Received 6/22/2022 3:53:42 PM Commonwealth Court of Pennsylvania

Filed 6/22/2022 3:53:00 PM Commonwealth Court of Pennsylvania
1 SHP 2022

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania in his capacity as the Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania, Plaintiff	:	
	:	DOCKET NO.: 1 SHP 2022
v.	:	
Brian Wegner 12862 Tuskany Boulevard Carmel, IN 46032	:	AMENDED COMPLAINT
Paul Lorentz: 214 Wellington Parkway Noblesville, IN 46060	:	JURY TRIAL DEMANDED
Barry Staldine 6789 South Foster Branch Court Pendleton, IN 46064	:	
Protiviti Inc. 2884 Sand Hill Road Menlo Park, CA 94025 Defendants.	:	

COZEN O'CONNOR
Michael J. Broadbent, PA ID 309798
Dexter R. Hamilton, PA ID 50225
Eric D. Freed, PA ID 39252
Matthew J. Siegel, PA ID 82406
1650 Market Street, Suite 2800
Philadelphia, PA 19103
(215) 665-2000

TUCKER LAW GROUP
Leslie Miller Greenspan
PA ID 91639
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609

Counsel for Michael Humphreys,
Acting Insurance Commissioner of the Commonwealth of Pennsylvania,
as Statutory Rehabilitator of Senior Health Insurance Company Of Pennsylvania

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint of for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

and

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
213 North Front Street
Harrisburg Pennsylvania 17101
(717) 232-7536

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decider a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado immediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

Central Pennsylvania Legal Services, Inc.
213 North Front Street
Harrisburg, Pennsylvania 17101
(717) 232-0581

and

Public Services and Lawyers Referral Committee
Dauphin County Bar Association
213 North Front Street
Harrisburg Pennsylvania 17101
(717) 232-7536

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania in his capacity as the Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania, Plaintiff	:	
	:	DOCKET NO.: 1 SHP 2022
v.	:	
Brian Wegner 12862 Tuskany Boulevard Carmel, IN 46032	:	AMENDED COMPLAINT
Paul Lorentz: 214 Wellington Parkway Noblesville, IN 46060	:	JURY TRIAL DEMANDED
Barry Staldine 6789 South Foster Branch Court Pendleton, IN 46064	:	
Protiviti Inc. 2884 Sand Hill Road Menlo Park, CA 94025 Defendants.	:	

AMENDED COMPLAINT

Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as the Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania ("SHIP"), by and through his undersigned counsel, brings the following causes of action against defendants Brian Wegner, Paul Lorentz, Barry Staldine, and Protiviti, Inc. ("Protiviti"), and in support hereof, respectfully avers as follows:

I. THE PARTIES

1. Michael Humphreys is the Acting Insurance Commissioner of the Commonwealth of Pennsylvania (the "Commissioner" or "Acting Commissioner"). The prior Commissioner, Jessica K. Altman, was appointed as the Statutory Rehabilitator of SHIP on January 29, 2020. Former Commissioner Altman and Acting Commissioner Humphreys have appeared in this action in the capacity of Statutory Rehabilitator of SHIP.

2. Acting Commissioner Humphreys was appointed Acting Commissioner on February, 28, 2022.

3. SHIP is a Pennsylvania stock limited life insurance company that administers a closed block of long-term care insurance policies.[1] SHIP is domiciled

[1] SHIP is referred to as a "closed block" because it has not sold new policies since 2003.

in the Commonwealth of Pennsylvania with its principal place of business in Carmel, Indiana.

4. Defendant Wegner is an individual residing at 12862 Tuskany Boulevard in Carmel, Indiana 46032. Defendant Wegner served as SHIP's President and Chief Executive Officer from August 2013 until December 2016. While he served as SHIP's Chief Executive Officer, Defendant Wegner also served as one of SHIP's directors.

5. Defendant Lorentz is an individual residing at 214 Wellington Parkway, Noblesville, Indiana 46060. Defendant Lorentz served as SHIP's Chief Financial Officer from 2008 until February 2017. While he served as SHIP's Chief Financial Officer, Defendant Lorentz also served as one of SHIP's directors and as the treasurer of Fuzion Analytics, Inc. ("Fuzion"), at the time SHIP's sister company and now SHIP's wholly owned subsidiary.

6. Defendant Staldine is an individual residing at 6789 South Foster Branch Court, Pendleton, Indiana 46064. Defendant Staldine served as a Vice President of CNO Financial Group, Inc. ("CNO"), of which SHIP was a subsidiary, in 2008. He later joined SHIP as a consultant in 2014, and then served as SHIP's Vice President of Business Management from February 2015 through October 2015. Following his time as SHIP's Vice President of Business Management, Mr. Staldine served as SHIP's Chief Operations Officer from October 2015 through March 2017.

Ultimately, when Defendant Wegner was placed on administrative leave in October 2016, Defendant Staldine replaced Defendant Wegner as President and Chief Executive Officer of SHIP. Defendant Staldine then served as Chief Executive Officer from April 1, 2017 until March 2020.

7. Defendant Protiviti is a global consulting firm that provides consulting on a range of topics including internal audit, risk and compliance. Defendant Protiviti's principal place of business is 2884 Sand Hill Road in Menlo Park, California, 94025. Protiviti served as SHIP's internal auditor from 2013 through 2016. (Attached hereto as Exhibit A is the Master Services Agreement between Protiviti and SHIP dated May 19, 2009 ("Protiviti MSA")).

II. JURISDICTION AND VENUE

8. The Commonwealth Court of Pennsylvania has jurisdiction over this matter pursuant to 42 Pa. C.S. § 761(a) and Sections 504 and 516 of the Pennsylvania Insurance Department Act, 40 P.S. §§ 221.4(d) and 221.16(c).

9. Venue is proper in this Court under 40 P.S. § 221.4(b) in that SHIP is a Pennsylvania domiciled insurance company.

III. FACTS COMMON TO ALL DEFENDANTS

A. SHIP and its Business

10. SHIP and its predecessors have provided long-term care insurance policy coverage since 1964.

11. SHIP's book of business consists of a closed block of defined benefit accident and health insurance policies that provide coverage for long-term care services.

12. Although SHIP has assumed a number of long-term care policies through co-insurance or reinsurance agreements, SHIP has not sold new policies since 2003. Accordingly, only a small fraction of SHIP's original long-term care business remains in force.

13. Until 2008, SHIP was a subsidiary of CNO, a financial services holding company based in Carmel, Indiana. However, in 2008, CNO recognized that it was enduring significant underwriting losses for SHIP policies and sought to reduce the strain of supporting these persistent losses.

14. Accordingly, in 2008, CNO transferred ownership of SHIP to the Senior Healthcare Trust, which was then merged into an independent oversight trust, the Senior Health Care Oversight Trust ("SHOT"). The trustees of SHOT serve as SHIP's directors and are primarily former insurance regulatory officials.

15. CNO and its subsidiaries made approximately $915 million in capital contributions to SHIP.

16. Following its transfer to SHOT and despite CNO's significant capital contributions, SHIP continued to decline financially due to critical and, in some

cases, egregious actuarial errors in the pricing of its policies and the establishment of its required reserves.

17. Throughout its decline, SHIP was advised by a series of third-party consultants that continuously provided overly optimistic, inappropriate or inaccurate estimates, assumptions, and calculations related to SHIP's financial health. These consultants additionally failed to notify SHIP or Pennsylvania insurance officials of red flags that they knew or should have known existed. SHIP relied on the purported expertise and advice of these consultants to help make critical financial decisions in the management of SHIP's business. This reliance ultimately inured to SHIP's tremendous detriment.

18. Milliman USA ("Milliman") served as SHIP's appointed actuary from as early as 2008 until at least 2017. Despite numerous criticisms of its methodologies in evaluating SHIP's financial health, Milliman consistently defended its aggressive (and unrealistic) calculations and assumptions—even where SHIP's actual experience did not match those assumptions. When other consulting firms attempted to review Milliman's work, they often did not receive complete documentation or data to review and were left to merely rely on Milliman's explanation of its work.

19. Eide Bailly LLP ("Eide Bailly") served as SHIP's independent auditor from 2013 through 2019. On occasion, Eide Bailly engaged third-party consultants on SHIP's behalf to review the work performed by SHIP's auditors, actuaries, and

other consultants. The consultants that Eide Bailly engaged raised several concerns with the work done by SHIP's advisors, and with Milliman's work in particular. Moreover, on November 23, 2016, despite significant red flags, Eide Bailly provided an erroneous opinion letter stating that SHIP's ultimately ill-advised Roebling Re transaction satisfied requirements for reinsurance and risk transfer standards set forth by the National Association of Insurance Commissioners ("NAIC") and applicable Pennsylvania law, including 40 Pa. C.S. § 3-502(b) and 31 Pa. Code § 163.20(b)

20. Lewis & Ellis Inc. ("Lewis & Ellis"), an actuarial firm, provided consulting services to Eide Bailly for SHIP's benefit from 2011 through 2016. In 2011, and again in 2014, Eide Bailly retained Lewis & Ellis to review Milliman's actuarial work. In this review, Lewis & Ellis identified numerous areas of concern suggesting that Milliman's methodology was overly aggressive, and made it impossible to measure the appropriateness of future valuations—which were issues critical to SHIP's long-term profitability. Indeed, Lewis & Ellis determined that SHIP's claims reserves reflected "a consistent pattern of historical deficiencies." In spite of these concerns, Lewis & Ellis declined to comment on the adequacy of Milliman's overall approach, going so far as to defend the methodologies as "appropriate."

21. Axene Health Partners LLC ("Axene") is an actuarial and consulting firm that provided consulting services to Eide Bailly for SHIP's benefit from 2011

through 2017. Axene conducted an actuarial review of SHIP's long-term care reserves on behalf of Eide Bailly and issued a draft report in April 2017. Again, despite concerns identified with Milliman's methodologies, Axene defended Milliman's work as "appropriate."

22. Given the information known by and available to it, Eide Bailly could not have relied reasonably on the findings and opinions of Milliman, Lewis & Ellis, Axene or other consultants and advisors to reach a conclusion that SHIP was in sound financial condition or that its financial statements were free from material misstatement or fairly presented SHIP's financial condition in accordance with accounting principles prescribed or permitted by Pennsylvania insurance law and regulators.

23. By 2018, when SHIP's management finally acknowledged that claims costs would substantially exceed available assets and revenues, SHIP's reserves were too deficient and its long-term care insurance policies as a group too severely underpriced. These actuarial problems were compounded by SHIP's ill-advised investments in Beechwood Re Ltd. ("Beechwood Re") and Roebling Re Ltd. ("Roebling Re"), as further discussed *infra*. As of the present date and going forward, it is clear that SHIP will not have enough money to pay for all the benefits expected to be owed to its remaining policyholders under its policies before modification pursuant to the Approved Rehabilitation Plan.

B. SHIP and Fuzion Analytics

24. Fuzion Analytics, Inc. ("Fuzion") is a Delaware corporation formed in 2012 as a wholly owned subsidiary of SHOT, ostensibly to provide administrative and management services to SHIP and other long-term care insurance companies. Fuzion is located in Carmel, Indiana.

25. Pursuant to a 2012 Management Agreement and Asset Purchase Agreement, SHIP conveyed essentially all of its employees and infrastructure to Fuzion in exchange for agreed-upon cash consideration.

26. As part of that transaction, Fuzion assumed responsibility for the administration of SHIP's long-term care policies. Since 2012, SHIP has had no facilities or employees as it relies exclusively on Fuzion and other vendors for its operations.

27. On August 20, 2019, SHOT transferred all of its interest in Fuzion to SHIP as a capital contribution. Accordingly, Fuzion is now a wholly owned subsidiary of SHIP.

C. Overview of SHIP's Financial Deterioration

28. SHIP began experiencing a material increase in financial difficulties in 2015.

29. There is no single cause of SHIP's financial problems. Instead, SHIP's financial deterioration is the result of diminished assets caused by poor management,

imprudent investment decisions, and insufficient premiums and premium rate increases, coupled with increased liabilities caused by demographic and market changes that led to higher than planned benefits costs.

IV. FACTS COMMON TO DEFENDANTS WEGNER, LORENTZ AND STALDINE

30. In an effort to evade oversight by the Pennsylvania Insurance Department ("PID") and personal culpability for SHIP's poor financial performance, Defendants Wegner, Lorentz and Staldine either explicitly created, introduced and/or approved, or completely abdicated their responsibility to stop, a series of ill-advised, risky and ultimately disastrous decisions and/or investments. The acts and omissions described began after November 12, 2008 and accrued to the detriment of SHIP and its policyholders.

31. Specifically, Defendants Wegner, Lorentz and Staldine were aware of the underpricing of SHIP's policy premiums due to the underestimation of future policy liabilities. In particular, these Defendants knew or should have known that SHIP's actuarial projections were based on faulty assumptions that, for example, understated morbidity, overstated morbidity improvement, overstated mortality, and overstated policy lapse and termination rates.

32. Defendants Wegner (as CEO), Lorentz (as CFO) and Staldine (as COO and then CEO) operated in concert to oversee and maintain an interactive process with the appointed actuary, Milliman, that resulted in the faulty actuarial

assumptions. Those faulty assumptions resulted in erroneous actuarial reports, memoranda, and opinions that led to gross understatements of SHIP's future liabilities. These gross understatements appeared in SHIP's official Annual Statements at least for the years 2014, 2015, 2016, 2017, 2018, and 2019.

33. Those gross understatements of SHIP's future liabilities led to an overstatement of SHIP's financial strength by creating the appearance of surpluses that did not exist, at least for the years 2014, 2015, 2016, 2017, and 2018.

34. Defendants Wegner, Lorentz and Staldine operated in concert to oversee and maintain a management enterprise that overstated SHIP's projected investment income and failed to acknowledge and properly account for lower-than-anticipated yields and other poor investment results.

35. Defendants Wegner, Lorentz and Staldine operated in concert to oversee and maintain a management enterprise that initiated, designed, contributed to, oversaw, maintained and/or failed to report to the PID the grossly understated future liabilities and the grossly overstated projected investment income. The concerted activity was ongoing and deliberate and sought to evade discovery, scrutiny, oversight and/or intervention by the PID.

36. The company management enterprise which injured SHIP included, but was not limited to:

a) Oversight and maintenance of the interactive process with the appointed actuary, Milliman, that resulted in grossly understating future liabilities of SHIP;

b) Working with investment advisors to conceive of and implement the Beechwood transaction which cost SHIP millions of dollars in losses;

c) Working with investment advisors to conceive of and implement the Roebling Re transaction which resulted in misrepresenting SHIP's financial condition and cost SHIP millions of dollars in losses;

d) Intentionally designing the Roebling Re transaction so that it would not require PID approval;

e) Seeking to convert SHIP to a property and casualty company to avoid PID intervention;

f) Seeking to re-domesticate SHIP to a different state to avoid PID intervention;

g) Failing to alert the Trustees and PID of Defendant Wegner's self-dealing and un-waivable financial conflicts that directly injured SHIP; and

h) Failing to alert the Trustees and PID of Defendant Wegner's inexcusable personal failures that directly injured SHIP.

37. The company management enterprise operated and maintained by Defendants Wegner, Lorentz and Staldine was in place at least from 2014, and remnants of that management enterprise continued to impact SHIP and SHIP's business operations until SHIP was placed in rehabilitation in January 2020.

38. On January 29, 2020, the Commonwealth Court entered the Order of Rehabilitation for SHIP naming former Commissioner Jessica Altman and her

successors as Rehabilitator of SHIP, empowering the Rehabilitator to manage the affairs of SHIP without any interference from its senior management.

39. Prior to the entry of the Order of Rehabilitation, former Commissioner Altman lacked the type of extensive authority granted to a statutory rehabilitator or liquidator under Pennsylvania law. SHIP's directors and officers retained their authority because no court had granted former Commissioner Altman the powers she would need if she wished to wrest control from the existing management enterprise that had been in control since 2014.

40. In contrast, the Order of Rehabilitation provided former Commissioner Altman and her successors—*i.e.*, SHIP's Rehabilitator—with, *inter alia*, the authority to "take such action as [the Rehabilitator] deems necessary or expedient to correct the condition or conditions which constituted the grounds" for rehabilitation, "the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator," and the ability to "pursue all appropriate legal remedies on behalf of the insurer." 40 P.S. § 221.23 (powers of rehabilitator).

41. Put differently, it was only upon entry of the Order of Rehabilitation on January 29, 2020 that the Rehabilitator, the Rehabilitator's appointees, and the Rehabilitator's advisors were able to recognize fully and begin to dismantle the

injurious management enterprise operated, maintained, continued, and protected at various points in time by Defendants Wegner, Lorentz and Staldine.

V. DEFENDANTS WEGNER'S AND LORENTZ'S POOR MANAGEMENT AND OVERSIGHT OF SHIP'S INVESTMENTS CAUSE HARM TO SHIP

42. Defendants Wegner and Lorentz approved or allowed SHIP to make poor investment transactions with insufficient due diligence, oversight, or protection against loss to SHIP.

A. The Beechwood Re Transactions

43. In February 2014, Fuzion and an entity known as Beechwood Re entered into an agreement under which Fuzion would provide third-party administration and management services to Beechwood Re.

44. Beechwood Re was a group of reinsurance and asset management companies formed by the principals of the now defunct hedge fund Platinum Partners ("Platinum").

45. Beginning in May 2014 and concluding in March 2015, SHIP also entered into a series of investments with Beechwood and its related entities. In that time, SHIP invested $320 million of its reserves in Beechwood Re. These investments were funded by SHIP with assets it was required to hold for benefits that would be owed to policyholders. In exchange for SHIP's $320 million investment, an affiliate of Beechwood Re guaranteed an annual return of 5.85% over a period of five years, which at the time substantially exceeded market returns for

investments suitable for SHIP. Moreover, the guarantees were provided by an entity that basic due diligence would have revealed could not satisfy the guarantees.

46. Beechwood Re's ratings and valuations were suspect prior to SHIP's investment, information Defendants should have discovered in the exercise of their duties, or did discover and overlooked deliberately.

47. Although SHIP's Board approved and ratified SHIP's investments on a quarterly basis, it did so based on incomplete or faulty information because SHIP's management, and specifically, Defendants Wegner and Lorentz, conducted little to no due diligence of Beechwood Re or its investment strategy prior to making these investments, or deliberately ignored indications that the information on which they were relying was unreliable.

48. Beechwood Re described the investments they were making with SHIP's $320 million as high-quality and high-yield investments. Beechwood Re also stated that it was investing SHIP's money conservatively and that the investments were more than sufficiently collateralized.

49. When SHIP entered into these investments, Defendant Wegner represented to the PID that SHIP's assets would be held in a custody account

compliant with Pennsylvania investment statutes and regulations, and with relevant NAIC requirements, including NAIC valuation standards.[2]

50. SHIP's Board believed it was entering into an agreement in which Beechwood Re was investing the $320 million in senior secured loans that were rated NAIC 1 and 2. However, the ratings of the Beechwood investments were suspect because they were based on incorrect information Beechwood Re itself provided to the ratings agencies, something Defendants would have discovered with appropriate due diligence. Further, Beechwood Re provided valuations that were not truly independent, but rather were concocted by an entity that worked closely with Beechwood Re to ensure they were consistent with Beechwood Re's expectations and needs.

51. In October 2014, Michael Rhoads, a certified public accountant and a financial auditor for Fuzion, reviewed the custodial agreements governing SHIP's Beechwood Re investments and determined they were not compliant with the 2014 NAIC Financial Condition Examiners Handbook guidance, applicable under Pennsylvania law. *See* 31 Pa. Code §§ 148a.1-148a.4. In particular, he noted the following deficiencies:

[2] NAIC valuation standards are industry-standard investment credit categorized in risk tiers ranging from 1 to 6, with 1 being the least risky.

a) The Custodian failed to identify SHIP as the owner of the Beechwood Re investments in the Custodial Agreements or in any other document governing SHIP's investment;

b) SHIP could not withdraw funds on demand from the Custodian; further, SHIP was locked into the investments for a specified period of time without the option for any flexibility; and

c) The Custodial Agreements did not describe the Custodian's responsibility to indemnify SHIP for any loss of securities due to negligence or dishonesty by the Custodian.

52. Then, after failing to properly investigate, analyze, and understand the Beechwood Re transaction, Defendants Wegner and Lorentz led SHIP to enter into Investment Management Agreements ("IMAs") and to execute other documents governing the Beechwood Re transactions, all of which failed to protect SHIP's investments.

53. SHIP's investments in Beechwood Re were formalized by IMAs with BAM Administrative Services ("BAM"), a non-registered investment advisor that was a subsidiary of Beechwood Re. Between 2014 and 2015, SHIP's management implemented three IMAs with Beechwood Re subsidiaries that were predicated on the apparently precarious financial condition of the parent.

54. Through the IMAs, SHIP forfeited its rights to the collateral purportedly securing the return promised by Beechwood Re, and, compounding the harm arising from that decision, there was little to no evidence of any oversight of

the Beechwood Investment program by SHIP's management or board of directors under the IMAs.

55. SHIP's board and/or management were required to establish and implement internal controls around its investment program to assure compliance with investment policy, but SHIP's management never did so with respect to Beechwood Re.

56. The IMAs were structured such that SHIP had no oversight or ability to exercise its rights with regard to any of the Beechwood Re investments; rather, those rights were effectively turned over to BAM. They also allowed Beechwood Re to use leverage in the account at its discretion, thus putting Beechwood's interests ahead of those of SHIP, to the detriment of SHIP and its policyholders and creditors.

57. Further, under the IMAs, the false valuations also triggered $33.5 million in performance-based bonus payments from SHIP to Beechwood Re. The IMAs did not require Beechwood Re to report the performance fee, in direct violation of Pennsylvania Insurance Code 40 P.S. § 504.1(c), which mandated that SHIP review the IMAs for such items as calculation of fees and review of performance.

58. Moreover, the IMAs gave Beechwood ultimate control of the investment valuations as Section 7 of the IMA stated that "any valuation of the Assets...shall be made by or at the direction of the Advisor (Beechwood Re),"

incentivizing Beechwood Re to manipulate pricing to increase its (wrongfully unreported) performance fee. SHIP's management, and in particular, Defendants Wegner and Lorentz, were responsible for overseeing this valuation and reporting it to the Board of Directors or a delegated committee.

59. In January 2015, Defendant Wegner informed the PID that SHIP wanted to enter into revised IMAs with Beechwood Re, representing to the PID that the revised IMAs would be subject to SHIP's statement of investment policy and guidelines. Ultimately SHIP and Beechwood Re decided to keep their original IMAs in place but agreed to enter into a new Custody Agreement with Wilmington Trust on February 3, 2015.

60. In February 2015, Protiviti provided SHIP's senior management with a report that identified potential problems with the IMAs that supported SHIP's Beechwood Re investments. Protiviti noted that it was unable to obtain from SHIP management any standard due diligence regarding Beechwood Re. Accordingly, Protiviti was unable to qualitatively assess the credit default risk borne by SHIP. This Protiviti report was apparently commissioned outside of established protocols and not delivered to appropriate committees or individuals at SHIP until a SHOT executive session in November 2016. (Attached as Exhibit B hereto is a Statement of Work under the Protiviti MSA dated January 5, 2015; *see also* Ex. A, Protiviti MSA.)

61. Overall, the Beechwood Re investments were highly speculative and opaque, and riddled with related-party transactions creating risks for SHIP—risks which later became unavoidably apparent, even for Defendants despite their efforts to actively turn a blind-eye to the Beechwood Re problems.

62. In June 2016, a Platinum co-founder was arrested on bribery charges and its offices were raided under suspicion of running a Ponzi scheme, including through the use of SHIP's $320 million investment.

63. Following this discovery, also in September 2016, SHOT held an executive session at which they acknowledged that SHIP's $320 million investment with Beechwood Re was in jeopardy.

64. At that SHOT executive session, SHIP retained Protiviti to audit the Beechwood Re investments. (Attached as Exhibit C hereto is a Statement of Work under the Protiviti MSA dated September 22, 2016; *see also* Ex. A, Protiviti MSA.)

65. At the same time, SHOT also hired an outside consultant to evaluate the IMAs and investments made under them on SHIP's behalf. This consultant concluded that SHIP's representation that the Beechwood Re investments were all high-quality assets with secure collateral positions was questionable.

66. Additionally, the alleged positive NAIC ratings of the Beechwood Re investments were dubious given the conflicts of interest, the control position of Beechwood Re, and the time limitation on the length the rating remained intact.

Analysis confirmed that Beechwood Re held a negative capital position and did not conform to accounting standards.

67. This investigation and analysis confirmed that there was to be little or no oversight of the Beechwood Re investment management programs by SHIP's management.

68. The legal documentation supporting SHIP's investments in Beechwood Re was incomplete, or in some cases, missing executed documents. These omissions include:

a) The Beechwood Re IMA was not executed, calling into question the legality of the investments made under that contract;

b) Some securities that were issued to SHIP were not listed on the schedule of investments;

c) Beechwood Re and at least one of its subsidiaries failed to release audited financial statements;

d) Beechwood Re did not use required Agency Agreements with certain investments;

e) Amendment No. 1 to the Custody Agreement dated February 3, 2016, clarified ownership and registration of the securities, and clarified that SHIP was authorized to provide direction; however, the copies of the Custody Agreement that Beechwood Re provided were not fully executed.

f) The guarantee on investment performance was provided by an affiliate without the means to perform.

69. Given the glaring problems with the Beechwood Re investments and Platinum's mounting legal troubles, in October 2016, Defendant Wegner stated in

an email to the Board that SHIP would fully divest itself from all Platinum-related investments (including Beechwood Re) by the end of that year.

70. At an October 2016 meeting, SHOT determined that it would conduct a detailed review and analysis of the Beechwood Re investments.

71. A subsequent analysis of the Custody Account Agreements between Beechwood Re and Wilmington Trust confirmed that while the assets were "pledged to SHIP," they had no documentation evidencing any such pledge, and the assets remained titled to Beechwood Re.

72. At a November 2016 SHOT executive session meeting, it became clear that the valuation of SHIP's Beechwood Re investments was likely inaccurate. Specifically, SHIP had calculated its risk-based capital ("RBC") ratio at 147% without any devaluation of its investments.[3] At this same meeting, it was suggested that the Roebling Re arrangement (discussed *infra*) differed from the Beechwood Re arrangement because SHIP's Board had exercised a hands-on approach and performed due diligence before entering into the Roebling Re arrangement,

[3] RBC is used to determine the minimum capital insurers are required to hold in reserve to avoid regulatory intervention by their state of domicile. Insurance regulators commonly use RBC standards to determine the appropriate amount of regulatory intervention for their domestic insurers. If the RBC ratio dips below 200% but stays above 150%, Pennsylvania law requires that the insurer submit to the state a written plan detailing efforts to improve the RBC ratio. 40 P.S. § 221.1-A. If the RBC ratio dips below 150%, further steps are taken to try and correct the company's conditions without entering rehabilitation or liquidation. Id.

insinuating that SHIP's Board failed to exercise this leadership in regards to the Beechwood Re transaction.

73. As will be seen, the Roebling Re transaction was no more defensible than the Beechwood transactions.

74. Further review and analysis revealed several red flags with regard to the Beechwood Re investments, including conflicts of interest, incomplete documentation, and flawed ratings reports.

75. For example, SHIP acquired an interest in a loan to entities known as Agera from BCLIC Primary, a New York statutory trust affiliated with Beechwood Re.

76. Defendants Wegner and Lorentz conducted very little due diligence before committing SHIP to the transaction, which took place over the span of about a week.

77. Upon information and belief, the amount assigned to SHIP pursuant to the agreement does not match the book value of the Agera loan, and the documentation of the transaction lacked the customary UCC statements necessary for perfecting security interests. The Agency Agreements which forfeited SHIP's rights in these investments were executed by Defendant Wegner.

78. Moreover, the Agera loan investment was riddled with potential harm for SHIP: it involved companies with significant debt obligations, an over-

concentration of risk, and a potential conflict of interest given the apparent relationship between Agera's principal Michael Nordlicht and Mark Nordlicht, the founder of both Beechwood Re and Platinum.

79. By the end of 2016, SHIP had begun the process of ending its relationship with Beechwood Re.

B. The Roebling Re Transactions

80. In or around September 2016, Roebling Re was a newly created offshore-entity owned by the Bruckner Investment Trust ("the BIT"), an active investment trust that is domiciled in Delaware.

81. SHIP management, with the assistance of others, caused SHIP to enter into a reinsurance agreement that allowed SHIP to cede 49% of most of its long-term care policy liability to this newly formed entity so that Roebling Re assumed 49% of these policy obligations from SHIP. Defendants also caused SHIP to transfer to Roebling Re, as a reinsurance premium, assets of substantially the same amount as the value placed on the reinsured liabilities in SHIP's financial statements.[4] These

[4] As discussed elsewhere in this Amended Complaint, in fact these liabilities were undervalued on SHIP's financial statements and the amount for which Roebling Re assumed responsibility was materially greater than was represented by the parties. This was yet one more risk with which Roebling Re could not cope because it simply had no assets of its own.

assets were to be held in a "funds withheld account" to secure Roebling Re's reinsurance obligations.

82. While Roebling Re appeared to accept financial responsibility for these liabilities, in fact, Roebling Re did not have any resources other than funds provided to it by SHIP. As a result, there was no required meaningful transfer of risk from SHIP to Roebling Re.

83. Further compounding the problems with this arrangement, Roebling Re was permitted to withdraw the first $100 million of what was planned to be at least $300 million from the funds withheld account to fund certain investments, and to substitute for the amount withdrawn certain securities of dubious or misstated value. The flawed transaction was also propped up by unachievable projections on returns on investments. On information and belief, the entire Roebling Re arrangement was motivated by the desire to enable the company to mislead regulators as to its true financial condition and to facilitate these investments outside of regulatory scrutiny.

84. To fund the investments, SHIP transferred $100 million from its funds withheld account to the BIT.

85. The BIT then invested $88.2 million of the $100 million into securities. Defendants Wegner and Lorentz, and those acting in concert with them, falsely represented that these securities had a value of $150.9 million. Notably, they were

not rated by a recognized rating organization. They were purchased originally by a non-insurer (*i.e.*, the BIT).

86. In return for its investment, the BIT issued SHIP a note with a 2.5% coupon rate and a 15-year maturity date. This note was collateralized by the purchased securities (the returns of which were used to pay the note), Roebling Re's stock (*i.e.*, profits from the securities, if any) and the BIT's other property (which was non-existent beyond cash flows from the Roebling Re arrangement).

87. SHIP and its auditors unjustifiably valued the BIT note at $100 million.

88. In addition to the $100 million note, the BIT also issued a $29 million note to Roebling Re. This note was for Roebling Re's alleged contributions to capitalization of the BIT and its alleged efforts to enter into the Roebling Re arrangement. This note has a 20-year maturity date and was inferiorly collateralized to the $100 million note.

89. The BIT paid $2,115,582 in management fees related to the acquisition and paid $3 million to the financial advisers that had brokered the transaction. The BIT retained the remaining balance (approximately $6.7 million in cash or cash equivalents) for future obligations.

90. The BIT also created a supplemental trust that functioned, at least in theory, to satisfy Roebling Re's reinsurance obligation to overcome any adverse developments and corresponding deficiencies in reserves for the ceded policies.

91. At the time SHIP entered into the Roebling Re agreement, Roebling Re appeared to have no assets. Similarly, beyond the remaining SHIP loan proceeds and revenues from the $88.2 million investments, the BIT had no appreciable assets.

92. After the Roebling Re arrangement was effected, in or around September 2016, the adequacy of reserves was reviewed and additions from the BIT were due on a quarterly basis.

93. Within just over a year, Roebling Re was no longer able to maintain its reserving obligations under the co-insurance agreement. The BIT was also unable to repay its note to SHIP as required.

94. In December 2016, Roebling Re transferred $10 million of the note to SHIP to avoid paying a ceding commission.

95. In June 2017, Roebling Re transferred another $19 million of the note to SHIP to avoid triggering a funding top-up obligation.

96. In December 2017, the BIT used $6 million of its retained cash or cash equivalents to satisfy Roebling Re's top-up obligation, presumably leaving only approximately $500,000 in BIT's accounts.

97. Within 15 months from the initial September 2016 investment, nearly all of Roebling Re's and BIT's assets were exhausted. This meant that SHIP was relying on the performance of the collateralized securities and had no material reinsurance protection from the Roebling Re arrangement.

98. Despite the inability of Roebling Re to perform on its reinsurance obligations, SHIP reduced its statutory reserves as if Roebling Re were capable of paying all of the losses for which it would be responsible under the reinsurance agreement, something that the Defendants knew full well was simply not the case.

99. As of April 2018, Roebling Re owed SHIP $98 million under the initial note and $31.2 million under the Roebling Re note.

100. In April 2018 regulatory filings, SHIP stated that it was terminating its reinsurance agreement with Roebling Re. SHIP exited this arrangement at the urging of the PID.

101. SHIP expended millions of dollars in the Roebling Re transaction and has nothing to show for it except a worsened financial condition.

VI. SHIP IS PLACED IN REHABILITATION FOLLOWING A MANDATORY CONTROL LEVEL EVENT

102. On March 1, 2019, SHIP filed with the PID its statutory annual financial statement for the year ending December 31, 2018.

103. That financial statement reflected that SHIP had declined from a reported surplus of more than $12 million as of year-end 2017 to a reported deficit of more than $466 million, a drop of $478 million in just one year, apparently rendering the Company statutorily insolvent as defined in 40 P.S. § 221.3.[5]

[5] SHIP remains in rehabilitation, not liquidation, and no court has declared SHIP to be insolvent such that it should be liquidated. While SHIP's deficit appears to bring

104. The Company's most recent RBC report indicated that its total adjusted capital was substantially below its mandatory control-level RBC, thereby triggering a "mandatory control level event" as defined in 40 P.S. § 221.1-A.[6]

105. SHIP was directed to provide the PID a corrective action plan to remedy this decline, but failed to do so.

106. On January 29, 2020, the Commonwealth Court of Pennsylvania placed SHIP into rehabilitation at the request and application of the Commissioner.

107. The purpose of this rehabilitation is, *inter alia*, to identify and address the causes of SHIP's financial deterioration for the benefit of policyholders and creditors.

108. The Commonwealth Court of Pennsylvania appointed Commissioner Altman and her successors, including Acting Commissioner Humphreys, as Rehabilitator.

109. As Rehabilitator, the Commissioner appointed Patrick H. Cantilo as SDR, and subject to the oversight of the Commissioner and the Commonwealth

---

SHIP within the definition of insolvency in § 221.3, the Rehabilitator maintains that SHIP should remain in rehabilitation and she does not admit through this allegation that SHIP should be liquidated.

[6] When a mandatory control level event is triggered, insurance regulators are required to take control of an insurer (as they did in this case) for the protection of policyholders and creditors.

Court, Mr. Cantilo is tasked with designing and implementing SHIP's rehabilitation and exercising the Rehabilitator's authority.

110. On August 24, 2021, the Commonwealth Court approved the Rehabilitator's proposed Plan of Rehabilitation. While certain intervening insurance regulators from other states appealed the Plan's approval, their request for stay was denied, and thus the Rehabilitator is proceeding with the implementation of the Approved Rehabilitation Plan ("the Plan"), which involves, *inter alia*, offering policyholders certain options for modifying their policies.

111. The Rehabilitator is implementing the Plan; however, until policies are modified as proposed under the Plan, SHIP is currently continuing to conduct its business as usual subject to the Commonwealth Court's oversight.

VII. FACTS AS TO EACH DEFENDANT

A. Wegner, Lorentz and Staldine Knowingly Entered into and/or Concealed the Flawed Beechwood Re and Roebling Re Transactions, Contributing Significantly to SHIP's Decline

112. In December 2013, Defendant Wegner contacted Beechwood Re regarding a potential investment in his company, Triliant LLC d/b/a Kala ("Triliant"). Also in December 2013, Mr. Wegner arranged for his son, Ryan Wegner, to join him for a meeting with Beechwood Re leadership regarding this potential investment.

113. In January 2014, Defendant Wegner emailed Ryan Wegner expressing optimism that the December 2013 meeting would lead to a payment of $250,000 for the Wegners. The relationship the Wegners developed with Beechwood Re led SHIP to make its massive investment in Beechwood Re.

114. Just a few months after this meeting, in April 2014, Defendant Lorentz informed Defendant Wegner that, after having met with Beechwood Re's leadership, he was comfortable with the concept of investing SHIP's reserves with Beechwood Re. Defendant Lorentz suggested that SHIP did not need to "go overboard" on due diligence in advance of making this investment decision. He further explained that he was unsure whether SHIP would want to be in a position of vetting Beechwood Re's individual investment deals due to resource constraints and because this would be the "job of the asset manager" (*i.e.*, Beechwood itself).

115. Defendant Staldine also took a lead role in driving the Beechwood deal. In June 2014 emails exchanged between Defendants Wegner and Staldine, Defendant Staldine stated that his "position responsibilities" during those upcoming months would include "driv[ing] the Beechwood deal" and "extend[ing] the Beechwood relationship to other blocks of business to the benefit of all parties."

116. Then, in July 2014, Fuzion's VP of Human Resources confirmed that Defendant Staldine would be a consultant working on the Beechwood Re project.

117. In or around September 2014, it was discussed at a SHIP board meeting that Defendant Wegner's family had a relationship with Beechwood Re and that this relationship presented a potential conflict of interest for SHIP's investments in Beechwood Re. Despite these concerns, under Defendant Wegner's leadership, SHIP continued to make additional investments in Beechwood Re until March 2015.

118. In or around November 2014, Defendant Wegner tasked Defendant Staldine with preparing a presentation for SHIP's board on Beechwood Re. In an email on this topic, Defendant Wegner told Defendant Staldine that it was "critical to make a great impression" in the upcoming meeting and Defendant Staldine replied that his intent was to make the presentation "Fortune 500 worthy." Defendant Wegner's daughter also assisted in preparing the Beechwood Re materials and Defendant Staldine was involved in Beechwood Re's quarterly business review that fall.

119. In December 2014, a full six months after SHIP first invested in Beechwood Re, Defendant Wegner informed Beechwood Re's leadership that SHIP's Board would need to gather additional information about Beechwood Re's investments. Specifically, Defendant Wegner stated that SHIP's Board should gather information regarding Beechwood Re's "structure, security, etc." However, Defendant Wegner assured Beechwood Re's leadership that this review would be "less intensive than some others [Beechwood] might do deals with."

120. In December 2014, Defendant Lorentz presented the Beechwood Re transaction as a means to improve SHIP's declining RBC ratio.

121. Mr. Lorentz later was the impetus behind the idea for the surplus note transaction with Beechwood. It was Mr. Lorentz's responsibility to review that transaction.

122. At an August 27, 2015, meeting of SHIP's Board of Directors, the Board requested additional due diligence on the Beechwood Re transactions. Defendants Wegner, Lorentz and Staldine were all present at this meeting. It is unclear what, if anything, came of this request.

123. After September 2016, Defendants Wegner and Lorentz actively tried to avoid regulatory action related to SHIP's declining RBC ratio. At the time, SHIP calculated its RBC ratio at 280%, failing to include any devaluation for the Beechwood Re or Roebling Re arrangements.

124. Also in September 2016, SHIP's need for solvency was identified as the rationale to enter into the Roebling Re arrangement. Specifically, the Roebling Re arrangement was designed to address SHIP's declining surplus ostensibly by establishing a structure that allowed SHIP to bolster its surplus through capital creation and to maintain RBC ratios at a level that would stave off regulatory action despite losses from the Beechwood Re investments.

125. In October 2016, Defendant Wegner acknowledged to the Board that the list of references SHIP engaged during the due diligence process for the Beechwood Re investments was only provided verbally. Further, Defendant Wegner stated that he was unable to locate any notes related to the alleged due diligence performed on these investments.

126. At the October 2016 meeting, SHIP's Board appointed Defendant Staldine (SHIP's then-Chief Operations Officer), as the acting Chief Executive Officer.

127. Even when Beechwood's issues came to light in the fall of 2016, Defendant Wegner continued to defend the Beechwood Re transactions and the individuals at Beechwood Re. Specifically, Defendant Wegner maintained that the leaders of Beechwood had high integrity and it would have been difficult for SHIP to uncover anything improper three years prior.

128. Despite Defendant Wegner's assurances that the Beechwood Re investments were sound, in October 2016, Defendant Wegner announced that SHIP was seeking to hire a new Chief Investment Officer as soon as possible to relieve Defendant Lorentz of those responsibilities.

129. Also in October 2016, Defendant Wegner's conflicts of interest were made explicit: SHIP's Board held another meeting at which it was revealed that

Beechwood Re had invested SHIP's money in Triliant, the business owned by Defendant Wegner's family.

130. Further, records show that even prior to SHIP's approval of the Beechwood Re transaction, Defendant Wegner had secured a $250,000 commitment from Beechwood Re for the Triliant investment.

131. Based on Beechwood Re's investment in Triliant, Defendant Wegner and/or his family may have personally benefitted from SHIP's Beechwood Re investment in this company. At the October 2016 meeting, the SHIP Board determined that it would place Defendant Wegner on administrative leave and ultimately terminate him from his position as President and CEO of SHIP.

132. Upon information and belief, there is no evidence that SHIP's Board approved the first two IMAs, or that Defendant Wegner even sought the Board's approval for these IMAs. It is unclear whether the Board was ever advised of the first two IMAs in advance of their execution by Defendant Wegner.

133. During the November 2016 SHIP Board meeting, it was acknowledged that the PID and SHIP management harbored concerns that Defendant Lorentz was not sufficiently competent to serve as SHIP's Chief Financial Officer.

134. Specifically, Defendant Staldine, then a SHIP director and officer, noted that investments were not within Defendant Lorentz's expertise. Further,

Defendant Staldine questioned whether Mr. Lorentz had been appropriately skeptical of the Beechwood Re investments.

135. SHIP's officers and directors also tried to avoid regulatory action by considering re-domestication. In January 2017, SHIP considered both the District of Columbia and Texas for this purpose, eventually pinning their hopes on Texas as they believed that Texas had less stringent RBC requirements than other states and regulatory action was not necessarily required at a RBC ratio below 70%. Their efforts to re-domesticate SHIP failed in the face of regulatory opposition.

136. Later, in February 2017, SHIP's management met again and concluded that Defendant Lorentz had exercised poor judgment in approving the Beechwood Re investment.

137. Despite these efforts, in February 2017, the PID concluded that SHIP had a capital shortfall. Between February and November 2017, the PID requested that SHIP issue a corrective plan and eventually considered seeking administrative supervision of SHIP.

138. By January 2018, the PID communicated its concerns to SHIP, specifically stating that SHIP's reserve assumptions were incorrect and that the Beechwood Re and Roebling Re transactions were problematic.

139. In February 2018, SHIP entered into a letter agreement with the PID similar in some respects to administrative supervision.

140. It is generally understood that incorrect actuarial assumptions and the imprudent Beechwood Re and Roebling Re investments caused or contributed to SHIP's financial difficulties.

141. Defendants knew or should have known that the Beechwood Re and Roebling Re transactions were ill-advised, lacked appropriate due diligence, and ultimately were likely to prove harmful to SHIP. Yet Defendants concealed these facts from the PID, SHIP's policyholders and creditors, and the public.

142. Moreover, Defendants knew or should have known of SHIP's precarious financial condition, but failed to disclose these facts to the PID, SHIP's policyholders and creditors, and the public. Rather, Defendants worked with SHIP's consultants to produce financial statements and reports, which were required to be submitted to the PID, declaring that SHIP's reserves were adequate and in compliance with Pennsylvania's insurance laws and regulations.

143. Defendants further knew, or should have known, that these statements contradicted the analysis of outside consultants, or otherwise significantly overestimated the adequacy of SHIP's reserves. Throughout the PID's investigation, Defendants concealed these relevant facts from regulators.

B. Eide Bailly Aided SHIP's Management in Masking the Flaws in the Roebling Re Transaction, which Contributed to Misrepresentations to Regulators and SHIP's Financial Deterioration

144. Eide Bailly served as SHIP's independent auditor from 2013 through 2019. SHIP relied on Eide Bailly to assist SHIP in making financial reporting and financial decisions that were critical to the health of SHIP's business and proper regulatory oversight.

145. Eide Bailly advised SHIP on the development and effectuation of the reinsurance agreement with Roebling Re. Specifically, by a letter dated November 23, 2016, Eide Bailly provided an opinion letter stating that the Roebling Re arrangement satisfied NAIC requirements for reinsurance and risk transfer standards.

146. Further, in 2017, Eide Bailly audited SHIP's financial statements for that fiscal year. In this audit, Eide Bailly considered SHIP's estimate of the reserves it maintained for long-term care insurance benefits. Based on unreasonable actuarial methods that relied on statistics from prior claim payment experience, estimates and assumptions regarding mortality, morbidity, lapse rates, expected future premium adjustments, estimated conversion rates, benefit utilization and anticipated investment earnings, Eide Bailly concluded that the actuarial assumptions used to develop SHIP's reserves were "reasonable in relation to the statutory financial statements taken as a whole."

147. Eide Bailly reached this conclusion despite the reality and indications that SHIP's actuarial methods and assumptions were based on outdated or erroneous information, which led to insufficient reserves and inaccurate financial estimates.

148. Furthermore, Eide Bailly failed to employ generally accepted and required accounting principles and auditing standards for auditors to investigate the reasonableness of the investment revenue assumed by SHIP's management.

149. These failures of Eide Bailly assisted SHIP's management in masking the flaws in the Roebling Re transaction and contributed to misrepresentations to the regulators of the PID and contributed to SHIP's financial deterioration.

150. Eide Bailly failed to provide the type of sound financial advice ordinarily expected of financial professionals and required by its engagement with SHIP. Accordingly, SHIP suffered financial damages including but not limited to those that arose from the Roebling Re transaction as well as those damages arising from the inaccurately audited 2017 financial results.

C. Defendant Lorentz's Actionable Behavior

151. In addition to other conduct described in this Amended Complaint, Defendant Lorentz played a particular role in causing SHIP to suffer losses as a result of the ill-advised Roebling Re transaction. Specifically, on at least three separate occasions, Lorentz provided misleading information on and related to the investment ratings assigned to certain commercial notes issued by Roebling Re's parent (*i.e.*,

BIT) despite knowing that the ratings for those notes were vital components of both obtaining approval of the transaction and valuing it for accurate financial reporting.

152. As described herein, in September 2016 SHIP purported to cede 49% of its liabilities to Roebling Re and providing Roebling Re with access to a funds withheld account used to secure Roebling Re's obligations—although no meaningful risk transfer actually occurred, in part because Roebling Re had no assets of its own to pay claims. (*See* ¶¶ 81-83.).

153. As part of the Roebling Re transaction, BIT immediately withdrew $100 million from the funds withheld account to invest in other securities and, in exchange, BIT issued two notes: a $100 million Class A Note to SHIP, and a $29 million Class B Note to a supplemental trust of Roebling Re naming SHIP as a purported beneficiary. (*See* ¶¶ 84-88.)[7]

154. On September 27, 2017, Egan-Jones Rating Company, a rating organization focused on the credit worthiness of issuers raising capital in private credit markets ("Egan-Jones"), prepared a ratings report on the Class A Note and Class B Note ("the BIT Notes").

155. In its September 27, 2017 report, Egan-Jones assigned a rating of "A" to the Class A Note and a rating of "A-" to the Class B Note. These A and A- ratings

[7] As part of the Roebling Re arrangement, portions of Note B were contributed to SHIP as commission payment for the reinsurance deal.

assigned to the Class A Note and Class B Note align with an "NAIC 1" rating. (*See* ¶ 49 n.2 (explaining NAIC ratings system; "NAIC 1" being the least risky investment.)

156. In rating the BIT Notes, Egan-Jones relied on BIT's pledged assets as security, specifically identifying three sets of assets as collateral: a $33.33 million note managed by Kohlberg Kravis Roberts & Co L.P. ("KKR Note"); $33.3 million in preferred equity in Ares Commercial Real Estate Inc., Ares Management LLC, or their affiliates (the "Ares Preferred Equity"); and $55.7 million of securities issued by subsidiaries of Assured Guaranty Ltd.[8]

Mr. Lorentz misrepresented the risk of the BIT Notes supporting the Roebling Re transaction when providing information for use in meeting with PID.

157. Mr. Lorentz knew these ratings were a crucial component of the Roebling Re transaction, and Mr. Lorentz knew these ratings were made expressly contingent on using the KKR Note and the Ares Preferred Equity as collateral. Neither the KKR Note nor the Ares Preferred Equity existed as assets of BIT at the time Egan-Jones issued its opinion, and the Egan-Jones report did not address how the BIT Notes would be rated in the absence of the KRK Note or the Ares Preferred Equity.

[8] The market value of the Assured Guaranty Ltd. securities was $88.6 million, but only $55.7 million was assigned as security.

158. Ignoring these critical facts, Mr. Lorentz misrepresented the risk level of the BIT Notes when he provided information about Roebling Re to the Board of Trustees and Audit Committee in advance of a meeting with PID regarding the Roebling Re transaction.

159. On or about November 7, 2016, approximately one week before a meeting with PID regarding the Roebling Re transaction, Mr. Lorentz emailed a copy of the Egan-Jones report and a related legal opinion to Thomas Hampton, a member of SHIP's Board of Trustees and its Audit Committee.

160. It is clear that Mr. Lorentz knew the importance of the ratings assigned to the BIT Notes and knew the importance of the KKR Note and the Ares Preferred Equity in supporting those ratings when he provided information to Mr. Hampton on November 7, 2016. In his cover email bearing the subject line "Reinsurance Support," represented to Mr. Hampton that the Egan-Jones "rating letter presupposes the Ares and KKR asset deals in addition to the original Assured Guaranty securities transaction."

161. Further discussion between Mr. Hampton and Mr. Lorentz on November 7 shows that Mr. Lorentz also knew that the ratings provided by Egan-Jones and the collateral supporting those ratings were critical pieces of information for the Board and Audit Committee in preparing for the PID meeting and follow-up reporting. Indeed, Mr. Hampton asked Mr. Lorentz to provide additional

information on "one issue" alone: the relationship between the ratings assigned to the BIT Notes and the securities used as collateral to support those ratings.

162. In response, Mr. Lorentz explained that the Egan-Jones ratings on the BIT notes were dependent on and "supported by the following investments: Assured Guaranty securities; Ares asset deal; [and the] KKR asset deal." Mr. Lorentz presented the deals to secure the KKR Note and the Ares Preferred Equity supporting the BIT Notes as inevitable: "[w]hile the BIT currently consists exclusively of the Assured Guaranty investment, once the other deals are executed, there will be a rebalancing of the assets under the trusts, i.e., the AG securities will be allocated among the four trusts. Likewise, the Ares and KKR investments will also be allocated among the trusts. The reason for this is to get greater diversification than would exist by holding each strategy in a single trust. This is why the Egan-Jones rating letter addresses all three strategies."

163. Mr. Hampton then asked Mr. Lorentz to address the NAIC rating for the BIT Notes in the event the KKR Note and the Ares Preferred Equity did not materialize and the Assured Guaranty securities were left as the only security of the BIT Notes. Mr. Lorentz represented to Mr. Hampton that the ratings assigned to BIT Notes would be reduced by "only . . . one rating notch" without the KKR Note and Ares Preferred Equity. Specifically, Mr. Lorentz represented that the Class A Note would remain "NAIC 1" rated (slipping from an "A" to an "A-" rating), and

the Class B Note would fall from "NAIC 1" to the top of the "NAIC 2" rating (slipping from an "A-" to a "B+++" rating).

164. Mr. Lorentz's representations regarding the ratings of the BIT Notes without the KKR Note and the Ares Preferred Equity are not supported by the Egan-Jones report, which is silent on the ratings that would apply in such a scenario.

165. In fact, there appears to be no clear basis for Mr. Lorentz's analysis of the impact of removing the KKR Note and the Ares Preferred Equity as supporting collateral. Given that losing the KKR Note and the Ares Preferred Equity would cause the collateral to drop from $122.4 million (*i.e.*, the $33.33 million KKR Note, $33.3 million in Ares Preferred Equity composed of two $16.67 million securities, and the $55.7 million Assured Guaranty securities) to $55.7 million (or at most $88.6 million, the market value of the Assured Guaranty securities), however, there would have been more than a "one notch" decrease in the ratings of these investments.

Mr. Lorentz misrepresented the risk of the BIT Notes immediately after SHIP's meeting with PID regarding Roebling Re.

166. Mr. Lorentz's misleading statements were not made in error or in haste because he repeated them eleven days later. On November 18, 2016, Mr. Hampton reported on his conversation with PID regarding Roebling Re, including his representation to PID (apparently based on his prior exchange with Mr. Lorentz) that the BIT Notes were rated "NAIC 1." In response, Mr. Lorentz offered his "[o]nly

correction" and represented again to Mr. Hampton that the BIT Notes were rated "A" and "A-." Mr. Lorentz did not truthfully address the value of the BIT Notes without the KKR Note and the Ares Preferred Equity despite knowing that incomplete and inaccurate information had been relayed to PID by Mr. Hampton.

167. These representations (or rather, misrepresentations) took place well after the Roebling Re arrangement had been executed and without any commitment or guarantee that the KKR Note and the Ares Preferred Equity transactions would materialize. In other words, at the time he made these representations to Mr. Hampton, Mr. Lorentz knew that the Egan-Jones ratings were based, in part, on collateral that did not exist and might never exist.

As CFO, Mr. Lorentz caused SHIP to rely on an erroneous valuation of the BIT Notes in its financial reporting.

168. As part of its annual financial reporting, SHIP retained Dixon Hughes to, among other things, perform a valuation of the two notes as of year-end 2016. This report was issued on or around February 20, 2017 to Mr. Lorentz.

169. In calculating the fair value of the Notes, Dixon Hughes relied on the Egan-Jones credit ratings—which, at this point were invalid, as the represented collateral was incorrect and did not exist, as Mr. Lorentz was well aware.

170. As CFO, Mr. Lorentz should have ensured that the BIT Notes were accurately valued by accounting for the possibility—and seeming inevitability—of the KKR Note and the Ares Preferred Equity failing to materialize.

171. Had appropriate credit rating been used (*i.e.*, not "A" and "A-"), the market value of the BIT Notes would have been lower, and, by extension, SHIP's assets on the financial statements (correctly) would have been lower.

D. Defendant's Staldine's Actionable Behavior

172. Defendant Staldine worked for SHIP's predecessor CNO for over 16 years. CNO originated as Conseco, the company that originally sold the long-term care policies that later formed the core holdings of SHIP.

173. Defendant Staldine had vast experience with long-term care policies by virtue of his time with Conseco; his work as a consultant for SHIP in 2014; his tenure as COO of SHIP from 2015 to 2017; and his tenure as CEO of SHIP from 2017 to 2020.

174. More than anyone else in SHIP's senior management, Defendant Staldine knew or should have known and understood the importance of SHIP's actuarial landscape.

175. Working for Conseco, Staldine worked directly on rate increase and compliance matters related to long-term care insurance. He was also working at Conseco in 2012, when the Commonwealth Court issued its pivotal decision in the

Penn Treaty matter which, among other things, re-emphasized the need for long-term care insurers to closely monitor their actuarial assumptions.

176. In addition, Defendant Staldine knew that SHIP was a long-term insurer in run-off and could not absorb the financial impact of mismanagement of actuarial projections and poor investment decisions.

177. Thus, based on his experience, at the time he served as senior management for SHIP, Mr. Staldine was or should have been familiar with the extensive financial difficulties faced by the long-term care industry and how those issues might impact SHIP—including the meaning and impact of the Penn Treaty proceedings, which arose out of what was and still is the largest long-term care insolvency and involved a Pennsylvania-domiciled long-term care insurer like SHIP.

178. During his tenure in senior management with SHIP from 2015 to 2020, Defendant Staldine contributed to SHIP's financial losses by, among other things:

a) Failing to affirmatively and timely report Defendant Wegner's clear management failures to the Trustees and/or to PID;

b) Failing to ascertain the reliability of Milliman's actuarial projections and to assure that SHIP management would rely on appropriate actuarial projections;

c) Failing to assure the propriety of the advice and services provided by Eide Bailly;

d) Providing final approval and signoff on SHIP's inaccurate and misleading Annual Statements for the years 2016, 2017, and 2018, knowing that the PID would justifiably rely on those Annual Statements;

e) Failing to affirmatively and adequately disclose problems relating to personnel issues, consultants and management to the PID, the SDR and the Chief Rehabilitation Officer in a prompt fashion; and

f) Participating in and perpetuating a management enterprise that contributed to SHIP's financial losses from 2015 to 2020.

E. Protiviti Failed to Properly Review SHIP's Financial Deterioration and the Proposed Beechwood Re Transactions

179. Protiviti was engaged by SHIP in January 2015 to: (1) assist in identifying and mitigating risks with regard to the Beechwood Re transaction, including, especially, reviewing due diligence material; (2) assist in reviewing economic assumptions used to calculate the economic impact of the transactions; and (3) assist in reviewing the transaction documents themselves by confirming that risk mitigation steps were provided for in the transaction documents and making recommendations to monitor compliance with risk mitigation steps. However, as the foregoing makes clear, Protiviti fell far short in its role.

180. In February 2015, Protiviti performed a review and analysis of a proposed Surplus Loan Transaction with Beechwood. In this analysis ("the Protiviti memo"), Protiviti noted that "[t]ypical due diligence information about the counterparties [*i.e.*, Beechwood] (financial statements, ownership structures, biographies and/or background checks of the principals) were not made available to [Protiviti] for this review." As a result, Protiviti was unable to "assess qualitatively the credit default risk being borne by SHIP."

181. Protiviti's analysis was based upon the January 5, 2015 version of the specific Beechwood Re agreements that were being negotiated. Protiviti confirmed that "[a]s of [the] writing, Beechwood has not provided the ownership structure to determine how BRe (Beechwood Re), BRIL (Beechwood Bermuda), BAM (B Asset Management), and BRILLC relate and who owns them, nor have they provided financial statements and biographies of the principals involved in the transactions." In Protiviti's opinion, that information should have been a "non-negotiable condition to closing." Despite reaching such conclusions, Protiviti failed in its obligation to ensure that SHIP's Board, and in particular, the Audit Committee, was aware of its concerns.

182. Protiviti attended formal quarterly meetings with SHIP's Audit Committee. Throughout the year, in addition to these formal meetings, members of Protiviti's staff met with the Audit Committee on several occasions. Although many of these meetings were intentionally organized so that SHIP's management was not in attendance, and while SHIP's management alluded to the fact that Protiviti may be engaged in additional assignments outside of their formal agreement with SHIP, Protiviti, and SHIP's management, failed to inform the Trustees of Protiviti's review of the Beechwood IMAs.

183. Indeed, upon information and belief, SHIP's management separately engaged Protiviti and instructed Protiviti not to inform the Trustees of this

assignment and to withhold the Protiviti memo (which was, of course, critical of the Beechwood transaction) from the Trustees. Protiviti was performing off-the-book projects directly with SHIP management and without the knowledge of SHIP's Audit Committee, then withheld essential information related to those projects from SHIP's board and Audit Committee at the request of management because sharing that information would have impeded management's desired goal of obtaining approval for the Beechwood transaction.

184. Protiviti's February 2015 memo circulated amongst the members of the Board of Trustees on April 23, 2018, more than a year after PID first asked SHIP for a corrective action plan. Indeed, although Protiviti promptly shared its February 2015 memo with management by sending it to both Mr. Wegner and Mr. Lorentz (the latter of whom, upon information and belief, represented to the Trustees that he never saw the memo) at the time it was prepared, the February 2015 memo was concealed and not presented to the Board until much later.

185. As a Trustee and chair of SHIP's Audit Committee, Mr. Hampton's role was to coordinate Protiviti's work and compensation on SHIP's behalf. Upon information and belief, because the Audit Committee was never made aware of the Beechwood side project, SHIP management paid fees separately to Protiviti that were not reviewed by and/or approved by Mr. Hampton.

186. By engaging separately with Mr. Wegner and Mr. Lorentz, without the knowledge of SHIP's Board or the Trustees, and by failing to raise red flags identified in its February 2015 memo regarding the Beechwood transaction, Protiviti engaged in willful misconduct and grossly negligent acts evincing reckless disregard for SHIP's wellbeing and for the wellbeing of SHIP's policyholders.

187. Protiviti, aware of the serious and risky nature of the red flags it identified in the Beechwood IMAs, acted unreasonably in its role as a statutorily required internal auditor for SHIP. As a result, SHIP continued to invest significant sums of money with Beechwood, further compounding this risk (and ultimately, causing more damage to SHIP).

188. Protiviti staff was provided access to SHIP's personnel, vendors, SHIP management, SHIP's records, and other sources of information. In addition, as SHIP's internal auditor, Protiviti was often in SHIP's/Fuzion's offices in Indiana, putting Protiviti in a position to investigate and identify problems through direct and indirect means.

189. Despite its extensive access to important information, Protiviti never informed SHIP's Board or the Trustees of Mr. Wegner's inappropriate behavior, nor that Mr. Wegner's children were working with SHIP and receiving fees. Rather, SHIP's board became aware of this inappropriate behavior from an external auditor

when its internal auditor (*i.e.*, Protiviti) either failed to do its diligence or knew, but did not raise these issues with the Board.

190. The consistent pattern over several years demonstrates that Protiviti continuously engaged in misrepresentations of SHIP's financial health and ability to exist as a going concern, reflected in years of overly optimistic and/or inappropriate or inaccurate estimates, assumptions, and calculations. SHIP relied on Protiviti to help make critical financial decisions in the management of SHIP's business. This reliance ultimately inured to SHIP's detriment.

VIII. CAUSES OF ACTION

Count 1: Breach of Fiduciary Duty (As Against Defendants Wegner, Lorentz, and Staldine)

191. Plaintiff incorporates the foregoing paragraphs of this Amended Complaint as if fully set forth here.

192. Defendants Wegner, Lorentz, and Staldine presented the Beechwood transaction to the Trustees and PID as a financially sound transaction.

193. The Trustees and PID relied on these representations.

194. As set forth in detail in the above paragraphs, Defendants Wegner, Lorentz, and Staldine, all of whom were key officers and directors of SHIP where they held senior management positions, entered into the Beechwood transactions after conducting little to no serious due diligence about Beechwood or its principals. Defendants Wegner, Lorentz, and Staldine entered into the Beechwood transactions

despite knowing or suspecting that the Beechwood transactions were founded upon suspect ratings and valuations.

195. Additionally, Defendants Wegner, Lorentz, and Staldine knew or suspected that serious deficiencies existed in SHIP's claims reserves, underwriting, and pricing practices but failed to disclose such material facts to the Board or the PID.

196. The foregoing constituted a series of violations of Defendants' fiduciary duties as officers and directors of SHIP.

197. Defendants' breaches have caused SHIP to suffer damages in an amount as yet to be ascertained but substantially in excess of $100 million.

198. Under Pennsylvania law, Defendants at all material times stood in a fiduciary relationship to SHIP regarding the handling of SHIP's funds. Accordingly, Defendants were obligated to perform their duties in good faith and in a manner that was in the best interests of SHIP and SHIP's policyholders, with such care as a person of ordinary prudence would use under similar circumstances.

199. Moreover, in addition to the violations by Defendants Wegner, Lorentz, and Staldine acting together as SHIP's management, Defendant Wegner willfully and intentionally breached his fiduciary duties, and failed to perform his duties in good faith, in a manner that was in the best interests of SHIP and SHIP's policyholders, and with such care as a person of ordinary prudence would use under

similar circumstances, by commission of the acts described herein, including but not limited to, unlawfully misappropriating, diverting and/or converting funds from SHIP for his own personal benefit and without benefit to SHIP or SHIP's policyholders.

200. Defendant Wegner engaged in self-dealing and improperly diverted SHIP's funds through an investment in his family-owned company, without any benefit to SHIP or SHIP's policyholders.

201. As a direct and proximate result of Defendant Wegner's breach of his fiduciary duties, SHIP has suffered actual injuries in an amount to be proven at trial.

202. Defendant Wegner's failure to act solely for SHIP's benefit was a real factor in bringing about Plaintiff's injuries.

203. Defendant Wegner is personally liable for the monetary damages suffered by SHIP attributable to his willful misconduct and recklessness.

204. Defendants Lorentz and Staldine had an obligation to act with such care as a person of ordinary prudence would use under similar circumstances with respect to Defendant Wegner's conduct and, had they done so, they would have uncovered and/or informed SHIP about that conduct.

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Defendants Wegner, Lorentz, and Staldine, jointly and severally, in the

amount of SHIP's damages as a result of Defendants' breaches, together with costs and such other relief as the Court deems appropriate.

Count 2: Breach of Fiduciary Duty
(As Against Defendant Protiviti)

205. Plaintiff incorporates the foregoing paragraphs of this Amended Complaint as if fully set forth here.

206. Protiviti owed to SHIP and SHIP's policyholders a fiduciary duty because it was in a superior or trusted position as set forth herein.

207. Protiviti breached that duty by failing to perform in accordance with its statutory and professional standards. Specifically, Protiviti acted as SHIP's auditor. In its review of the Beechwood transaction, Protiviti failed to obtain adequate information regarding Beechwood to enable Protiviti to assess the Beechwood transaction qualitatively, and failed in its obligation to ensure that the necessary individuals at SHIP were aware of the risk and potential, if not probable, harm presented by the transactions.

208. As a direct and proximate result of Protiviti's conduct, SHIP has suffered damages in an amount as yet unascertained but substantially in excess of $100 million.

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Protiviti, in the amount of SHIP's damages as a result of Protiviti's breaches, together with costs and such other relief as the Court deems appropriate.

Count 3: Civil Conspiracy
(Against All Defendants)

209. Plaintiff hereby incorporates by reference the foregoing paragraphs of this Amended Complaint as if fully set forth here.

210. Upon information and belief, Defendants willfully, intentionally, maliciously and/or with reckless disregard of the rights of SHIP, engaged in or entered into a conspiracy against SHIP.

211. Defendants acted in concert with each other and with management of SHIP, to:

a) conceive of and enter into risky transactions and engage in self-dealing;

b) evade statutory supervision by their use of untruthful and/or unreliable financial data;

c) conceal internal control weaknesses and other wrongdoing;

d) participate in the preparation of faulty and misleading financial information that was provided to SHIP and PID regulators; and

e) provide information to SHIP and/or PID regulators which they knew was not in accordance with applicable statutory and professional standards.

212. Through the above-referenced acts, relationships and interest of all Defendants, the Defendants have, at all times material hereto, conspired, combined and agreed to establish, operate and carry on, and did establish, operate and carry on a business to defraud SHIP and obtain money under false pretenses.

213. Through their above actions, Defendants acted with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose.

214. In achieving the objectives of the conspiracy, Defendants committed various overt acts, including without limitation making false and fraudulent representations, concealments and omissions described more particularly above, in pursuance of the common purpose and design of the civil conspiracy.

215. At all relevant times, Defendants acted with malice and/or reckless and oppressive disregard of SHIP's rights. Defendants were individually and collectively motivated by their desire to promote their own personal, business and financial interest to SHIP's detriment.

216. At all relevant times, Defendants knew their actions were unlawful and without justification when they were committed.

217. As a direct and proximate result of this scheme, SHIP has sustained damages.

218. Defendants' conduct was knowing, willful, malicious and/or reckless.

219. Defendants' false representation, concealments, actions and admissions were malicious, oppressive and/or fraudulent as defined by Pennsylvania law, so as to entitle SHIP to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants Wegner, Lorentz, Staldine, and Protiviti, jointly and severally, in the amount of SHIP's damages as a result of Defendants' conduct, together with costs and such other relief as the Court deems appropriate.

Count 4: Negligence
(As Against Defendants Wegner, Lorentz, Staldine and Protiviti)

220. Plaintiff hereby incorporates by reference the foregoing paragraphs of this Amended Complaint as if fully set forth here.

221. As President, Chief Executive Officer, and Director, Defendant Wegner owed SHIP a duty to act with due care in carrying out his responsibilities, including, but not limited to ultimate responsibility for SHIP's day-to-day operations, ensuring that SHIP was operated pursuant to a system of adequate internal controls that addressed the critical operational risks that comprised its business, and ensuring that its business was protected by appropriate risk management and loss control practices, including establishment of and strict adherence to investment guidelines and conservative reserving and management.

222. Defendant Wegner breached that standard of care by acting with negligence, gross negligence, and with a reckless and/or knowing disregard for SHIP's financial well-being, taking actions that he knew, or absent his negligence, gross negligence, and recklessness, he would and should have known, affirmatively and directly placed SHIP on the path to financial harm and eventual destruction.

223. As a direct and proximate cause of Defendant Wegner's negligent, grossly negligent, and/or reckless conduct, SHIP sustained substantial financial damages in an amount as yet to be ascertained.

224. As Chief Financial Officer and Director, Defendant Lorentz owed SHIP a duty to act with due care in carrying out his responsibilities including, but not limited to, having day-to-day responsibility over SHIP, ensuring that adequate internal controls over SHIP's financial reporting existed, ensuring that appropriate risk management and loss control practices were being utilized on behalf of SHIP, ensuring that SHIP was adequately addressing critical operational risks that existed in its business through, amongst other things, the implementation of conservative financial reporting through proper reserving and actuarial methodologies, and establishment of and strict adherence to appropriate investment guidelines.

225. Defendant Lorentz breached that standard of care by acting with negligence and with a reckless and/or knowing disregard for SHIP's financial well-being, taking actions that he knew, or absent his negligence and recklessness, he would and should have known, affirmatively and directly placed SHIP on the path to financial harm and eventual destruction.

226. As a direct and proximate cause of Defendant Lorentz's negligent and/or reckless conduct, SHIP sustained substantial financial damages in an amount as yet to be ascertained.

227. As Vice President of Business Management, and later Chief Operations Officer, and President and Chief Executive Officer, Defendant Staldine owed SHIP a duty to act with due care in carrying out his responsibilities including, but not limited to, ensuring that SHIP was protected by an adequate system of internal controls that addressed the critical operational risks that existed in its business, and ensuring that its business was protected by appropriate risk management and loss control practices, including but not limited to conservative claims management.

228. Defendant Staldine breached that standard of care by acting with negligence, gross negligence, and with a reckless and/or knowing disregard for SHIP's financial well-being, taking actions that he knew, or absent his negligence, gross negligence, and recklessness, he would and should have known, affirmatively and directly placed SHIP on the path to financial harm and eventual destruction.

229. As a direct and proximate cause of Defendant Staldine's negligent, grossly negligent, and/or reckless conduct, SHIP sustained substantial financial damages in an amount as yet to be ascertained.

230. As an auditor, Protiviti owed SHIP a duty to act with due care, diligence, and competence in carrying out its professional responsibilities—namely ensuring that SHIP had adequate processes in place to obtain accurately audited financial statements, ensuring that SHIP's financial positions were properly

supported, and conducting audits designed to detect weaknesses in SHIP's internal controls.

231. Protiviti breached that standard of care by acting with negligence, gross negligence, and with a reckless and/or knowing disregard for SHIP's financial well-being, taking actions that it knew, or absent its negligence and recklessness, it would and should have known, affirmatively and directly placed SHIP on the path to financial harm and eventual destruction.

232. As a direct and proximate cause of Protiviti's negligent, grossly negligent, and/or reckless conduct, SHIP sustained substantial financial damages in an amount as yet to be ascertained.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor and against all Defendants, jointly and severally, in the amount of SHIP's damages as a result of Defendants' conduct, together with costs and such other relief as the Court deems appropriate.

Count 5: Breach of Contract
(As Against Protiviti)

233. Plaintiff hereby incorporates by reference the foregoing paragraphs of this Amended Complaint as if fully set forth here.

234. Protiviti entered into various contracts with SHIP by which it assumed the role of internal auditor for SHIP. (*See* Exs. A-C.)

235. SHIP performed its obligations under the Protiviti contracts.

236. Protiviti breached its obligations under its contracts with SHIP to audit SHIP's internal controls and processes, and otherwise provide sound financial advice. Accordingly, SHIP suffered financial damages in an amount as yet to be ascertained.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor and against Defendant Protiviti in the amount of SHIP's damages as a result of Defendant's conduct, together with costs and such other relief as the Court deems appropriate.

Count 6: Negligent Misrepresentation
(As Against Wegner, Lorentz, Staldine)

237. Plaintiff hereby incorporates by reference the foregoing paragraphs of this Amended Complaint as if fully set forth here.

238. Defendants Wegner, Lorentz, and Staldine owed to SHIP, the PID, and the Commissioner, on behalf of the policyholders and creditors of SHIP and the public, the duty to exercise due care as officers and directors of SHIP.

239. In the course of acting as directors and officers of SHIP, Defendants Wegner and Lorentz made several false representations regarding (a) the financial condition of SHIP and (b) whether they could provide reasonable assurance that SHIP's financial statements were free of material misstatements and other representations as set forth above, under circumstances where they knew or should have known the falsity of these representations.

240. In the course of acting as a director and officer of SHIP, Defendant Staldine concealed internal control weaknesses and other wrongdoing; participated in the preparation of faulty and misleading financial information that was provided to SHIP and PID regulators; and provided information to SHIP and/or PID regulators which he knew or should have known was not in accordance with applicable statutory and professional standards.

241. These representations were made in the course of their duties as officers and directors and were made for the guidance of SHIP, the PID, and the Commissioner, on behalf of the policyholders and creditors of SHIP and the public.

242. SHIP, the PID, and the Commissioner, on behalf of the policyholders and creditors of SHIP and the public, are among the limited group of persons for whose benefit Defendants Wegner, Lorentz, and Staldine made representations.

243. These representations by Defendants Wegner, Lorentz, and Staldine were false and were material to an understanding of the financial condition of SHIP.

244. Defendants Wegner, Lorentz, and Staldine made these representations regarding the financial condition of SHIP with the intent and knowledge that they would be relied upon by SHIP, the PID, and the Commissioner, on behalf of the policyholders and creditors of SHIP and the public.

245. The misrepresentations made by Defendants Wegner, Lorentz, and Staldine were a breach of their duties to exercise due care.

246. SHIP, the PID, and the Commissioner, on behalf of the policyholders and creditors of SHIP, and the public, reasonably relied on the misrepresentations of Defendants Wegner, Lorentz, and Staldine, and were damaged thereby in an amount to be determined.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor and against Defendants Wegner, Lorentz, and Staldine in the amount of SHIP's damages as a result of Defendants' conduct, together with costs and such other relief as the Court deems appropriate.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and against the Defendants, and that the Court award the Plaintiff the following relief:

(1) The entry of judgment in favor of the Plaintiff and against the Defendants, jointly and severally, for an amount in excess of $500 million;

(2) The entry of judgment in favor of the Plaintiff and against the Defendants, jointly and severally, finding that they deepened SHIP's insolvency and that damages be assessed on that basis;

(3) Reasonable attorneys' fees and costs; and

(4) Such other and further relief as the Court deems just and proper.

X. JURY DEMAND

Plaintiff demands a trial by jury on all issues triable by jury.

Dated: June 22, 2022

COZEN O'CONNOR

/s/ Michael J. Broadbent
Michael J. Broadbent, PA ID 309798
Dexter R. Hamilton, PA ID 50225
Eric D. Freed, PA ID 39252
Matthew J. Siegel, PA ID 82406
1650 Market Street, Suite 2800
Philadelphia, PA 19103
(215) 665-2000

TUCKER LAW GROUP
Leslie Miller Greenspan, PA ID 91639
Ten Penn Center
1801 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 875-0609
Counsel for Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, as Statutory Rehabilitator of Senior Health Insurance Company of Pennsylvania

VERIFICATION

I, Patrick H. Cantilo, am the Special Deputy Rehabilitator ("SDR") for Senior Health Insurance Company of Pennsylvania in rehabilitation ("SHIP"). I am authorized to make this Verification on behalf of Plaintiff Michael Humphreys, Acting Insurance Commissioner of Pennsylvania, in his official capacity as Statutory Rehabilitator of SHIP. I hereby verify that the facts set forth in the Amended Complaint are true and correct to the best of my knowledge, information, and belief, SHIP's documents, and information provided to me by SHIP staff and advisors in my capacity as SDR.

I understand that I make this Verification subject to the penalties of 18 Pa. Stat. § 4904 relating to unsworn falsifications to authorities.

Patrick Cantilo

Dated: June 22, 2022

EXHIBIT A

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is dated for reference purposes only as of May 19, 2009 and is by and between **PROTIVITI INC.**, a Delaware corporation ("**Protiviti**"), and Senior Health Insurance Company of Pennsylvania, a Business Trust ("Client").

WHEREAS Protiviti is in the business of providing internal audit and risk assessment services..

WHEREAS Client desires to engage Protiviti with respect to said services and may desire to engage Protiviti's services at additional times for additional services.

THE PARTIES hereto agree as follows:

Agreement

This Master Services Agreement, the terms and conditions set forth in Attachment I, all exhibits referenced herein and attached hereto, and each Statement of Work (as that term is defined below) (collectively, the "**Agreement**") represent the entire agreement between Protiviti and Client regarding the engagement to which a Statement of Work refers and, supersedes all other oral, written or electronic communications between the parties concerning the subject matter thereof, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. In the event of conflict between any Statement of Work and this Agreement, the terms set forth in this Agreement shall govern unless the parties specifically agree otherwise in said Statement of Work.

Statements of Work

All services Protiviti shall provide under this Agreement shall be memorialized in a statement of work in the form attached hereto as Exhibit A, which, when fully executed by both parties, shall be incorporated herein and become part of this Agreement as though fully set forth herein (each a "**Statement of Work**"). Each Statement of Work will include a description of the project, a summary of Protiviti's approach, a list of the key tasks, a list of Client's obligations, a description of the project staffing and the names of the engagement team leaders, fees for services and the stipulated level of involvement by Client personnel. Client acknowledges that Protiviti's work is highly dependent on the availability of Client's personnel, other contractors of Client and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Client in meeting any stated deadlines but Client acknowledges that despite these efforts, due to such factors, any stated deadlines and timelines may not be met. Periodically, Protiviti may adjust its fees to reflect company-wide pricing changes and rate modifications associated with customary promotions of engagement personnel. Such changes will be communicated to you in a timely manner. Client shall be responsible for payment of all taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Protiviti's net income. Payment is due upon receipt of invoice. Should any invoice remain unpaid for more than thirty (30) days, interest shall be paid at a rate equal to the lower of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law.

Each Statement of Work shall also contain a description of the deliverables Protiviti will prepare for the project described in the applicable Statement of Work. All deliverables will have been prepared solely for the use of Client's management, employees and directors. The deliverables may not be relied upon for any purpose by any third party without the prior written consent of Protiviti.

Executed as of the date first written above.

PROTIVITI INC.	INSERT FULL NAME OF CLIENT
By: _____	By: _____
Patrick Scott	**Dean Sarantos**
Managing Director	Chief Financial Officer

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is dated for reference purposes only as of May 19, 2009 and is by and between **PROTIVITI INC.**, a Delaware corporation ("**Protiviti**"), and Senior Health Insurance Company of Pennsylvania, a Business Trust ("**Client**").

WHEREAS Protiviti is in the business of providing internal audit and risk assessment services.

WHEREAS Client desires to engage Protiviti with respect to said services and may desire to engage Protiviti's services at additional times for additional services.

THE PARTIES hereto agree as follows:

Agreement

This Master Services Agreement, the terms and conditions set forth in Attachment I, all exhibits referenced herein and attached hereto, and each Statement of Work (as that term is defined below) (collectively, the "**Agreement**") represent the entire agreement between Protiviti and Client regarding the engagement to which a Statement of Work refers and, supersedes all other oral, written or electronic communications between the parties concerning the subject matter thereof, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. In the event of conflict between any Statement of Work and this Agreement, the terms set forth in this Agreement shall govern unless the parties specifically agree otherwise in said Statement of Work.

Statements of Work

All services Protiviti shall provide under this Agreement shall be memorialized in a statement of work in the form attached hereto as Exhibit A, which, when fully executed by both parties, shall be incorporated herein and become part of this Agreement as though fully set forth herein (each a "**Statement of Work**"). Each Statement of Work will include a description of the project, a summary of Protiviti's approach, a list of the key tasks, a list of Client's obligations, a description of the project staffing and the names of the engagement team leaders, fees for services and the stipulated level of involvement by Client personnel. Client acknowledges that Protiviti's work is highly dependent on the availability of Client's personnel, other contractors of Client and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Client in meeting any stated deadlines but Client acknowledges that despite these efforts, due to such factors, any stated deadlines and timelines may not be met. Periodically, Protiviti may adjust its fees to reflect company-wide pricing changes and rate modifications associated with customary promotions of engagement personnel. Such changes will be communicated to you in a timely manner. Client shall be responsible for payment of all taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Protiviti's net income. Payment is due upon receipt of invoice. Should any invoice remain unpaid for more than thirty (30) days, interest shall be paid at a rate equal to the lower of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law.

Each Statement of Work shall also contain a description of the deliverables Protiviti will prepare for the project described in the applicable Statement of Work. All deliverables will have been prepared solely for the use of Client's management, employees and directors. The deliverables may not be relied upon for any purpose by any third party without the prior written consent of Protiviti.

Executed as of the date first written above.

PROTIVITI INC.	**INSERT FULL NAME OF CLIENT**
By: _____	By: _____
Patrick Scott Managing Director	**Dean Sarantos** Chief Financial Officer

ATTACHMENT I

Terms and Conditions to Agreement Dated May __, 2009 Between Senior Health Insurance Company of Pennsylvania ("Client") and PROTIVITI INC. ("Protiviti")

1. **Client Responsibility.** Client acknowledges that the achievement of any policy, process, model, system or risk management practice depends not only on the design and implementation, but also on the quality, experience and continuity of personnel involved, the diligent ongoing execution, and the appropriate modifications as changing conditions warrant. Client understands and accepts responsibility for all decisions related to, and implementation of, policies, processes, models, systems and risk management practice assessments, methods and assumptions developed in the course of this project.

   In addition, the ultimate responsibility as to the sufficiency of the approach and the specific scope of Protiviti's work and the nature, extent and timing of the procedures performed rests with management and the Client's Audit Committee.

2. **Responsibility for Internal Controls.** Client is solely responsible for establishing and maintaining its own effective internal control system, record keeping, management decision-making and other management functions. Client shall be fully and solely responsible for applying independent business judgment with respect to the services and the deliverables provided by Protiviti, to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in any advice, recommendations, services, reports or other deliverables to Client.

3. **Regulated Activity.** Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services. To the extent required by the U.S. Securities Exchange Act of 1934 and applicable U.S. Securities and Exchange Commission regulations (referred collectively as the "**SEC Rules**"), Client (i) acknowledges to Protiviti that it is Client's responsibility to design, establish and maintain a system of internal accounting controls in compliance with applicable SEC Rules, including "disclosure controls and procedures" and "internal controls and procedures for financial reporting," as each such term is used and defined under the Sarbanes-Oxley Act of 2002 and the interpretive guidance and regulations relating to such Act, and (ii) acknowledges to Protiviti that it is Client's responsibility to make such disclosures with respect to this engagement that are required by applicable SEC Rules.

4. **Authoritative Standards.** Client acknowledges that there is no authoritative standard against which risk management practices can be directly compared. In practice, methodologies and approaches to measuring, managing and controlling risk vary considerably. New and refined practices continue to evolve and the characterization of policies, procedures or models as sound or "best" practices is judgmental and subjective.

5. **Confidential Information.** Each party agrees to protect the other party's Confidential Information in a reasonable and appropriate manner and in accordance with any applicable professional practices and to use and reproduce Confidential Information only to perform its obligations under this Agreement or for its internal collection, analysis and training purposes. Confidential Information is any information disclosed to the recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature except for information that (i) is or becomes generally available to the public without breach by recipient of its confidentiality obligations, (ii) is received by recipient from a third party without restriction against disclosure, (iii) was known to recipient without restriction prior to disclosure, (iv) is independently developed by recipient without use of discloser's confidential information, or (v) is disclosed pursuant to any legal requirement or order, or pursuant to any rule or regulation of any stock exchange or national securities quotation system, governing either the recipient or the disclosing party.

6. **Distribution of Deliverables.** Protiviti's deliverables are for the use and benefit of the Client only and not for any other party (each a "**Third Party**"), including but not limited to Client's affiliates, shareholders, business partners or advisors. If the Client desires to disclose such deliverables or make reference to Protiviti to any Third Party other than the Client's legal counsel and external auditors who need access to such information and who have agreed to keep such information confidential, Client will obtain Protiviti's prior written approval and if requested by Protiviti, obtain from such Third Party a non-disclosure agreement and release in a form satisfactory to Protiviti in its reasonable discretion. Protiviti accepts no liability or responsibility to any Third Party who benefits from or uses services hereunder or gains access to the deliverables. Because Protiviti accepts no liability to any Third Party with respect to the services or deliverables rendered hereunder, Client agrees to indemnify, defend and hold Protiviti, its affiliates, directors, officers, employees, vendors, and contractors ("**Protiviti Parties**") harmless against any and all losses, damages or liabilities (including costs, expenses and reasonable attorney's fees) resulting from or related to a Third Party claim to which Protiviti may become subject arising in any manner out of or in connection with the services or deliverables rendered by Protiviti hereunder, except to the extent that it is finally judicially determined that the losses, claims, damages or liabilities were the direct result of Protiviti's gross negligence or willful misconduct in the rendering of services hereunder. The Protiviti Parties are entitled at their election to retain separate counsel; provided that it shall be at their own cost and expense except where the need for separate counsel arises from a conflict of interest.

   Nothing contained in this Agreement shall prohibit the legally required disclosure of requested deliverables to the Client's regulators who can be granted immediate and full access to such deliverables with the understanding that Client shall give Protiviti prior notice so that it may seek confidential treatment of such information.

7. **No Third-Party Beneficiaries.** This Agreement has been entered into solely between Client and Protiviti, and no third-party beneficiaries are created hereby except as expressly otherwise provided herein.

8. **Responsibility for Information.** Protiviti shall be entitled to rely on all information provided by, and decisions and approvals of, Client in connection with Protiviti's work hereunder. Client hereby releases Protiviti and its personnel from any liability and costs relating to the services hereunder to the extent such liability and costs are attributable to any information provided by Client personnel that is not complete, accurate or current in all material respects.

9. **Changes to Services.** Changes to the services must be agreed to by Protiviti and Client and will not be considered effective unless and until both parties agree as to the impact of the requested change on the cost, timing or any other aspect of the services or this Agreement.

10. **Indemnification.** Protiviti and the Client shall indemnify, defend and hold harmless the other for any and all bodily injury losses and damages and physical property damages to which the other party may become subject that result directly from the indemnifying party's negligence or willful misconduct.

    A party required to provide indemnification under this Agreement shall reimburse the party entitled to such indemnification promptly for any legal or other expenses reasonably incurred by it in connection with providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings arising in any manner out of or in connection with the rendering of services by Protiviti hereunder, in each case to the extent that indemnification is required for such proceedings under this Agreement.

11. **Limitation of Liability.** Notwithstanding anything to the contrary herein, Client and Protiviti agree that in no event, regardless of the legal theory asserted (including without limitation breach of contract, negligence or any tort claim), shall (i) Protiviti be liable to Client or any person asserting claims on behalf of or in the right of Client for any claim, liability, loss, damage or expense in excess of the total amount of fees paid to Protiviti under the relevant Statement of Work except to extent of the indemnification obligations of Protiviti under Section 10; or (ii) either party be liable to the other or any person asserting claims on behalf of or in the right of it for consequential, indirect, incidental or

special damages of any nature suffered by Client or Protiviti (including, without limitation, lost profits or business opportunity costs).

12. **Engagement Team Restrictions.** If for any reason any of the employees or subcontractors designated in the applicable Statement of Work is not able to complete this engagement, Protiviti will provide employees or subcontractors with similar qualifications and experience to complete the assignment. For a period commencing as of the date of this Agreement and ending one (1) year from the date that a Protiviti employee or subcontractor stops providing services to Client under this Agreement, neither Client nor its affiliates shall hire or solicit said individual without paying Protiviti a fee equal to the annual salary or subcontractor revenue of such individual. The restrictions on solicitation or hiring set forth in this Section will not apply to any employee or subcontractor who was terminated prior to solicitation.

13. **Workspace.** Client will provide reasonable workspace for Protiviti personnel at its work sites, as well as occasional administrative support services related to the engagement. Client shall provide Protiviti personnel with any necessary safety orientation and security access for work on Client's premises.

14. **Warranties.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PROTIVITI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

15. **Publicity.** Neither party shall use the name of the other, in part or whole, or any of their trademarks or trade names of the other without the other's prior written approval. Notwithstanding the foregoing, Client consents to Protiviti's use of Client's name and a general description of the services to be performed by Protiviti under this Agreement in resumes and confidential proposals.

16. **Proprietary Rights in Deliverables and Data.** Subject to the terms of Section 6 (Distribution of Deliverables) and Client's fulfillment of all payment obligations, Protiviti acknowledges and agrees that Client shall retain all ownership rights in any deliverables developed by Protiviti under this Agreement and delivered to Client, excluding Protiviti Proprietary Materials, as defined below, and any third-party software that is incorporated into the deliverables. Client acknowledges that as part of performing services, Protiviti may utilize proprietary software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques (including any enhancements or modifications thereto) which have been originated or developed by Protiviti, or which have been purchased by, or licensed to Protiviti (collectively, "**Protiviti Proprietary Materials**"). Client agrees that Protiviti shall retain sole and exclusive title, rights and interest in and to Protiviti Proprietary Materials. Subject to the terms of this Agreement, Protiviti grants and Client accepts a worldwide, nonexclusive, nontransferable license to Protiviti Proprietary Materials for use only in conjunction with deliverables.

17. **Termination of Agreement.** Either party may at any time and without cause terminate this Agreement by giving written notice of termination to the other party. The rights and obligations set forth in Sections 5, 6, 8, 10, 11, 12, 14, 15, 16 and 17 shall survive termination of this Agreement. After conclusion of the work contemplated in a Statement of Work or the termination or expiration of a Statement of Work (a "**Prior SOW**"), for so long as the Client and Protiviti are actively negotiating a new Statement of Work for Protiviti's provision of services to Client that are substantially similar to those provided under the Prior SOW, the provisions of this Agreement and the Prior SOW, including any payment terms, shall apply to such services provided by Protiviti prior to the finalization of such new Statement of Work.

18. **Governing Law.** This Agreement and the rights and duties of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York.

19. **Notice.** All notices or other communications required or desired to be sent to either party shall be in writing and sent by first class mail, postage prepaid, by next-day courier or by facsimile, to the

attention of the person identified below, at the address shown below or to the facsimile number shown below. Either party may change such address or facsimile number by written notice to the other party. Notice shall be effective on the fifth (5th) business day after mailing, on the first (1st) day after the date of sending via next-day courier, or on the date of the transmission if sent by facsimile (provided that notice shall be effective on the first business day following the date of transmission if transmission is effected on a non-business day).

Protiviti: Protiviti Inc.
Attn: Patrick Scott
Managing Director
120 S. LaSalle, Suite 2200
Chicago, IL 60603
Facsimile: (312) 476-6897

cc: Protiviti Inc.
Attn: Legal Department
50 California Street, 17th Floor
San Francisco, CA 94111

Client: SHIP
Attn: Dean Sarantos
1289 West City Center Drive, Suite 200
Carmel, IN 46032
Facsimile: (317) 566-7585

20. **Assignment.** Neither Protiviti nor Client shall assign this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any assignment in violation of this provision shall be deemed to be null and void.

21. **Employment Practices.** Both parties agree to comply with all applicable equal employment opportunity laws, including Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, and, if applicable, the affirmative action requirements of the Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.

22. **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations (except for payment obligations) under this Agreement if such default or delay is caused by an act of God or other circumstance outside the reasonable control of the party.

23. **Severability.** If any term of the Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from the Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

24. **Headings and Interpretation.** The section headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement. All parties hereto have participated substantially in the negotiation and drafting of this Agreement and each party hereby disclaims any defense or assertion that any ambiguity herein should be construed against the drafter of the Agreement.

25. **Regulatory Compliance.** Client acknowledges and agrees that it is responsible for its own legal representation and guidance related to the services provided hereunder, and that it will consult its own legal resources before acting upon any deliverables Protiviti provides under this Agreement. Client further acknowledges and agrees that Protiviti is not a law firm and is not providing legal advice or analysis and that Protiviti has not engaged legal counsel with respect to the services.

26. **Release; Use of Certain Automated Tools.** Client understands that Protiviti's testing procedures and the tools Protiviti uses, including security assessment tools and/ or security software solutions and other automated tools, are designed to detect possible weaknesses in network security controls. Protiviti cannot, however, provide assurance that these tools or any other procedures that Protiviti might apply will identify all possible vulnerabilities. There is a slight possibility that the tools may, because of possible unique conditions in Client's software, inadvertently impact Client's network performance or Client's software configuration or data. Client agrees not to hold Protiviti responsible or liable for any adverse effects relating to the use of such tools. If activity occurs which impacts Client's network performance or Client's software configuration or data, or is otherwise in conflict with agreements made as to the conduct of this effort, Client reserves the right to take actions to minimize or eliminate this impact.

27. **Non-Public Personally Identifiable Information.** In providing services to Client, Protiviti may have access to certain proprietary information ("Proprietary Information") owned by Client and not generally available to the public; this information may include non-public personally identifiable information ("NPPI") of Client's customers as that term is defined in The Gramm-Leach-Bliley Act. Protiviti is authorized to use this Proprietary Information solely for the purpose of providing services to Client. Protiviti agrees to reveal this Proprietary Information only to those employees and agents who need to know the information for purposes of providing services to Client. Protiviti, its employees and agents will not disclose any Proprietary Information to any person or entity without Client's consent unless compelled by subpoena or other validly issued administrative or judicial request. The Proprietary Information is the sole property of Client and Protiviti agrees that, upon request of the Client, it will return or destroy all Proprietary Information, unless otherwise required by law or regulation to maintain such information. If requested by Client, Protiviti shall cooperate with Client in evaluating the security measures that Client requires Protiviti have in place for the protection of NPPI. If Protiviti cannot meet such security measure requirements for the engagement contemplated hereby, Protiviti shall notify Client and Client may, as its sole remedy, terminate this Agreement upon written notice to Protiviti.

EXHIBIT B

EXHIBIT A

STATEMENT OF WORK

Check one

☒ **Project** ☐ **Staff Augmentation**

This is a Statement of Work referred to in the Master Services Agreement dated May 19, 2009 by and between Senior Health Insurance Company of Pennsylvania ("**Client**") and Protiviti Inc. ("**Protiviti**"). This Statement of Work shall be effective immediately after signed by both parties.

1. Engagement Team Leaders and Project Staffing:

   David Kupinski – Client Relationship Managing Director
   Charles Soranno – Engagement Managing Director
   Rick Yager – Subject Matter Expert, Treasury

2. Client's Project Manager and Additional Client Contacts:

   Paul Lorentz – Chief Financial Officer

3. Name of Project: Transaction Treasury Diligence Review

4. Project Description:

SHIP anticipates entering into a series of transactions that will improve their Risk-Based Capital (RBC) ratio and provide a guaranteed return on $180 million in invested funds. Transaction consists of:

- a $50 million subsidized surplus loan from Beechwood Re (BRe) to SHIP,
- Re-characterization of a $80 million investment management agreement (IMA) with guaranteed rate of return with BRe from custody to fixed rate loan,
- Re-characterization of $20 million IMA with guaranteed rate of return with Beechwood Bermuda International Ltd (BBIL) from custody to fixed rate loan,
- additional fixed rate loan from SHIP to BBIL of $60 million,
- New IMA with BRe for management of $110 million new assets.

Protiviti will assist SHIP in regard to the proposed transaction, as follows:

- Provide preliminary observations on the transaction(s)
- Assistance in identifying & mitigating the following risks
  - Identify leading practices on credit review for collateralized loans, including information requirements, analysis, and
  - Review due diligence materials on Beechwood Re, Beechwood Bermuda International, Ltd, and Beechwood Capital Group (parent) and
  - Prepare inventory of risks associated with the transaction and prepare a gap analysis of loan provisions necessary to minimize risks
- Assistance in reviewing economic analysis
  - Review economic model formulation
  - Review assumptions used in calculating economic impact of the transactions

- Identify additional provisions and potential refinements in the analysis that may be useful for presentation to the Board

- Assistance in the operational review of transaction documents
  - Provide observations on the operational aspects of the transaction documents. Legal analysis is not part of the Protiviti review
  - Confirm that identified risk mitigation steps have been provided for in the transaction documents
  - Recommend processes to monitor up front and ongoing compliance with risk mitigation steps identified above
- Provide input to SHIP management on Board presentation materials, participation in meetings with the Board and SHIP management as requested

5. Start Date: December 15, 2014

6. Estimated End Date: April 30, 2015 unless otherwise modified or terminated in accordance with the terms of the Agreement.

7. Special Conditions: None

8. Fees: Protiviti will charge for this work based upon the level of expertise and time required for completing this project, plus reasonable and customary out-of-pocket expenses. Based on the scope of work presented above, the length of this project will be approximately 100 - 135 hours. Client acknowledges that Protiviti's work is highly dependent on the availability of Client's personnel, other contractors of Client and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Client in meeting any stated deadlines but Client acknowledges that despite these efforts, due to such factors, any stated deadlines and timelines may not be met.

   The fees will be based upon the following rates:

Managing Director:	$375
Subject Matter Expert:	$250
Other Resources:	$135 - $225 (if needed)

   Provided that there is no change to the scope of the work, we estimate the fees for completion of this engagement to be $26,000 - $36,000.

   Client shall be responsible for payment of all taxes and any related interest and/or penalties resulting from any payments made or Services rendered hereunder, other than any taxes based on Protiviti's net income

9. Deliverables: Protiviti will provide Client various deliverables consistent with the assistance outlined in section 4, above.

   All Deliverables are based upon information made available by Client to Protiviti as of the date such Deliverables are provided to Client. Protiviti has no obligation to update any Deliverable.

   Client understands that Protiviti is not a CPA firm and does not issue opinions on financial statements or application of accounting principles. Further, Client understands it is solely responsible for decisions related to the selecting between available alternatives,

determining materiality or developing assumptions related to its application of accounting principles and presentation of financial information.

10. Address for notice (if different or additional to those set forth above): N/A

Executed this 5th day of January, 2015.

All of the terms, covenants and conditions set forth in the Agreement are incorporated herein by reference as if the same had been set forth herein in full.

PROTIVITI INC.

By: _____

Charles Soranno
Managing Director

SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

By: _____

Paul Lorentz
Chief Financial Officer

EXHIBIT C

EXHIBIT A

STATEMENT OF WORK

Check one

☒ **Project** ☐ **Staff Augmentation**

This is a Statement of Work referred to in the Master Services Agreement dated May 19, 2009 by and between Senior Health Insurance Company of Pennsylvania ("**Client**") and Protiviti Inc. ("**Protiviti**"). This Statement of Work shall be effective immediately after signed by both parties.

1. Engagement Team Leaders and Project Staffing:

   David Kupinski – Client Relationship Managing Director
   Charles Soranno – Engagement Managing Director
   Rick Yager – Subject Matter Expert, Treasury
   TBD – Other Professional Resources

2. Client's Project Manager and Additional Client Contacts:

   Paul Lorentz – Chief Financial Officer

3. Name of Project: Transaction Treasury Diligence Review

4. Project Description:

SHIP contracted into a series of transactions in 2015 that was designed to provide an above-market guaranteed return on $270 million in invested funds for a period of 5 years. The transactions comprised of 5 major elements:

- a $50 million surplus note from Beechwood Re (BRe) to SHIP,
- reallocation of a $80 million investment management agreement (IMA) with guaranteed rate of return with BRe from custody to fixed rate loan,
- reallocation of $20 million IMA with guaranteed rate of return with Beechwood Bermuda International Ltd (BBIL) from custody to fixed rate loan,
- Establishment of an additional fixed rate loan from SHIP to BBIL of $60 million,
- Reallocation of $110 million to a IMA with B Asset Management LP (BAM).

When fully completed, the transactions involved $270 million of assets – representing approximately 10% of SHIP's invested assets – previously managed under an IMA with Conning.

SHIP request Protiviti to perform the following agreed – upon – procedures in regards to (i) analysis of guarantee provisions, (ii) Beechwood due diligence (iii) SHIP investment compliance review and (iv) ongoing compliance monitoring of investment processes:

Guarantee Analysis

- Review and analyze guarantee provisions of Agreement and Side Letter to determine when the guarantee is triggered as well as possible scenarios for the true up of principal and interest.
- Review and analyze collateral provisions of Agreement to determine if specific collateral is earmarked to secure the guarantees of principal and interest.
- Evaluate the provisions of the Agreement for valuing the investments and the conditions under which a reduction in principal is deemed to have occurred
- Report on Protiviti's findings on above

Beechwood Due Diligence Review

- Obtain and review Beechwood's internal due diligence policy and implementing procedures for reviewing and approving investment transactions.
- Review the KPMG findings of the investment review process audit performed as part of the annual audit.
- For a sample of investments made for SHIP's portfolio, obtain Beechwood's documentation for those investments and evaluate if Beechwood's internal procedures have been followed.
- Report on Protiviti's findings on above.

Investment Compliance Review

- Obtain and review SHIP's approved Investment Policy Statement and determine compliance with the Commonwealth of Pennsylvania Model Investment Law
- Establish a methodology for systematically evaluating each Beechwood investment against the policy with respect to individual investment and investment category concentrations.
- Analyze the SHIP methodology to investment portfolios reported in their Quarters 1 and 2 of 2016 financial statements.
- Report on Protiviti's findings on above.

Ongoing Compliance Monitoring

- Adapt the methodology developed during the Investment Compliance Review to be applied prospectively.
- Apply the methodology for Quarters 3 and 4 of 2016 and Quarter 1 of 2017.
- Development goals and objectives for an Investment Officer position that will include the Investment Compliance review and Ongoing Compliance monitoring functions.

5. Start Date: September 6th, 2016

6. Estimated End Date: December 31, 2016 unless otherwise modified or terminated in accordance with the terms of the Agreement.

7. Special Conditions: None

8. Fees: Protiviti will charge for this work based upon the level of expertise and time required for completing this project, plus reasonable and customary out-of-pocket expenses. Based on the scope of work presented above, in regard to (i) analysis of guarantee provisions, (ii) Beechwood due diligence (iii) SHIP investment compliance review the length of this project will be approximately 500 hours. The level of effort for Item (iv) Ongoing Compliance Monitoring will be defined as part of the review of Items (i), (ii) & (iii) above and post –that will be subject to a separate statement of work.

   Client acknowledges that Protiviti's work is highly dependent on the availability of Client's personnel, other contractors of Client and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Client in meeting any stated deadlines but Client acknowledges that despite these efforts, due to such factors, any stated deadlines and timelines may not be met.

   The fees will be based upon the following rates:

Managing Director:	$375
Subject Matter Expert:	$270
Other Resources:	$170 - $240

   Provided that there is no change to the scope of the work, we estimate the fees for completion of this engagement to be $120,000 - $130,000.

   Client shall be responsible for payment of all taxes and any related interest and/or penalties resulting from any payments made or Services rendered hereunder, other than any taxes based on Protiviti's net income

9. Deliverables: Protiviti will provide Client various deliverables consistent with the assistance outlined in section 4, above.

   All Deliverables are based upon information made available by Client to Protiviti as of the date such Deliverables are provided to Client. Protiviti has no obligation to update any Deliverable.

   Client understands and acknowledges that Protiviti is not a CPA firm and does not issue opinions on financial statements or application of accounting principles. Further, Client understands it is solely responsible for decisions related to the selecting between available alternatives, determining materiality or developing assumptions related to its application of accounting principles and presentation of financial information.

10. Address for notice (if different or additional to those set forth above): N/A

Executed this 22nd day of September, 2016.

All of the terms, covenants and conditions set forth in the Agreement are incorporated herein by reference as if the same had been set forth herein in full.

PROTIVITI INC.

By: _____

Charles Soranno
Managing Director

SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA

By: _____

Paul Lorentz
Chief Financial Officer

By: _____

Thomas Hampton
Board of Trustees

Received 6/22/2022 3:53:42 PM Commonwealth Court of Pennsylvania

Filed 6/22/2022 3:53:00 PM Commonwealth Court of Pennsylvania
1 SHP 2022

CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on June 22, 2022, I caused to be served the foregoing AMENDED COMPLAINT through the Court's PACFile system, and that notice was provided to all parties listed on the Master Service List associated with 1 SHP 2020. Additional service, if any, will be effectuated in accordance with any applicable Rules. In addition, I hereby certify that an electronic copy of the foregoing document will be posted on SHIP's website at https://www.shipltc.com/court-documents.

/s/ Michael J. Broadbent