ex. 38 (LINCOLNSUB-00000566) at 00000566-00000569; Ex. 39 (LINCOLNSUB-00000329) at 00000330-00000331.)

69. The reports issued between March 7, 2014, and December 4, 2014, do not reference SHIP, the SHIP custody accounts, or the value of Beechwood's investments in the SHIP custody accounts. (Ex. 23 (LINCOLNSUB-00000572); Ex. 24 (LINCOLNSUB-00000001); Ex. 25 (LINCOLNSUB-00000003); Ex. 26 (LINCOLNSUB-00000546); Ex. 27 (LINCOLNSUB-00000317); Ex. 28 (LINCOLNSUB-00000700); Ex. 29 (LINCOLNSUB-00000191); Ex. 30

(LINCOLNSUB-00000549); Ex. 31 (LINCOLNSUB-00000319); Ex. 32 (LINCOLNSUB-00000553); Ex. 33 (LINCOLNSUB-00000321); Ex. 34 (LINCOLNSUB-00000252); Ex. 35 (LINCOLNSUB-00000892); Ex. 36 (LINCOLNSUB-00000562); Ex. 37 (LINCOLNSUB-00000326); Ex. 38 (LINCOLNSUB-00000566); Ex. 39 (LINCOLNSUB-00000329).)

70. Over the course of the engagement, Lincoln personnel grew frustrated because Beechwood was slow to provide Lincoln with the information that it requested, which made the valuation process more time intensive. (Ex. 12 (Trowbridge Dep.) at 39:15-40:16; Ex. 40 (O’Kane Dep) at 17:13-17:20.)

71. In December 2014, Beechwood informed Lincoln of the existence of a guarantee from Platinum, which had not been previously disclosed to Lincoln. (Ex. 2 (Fisch Dep.) at 65:11-65:16.)

72. Concerned “that there could be other instances where [Lincoln] didn’t have complete information on the other investments,” Lincoln “instructed the team to perform a detailed review and analysis of each of the [investment] names to ensure that there were no other instances of missing information.” (*Id.* at 65:17-66:06.)

73. On December 16, 2014, Lincoln associate Wesley Trowbridge sent an email to the Lincoln analysts informing them that there has been “some internal debate regarding some of [Beechwood’s] investments” and that Lincoln “will need to make some changes to the[] methodologies.” (Ex. 41 (LINCOLNSUB-00020579).)

74. Trowbridge requested that the analysts “hold off on preparing reports for securities with maturities on or before June 30, 2015.” (*Id.*)

75. Shortly thereafter, analyst Christopher Buck replied to the email with a link to a *South Park* video clip, which depicts a character, upon seeing two individuals at his door, dropping a coffee mug and stating “Oh my God.” (*Id.*; Ex. 42 (Wirth Dep.) at 21:16-21:23.)

76. Buck circulated the video clip “[b]ecause it meant more work for us around year-end, and it was a busy time around the holidays.” (Ex. 11 (Buck Dep.) at 98:24-99:03.)

77. Lincoln analyst Jason Wirth responded to the email chain with a link to another *South Park* video clip with the statement “Beechwood investment strategy?” (Ex. 41 (LINCOLNSUB-00020579).)

78. The *South Park* clip sent by Wirth depicts money being invested in a series of complicated investments, which leads to the money being “gone.” (Ex. 42 (Wirth Dep.) at 24:16-25:08.)

79. Wirth circulated the video “to draw a parallel between the complicated nature of Beechwood’s investments relative to the complicated nature of the investments [described] in [the] video.” (*Id.* at 25:13-25:16.)

80. On December 22, 2014, Lincoln requested that Beechwood provide additional information and documentation regarding, among other things, “the guarantee arrangement for each loan in the portfolio that has a guarantee” and “[f]or each portfolio company, whether Platinum or another affiliate is a control equity investor (in the legal or economic sense), minority equity investor, or lender to the company.” (Ex. 43 (Lincoln-00002533).)

81. On December 23, 2014, analyst Wirth emailed a quote from the personal website of Mark Nordlicht to other members of the Lincoln team and asked, “Tis the season to give Beechwood par marks?,” (Ex. 44 (LINCOLNSUB-00021018)), which Wirth characterized as “sarcasm.” (Ex. 42 (Wirth Dep.) at 32:04-33:23.)

82. On December 29 and 30, 2014, Lincoln's analysts performed additional reviews of the investments, including a "comprehensive news search for each of [the] portfolio companies." (Ex. 45 (LINCOLNSUB-00021099); Ex. 46 (Lincoln-00001117); Ex. 47 (Lincoln-00001699) at 00001705; Ex. 48 (Lincoln-00004973); Ex. 49 (Lincoln-00001696).)

83. Also on December 30, 2014, Lincoln sent Beechwood an email attaching a "consolidated information request list [Lincoln] prepared for the Beechwood portfolio," which was "the result of a comprehensive review [Lincoln] performed over the past few days for the portfolio valuations in light of a variety of developments including recent volatility in the energy markets, the approaching maturity dates of several of the investments, a bankruptcy filing (in the case of San Gold), and several new pieces of information that [Lincoln had] received from Beechwood over the past week." (Ex. 50 (LINCOLNSUB-00021108).)

84. Later that day, Beechwood emailed Lincoln attaching its responses to Lincoln's information request list. (Ex. 51 (LINCOLNSUB-00021127).)

85. Beechwood also provided Lincoln with additional documentation for the investments. (Ex. 52 (LINCOLNSUB-00020852); Ex. 53 (Lincoln-00004455); Ex. 54 (LINCOLNSUB-00021027); Ex. 55 (LINCOLNSUB-00021197); Ex. 56 (LINCOLNSUB-00021276); Ex. 57 (Lincoln-00002730).)

86. Lincoln also met with Beechwood's auditor, KPMG, "to understand the extent and nature of certain guarantees that were part of the investments that Beechwood was making." (Ex. 2 (Fisch Dep.) at 55:07-55:13; Ex. 58 (Lincoln-00001142).)

87. Lincoln also reconvened a meeting of its Technical Review Committee to revisit the valuation analyses for certain investments. (Ex. 2 (Fisch Dep.) at 61:16-62:11.)

88. Upon completion of the additional diligence, Lincoln concluded it had enough information to issue valuation reports for the fourth quarter. (Ex. 5 (Fisch 30(b)(6) Dep.) at 28:19-28:21; Ex. 2 (Fisch Dep.) at 70:16-70:23, 81:10-81:18.)

89. On January 16, 2015, Beechwood informed Lincoln that it would need three separate reports: a “Beechwood Re CNO report, a BBIL ULICO report and a Beechwood re/BBIL Ship report.” (Ex. 59 (LINCOLNSUB-00022487).)

90. 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. (Ex. 60 (LINCOLNSUB-00000006); Ex. 61 (LINCOLNSUB-00000332); Ex. 9 (LINCOLNSUB-00001291).)

91. In the report, Lincoln valued debt investments in four companies—MYSYRL Capital, New Bradley House, Northstar GOM Holdings, LLC, and San Gold Corp. LLC. (Ex. 9 (LINCOLNSUB-00001291) at 00001297.)

92. 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.*)

93. Lincoln also valued an equity investment in Agera Energy, as well as limited partnership investments in PPCO and Platinum Partner Value Arbitrage Fund LLC (“PPVA”). (*Id.*)

94. The partnership investments were valued based on the net asset value reported by Platinum, in accordance with ASC 820. (Ex. 8 (Kennelly Rep.) at 22-23.)

95. ASC 820 provides that a “reporting entity is permitted, as a practical expedient, to estimate the fair value of an investment . . . using the net asset value per share . . . , if the net asset value per share of the investment (or its equivalent) is calculated in a manner consistent with the

measure principles of Topic 946 as of the reporting entity’s measurement date.” (Ex. 7 (ASC 820-10-35-59).)

96. The valuation report provided the following summary of the values:

<b>Investment</b>	<b>Lincoln Range (\$) Low</b>	<b>Lincoln Range (\$) High</b>	<b>Lincoln Range (% Cost) Low</b>	<b>Lincoln Range (% Cost) High</b>
Agera Energy, LLC	\$ 40,000	\$ 75,000	n/a	n/a
MYSYRL Capital	\$ 2,006,000	\$ 2,189,000	96.5%	105.3%
New Bradley House	\$ 1,470,000	\$ 1,470,000	100.0%	100.0%
Northstar	\$ 10,533,000	\$ 11,298,000	82.6%	88.6%
PPCO	\$ 29,272,000	\$ 29,272,000	100.0%	100.0%
PPVA	\$ 8,946,000	\$ 8,946,000	99.4%	99.4%
San Gold Corp LLC	\$ 14,363,000	\$ 15,529,000	73.9%	79.9%
<b>Total</b>	<b>\$ 66,630,000</b>	<b>\$ 68,779,000</b>	<b>90.0%</b>	<b>92.9%</b>

(Ex. 9 (LINCOLNSUB-00001291) at 00001297.)

97. Because Beechwood’s valuation mark fell within Lincoln’s fair value range for each investment, Lincoln concluded that “Beechwood fair values as of December 31, 2014 . . . are reasonable, in accordance with the fair value measurement principles of [ASC 820].” (*Id.*)

98. The valuation report that valued Beechwood’s investments in the SHIP custody accounts was never sent to SHIP, nor was it sent to Wilmington Trust. (Ex. 20 (Lorentz Dep.) at 257:14-257:20; Ex. 62 (Young Dep.) at 70:02-70:13; Ex. 21 (SHIP’s Responses to Lincoln’s Request for Admissions) at 5.)

#### **G. Lincoln Terminates the Beechwood Engagement**

99. Following the issuance of the fourth quarter valuation reports, Lincoln decided to terminate the Beechwood engagement because “the process itself was absorbing an enormous amount of personnel resources” and “[t]here was a growing frustration of the team that they were spending a disproportionate amount of time” on the Beechwood engagement. (Ex. 2 (Fisch Dep.) at 82:02-82:10; *see also* Ex. 63 (Kahn Dep.) at 12:14-12:17.)

100. On February 6, 2015, Fisch emailed other members of VOG leadership informing them that Beechwood had asked Lincoln to reconsider its decision to terminate the engagement and noted that Beechwood was “willing to increase fees to make the economics work for Lincoln.” (Ex. 64 (LINCOLNSUB-00023966).)

101. The email noted that Lincoln’s “work goes well beyond positive assurance and has required substantial unanticipated senior oversight and junior processing time.” (*Id.*)

102. The email also cited as an “open question[,]” “Client integrity (this is the threshold question – do we trust them?).” (*Id.*)

103. By “integrity,” Fisch meant whether Lincoln could trust Beechwood to provide information in an efficient manner moving forward. (Ex. 2 (Fisch Dep.) at 96:13-96:21, 97:03-97:07.)

104. Lincoln declined to reconsider its decision to terminate, and the termination was effective February 19, 2015. (Ex. 65 (Lincoln-00000300).)

105. Prior to the termination of the engagement, Wesley Trowbridge emailed other members of the Lincoln team and instructed them to “delete any draft models or reports,” “in accordance with [Lincoln’s] record retention policy.” (Ex. 66 (LINCOLNSUB-00023964).)

106. Lincoln’s record retention policy states that Lincoln will adhere to various filing procedures, including “[e]liminat[ing] any draft analyses from electronic and paper files including draft versions of reports.” (Ex. 67 (Lincoln-00010396) at 00010404; *see also* Ex. 11 (Buck Dep.) at 121:05-121:17; Ex. 12 (Trowbridge Dep.) at 110:19-111:13.)

107. On February 19, 2015, Lincoln issued its final negative assurance letters to Beechwood for the month ending January 31, 2015, including one letter that valued Beechwood’s investments in the SHIP custody accounts. (Ex. 6 (LINCOLNSUB-00000570).)

108. The negative assurance letter valued investments in the same seven portfolio companies as the fourth quarter valuation, and two of the investments were valued below par. (*Id.*)

109. The negative assurance letter was never sent to SHIP, nor was it sent to Wilmington Trust. (Ex. 20 (Lorentz Dep.) at 257:14-257:20; Ex. 62 (Young Dep.) at 70:02-70:13.)

110. During the course of the Beechwood engagement, Lincoln did not know that Beechwood was engaged in any fraud or impropriety. (*See, e.g.*, Ex. 11 (Buck Dep.) at 54:04-54:06; Ex. 68 (Lawrence Dep.) at 35:25-36:02; Ex. 69 (Levine Dep.) at 23:17-23:19; Ex. 2 (Fisch Dep.) at 98:18-98:23; Ex. 12 (Trowbridge Dep.) at 44:20-45:02.)

111. Lincoln believed its valuations were reasonable and correct. (Ex. 1 (Fisch Decl.) at ¶ 13; Ex. 2 (Fisch Dep.) at 71:11-71:16.)

#### **H. Expert Opinions**

112. Lincoln's expert reviewed the supporting documentation and tested the valuation marks, concluding that the fair value measurements for December 31, 2014, and January 31, 2015, were reasonable. (Ex. 8 (Kennelly Rep.) at 19-30.)

113. SHIP's purported expert did not opine on whether any of the investments were overvalued during Lincoln's engagement. (Ex. 70 (Hart Dep.) at 163:08-163:17.)

114. SHIP's purported expert did not review Lincoln's valuation models, financial analysis, or supporting documentation, and was not aware that Lincoln conducted its own analysis for the valuations. (*Id.* at 169:18-170:03, 178:24-179:07.)

#### **I. Beechwood Engages Duff & Phelps to Perform Valuations**

115. Following Lincoln's termination of the engagement, Beechwood engaged Duff & Phelps to perform quarterly valuations for its investments, including those in the SHIP custody accounts. (Ex. 71 (SHIP0019688).)

116. Duff & Phelps issued its first valuation report for the quarter ending March 31, 2015, which was sent to SHIP on April 20, 2015. (*Id.* at 0019689.)

117. The valuation marks assigned by Duff & Phelps in its March 31, 2015 valuation report were consistent with or higher than Lincoln's valuation marks for the quarter ending December 31, 2014:

<b>Investment</b>	<b>Duff &amp; Phelps (% of Cost) Low</b>	<b>Duff &amp; Phelps (% of Cost) High</b>	<b>Lincoln (% Cost) Low</b>	<b>Lincoln (% Cost) High</b>
MYSYRL Capital	100.0%	104.0%	80.1%	88.1%
New Bradley House	100.0%	100.0%	100.0%	100.0%
Northstar	97.0%	100.0%	82.6%	88.6%
San Gold Corp LLC	98.0%	100.0%	72.2%	78.0%
San Gold Corp LLC	99.0%	100.0%	72.2%	78.0%

(*Id.* at 0019691; Ex. 9 (LINCOLNSUB-00001291); Ex. 8 (Kennelly Rep.) at 27.)

118. Duff & Phelps issued valuations reports every quarter in 2015 and 2016. (Ex. 21 (SHIP's Responses to Lincoln's Request for Admissions ) at 9.)

#### **J. Wilmington Trust Account Statements**

119. Wilmington Trust issued monthly account statements for the SHIP custody accounts, which were typically "generated on either the third or fourth business day of the following month." (Ex. 19 (Robison Dep.) at 167:22-167:24; Ex. 62 (Young Dep.) at 61:15-61:17.)

120. The Wilmington Trust account statements included a market value for each of the investments held in the account as of the end of the month. (*See, e.g.*, Ex. 76 (SHIP0015126); Ex. 77 (SHIP0014910).)

121. Wilmington Trust did not receive any Lincoln valuation reports during the existence of the SHIP IMAs. (Ex. 62 (Young Dep.) at 70:08-70:13.)

122. The market values in the Wilmington Trust account statements were based on information received by Wilmington Trust from its client, Beechwood. (Ex. 62 (Young Dep.) at 30:08-30:21.)

123. For example, on September 16, 2014, Samuel Adler (Beechwood) sent David Young (Wilmington Trust) an email titled “September Month End Values,” with an attachment titled “Copy of Beechwood Re and BBIL ULICO Investments WilmingtonV1.xls.” (Ex. 72 (WT-SHIP\_0004647).)

124. The spreadsheet attached to the email includes the fair value of certain investments in the Beechwood accounts, including the BRE SHIP custody account, as of September 30, 2014. (*Id.*)

125. Wilmington Trust used the September 16, 2014 email and spreadsheet to update the values in the SHIP custody accounts for the month ending September 30, 2014. (Ex. 62 (Young Dep.) at 71:19-72:09.)

126. The Wilmington Trust account statements for the month ending September 30, 2014, reflect a total market value with accrued income of \$82,029,142.47 for the BRe SHIP account and \$16,087,866.88 for the BBIL SHIP account. (Ex. 73 (SHIP0014892); Ex. 74 (SHIP0015104).)

127. On December 30, 2014, Samuel Adler (Beechwood) sent David Young (Wilmington Trust) an email, requesting that Young “update the highlighted positions” in the email and attached a spreadsheet titled “Beechwood Re and BBIL ULICO Investments 12.31.14 For Wilmington V2.xls.” (Ex. 75 (WT-SHIP\_0004773).)

128. The spreadsheet attached to the email includes the fair value of certain investments in the Beechwood accounts, including the BRE SHIP and BBIL SHIP custody accounts, as of December 31, 2014. (*Id.* at 0004779.)

129. Wilmington Trust used the email and spreadsheet sent on December 30, 2014, to update the values in the SHIP custody accounts for the month ending December 31, 2014. (Ex. 62 (Young Dep.) at 72:12-73:17.)

130. The Wilmington Trust account statements for the month ending December 31, 2014, reflect a total market value with accrued income of \$87,110,916.92 for the BRe SHIP account and \$16,087,866.88 for the BBIL SHIP account. (Ex. 76 (SHIP0015126); Ex. 77 (SHIP0014910).)

131. Some of the values in the December 31, 2014 Wilmington Trust account statements are different from those contained in the valuation report issued by Lincoln on January 19, 2015, for the quarter ending December 31, 2014. (Ex. 76 (SHIP0015126); Ex. 77 (SHIP0014910); Ex. 9 (LINCOLNSUB-00001291).)

132. For example:

<b>Investment</b>	<b>Wilmington Trust 12/31/14 value</b>	<b>Lincoln 12/31/14 value (Low)</b>	<b>Lincoln 12/31/14 value (High)</b>
Abatement Capital	\$ 5,563,990.30	Not valued	
Alliance One International	\$ 5,355,000.00 <sup>2</sup>	Not valued	
Black Elk Energy	\$ 11,805,965.00	Not valued	
Market value gain/loss bank loans	\$ 5,377,519.36	Not valued	
Agera (Equity)	Not included	\$ 40,000	\$ 75,000
Northstar	\$ 12,750,000.00 <sup>3</sup>	\$ 10,533,000	\$ 11,298,000

<sup>2</sup> Includes BRe SHIP account statement balance of \$3,570,000.00 and BBIL SHIP account statement balance of \$1,785,000.00

<sup>3</sup> Includes BRe SHIP account statement balance of \$10,750,000.00 and BBIL SHIP account statement balance of \$2,000,000.00.

PPVA	\$ 9,124,692.00	\$ 8,946,000	\$ 8,946,000
San Gold	\$ 19,024,640.00	\$ 14,363,000	\$ 15,529,000

133. SHIP received the December 31, 2014 Wilmington Trust account statements on January 14, 2015. (Ex. 76 (SHIP0015126); Ex. 77 (SHIP0014910).)

**K. Performance Fee Withdrawals**

134. Over the course of the IMAs, Beechwood withdrew performance fees of \$34,968,981 from the custody accounts. (Ex. 78 (SHIP0122017).)

135. Only one performance fee withdrawal occurred prior to March 1, 2015, and that withdrawal, of \$1,000,000 from the BRE SHIP account, occurred on October 2, 2014, and was for the period ending September 30, 2014. (Ex. 21 (SHIP's Responses to Lincoln's Request for Admissions) at 7; Ex. 78 (SHIP0122017); Ex. 79 (SHIP0055849).)

136. Lincoln did not issue a valuation report for Beechwood's investments in the SHIP custody accounts as of September 30, 2014. (Ex. 34 (LINCOLNSUB-00000252) at 00000268, 00000277, 00000290, 00000300, 00000302, 00000308.; Ex. 35 (LINCOLNSUB-00000892) at 00000911, 00000921, 00000932, 00000941, 00000950, 00000958, 00000972, 00000985, 00000995, 00001002, 00001014, 00001025, 00001036, 00001043, 00001053, 00001066, 00001068, 00001081, 00001097, 00001108.)

137. The next performance fee withdrawal occurred on April 6, 2015, and that withdrawal, of \$3,500,000 from the SHIP BAM account, was for the period ending March 31, 2015. (Ex. 80 (SHIP0016019); Ex. 78 (SHIP0122017).)

138. Lincoln did not value any of the SHIP IMA assets as of March 31, 2015, rather, Duff & Phelps performed valuations. (Ex. 21 (SHIP's Responses to Lincoln's Request for Admissions) at 9; Ex. 71 (SHIP0019688).)

**L. Platinum Revelations**

139. In June 2016, federal authorities arrested Murray Huberfeld, a former Platinum executive, and the ongoing federal investigation of Platinum became public. (Ex. 81 (SHIP0121297).)

140. In June 2016, SHIP had over \$65 million invested in Platinum hedge funds PPVA and PPCO. (Ex. 82 (SHIP0073083) at 0073088; Ex. 83 (SHIP0073977) at 0073982.)

141. The following month, on July 25, 2016, the Wall Street Journal published an article on the Platinum fraud probe and the ties to Beechwood. (Ex. 81 (SHIP0121297).)

142. SHIP was aware of the Wall Street Journal article shortly after it was published. (Ex. 14 (Wegner Dep.) at 125:11-125:20.)

143. On August 2, 2016, SHIP paid a final performance fee of \$11,118,981 to Beechwood. (Ex. 84 (SHIP0018886).)

Dated: February 14, 2020

Chicago, Illinois

Respectfully submitted,

/s/ William Ridgway

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**CERTIFICATE OF SERVICE**

I hereby certify that, on February 14, 2020, I served the foregoing Local Rule 56.1 Statement of Undisputed Facts in Support of Lincoln International LLC and Lincoln Partners Advisors LLC's Motion for Summary Judgment via the Court's electronic filing system on all attorneys of record who have entered an appearance by ECF in this proceeding.

*/s/ William Ridgway*

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William Ridgway