

**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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**LINCOLN INTERNATIONAL LLC AND LINCOLN PARTNERS ADVISORS LLC'S  
RESPONSE TO SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA'S  
COUNTERSTATEMENT OF DISPUTED FACTS**

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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 (“Defendants”), in connection with their Motion for Summary Judgment, submit this response to Senior Health Insurance Company of Pennsylvania’s (“SHIP”) Counterstatement of Disputed Facts.<sup>1</sup>

***A. Platinum Appoints Lincoln as Beechwood’s Valuation Provider***

144. On November 12, 2013, the Managing Director of Lincoln’s Valuations and Opinions Group (“VOG”), Michael Fisch, received a phone call from Will Slota, the Chief Operating Officer (“COO”) of Platinum. (SHIP Ex. 2 (Fisch Dep.) 8:12-15). Mr. Slota indicated that Platinum was interested in retaining Lincoln to do valuation work for Beechwood. (SHIP Ex. 2 (Fisch Dep.) 8:16-19). The next day, Mr. Fisch emailed Mr. Slota, stating: “We are very interested in working with Platinum / Beechwood.” (SHIP Ex. Lincoln-00000576 at 00000577).

**Response to No. 144:** Defendants do not dispute Paragraph 144.

145. On December 4, 2013, Mr. Fisch and three other senior Lincoln representatives, including Managing Directors Ron Kahn and Patricia Luscombe met with Mr. Slota in Platinum’s offices. (Lincoln Ex. 3 LINCOLNSUB-00012098 at 00012099).

**Response to No. 145:** Defendants do not dispute Paragraph 145.

146. On December 11, 2013, Mr. Fisch sent a memorandum to Lincoln’s Commitment Committee, with a cover email stating that VOG was seeking “approval to proceed with a proposal

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<sup>1</sup> Citations to “Lincoln Ex.” refer to exhibits attached to the Declaration of William Ridgway (Dkt. No. 53), submitted in support of Defendants’ Motion for Summary Judgment. Citations to “Lincoln Supp. Ex.” refer to the exhibits attached to the Supplemental Declaration of William Ridgway in further support of Defendants’ Motion for Summary Judgment, filed herewith. Citations to “Ship Ex.” refer to exhibits attached to the Declaration of Amiad Kushner (Dkt. No. 59), submitted in opposition to Defendants’ Motion for Summary Judgment.

to provide valuation services to Platinum Partners, a New York based hedge fund, for valuation services for its newly formed reinsurance company, Beechwood Re Ltd.” (SHIP Ex. 35 Lincoln-00007069).

**Response to No. 146:** Defendants do not dispute Paragraph 146.

147. Lincoln knew that Platinum had established Beechwood as a source of capital, a development that (in Lincoln’s assessment) reflected the “growing trend in the hedge fund industry of managers setting up reinsurers which offer the benefits of permanent capital.” (Lincoln Ex. 3 LINCOLNSUB-00012098 at 00012099).

**Response to No. 147:** Defendants dispute Paragraph 147 because its assertions are not supported by the record SHIP cites and are contradicted by admissible evidence. Lincoln did not understand that Platinum had established Beechwood as a source of capital. (Lincoln Supp. Ex. 85 (Fisch Dep.) at 25:25-27:06). Notwithstanding the foregoing, Defendants deny that Paragraph 147 raises a disputed material fact precluding summary judgment.

148. Lincoln knew that *Platinum* would decide who Beechwood’s valuation provider would be. (SHIP Ex. 8 (Trowbridge Dep.) at 13:18-21). Thus, in the December 11, 2013 memorandum, Lincoln stated that “Platinum has not been pleased” with its existing valuation provider and “*intends to hire a different firm for Beechwood.*” (Lincoln Ex. 3 LINCOLNSUB-00012098) (emphasis added); *see also id.* at LINCOLNSUB-00012100) (“*appointing a valuation provider for Beechwood is Platinum’s immediate priority*”) (emphasis added).

**Response to No. 148:** Defendants dispute the first sentence of Paragraph 148 because the witness identified lacks personal knowledge regarding which entity appointed Lincoln. (SHIP Ex. 8 (Trowbridge Dep.) at 20:3-15.) The witness with that personal knowledge—Michael Fisch—testified that “Lincoln didn’t understand that Platinum would be making that determination.” (Lincoln Supp. Ex. 85 (Fisch Dep.) at 21:14-22.) Lincoln understood that the appointment would be made by Beechwood. (*Id.* at 20:8-20.) Defendants do not dispute the second sentence of Paragraph 148, subject to the clarification that Lincoln understood that the appointment would be made by Beechwood. (*Id.*) Notwithstanding the foregoing, Defendants deny that Paragraph 148 raises a disputed material fact precluding summary judgment.

149. Lincoln also knew that Platinum’s personnel were intermingled with Beechwood. As Mr. Fisch testified, “parties at Platinum . . . were also involved in Beechwood” and “there were Platinum individuals involved with setting Beechwood up and that were wearing two hats, if you will, that for Platinum and that for Beechwood.” (SHIP Ex. 2 (Fisch Dep.) at 21:10-12, 23:16-19).

**Response to No. 149:** Defendants dispute the first sentence of Paragraph 149. Fisch testified that Lincoln did not know that there would be identical staffing and that materials had been provided to Lincoln that “indicated that Beechwood was a new reinsurance entity with its own staff.” (Lincoln Supp. Ex. 85 (Fisch Dep.) at 29:18-30:07.) Defendants do not dispute the second sentence of Paragraph 149. Notwithstanding the foregoing, Defendants deny that Paragraph 149 raises a disputed material fact precluding summary judgment.

150. As Mr. Fisch explained at his deposition: “*we knew that Beechwood had been formed as a result of actions that Platinum had been taking,*” and that “*They were behind it in some way.*” (SHIP Ex. 2 (Fisch Dep.) at 19:6-8).

**Response to No. 150:** Defendants do not dispute Paragraph 150.

151. John O’Kane, a Senior Adviser at Lincoln who worked with Lincoln’s engagement team for Beechwood) confirmed at his deposition, Lincoln understood that Beechwood was managed by Platinum. (SHIP Ex. 36 (O’Kane Dep.) at 13:4-7).

**Response to No. 151:** Defendants dispute Paragraph No. 151 because the witness identified is an outside consultant to Lincoln and testified as to his personal understanding, not Lincoln’s understanding. (Lincoln Supp. Ex. 86 (O’Kane Dep.) at 9:20-25; SHIP Ex. 36 (O’Kane Dep) at 13:4-7.) Fisch, the managing director who led the Beechwood engagement for Lincoln, testified that materials had been provided to Lincoln that “indicated that Beechwood was a new reinsurance entity with its own staff.” (Lincoln Supp. Ex. 85 (Fisch Dep.) at 29:18-30:07.) Notwithstanding the foregoing, Defendants deny that Paragraph 151 raises a disputed material fact precluding summary judgment.

152. In February 2014, Lincoln was formally engaged by Beechwood. But, as set forth above, Lincoln knew that its real client was Platinum and that Beechwood was beholden to Platinum. (*See supra*, at ¶¶ 144-151).

**Response to No. 152:** Defendants dispute Paragraph 152 because SHIP fails to cite admissible record evidence to support its assertions, in violation of Local Rule 56.1. The record establishes

that Lincoln viewed Beechwood as its client and as an entity distinct from Platinum. (Lincoln Supp. Ex. 85 (Fisch Dep.) at 29:18-30:07, 94:02-15.) Notwithstanding the foregoing, Defendants deny that Paragraph 152 raises a disputed material fact precluding summary judgment.

153. Indeed, in March 2014, when Lincoln sent Beechwood a draft of its first quarterly Positive Assurance Valuation, Beechwood instructed Lincoln to remove references to Platinum from the draft report. (SHIP Ex. 37 BW-SHIP-01016819 at 1016820) (Beechwood directed Lincoln to remove the reference to PPVA involvement and Beechwood objected that “again, Platinum is being referenced”).

**Response to No. 153:** Defendants dispute Paragraph 153 because it is not supported by the record SHIP cites. The document relied upon by SHIP is an email between two Beechwood employees, Eli Rakower and Naftali Manela, in which Rakower provides Manela comments to Lincoln’s draft report. (SHIP Ex. 37 (BW-SHIP-01016819).) No Lincoln employee was privy to the communication, and SHIP fails to cite admissible evidence that Rakower’s comments were communicated to Lincoln. (*Id.*) Notwithstanding the foregoing, Defendants deny that Paragraph 153—which occurred prior to SHIP’s entry into the IMAs—raises a disputed material fact precluding summary judgment. (Lincoln Ex. 16 (SHIP0019746); Lincoln Ex. 17 (SHIP0019769); Lincoln Ex. 18 (SHIP0019797).)

***B. SHIP Enters Into The IMAs Based On Beechwood’s Assurances That Lincoln Was Independently Valuing The IMA Assets***

154. In late 2013, SHIP was introduced to Beechwood. (SHIP Ex. 38 (Wegner Dep.) at 29:25–32:4).

**Response to No. 154:** Defendants do not dispute Paragraph 154.

155. In or about early April 2014, SHIP’s chief executive officer Brian Wegner and its chief financial officer Paul Lorenz met in person in New York with representatives of Beechwood. At the meeting, Beechwood touted its relationships with leading third-party service partners, including Lincoln, which Beechwood identified as its independent valuation firm. (SHIP Ex. 39 (Lorenz Dep.) at 256:3-17; SHIP Ex. 38 (Wegner Dep.) at 40:24-41:6).

**Response to No. 155:** Defendants do not dispute Paragraph 155.

156. On April 10, 2014, Beechwood sent SHIP's CEO Wegner an e-mail with further information concerning Beechwood and its partners. A "Discussion Document" attached to this email emphasized Beechwood's relationship with Lincoln and promised "independent valuation and reporting" from Lincoln on "all valuations on a quarterly basis." (SHIP Ex. 40 SHIP0047549 at 0047550; SHIP Ex. 41 BW-SHIP-00070261 at 00070268). The Discussion Document did not disclose Beechwood's relationship with Platinum. (*See id.*).

**Response to No. 156:** Defendants do not dispute Paragraph 156 except for SHIP's characterization of the Discussion Document as "emphasiz[ing] Beechwood's relationship with Lincoln" as such a characterization is not supported by the record SHIP cites.<sup>2</sup> Notwithstanding the foregoing, Defendants deny that Paragraph 156 raises a disputed material fact precluding summary judgment.

157. Between May 2014 and January 2015, SHIP entered into three Investment Management Agreements (the "IMAs") with Beechwood Bermuda International Ltd. ("BBIL"), Beechwood Re Ltd. ("Beechwood Re"), and B Asset Manager LP ("BAM," and collectively with BBIL and Beechwood Re, the "Beechwood Advisors" or "Beechwood"), respectively. (Lincoln Ex. 18 BW-SHIP-00009661 at 0009662; Lincoln Ex. 17 BW-SHIP-00010162 at 10162; Lincoln Ex. 16 BW-SHIP-00011074 at 11074) (Three IMAs were entered on May 22, 2014, June 13, 2014, and January 15, 2015 respectively).

**Response to No. 157:** Defendants do not dispute Paragraph 157.

158. Under the terms of the IMAs, SHIP granted Beechwood authority "to invest and reinvest [SHIP's] Assets at such time and in such manner as [Beechwood] in its sole discretion shall determine or elect . . . ." (Lincoln Ex. 18 BW-SHIP-00009661 at 9662; Lincoln Ex. 17 BW-SHIP-00010162 at 10163; Lincoln Ex. 16 BW-SHIP-00011074 at 11074). In light of its broad

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<sup>2</sup> Note that SHIP did not include the Discussion Document in SHIP Ex. 41. A copy of the email dated April 10, 2014, with the Discussion Document attached was included in Lincoln's filing as Lincoln Ex. 15.

discretionary authority, Beechwood did not seek SHIP's approval before making investments. (SHIP Ex. 42 (Robison Dep.) at 87:8-11; SHIP Ex. 43 (Thomas Dep.) at 430:6-13; SHIP Ex. 39 (Lorentz Dep.) at 156:20-157:23, 172:15-173:3, 201:7-203:10; SHIP Ex. 66 (Wegner Dep.) at 232:2-234:4).

**Response to No. 158:** Defendants do not dispute Paragraph 158.

159. Each of the IMAs contained a requirement that an independent valuation firm (identified in each of the IMAs as "Lincoln International") would independently value the assets that Beechwood was investing for SHIP. (Lincoln Ex. 17 BW-SHIP-00010162 at 10185; Lincoln Ex. 18 BW-SHIP-00009661 at 9697; Lincoln Ex. 16 BW-SHIP-00011074 at 11096).

**Response to No. 159:** Defendants dispute Paragraph 159 because it is not supported by the record SHIP cites. Each of the IMAs contained a requirement that Beechwood would provide SHIP "valuation reports from an independent third-party valuation company (currently Lincoln International) on all non-public securities." (Lincoln Ex. 16 (SHIP0019746) at 0019768; Lincoln Ex. 17 (SHIP0019769) at 0019792; Lincoln Ex. 18 (SHIP0019797) at 0019833.) Notwithstanding the foregoing, Defendants deny that Paragraph 159 raises a disputed material fact precluding summary judgment.

160. SHIP would not have entered into the IMAs absent the requirement that an independent valuation firm confirm the values of Beechwood's investments. It was critical for SHIP that an independent valuation firm act as a "check" on Beechwood, particularly given Beechwood's broad discretionary authority over investments, and the fact that Beechwood's performance fees under the IMAs were based on the market values of its investments. (SHIP Ex. 67 (Wegner Decl.) at ¶ 5).

**Response to No. 160:** Defendants do not dispute the first sentence of Paragraph 160. Defendants dispute the second sentence of Paragraph 160 because it is not supported by the record SHIP cites. Notwithstanding the foregoing, Defendants deny that Paragraph 160 raises a disputed material fact precluding summary judgment.

161. SHIP understood that, as the independent valuation firm identified in the IMAs, Lincoln was independently reviewing and validating Beechwood's marks of IMA assets. (*Id.* at ¶ 6).

**Response to No. 161:** Defendants dispute Paragraph 161 because it is not supported by the record SHIP cites and is not supported by admissible evidence. In Wegner's declaration, he stated that he did not personally review the account statements and thus cannot testify about SHIP's understanding of the values reflected in those account statements. Notwithstanding the foregoing, Defendants deny that Paragraph 161 raises a disputed material fact precluding summary judgment.

162. On October 14, 2014, Beechwood emailed SHIP several spreadsheets containing the market values of SHIP's assets, along with a calculation of Beechwood's performance fee. The attachments listed Lincoln as the "price source" for two assets (Agera Energy and Bre-Ship). (SHIP Ex. 19 SHIP\_LP\_0098665; SHIP Ex. 20 SHIP\_LP\_0098682; SHIP Ex. 21 SHIP0096203 at 96230).

**Response to No. 162:** Defendants do not dispute the first sentence of Paragraph 162, with the clarification that the spreadsheet contained 9/30/14 market values of Beechwood's investments in the BBIL and BRE SHIP custody accounts, not the "market values of SHIP's assets." (Dkt No. 44-3 at 3, 5.)<sup>3</sup> Defendants do not dispute the second sentence of Paragraph 162, with the clarification that the two assets are Agera Energy and Platinum Partners Value Arbitrage, not "Bre-SHIP." (*Id.* at 5-6.) Notwithstanding the foregoing, Defendants deny that Paragraph 162 raises a disputed material fact precluding summary judgment.

163. SHIP received monthly statements from Wilmington Trust which reported the market values of SHIP's investments in the IMA accounts. SHIP understood that Lincoln was independently valuing the values that were reported on those statements. (SHIP Ex. 67 (Wegner Decl.) at ¶6).

**Response to No. 163:** Defendants dispute Paragraph 163 because it is not supported by admissible evidence. In Wegner's declaration, he stated that he did not personally review the Wilmington Trust account statements and thus cannot testify about SHIP's understanding of those statements. Notwithstanding the foregoing, Defendants deny that Paragraph 163 raises a disputed material fact precluding summary judgment.

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<sup>3</sup> Note that SHIP failed to include the spreadsheet in SHIP Ex. 20. The spreadsheet can be found at Dkt. No. 44-3.)

***C. Beechwood Informed Lincoln That SHIP Was an Investment Management Client of Beechwood and that SHIP Needed Access to Lincoln's Valuations***

164. In connection with the issuance of its valuation reports for the quarter ending on December 31, 2014, Lincoln was focused on identifying all parties who would receive and rely upon Lincoln's reports, including all Beechwood entities and third parties. Troy Peters, Lincoln's senior in-house counsel, participated directly in these efforts.

**Response to No. 164:** Defendants dispute Paragraph 164 because it is not supported by any record evidence, in violation of Local Rule 56.1. Notwithstanding the foregoing, Defendants deny that Paragraph 164 raises a disputed material fact precluding summary judgment.

165. On January 13, 2015, Mr. Peters received a calendar invite that invited him to participate in a teleconference with Beechwood and members of the Lincoln engagement team. The subject of the call was "Beechwood Engagement Letter Update," and it was scheduled for the next day, January 14, 2015. (SHIP Ex. 44 Lincoln-00001776 at 00001778).

**Response to No. 165:** Defendants do not dispute Paragraph 165.

166. On January 16, 2015, Mr. Trowbridge emailed Beechwood (copying Mr. Peters), asking Beechwood to "pass along the name and contact information for the funds which we are going to add to your engagement letter and any other organizations that need to sign non-reliance letters." (*Id.*)

**Response to No. 166:** Defendants do not dispute Paragraph 166.

167. On January 19, 2015, Lincoln delivered to Beechwood a valuation report entitled "*Quarterly Portfolio Review Prepared for: SHIP.*" (Lincoln Ex. 9 LINCOLNSUB-00001291). The report contained valuations of seven of SHIP's assets.

**Response to No. 167:** Defendants do not dispute Paragraph 167, subject to clarification that the report issued on January 19, 2015, valued seven of Beechwood's investments in the BBIL SHIP and BRE SHIP custody accounts. (Lincoln Ex. 9 (LINCOLNSUB-00001291) at 00001297, 00001312, 00001319, 00001329, 00001342, 00001344, 00001348, 00001363.) Those custody

accounts were owned by Beechwood, and thus the investments were not “SHIP’s assets.” (Lincoln Supp. Ex. 87 (Young Dep.) at 11:5-12:3.) Notwithstanding the foregoing, Defendants deny that Paragraph 167 raises a disputed material fact precluding summary judgment.

168. On January 26, 2015, Beechwood’s in-house counsel Christian Thomas sent an email to Mr. Peters and Mr. Trowbridge noting that “Senior Health Insurance Company of Pennsylvania” was an “IMA client” of Beechwood. Mr. Thomas attached a structure chart to his email. The chart indicated that B Asset Manager L.P. was the “investment manager” for Senior “Health insurance Company of Pennsylvania.” (SHIP Ex. 45 Lincoln-00001736 at 00001738).

**Response to No. 168:** Defendants do not dispute Paragraph 168 except to note that SHIP failed to include the structure chart in SHIP Ex. 45.

169. On January 27 at 4:12 pm, Mr. Peters forwarded a copy of the structure chart (which indicated that “Senior Health Insurance Company of Pennsylvania” was an “IMA client” of Beechwood) to Mr. Trowbridge and Patricia Luscombe, the managing director at Lincoln who signed Lincoln’s engagement letter with Beechwood. (*Id.* at Lincoln-00001736).

**Response to No. 169:** Defendants do not dispute Paragraph 169 except to note that SHIP failed to include the structure chart in SHIP Ex. 45.

170. Ten minutes later, on January 27 at 4:22 pm, Mr. Peters sent an email to Mr. Thomas (copying several Beechwood representatives, including Mr. Naftali Manela), stating that “[i]t appears that Senior Health Insurance Company of Pennsylvania is not a Beechwood entity and would not require the Valuation Reports.” There was no response from Beechwood to this email. (SHIP Ex. 44 Lincoln-00001776 at 00001776-1777).

**Response to No. 170:** Defendants do not dispute Paragraph 170.

171. On January 30 at 3:24 pm, Mr. Peters sent a follow up email to Mr. Thomas and the Beechwood team, asking whether “Senior Health Insurance Company of Pennsylvania” required access to Lincoln’s valuations. (*Id.* at Lincoln-00001776).

**Response to No. 171:** Defendants dispute Paragraph 171 because it is not supported by the record SHIP cites. In the email referenced in Paragraph 171, Mr. Peter asks Mr. Thomas to confirm “that only (1) BRE BCLIC Primary, (2) BRe BCLIC Sub, BRe WNIC 2013 LTC Primary and (4) BRe WNIC 2013 LTC Sub. require reliance on the Valuations and not Senior Health Insurance Company of Pennsylvania.” (SHIP Ex. 44 at Lincoln-00001776.) Notwithstanding the foregoing, Defendants deny that Paragraph 171 raises a disputed material fact precluding summary judgment.

172. In response to Mr. Peters’ email, Mr. Manela of Beechwood stated: “*I would put senior health insurance on as well. They are third party with investments.*” (*Id.*) (emphasis added).

**Response to No. 172:** Defendants do not dispute Paragraph 172.

173. In response to Mr. Manela’s email, Mr. Peters stated that “*if [SHIP] are a true third party with investments, I believe they should be signing non-reliance letters.*” (*Id.* at Lincoln-00001776-1777).

**Response to No. 173:** Defendants do not dispute Paragraph 173.

174. There is no evidence that Mr. Peters (or anyone at Lincoln or Beechwood) communicated with SHIP in order to request that SHIP sign any engagement related documentation with Lincoln. (SHIP Ex. 7 (Peters Dep.) at 32:32-25; SHIP Ex. 42 (Robison Dep.) at 181:19 – 182:2).

**Response to No. 174:** Defendants do not dispute Paragraph 174.

175. On February 19, 2015, Lincoln issued a final Negative Assurance Letter for SHIP’s assets, which mentioned “SHIP” twelve times. (Lincoln Ex. 6 LINCOLNSUB-00024140 – 24141).

**Response to No. 175:** Defendants do not dispute that Lincoln issued a negative assurance letter on February 19, 2015, subject to the clarification that the letter valued Beechwood’s investments in the SHIP custody accounts. (Lincoln Ex. 6 (LINCOLNSUB-0002414).)

***D. Lincoln's valuation marks of SHIP's assets were transmitted from Beechwood to Wilmington to SHIP, or from Beechwood to SHIP***

176. In early 2014, Beechwood told Wilmington that Lincoln was Beechwood's independent valuation service. (SHIP Ex. 32 WT-SHIP\_0006503; SHIP Ex. 33 CN0CSL\_00447395; SHIP Ex. 14 (Young Dep.) 20:14 - 21:24).

**Response to No. 176:** Defendants do not dispute Paragraph 176, subject to clarification that the communication at issue in Paragraph 176 occurred prior to SHIP entering into the IMAs. (Lincoln Ex. 16 (SHIP0019746); Lincoln Ex. 17 (SHIP0019769); Lincoln Ex. 18 (SHIP0019797).)

177. After SHIP entered into the IMAs, Beechwood provided Wilmington Trust with valuation marks for SHIP's IMA assets (SHIP Ex. 46 (Taylor Dep.), Vol. 2, 690:13-23).

**Response to No. 177:** Defendants do not dispute Paragraph 177.

178. Wilmington understood from Beechwood that Beechwood's marks of SHIP's assets were independently valued by Lincoln. Thus, for example, on January 28, 2015, Beechwood sent a mark for one of SHIP's assets to Wilmington that identified Lincoln as the "Price Source." (SHIP Ex. 22 WT-SHIP\_0004876; SHIP Ex. 23 WT-SHIP\_0004877). Wilmington understood that to mean the price came from Lincoln. (SHIP Ex. 14 (Young Dep.) 52:12-23).

**Response to No. 178:** Defendants do not dispute the second sentence of Paragraph 178 except for the characterization of the mark as "one of SHIP's assets," as it is not supported by the record SHIP cites. The investment was a Beechwood investment in the SHIP-BAM custody account. (SHIP Ex. 23 (WT-SHIP\_0004877) at 3.) Defendants dispute the first and third sentences of Paragraph 178 because they are not supported by admissible evidence and are contradicted by other evidence in the record. Mr. Young testified that Wilmington did not "have any discussions with Beechwood regarding Lincoln's role with respect to the market values that Beechwood was providing to Wilmington," (SHIP Ex. 14 (Young Dep.) at 20:05-10), and that "Wilmington was not aware that Lincoln was providing values for this situation" (Lincoln Supp. Ex. 87 (Young Dep.) at 77:12-19 (referring to SHIP Ex. 23 (WT-SHIP\_0004877))). Mr. Young also does not have personal knowledge of what Beechwood meant by identifying Lincoln as the "price source." (SHIP Ex. 14 (Young Dep.) at 52:12-23.) Notwithstanding the foregoing, Defendants deny that Paragraph 178 raises a disputed material fact precluding summary judgment.

179. Wilmington reflected Beechwood's marks in monthly account statements, which were sent to SHIP. (SHIP Ex. 14 (Young Dep.) at 21:4-13; SHIP Ex. 47 (Zaichek Dep.) at 13:22-14:1).

**Response to No. 179:** Defendants do not dispute Paragraph 179.

180. On January 19, 2015, Lincoln delivered to Beechwood a Positive Assurance Report valuing SHIP's assets as of December 31, 2014. (SHIP Ex. 17 LINCOLNSUB-00022984; SHIP Ex. 18 Lincoln-00010133).

**Response to No. 180:** Defendants do not dispute Paragraph 180, subject to the clarification that the report issued on January 19, 2015, valued seven of Beechwood's investments in the BBIL SHIP and BRE SHIP custody accounts. (Lincoln Ex. 9 (LINCOLNSUB-00001291) at 00001297, 00001312, 00001319, 00001329, 00001342, 00001344, 00001348, 00001363.) Those custody accounts were owned by Beechwood, and thus the investments were not "SHIP's assets." (Lincoln Supp. Ex. 87 (Young Dep.) at 11:5-12:3.) Notwithstanding the foregoing, Defendants deny that Paragraph 180 raises a disputed material fact precluding summary judgment.

181. Beechwood, in turn, forwarded its marks (which had been independently valued by Lincoln) to Wilmington. On January 27, 2015, Beechwood sent Wilmington a spreadsheet containing marks for SHIP's assets in the IMA accounts. (SHIP Ex. 12 WT-SHIP\_0004780; SHIP Ex. 13 WT-SHIP\_0004791).

**Response to No. 181:** Defendants dispute the first sentence of Paragraph 181 because it is not supported by the record SHIP cites and is contradicted by other evidence in the record. For four of the seven investments listed, the spreadsheet at issue does not reflect the market values in the Lincoln valuation report issued on January 19, 2015:

<b>Investment</b>	<b>Beechwood mark from Lincoln's January 19, 2015 Valuation Report (Lincoln Ex. 9 (LINCOLNSUB-00001291) at 1297)</b>	<b>Beechwood mark from January 27, 2015 spreadsheet (SHIP Ex. 13 (WT-SHIP_0004791) at 13)</b>	<b>Wilmington Trust account statements dated January 31, 2015 (SHIP Ex. 49 (SHIP0014918) at 14922; SHIP Ex. 16 (SHIP0015138) at 15142-15143)</b>
Agera Energy, LLC	\$58,000	\$57,802	Not included
New Bradley House	\$1,470,000	\$1,468,702	\$1,468,702

Northstar	\$11,297,000	\$11,296,500	\$11,296,500
MYSYRL Capital	\$2,079,000	\$887,618	\$887,618
San Gold Corporation	\$15,529,000	\$16,895,400 <sup>4</sup>	\$16,895,400
PPCO	\$29,272,000	\$29,475,798	\$29,475,798
PPVA	\$8,946,000	\$9,097,927	\$9,097,927

Defendants do not dispute the second sentence of Paragraph 181, with the clarification that the spreadsheet contained marks for Beechwood's investments in the SHIP custody accounts. Notwithstanding the foregoing, Defendants deny that Paragraph 181 raises a disputed material fact precluding summary judgment.

182. Wilmington used the spreadsheet to update the market values on its account statements as of January 31, 2015 for SHIP's IMA custody accounts. (SHIP Ex. 14 (Young Dep.) at 64:1-65:23; SHIP Ex. 12 WT-SHIP\_0004780; SHIP Ex. 13 WT-SHIP\_0004791).

**Response to No. 182:** Defendants do not dispute Paragraph 182.

183. For example, as shown below, Wilmington used the spreadsheet to update values for the SHIP BBIL account:

Asset	Wilmington Statement (Dec. 31, 2014) (SHIP Ex. 48 SHIP0014910 at 14914)	Lincoln Report (Jan. 19, 2015) (SHIP Ex. 18 Lincoln-00010133 at 10139)	Beechwood Spreadsheet Sent to Wilmington (Jan. 27, 2015) (SHIP Ex. 13 WT-SHIP_0004791)	Wilmington Statement (Jan. 31, 2015) (SHIP Ex. 49 SHIP0014918 at 14922)
Northstar	100	88.6 (Beechwood's mark, which opined to be "reasonable")	88.6	88.6

**Response to No. 183:** Defendants do not dispute Paragraph 183, subject to the following clarifications to the chart:

<sup>4</sup> This combines the values for San Gold Corporation (\$13,734,706) and San Gold Corporation DF (\$3,160,694) in the Bre SHIP accounts.

- The December 31, 2014, Wilmington statement identifies 100 as the market value price for Northstar, not the actual market value. (SHIP Ex. 48 (SHIP0014910) at 0014914.)
- The Lincoln report issued Jan. 19, 2015, identifies 88.6% as Beechwood’s percentage “mark” for Northstar. (Lincoln Ex. 9 (LINCOLNSUB-00001291) at 00001297.)<sup>5</sup>
- The Beechwood spreadsheet from January 27, 2015 identifies 88.6 as the “price” for Northstar. (SHIP Ex. 13 (WT-SHIP\_0004791) at 13).
- The January 31, 2015, Wilmington statement identifies 88.6 as the market unit price for Northstar, not the actual market value. (SHIP Ex. 49 (SHIP0014918) at 0014922.)

Notwithstanding the foregoing, Defendants deny that Paragraph 183 raises a disputed material fact precluding summary judgment.

184. As a further example, Wilmington also used the spreadsheet to update and confirm values for the SHIP BRE account, as shown below:

<b>Asset</b>	<b>Wilmington Statement (Dec. 31, 2014) (SHIP Ex. 15 SHIP0015126 at 15130-15132)</b>	<b>Lincoln Report (Jan. 19, 2015) (SHIP Ex. 18 Lincoln-00010133 at 10139)</b>	<b>Beechwood Spreadsheet Sent to Wilmington (Jan. 27, 2015) (SHIP Ex. 13 WT-SHIP_0004791)</b>	<b>Wilmington Statement (Jan. 31, 2015) (SHIP Ex. 16 SHIP0015138 at 15142-15143)</b>
Northstar	100	88.6 (Beechwood’s mark, confirmed by Lincoln)	88.6	88.6
New Bradley House	100	100 (Beechwood’s mark, confirmed by Lincoln)	100	100
MYSYRL Capital	100	100 (Beechwood’s mark as confirmed by Lincoln)	100	100

<sup>5</sup> SHIP incorrectly cites to SHIP Ex. 18, which is a separate extract from the January 19, 2015 Lincoln report.

PPCO	100	100 (Beechwood's mark as confirmed by Lincoln)	100	100
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**Response to No. 184:** Defendants dispute the following parts of the chart in Paragraph 184 (highlighted in red for ease of reference):

Asset	Wilmington Statement (Dec. 31, 2014) (SHIP Ex. 15 SHIP0015126 at 15130-15132)	Lincoln Report (Jan. 19, 2015) (SHIP Ex. 18 Lincoln-00010133 at 10139)	Beechwood Spreadsheet Sent to Wilmington (Jan. 27, 2015) (SHIP Ex. 13 WT-SHIP_0004791)	Wilmington Statement (Jan. 31, 2015) (SHIP Ex. 16 SHIP0015138 at 15142-15143)
Northstar	100 Undisputed that 100 is identified as the market unit price	88.6 (Beechwood's mark, confirmed by Lincoln) Undisputed that 88.6% is identified as Beechwood's percentage mark	88.6 Undisputed that 88.6 is identified as the "Price"	88.6 Undisputed that 88.6 is identified as the market unit price
New Bradley House	100 Disputed – "100" does not appear as either the market value or the market unit price for New Bradley House	100 (Beechwood's mark, confirmed by Lincoln) Undisputed that 100% is identified as Beechwood's percentage mark	100 Undisputed that 100 is identified as the "Price"	100 Disputed – "100" does not appear as either the market value or the market unit price for New Bradley House
MYSYRL Capital	100 Disputed – "100" does not appear as either the market value or the market unit price for MYSYRL	100 (Beechwood's mark as confirmed by Lincoln) Undisputed that 100% is identified as Beechwood's	100 Undisputed that 100 is identified as the "Price"	100 Disputed – "100" does not appear as either the market value or the market unit price for MYSYRL

		percentage mark		
PPCO	100 Disputed – “100” does not appear as either the market value or the market unit price for PPCO	100 (Beechwood’s mark as confirmed by Lincoln) Undisputed that 100% is identified as Beechwood’s percentage mark	100 Disputed – “100” does not appear as either the price or the fair value.	100 Disputed – “100” does not appear as either the market value or the market unit price for PPCO

Lincoln further disputes Paragraph 184 to the extent that it implies that the market values in Lincoln’s report dated January 19, 2015, are reflected in Wilmington Trust’s statement dated January 31, 2015. (*See* Resp. to ¶ 181.) Notwithstanding the foregoing, Defendants deny that Paragraph 184 raises a disputed material fact precluding summary judgment.

185. By January 14, 2015, SHIP received the December 31, 2014 Wilmington statement for the BBIL and BRE accounts. (SHIP Ex. 48 SHIP0014910; SHIP Ex. 15 SHIP0015126).

**Response to No. 185:** Defendants do not dispute Paragraph 185.

186. By February 9, 2015, SHIP received the January 31, 2015 Wilmington statement for the BBIL and BRE accounts. (SHIP Ex. 49 SHIP0014918; SHIP Ex. 48 SHIP0014910; SHIP Ex. 15 SHIP0015126; SHIP Ex. 16 SHIP0015138).

**Response to No. 186:** Defendants do not dispute Paragraph 186.

187. In addition to receiving Lincoln’s marks via Wilmington account statements, SHIP received some Lincoln marks directly from Beechwood. On October 14, 2014, Beechwood sent SHIP a “9/30 SHIP holdings report,” which listed a PPVA asset with a price of 100 that identified Lincoln as the Price Source. The same attachment also included a price of 100 for Agera that also identified Lincoln as the Price Source. Lincoln’s pricing of these assets was included in SHIP’s Agenda for the December 2, 2014 Board of Directors Meeting. (SHIP Ex.19 SHIP\_LP\_0098665; SHIP Ex. 20 SHIP\_LP\_0098682; SHIP Ex. 21 SHIP0096203 at 96230).

**Response to No. 187:** Defendants do not dispute the second, third, and fourth sentences of Paragraph 187, with the clarification that the holdings report identified the market value for Agera as \$25,375,878 and PPVA as \$9,134,365. (Dkt. No. 44-3 at 5-7.) Defendants dispute the first sentence of Paragraph 187 because it is not supported by the record SHIP cites and is contradicted by other admissible evidence in the record. For the month ending September 30, 2014, Lincoln did not issue a valuation report for Beechwood's investments in the SHIP custody accounts. (Lincoln 56.1 ¶¶ 65-66.) And SHIP has not cited to a Lincoln valuation report that valued Agera for \$25.4 million or PPVA for \$9.1 million. Notwithstanding the foregoing, Defendants deny that Paragraph 187 raises a disputed material fact precluding summary judgment.

188. SHIP relied on Lincoln's valuation marks in maintaining the IMAs and paying Beechwood's fees. (SHIP Ex. 42 (Robison Dep.) at 186:10-21).

**Response to No. 188:** Defendants dispute Paragraph 188 because its assertions are not supported by the record SHIP cites. The cited passage from the deposition of John Robison does not reference Lincoln's valuation marks, SHIP's reliance on such marks, or the payment of Beechwood's fees. (SHIP Ex. 42 (Robison Dep.) at 186:10-186:21). Notwithstanding the foregoing, Defendants deny that Paragraph 187 raises a disputed material fact precluding summary judgment.

***E. Lincoln Identifies Numerous Beechwood Investments That Were Related to Platinum, Which Beechwood Had Concealed or Failed to Adequately Disclose***

189. From the outset of its engagement, Lincoln knew that Platinum and Beechwood were related parties, and thus, by definition any transaction between Beechwood and Platinum was a related party transaction. (*See infra*, ¶¶ 3, 29).

**Response to Paragraph 189:** Defendants dispute Paragraph 189 because it is not supported by the record SHIP cites. Lincoln understood that Beechwood had ties to Platinum, and thus considered any transactions between the two as related-party transactions. (Lincoln 56.1 ¶ 29.)

190. Under the terms of Lincoln's engagement letter with Beechwood, Lincoln was required to opine on whether Beechwood's marks were "reasonable in accordance with ASC-820." Ridgway Ex. 4 (Lincoln Ex. 4 LINCOLNSUB-00012065). Under ASC 820, a fair value determination may be made for a related party transaction only "if the reporting entity has evidence that the transaction was entered into at market terms." (Lincoln Ex. 7 (ASC 820) at 938) (emphasis added). The "reporting entity" in this case is Beechwood. (*See infra*, ¶ 21).

**Response to No. 190:** Defendants do not dispute the first or third sentence of Paragraph 190. Defendants dispute the second sentence of Paragraph 190 to the extent it mischaracterizes the applicable standard. Pursuant to ASC 820, a fair value determination can be made even if there is evidence that the related-party transaction was *not* entered into at market terms. (Lincoln Ex. 7 (ASC 820) at 10-30-3A; Lincoln Ex. 8 (Kennelly Rep.) at 31.) Notwithstanding the foregoing, Defendants deny that Paragraph 190 raises a disputed material fact precluding summary judgment.

191. Lincoln recognized that, in order for it to issue a “fair value” opinion under ASC 820 for related party transactions involving Beechwood and Platinum, it needed to determine whether the transaction was at arm’s length. (SHIP Ex. 8 (Trowbridge Dep.) at 48:20-49:11).

**Response to No. 191:** Defendants dispute Paragraph 191 because it is not supported by the record SHIP cites and contradicted by other admissible evidence in the record. Trowbridge testified that “if [Lincoln is] not using the price that they [the related parties] transacted that [*sic*] at in the valuation, it’s not important whether it’s arms length or not.” (SHIP Ex. 8 (Trowbridge Dep.) at 49:12-19.) Notwithstanding the foregoing, Defendants deny that Paragraph 191 raises a disputed material fact precluding summary judgment.

192. Lincoln also knew that if a transaction was not at arm’s length, the transaction price could not be presumed to be at market terms, and the asset would have to valued independently. As Mr. Trowbridge testified, if “an investment was not acquired at arm’s length . . . we would have to do more independent work to estimate the value of the investment [and] may not be able to rely on the transaction price.” (SHIP Ex. 8 (Trowbridge Dep.) at 54:7-54:11; *Id.* at 18-19 (“You wouldn’t use the [non-arm’s length] transaction as an input for valuation. You would value it independently.”); SHIP Ex. 9 (Hart Dep.) 175:18-20 (“a lack of independent work in a positive-negative assurance is strictly problematic among related parties.”); *Id.* at 172:19-21 (“relying upon the interested party, the related party’s own valuation would not be independent work”); *Id.* at 178:6-17; *Id.* at 179:10-19; *id.* at 183:12-19; *Id.* at 184:9-185:6).

**Response to No. 192:** Defendants dispute the first sentence of Paragraph 192 because it is not supported by the record SHIP cites and is contradicted by other admissible evidence in the record. Pursuant to ASC 820, the price in a related party transaction may be used as an input into a fair value measurement if there is evidence that the transaction was entered into at market terms. (Lincoln Ex. 7 (ASC 820) at 10-30-3A.) In other words, a valuator may reach a fair value determination if it tests the transaction to ensure that it was entered into at market terms. (Lincoln

Ex. 10 (Kennelly Dep.) at 9:08-9:11.) Defendants do not dispute the second sentence of Paragraph 192 except to the extent it relies on SHIP's purported expert, Timothy Hart, because Mr. Hart is not qualified to opine on the valuation of illiquid investments under ASC 820, and did not review any of Lincoln's valuation analysis, models, or documentation. (Lincoln Ex. 70 (Hart Dep.) at 169:18-170:03, 178:24-179:07.) Notwithstanding the foregoing, Defendants deny that Paragraph 192 raises a disputed material fact precluding summary judgment.

193. Against this backdrop, by December 2014, Lincoln could no longer ignore the fact that numerous Beechwood investments were related party transactions involving Platinum. (SHIP Ex. 4 (Buck Dep.) at 115:23-116:5) (Stating that acquiring new information about a potential relationship between Beechwood and Platinum was an important issue).

**Response to No. 193:** Defendants dispute Paragraph 193 because it is not supported by the record SHIP cites. Buck testified that it "became important" to consider the relationship between Platinum and Beechwood as "Lincoln got new information about a potential relationship." (SHIP Ex. 4 (Buck Dep.) at 115:23-116:5.) Notwithstanding the foregoing, Defendants deny that Paragraph 193 raises a disputed material fact precluding summary judgment.

194. Further, Lincoln was concerned that Beechwood was concealing the full extent of its dealings with Platinum or providing inadequate information regarding Platinum linked transactions. As Mr. Fisch testified, "there was at least one instance of the existence of a guarantee from a Platinum entity on an investment that we were valuing that hadn't previously been disclosed to us in prior quarters," and Lincoln was "concerned that . . . if there was an instance of complete information not having been provided . . . there could be other instances where we didn't have complete information on the other investments." (SHIP Ex. 2 (Fisch Dep.) at 65:12-66:2).

**Response to No. 194:** Defendants dispute the first sentence of Paragraph 194 because SHIP fails to cite admissible evidence to support its assertions. Defendants do not dispute the second sentence, subject to the clarification that upon completion of additional due diligence, Lincoln determined that it had enough information to issue valuation reports for the fourth quarter. (Lincoln Ex. 5 (Fisch 30(b)(6) Dep.) at 28:19-21; Lincoln Ex. 2 (Fisch Dep.) at 70:13-23; 81:10-18.) Notwithstanding the foregoing, Defendants deny that Paragraph 194 raises a disputed material fact precluding summary judgment.

195. Indeed, Lincoln identified numerous examples of insufficient documentation relating to Beechwood's Platinum related transactions.

**Response to No. 195:** Defendants do not dispute Paragraph 195, subject to the clarification that upon completion of additional due diligence, Lincoln determined that it had enough information to issue valuation reports for the fourth quarter 2014. (Lincoln Ex. 5 (Fisch 30(b)(6) Dep.) at 28:19-21; Lincoln Ex. 2 (Fisch Dep.) at 70:13-23, 81:10-18.) Notwithstanding the foregoing, Defendants deny that Paragraph 195 raises a disputed material fact precluding summary judgment.

196. For example, on December 22, 2014, Mr. Trowbridge acknowledged Lincoln had seen “no support” for five Platinum-guaranteed loans. On December 23, 2014, Mr. Trowbridge noted that Lincoln had “never [been] provided the details of the ‘guarantees’ Beechwood says they have in Implant Sciences, LC Energy, or Northstar.” (SHIP Ex. 49 Lincoln-00002555).

**Response to No. 196:** Defendants do not dispute Paragraph 196, subject to clarification.<sup>6</sup> The five Platinum-guaranteed loans at issue in Trowbridge’s December 22, 2014, email are: ALS Capital Ventures, Golden Gate Oil, Implant Sciences, LC Energy, and Northstar. (Lincoln Supp Ex. 88 (LINCOLNSUB-00020852) at 00020853). On December 24, 2014, Beechwood provided Lincoln the guarantees for those loans. (Lincoln Ex. 54 (LINCOLNSUB-00021027).) Notwithstanding the foregoing, Defendants deny that Paragraph 196 raises a disputed material fact precluding summary judgment.

197. As another example, on December 23, 2014, Mr. Trowbridge noted that Lincoln only received an income statement for New Bradley House, stating that “Beechwood underwrote the loans [relating to New Bradley House] without financial information.” (Lincoln Ex. 44 LINCOLNSUB-00021081). As Lincoln knew, examining only an income statement without a balance sheet is not an appropriate valuation methodology. (SHIP Ex. 9 (Hart Dep.) 197:10-16).

**Response to No. 197:** Defendants dispute the first sentence of Paragraph 197 as its assertions are not supported by the record SHIP cites and contradicted by other admissible evidence in the record. Lincoln’s fourth quarter 2014 valuation report provides a financial overview of New Bradley House’s fiscal 2013 and 2014 income statements and 2013 balance sheet. (Lincoln Ex. 9 (LINCOLNSUB-00001291) at 00001324.) Defendants dispute the second sentence of Paragraph 197 because it is based on inadmissible expert opinion. SHIP’s purported expert admitted that he did not know what information Lincoln possessed in rendering the New Bradley House valuation. (SHIP Ex. 9 (Hart Dep.) at 197:17-20.) Notwithstanding the foregoing, Defendants deny that Paragraph 197 raises a disputed material fact precluding summary judgment.

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<sup>6</sup> Note that SHIP incorrectly cites to SHIP Ex. 49—the correct exhibit is SHIP Ex. 50.

198. Similarly, on December 24, 2014, Mr. Trowbridge acknowledged that Lincoln did “not have a 2013 audit” for PPVA. (SHIP Ex. 8 (Trowbridge Dep.) 61:5-16; SHIP Ex. 51 LINCOLNSUB-00021036).

**Response to No. 198:** Defendants do not dispute Paragraph 198.

199. On December 28, 2014, Mr. Trowbridge emailed the Lincoln engagement team for Beechwood, instructing them to “[t]ake a fresh look at each of your portfolio companies . . . to determine whether the company or transaction have any ties to Platinum (Platinum Partners Credit Opportunities or PPCO; or Platinum Partners Value Arbitrage Fund or PPVA).” (SHIP Ex. 56 Lincoln-00004973 at 00004974).

**Response to No. 199:** Defendants do not dispute Paragraph 199.

200. On or about December 29, 2014, Lincoln provided Beechwood with a list of information requests. The requests included “[g]lobal questions to be addressed by Beechwood for each portfolio company,” such as “*Does Platinum have an economic or legal relationship with the subject company?*” and “*Does any Platinum person have an economic or legal relationship with the subject company?*” (SHIP Ex. 53 LINCOLNSUB-00021170) (emphasis added).

**Response to No. 200:** Defendants do not dispute Paragraph 200.

201. On December 29, 2014, Mr. Fisch took handwritten notes of a meeting among Lincoln’s senior team to discuss Beechwood. (SHIP Ex. 2 (Fisch Dep.) at 77:2-7; SHIP Ex. 10 Lincoln-00006428). Mr. Fisch’s contemporaneous notes provide a vivid illustration of the Lincoln team’s suspicions that Beechwood was not telling the truth about Platinum’s involvement in Beechwood’s investments:

- “*Milberg. Platinum has 12% interest (PPVO). Not known before.*” *Id.* at 0006429.
- “*NBH . . . Q. who owns the hotel now? Platinum?*” *Id.* at 00006431 (emphasis added).

- “*LC Energy . . . told us this was backed by a “venture investor” – we found out this was Platinum.*” *Id.* at 00006433 (emphasis added).
- “*Lumens. Said they had no affiliation with Platinum but co-founder is port[folio] manager @ Platinum.*” *Id.* at 00006433 (emphasis added).

**Response to No. 201:** Defendants do not dispute the first sentence or the four bullets of Paragraph 201. Defendants dispute the second sentence because its assertions are not supported by the record SHIP cites and are contradicted by other admissible evidence in the record. Fisch testified that his notes sought to serve as a reminder that “Lincoln [was] looking deal by deal to understand the nature and extent of Platinum’s involvement in the transaction[s].” (Lincoln Supp. Ex. 85 (Fisch Dep.) at 78:09-14.) Notwithstanding the foregoing, Defendants deny that Paragraph 201 raises a disputed material fact precluding summary judgment.

202. On December 30, 2014, in response to Lincoln’s request, Beechwood listed a dozen of its investments that were owned, managed, guaranteed, or otherwise tied to Platinum, including four investments (Agera, Northstar, PPCO, and PPVA) that Beechwood purchased for SHIP. (SHIP Ex. 53 LINCOLNSUB-00021170).

**Response to No. 202:** Defendants do not dispute Paragraph 202 except SHIP’s characterization that Beechwood purchased the four investments identified “for SHIP” as such a characterization is not supported by the record SHIP cites. Notwithstanding the foregoing, Defendants deny that Paragraph 202 raises a disputed material fact precluding summary judgment.

***F. Lincoln Fails to Obtain Evidence From Beechwood That Beechwood’s Transactions With Platinum Were At Market Terms***

203. Lincoln did not insist that Beechwood provide *evidence* that its transactions with Platinum were on market terms, as required by ASC 820. *See supra*, at ¶ 189. Lincoln simply assumed that all transactions were at arm’s length, as revealed in Mr. Fisch’s contemporaneous handwritten notes (SHIP Ex. 10 Lincoln-00006428) (“*We are assuming all transactions @ arm’s length.*”). At best, Lincoln simply *asked* Beechwood whether its transactions were at “arm’s length.” (*See, e.g.*, SHIP Ex. 4 (Buck Dep.) at 61:8-12 (“we had asked [Beechwood] about . . . whether these were arm’s length”); SHIP Ex. 54 Lincoln-00004963 (Lincoln’s questionnaire

requested that for each investment, Beechwood “[c]onfirm whether the transaction between the borrower and Beechwood was negotiated at arm’s length.”).

**Response to No. 203:** Defendants dispute Paragraph 203 because its assertions are not supported by the record SHIP cites and are contradicted by other admissible evidence in the record. ASC 820 does not require that “evidence” come solely from the reporting entity—rather, it states that a reporting entity should “develop unobservable inputs using the best information available in the circumstances, which might include the reporting entity’s own data” and should “take into account all information about market participant assumptions that is reasonably available.” (Lincoln Ex. 7 (ASC 820) at 10-35-54A.)

Fisch testified that the quote cited in the parenthetical to the second sentence of Paragraph 203 referred to “those transactions [with which] Platinum had prior experience, before Beechwood had come into the picture . . . [such] that those transactions were arm’s length in nature and between unrelated parties.” (Lincoln Supp. Ex. 85 (Fisch Dep.) at 79:12-80:03.) Fisch’s subsequent testimony refutes the proposition that Lincoln assumed that all transactions were arm’s length. (*Id.* at 80:05-81:18.)

Furthermore, as to the third sentence of Paragraph 203, Lincoln did not simply ask Beechwood whether the transactions were arm’s length. The record contains evidence that Lincoln asked for and received documentation from Beechwood regarding the transactions. (*See, e.g.*, Lincoln Supp. Ex. 85 (Fisch Dep.) at 65:03-66:06; Lincoln Ex. 8 (Kennelly Rep.) App’x A at 5-23; Lincoln Ex. 43 (Lincoln-00002533); Lincoln Ex. 50 (LINCOLNSUB-00021108); Lincoln Ex. 52 (LINCOLNSUB-00020852); Lincoln Ex. 55 (LINCOLNSUB-00021197).)

Notwithstanding the foregoing, Defendants deny that Paragraph 203 raises a disputed material fact precluding summary judgment.

204. Indeed, Lincoln satisfied itself with Beechwood’s bald assertions that its transactions with Platinum were at arm’s length. Thus, for example, on December 30, 2014, Lincoln included in a request list to Beechwood the following line item: “*Confirm whether the transaction between the borrower and Beechwood was negotiated at arm’s length.*” (SHIP Ex. 55 Lincoln-00004976 at 00004985) (emphasis added). On the same day, Beechwood responded: “*BW: Confirmed.*” (*Id.*) (emphasis added); (SHIP Ex. 4 (Buck Dep.) at 70:8-14 (“we identified these as potential issues . . . and I believe that we received the responses that they were indeed arm’s length, so that’s why it moved forward.”). Beechwood provided no documentation or other evidence to support this assertion. (*Id.*)

**Response to No. 204:** Defendants dispute Paragraph 204 because its assertions are not supported by the record SHIP cites and are contradicted by other admissible evidence in the record. Lincoln did not simply ask Beechwood whether the transactions were arm's length. Lincoln asked for and received documentation from Beechwood regarding the transactions. (*See, e.g.*, Lincoln Supp. Ex. 85 (Fisch Dep.) at 65:03-66:06; Lincoln Ex. 8 (Kennelly Rep.) App'x A at 5-23; Lincoln Ex. 43 (Lincoln-00002533); Lincoln Ex. 50 (LINCOLNSUB-00021108); Lincoln Ex. 52 (LINCOLNSUB-00020852); Lincoln Ex. 55 (LINCOLNSUB-00021197).) Notwithstanding the foregoing, Defendants deny that Paragraph 204 raises a disputed material fact precluding summary judgment.

205. Notwithstanding Beechwood's assurances that its dealings with Platinum were at arm's length, Lincoln's own analysts questioned whether such assurances were truthful. (*See, e.g.*, SHIP Ex. 56 Lincoln-00004973) (on December 30, 2014, commenting on Beechwood's New Bradley House loan, Mr. Buck asked "*If [Beechwood] underwrote the loan without financial information and took it over from Platinum, how is that arm's length?*") (emphasis added).

**Response to No. 205:** Defendants dispute Paragraph 205 because its assertions mischaracterize the record SHIP cites. Buck testified that his comment alluded to the fact that Lincoln would "want to look into" the relatedness issue. (Lincoln Supp. Ex. 90 (Buck Dep.) at 64:15-65:03.) Lincoln prepared an Excel valuation model titled "NBH Model\_Issuance\_v0.1.xlsm," which tested the New Bradley House transaction as of the transaction date, March 17, 2014, to ensure the transaction price reflected market terms. (Lincoln Supp. Ex. 91 (LINCOLNSUB-00001935).) Notwithstanding the foregoing, Defendants deny that Paragraph 205 raises a disputed material fact precluding summary judgment.

206. As Lincoln's analyst Jesse Lawrence testified, there were concerns at Lincoln that Beechwood was not "truthful with us." (SHIP Ex. 6 (Lawrence Dep.) at 50:15-23).

**Response to Paragraph 206:** Defendants dispute Paragraph 206 because its assertions are based on inadmissible hearsay statements by a witness who lacks personal knowledge on the issue. (SHIP Ex. 6 (Lawrence Dep.) at 50:8-13 ("I wasn't privy to the conversations" regarding Lincoln's internal debate about Beechwood).) Notwithstanding the foregoing, Defendants deny that Paragraph 206 raises a disputed material fact precluding summary judgment.

207. On January 19, 2015, Lincoln delivered its Positive Assurance Report for SHIP in which it opined that *all* of Beechwood's marks were reasonable. (SHIP Ex. 18 Lincoln-00010133 at 10139). As Lincoln's expert conceded, most of SHIP's assets that Lincoln valued (by dollar

value) in this report were related party transactions between Beechwood and Platinum. (SHIP Ex. 1 (Kennelly Dep.) at 32:24-33:24).

**Response to No. 207:** Defendants do not dispute Paragraph 207, subject to clarification that Lincoln delivered its positive assurance report that valued Beechwood's investments in the SHIP custody accounts. (Lincoln Ex. 9 (LINCOLNSUB-00001291).)

208. Lincoln's Positive Assurance Report contains no discussion of whether Beechwood's related party transactions with Platinum were at market terms. The "Valuation Methodologies" section of the report makes no reference to related party transactions. (*See* SHIP Ex. 18 Lincoln-00010133 at 00010206-00010207).

**Response to No. 208:** Defendants do not dispute Paragraph 208 except to the extent that it implies that Lincoln did not consider whether related-party transactions with Platinum were at market terms. Fisch testified that Lincoln determined that initial transaction pricing and valuation date pricing were at market terms and the valuation report was intended to "summarize [Lincoln's] conclusions and present some background on the analysis." (Lincoln Supp. Ex. 89 (Fisch 30(b)(6) Dep.) at 25:7-26:13.) (*See also* Lincoln Ex. 1 (Fisch Decl.) ¶ 10.) Notwithstanding the foregoing, Defendants deny that Paragraph 208 raises a disputed material fact precluding summary judgment.

209. Lincoln never even considered disclosing in its valuation reports the fact that Beechwood was related to Platinum. (SHIP Ex. 57 (Fisch 30(b)(6) Dep.) at 27:18-23).

**Response to No. 209:** Defendants do not dispute Paragraph 209.

***G. Lincoln Terminates Beechwood After Concluding That Beechwood Could Not Be Trusted***

210. On or about February 5, 2015, during a phone call, Mr. Fisch informed Mr. Manela of Beechwood that Lincoln had decided to terminate its engagement with Beechwood. (SHIP Ex. 2 (Fisch Dep.) at 100:25 – 101:11).

**Response to No. 210:** Defendants do not dispute Paragraph 210.

211. In connection with the termination of Lincoln's engagement, on February 5, 2015, Mr. Trowbridge issued a directive to the Lincoln engagement team, instructing them to "*go back and cleanse your files on the Beechwood valuations in accordance with our record retention*

*policy. Please delete any draft models or reports and just hang onto the final models and analyses.”*

(SHIP Ex. 58 Lincoln-00005500) (emphasis added).

**Response to No. 211:** Defendants do not dispute Paragraph 211 except to the extent that it states that Mr. Trowbridge’s email was “in connection with the termination of Lincoln’s engagement” as that is not supported by the record SHIP cites and is contradicted by other admissible evidence in the record. Lincoln’s policies and procedures provided that on a quarterly basis, Lincoln would eliminate any draft analyses, including draft versions of reports. (Lincoln Ex. 67 (Lincoln-00010396) at 000010404; SHIP Ex. 11 (Buck Dep.) at 38:3-7.)

212. Mr. Fisch and Mr. Trowbridge testified that they were not aware of any other instance in which Lincoln’s valuation group terminated a client. (SHIP Ex. 2 (Fisch Dep.) at 99:4-99:15; SHIP Ex. 8 (Trowbridge Dep.) at 117:4-117:15).

**Response to No. 212:** Defendants do not dispute Paragraph 212.

213. On or about February 6, 2015, Beechwood asked Lincoln to reconsider its decision to terminate the engagement. On that day, in an internal email to the Lincoln team, Mr. Fisch documented Lincoln’s concerns with Beechwood which led to its decision to terminate the engagement. Mr. Fisch wrote: “*Client integrity. This is the threshold question. Do we trust them?*” He also noted: “*Need a better understanding what Beechwood is, source of funds, ownership and management’s reputation*” and that “*Lincoln needs more transparency as to [Beechwood’s] investments, underwriting, financial performance, beneficial owners, etc.*” (SHIP Ex. 59 LINCOLNSUB-00024053-24054) (emphasis added). Fisch also noted that Beechwood claimed to be working to “*become completely independent of Platinum.*” (*Id.*) (emphasis added).

**Response to No. 213:** Defendants dispute Paragraph 213 to the extent it characterizes the cited email as “document[ing] Lincoln’s concerns with Beechwood which led to its decision to terminate the engagement,” as such a characterization is not supported by the record SHIP cites. The cited email does not document what led to Lincoln’s decision to terminate the engagement, and Fisch’s quote regarding “client integrity” referenced “whether [Beechwood] could be trusted to . . . provid[e] [Lincoln] information in an efficient manner.” (Lincoln Ex. 2 (Fisch Dep.) at 97:03-13.) The record indicates that Lincoln terminated 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

engagement. (Lincoln Ex. 2 (Fisch Dep.) at 82:02-82:10; *see also* Lincoln Ex. 63 (Kahn Dep.) at 12:14-17.) Notwithstanding the foregoing, Defendants deny that Paragraph 213 raises a disputed material fact precluding summary judgment.

***H. After Beechwood Insists That Lincoln Issue One More Valuation, Lincoln Instructs Junior Analysts to Prepare a “Zombie Valuation”***

214. Lincoln did not reconsider its decision to terminate the engagement. However, Lincoln acquiesced to Beechwood’s request that Lincoln issue one more valuation – a negative assurance letter for January 2015. As Mr. Fisch indicated in an internal email, Lincoln agreed to provide “the January negative assurance letter. . . *to facilitate a transition,*” *i.e.*, to help Beechwood deal with the abrupt loss of its valuation provider (SHIP Ex. 59 LINCOLNSUB-00024053) (emphasis added).

**Response to No. 214:** Defendants do not dispute Paragraph 214 except SHIP’s characterization of Lincoln “acquiesce[ing] to Beechwood’s request” as such a characterization is not supported by the record SHIP cites.

215. On February 11, 2015, Mr. Trowbridge sent an email to two junior Lincoln analysts under the heading “Zombie Beechwood Valuations.” Mr. Trowbridge did not copy any members of the Lincoln team who had extensive experience with Beechwood. Mr. Trowbridge stated that “[i]f it is a complex investment of some sort and we’re very clearly just going to backsolve into a mark of par at close, we may not even need a full model.” (SHIP Ex. 60 LINCOLNSUB-00024010) (emphasis added). Mr. Trowbridge further noted: “[j]ust need to make sure the deal is arm’s length, no warrants, and that cost is reasonable.” (*Id.*) (emphasis added).

**Response to No. 215:** Defendants dispute Paragraph 215 to the extent it implies that Mr. Trowbridge asked the two analysts to prepare valuations for all of Beechwood’s investments in the SHIP custody accounts because that is not supported by the record SHIP cites. In his February 11, 2015, email, Trowbridge instructed the analysts to set up valuations models for three new Beechwood investments—Monstasnt Partners, MNYK, and Kennedy RH Holdings. (SHIP Ex. 60 (LINCOLNSUB-00024010).) None of the three investments was included in Lincoln’s negative assurance letter that valued Beechwood’s investments in the SHIP custody accounts. (*See* Lincoln Ex. 6 (LINCOLNSUB-00000570).) Notwithstanding the foregoing, Defendants deny that Paragraph 215 raises a disputed material fact precluding summary judgment.

216. Mr. Trowbridge further stated: “*we’re trying to get these done by tomorrow.*” (*Id.*) (emphasis added).

**Response to No. 216:** Defendants do not dispute Paragraph 216.

217. Mr. Trowbridge’s email made no mention of the fact that Lincoln had terminated Beechwood. Nor did Mr. Trowbridge’s email mention Lincoln’s extensive concerns with Beechwood which led to the termination (and which Mr. Fisch had extensively documented on February 6), including that Lincoln needed more “transparency as to [Beechwood’s] investments, underwriting, financial performance, beneficial owners, etc.” and that Beechwood was not independent of Platinum. (*Id.*)

**Response to No. 217:** Defendants do not dispute the first sentence of Paragraph 217. Defendants dispute the second sentence of Paragraph 217 because it is not supported by the record SHIP cites. Notwithstanding the foregoing, Defendants deny that Paragraph 217 raises a disputed material fact precluding summary judgment.

218. On February 19, 2015, Lincoln issued its final negative assurance letter. Notwithstanding Lincoln’s serious concerns about Beechwood’s integrity which led to Lincoln’s termination of Beechwood, the negative assurance letter confirmed that all of Beechwood’s marks were reasonable. (Lincoln Ex. 6 LINCOLNSUB-00024140 - 24141).

**Response to No. 218:** Defendants do not dispute the first sentence of Paragraph 218 or that Lincoln’s negative assurance letter confirmed that all of Beechwood’s marks were reasonable. Defendants dispute that Lincoln had “serious concerns about Beechwood’s integrity which led to Lincoln’s termination of Beechwood,” because it is not supported by the record SHIP cites and is contradicted by other evidence in the record. Lincoln terminated the engagement because the process itself was absorbing an enormous amount of personnel resources. (Lincoln Ex. 2 (Fisch Dep.) at 82:02-10; *see also* Lincoln Ex. 63 (Kahn Dep.) at 12:14-17.) Notwithstanding the foregoing, Defendants deny that Paragraph 218 raises a disputed material fact precluding summary judgment.

219. On the same day (February 19, 2015), Mr. Trowbridge again instructed the Lincoln team to cleanse their Beechwood files. (SHIP Ex. 30 LINCOLNSUB-00024129).

**Response to No. 219:** Defendants dispute Paragraph 219 to the extent it mischaracterizes the record. Trowbridge's February 19, 2015, email referenced his earlier instruction to the analysts to "cleanse your files on the Beechwood valuations in accordance with our record retention policy. Please delete any draft models or reports and just hang onto the final models and analyses." (SHIP Ex. 30 (LINCOLNSUB-00024129).) Notwithstanding the foregoing, Defendants deny that Paragraph 219 raises a disputed material fact precluding summary judgment.

***I. At Beechwood's Behest, Lincoln Speaks to Beechwood's Auditors, and Backdates its Termination Notice***

220. On February 24, 2015, Beechwood asked Lincoln to participate in a call with KPMG (Beechwood's auditors) regarding Lincoln's 4Q 2014 valuation reports. (SHIP Ex. 24 LINCOLNSUB-00024199 at 00024200) ("Our auditors are asking if they can set up a call to discuss the Q4 valuations next week. What is your availability?").

**Response to No. 220:** Defendants do not dispute Paragraph 220.

221. In response to Beechwood's request, on February 24, 2015, Mr. Fisch instructed Mr. Trowbridge to "*do this call as it relates to the 12/31 report to close things out.*" (SHIP Ex. 61 LINCOLNSUB-00024175) (emphasis added).

**Response to No. 221:** Defendants do not dispute Paragraph 221.

222. Lincoln decided that it would delay issuance of its formal termination notice to Beechwood until after it had spoken to KPMG. On March 5, 2015, Mr. Fisch sent an email to Lincoln's senior team, confirming that Lincoln would speak to the auditors the next day and directed that: "*Following that call we will send the termination letter.*" (SHIP Ex. 26 Lincoln-00001565) (emphasis added).

**Response to No. 222:** Defendants do not dispute Paragraph 222.

223. In Lincoln's engagement letter with Beechwood, Lincoln agreed that copies of its valuation reports could be provided to Beechwood's auditors without Lincoln's consent. (Lincoln Ex. 4 at 00012066 ("[Beechwood] may provide Valuations in their entirety once in final form to

the Company's auditors[.]"). Lincoln knew that Beechwood's auditors at KPMG were reviewing and relying on Lincoln's 4Q 2014 valuation report issued on January 19, 2015. (Lincoln Ex. 8 Kennelly Rep. at ¶ 61 ("KPMG analyzed Lincoln's Q4 2014 positive assurance report as part of its year end auditing process of Beechwood Re.")).

**Response to No. 223:** Defendants do not dispute Paragraph 223 except to the extent that it states that Lincoln knew that Beechwood's auditors were relying on Lincoln's 4Q 2014 valuation report as it is not supported by the record SHIP cites. Notwithstanding the foregoing, Defendants deny that Paragraph 223 raises a disputed material fact precluding summary judgment.

224. On March 6, 2015 at 8:52 am, KPMG sent Lincoln and Beechwood a list of topics that KPMG wanted to discuss on the call later that day. The topics made no reference to the fact that Lincoln had terminated Beechwood. (SHIP Ex. 25 Lincoln-00000688).

**Response to No. 224:** Defendants do not dispute Paragraph 224.

225. Later on March 6, 2015, Lincoln spoke to KPMG, with Beechwood on the line. (SHIP Ex. 24 LINCOLNSUB-00024199; SHIP Ex. 62 Lincoln-00001564; SHIP Ex. 63 Lincoln-00000217; SHIP Ex. 64 Lincoln-00006986; SHIP Ex. 25 Lincoln-00000688). There is no evidence that during this call Lincoln disclosed to KPMG (i) the fact that Lincoln had terminated Beechwood, or (ii) the circumstances of Lincoln's termination of Beechwood, including Lincoln's concerns regarding Beechwood's integrity and whether Beechwood could be trusted. Indeed, as Lincoln's expert acknowledged, KPMG analyzed Lincoln's valuation report for the quarter ending December 31, 2014 and spoke to the Lincoln team regarding that report. (SHIP Ex. 1 (Kennelly Dep.) at 113:24-114:11). As Lincoln's expert further acknowledged, Beechwood's financial statements for 2014 contain no disclosure of any related party transactions with Platinum. (*Id.* at 116:5-16; SHIP Ex. 52 CNOCSL\_00675038 at 675067).

**Response to Paragraph 225:** Defendants do not dispute the first, third or fourth sentences of Paragraph 225. Defendants dispute the second sentence of Paragraph 225 because SHIP fails to

cite admissible evidence to support its assertions. Notwithstanding the foregoing, Defendants deny that Paragraph 225 raises a disputed material fact precluding summary judgment.

226. On Monday, March 9, 2015 (the business day immediately following Lincoln's call with KPMG and Beechwood), Mr. Fisch sent a draft of the termination letter to Managing Director, Patricia Luscombe. In response, Ms. Luscombe asked: "*should we mention the practical date of the termination which was about one month ago?*" (SHIP Ex. 27 Lincoln-00000285) (emphasis added).

**Response to No. 226:** Defendants do not dispute Paragraph 226, subject to the clarification that Luscombe requested the change "so as there [was] no confusion about any further scope of services beyond [the] date" of Lincoln's last monthly report. (SHIP Ex. 27 (Lincoln-00000285) at 0285.) Notwithstanding the foregoing, Defendants deny that Paragraph 226 raises a disputed material fact precluding summary judgment.

227. Mr. Fisch replied: "*I can backdate the letter to Feb 19th, the date we delivered the last monthly report.*" (*Id.*) (emphasis added)

**Response to No. 227:** Defendants do not dispute Paragraph 227.

228. Later on March 9, 2015, Mr. Fisch emailed Lincoln's termination letter to Beechwood. Lincoln backdated the termination letter to February 19, 2015. (SHIP Ex. 28 Lincoln-00000298; SHIP Ex. 29 Lincoln-00000300).

**Response to No. 228:** Defendants do not dispute Paragraph 228.

229. On March 9, 2015 (the same date that Lincoln sent Beechwood its termination letter), Beechwood engaged Duff & Phelps as its new valuation provider. (SHIP Ex. 65 Duff & Phelps Dep. at 11:8-11:14).

**Response to No. 229:** Defendants do not dispute Paragraph 229.

230. There is no evidence that Lincoln disclosed to Duff & Phelps the fact that Platinum and Beechwood were related, the fact that Lincoln had terminated Beechwood, or the circumstances of Lincoln's termination of Beechwood. At its deposition, Duff & Phelps confirmed

that it had no knowledge of the fact that Platinum and Beechwood had common ownership or were related. (SHIP Ex. 65 Duff & Phelps Tr. at 90:3-90:7; 91:24-92:2; 95:22-96:5; 101:21-102:4; 108:15-108:18).

**Response to No. 230:** Defendants dispute Paragraph 230 because it is not supported by any admissible evidence. The transcript cited by SHIP was from an arbitration hearing between CNO and Beechwood. Lincoln was not present and did not have an opportunity to cross-examine the witness. Notwithstanding the foregoing, Defendants deny that Paragraph 230 raises a disputed material fact precluding summary judgment.

***J. SHIP Was Unaware That Lincoln Terminated Beechwood and The Circumstances of the Termination***

231. SHIP was not informed of the circumstances that led to the termination of Lincoln's work for Beechwood in or about March 2015. (SHIP Ex. 67 (Wegner Decl.) ¶ 9). At that time, if Lincoln had disclosed to SHIP that (i) Beechwood and Platinum were related parties, and (ii) substantial portions of the investments Beechwood made pursuant to the IMAs were related party transactions with Platinum, SHIP would have immediately investigated the relationship between Beechwood and Platinum. *Id.* If, upon such investigation, SHIP concluded that Beechwood was investing SHIP's money in related party transactions with Platinum while intentionally concealing that fact from SHIP, then SHIP would have terminated the IMAs. *Id.*

**Response to No. 231:** Defendants do not dispute the first sentence of Paragraph 231. Defendants dispute the second and third sentences of Paragraph 231 because the assertions are based on inadmissible, speculative testimony and are contradicted by evidence in the record. In an October 3, 2016, email, SHIP CEO Brian Wegner wrote: "[H]ad it been known in 2013 that [Mark] Nordlict, a Platinum executive, was an owner of Beechwood, it would not have been a concern because Platinum was a respected hedge fund at the time." (Lincoln Supp. Ex. 92 (SHIP0039881) at 0039883.) Notwithstanding the foregoing, Defendants deny that Paragraph 231 raises a disputed material fact precluding summary judgment.

232. The IMAs required Beechwood's auditors (KPMG) to send to Beechwood, by May 15 of each year, a letter opining on the net asset value of SHIP's IMA assets as of December 31 of the preceding year – and that Beechwood was required to provide these letters to SHIP. (Lincoln

Ex. 17 BW-SHIP-00010162 at 10185; Lincoln Ex. 18 BW-SHIP-00009661 at 9697; Lincoln Ex. 16 BW-SHIP-00011074 at 11096).

**Response to No. 232:** Defendants do not dispute Paragraph 232.

233. If Beechwood's auditors had refused to issue any such audit opinion because they determined that they could not rely upon Lincoln's valuation reports, SHIP would have immediately investigated the circumstances surrounding the auditor's refusal to provide the opinion. (SHIP Ex. 67 (Wegner Decl.) ¶ 11). If, upon such investigation, SHIP concluded that Beechwood was investing SHIP's money in related party transactions with Platinum while intentionally concealing that fact from Beechwood's auditors and SHIP, then SHIP would have terminated the IMAs. *Id.*

**Response to No. 233:** Defendants dispute Paragraph 233 because its assertions rely on inadmissible, speculative testimony and are contradicted by evidence in the record. SHIP did not request and receive a KPMG audit opinion until August 2016. (*See* Lincoln Supp. Ex. 93 (SHIP\_LP\_0075117); Lincoln Supp. Ex. 94 (SHIP0101609).) Notwithstanding the foregoing, Defendants deny that Paragraph 233 raises a disputed material fact precluding summary judgment.

234. SHIP's losses arising from its investments with Beechwood under the IMAs total approximately \$254,000,000 excluding prejudgment interest. (SHIP Ex. 9 (Hart Rep.) at ¶305-06).

**Response to No. 234:** For purposes of this summary judgment motion, Defendants do not dispute Paragraph 234.

Dated: March 17, 2020

Respectfully submitted,

Chicago, Illinois

/s/ William Ridgway

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**CERTIFICATE OF SERVICE**

I hereby certify that, on March 17, 2020, I served the foregoing Lincoln International LLC and Lincoln Partners Advisors LLC's Response to Senior Health Insurance Company of Pennsylvania's Counterstatement of Disputed Facts 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