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April 20, 2011

9:02 a.m.

Deposition of JEFFREY EPSTEIN, held at  
the offices of Cooley Godwin Kronish, 1114  
Avenue of the Americas, New York, New York,  
before Laurie A. Collins, a Registered  
Professional Reporter and Notary Public of the  
State of New York.

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A P P E A R A N C E S :

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Attorneys for Claimants

1285 Avenue of the Americas

New York, New York 10019-6064

BY: ALLAN J. ARFFA, ESQ.

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SUSMAN GODFREY

Attorneys for JEEPERS,

Financial Trust Company, and Witness

560 Lexington Avenue, 15th Floor

New York, New York 10022

BY: STEPHEN D. SUSMAN, ESQ.

COOLEY GODWARD KRONISH LLP

Attorneys for D.B. Zwirn Partners, LLC,

D.B. Zwirn Co., L.P., and DBZ GP, LLC

1114 Avenue of the Americas

New York, New York 10036-7798

BY: WILLIAM J. SCHWARTZ, ESQ.

WILLIAM O'BRIEN, ESQ.

ARASTU K. CHAUDHURY, ESQ.

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A P P E A R A N C E S (continued):

LANKLER SIFFERT & WOHL LLP  
Attorneys for Daniel Zwirn  
500 Fifth Avenue,  
New York, New York 10110-3398  
BY: JOHN S. SIFFERT, ESQ.  
DANIEL E. REYNOLDS, ESQ.  
ANDREW S. LEE, ESQ.

ALSO PRESENT:

RICK NOBLE, ESQ. (Fortress)  
ADAM DICOLA, Videographer

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Proceedings

THE VIDEOGRAPHER: Good morning. We are now on the record. My name is Adam DiCola of Veritext New York. The date today is April 20th, 2011, and the time is approximately 9:01 09:02:17 a.m.

This deposition is being held in the office of Cooley Godward Kronish LLP, located at 1114 Avenue of the Americas, New York, New York. The caption of this case is Fortress VRF LLC, et al., versus JEEPERS, Inc., et al., in the Judicial Arbitration and Mediation Service, New York, New York, Reference Number 1425006537. The name of the witness is Jeffrey Epstein.

At this time will the attorneys please identify themselves and the parties they represent, after which our court reporter, Laurie Collins, will swear in the witness and we can proceed.

MR. SCHWARTZ: My name is William Schwartz. I represent D.B. Zwirn Partners, LLC; D.B. Zwirn & Co., L.P.; DBZ GP, LLC; and Zwirn Holdings, LLC.

MR. CHAUDHURY: My name is Arastu

## Proceedings

1  
2 Chaudhury, also from Cooley LLP. I also  
3 represent D.B. Zwirn Partners, LLC;  
4 D.B. Zwirn & Co., L.P.; DBZ GP, LLC; and Zwirn  
5 Holdings, LLC. 09:03:16

6 MR. O'BRIEN: William O'Brien from  
7 Cooley for the same parties.

8 MR. SIFFERT: John Siffert, Lankler  
9 Siffert & Wohl, for Daniel Zwirn.

10 MR. REYNOLDS: Daniel Reynolds, Lankler 09:03:38  
11 Siffert & Wohl, also for Daniel Zwirn.

12 MR. LEE: Andrew Lee, Lankler Siffert &  
13 Wohl, also for Daniel Zwirn.

14 MR. ARFFA: I'm Allan Arffa from Paul,  
15 Weiss, Rifkind, Wharton & Garrison, LLP. We 09:03:51  
16 represent the two claimants, Fortress VRF I  
17 LLC and Fortress Value Recovery Fund I LLC.

18 MS. SHOLL: I'm Hannah Sholl, here for  
19 the same clients, also from Paul, Weiss,  
20 Wharton & Garrison. 09:04:05

21 MR. NOBLE: Rick Noble from Fortress  
22 for Fortress Value Recovery Fund.

23 MR. SUSMAN: Steve Susman on behalf of  
24 FTC, JEEPERS, and the witness, Mr. Epstein.

25 Before we get going, before we swear 09:04:18

## Proceedings

1  
2 him in, let's get some agreements on the  
3 record; I think it's appropriate. We agree  
4 that these depositions each side will get  
5 seven hours of questioning time, exclusive of 09:04:29  
6 breaks.

7 We have agreed, at least today -- I  
8 think we have agreed that the depositions will  
9 be taken in the office of the party taking the  
10 deposition or at the location. 09:04:40

11 MR. SCHWARTZ: That's where this one  
12 is.

13 MR. SUSMAN: Right. I'm just trying to  
14 say the rules we set today, since it's the  
15 first deposition, will be the rules of the 09:04:49  
16 game, as far as I'm concerned.

17 We'll begin these depositions at 9. We  
18 can make other agreements. But unless other  
19 agreements are made, we start the depositions  
20 at 9. When the seven hours are up, the seven 09:04:59  
21 hours are up.

22 I thank you for accommodating me for  
23 lunch today. We will break at 12:20 and be  
24 back at 1:45. We can do -- an hour and a half  
25 for lunch. We can do whatever schedule you 09:05:11

## Proceedings

1  
2 want on that. But I would ask you give us  
3 notice if you have any luncheon times so  
4 people can make plans, such as we gave you.

5 Mr. Epstein needs to use the facility 09:05:21  
6 more regularly than normally. So what I  
7 proposed to him is that we are going to take a  
8 break every hour on the hour for five minutes  
9 for you to do what you need to do.

10 So you know coming to the hour he's 09:05:34  
11 going to break and you'll not have any interim  
12 breaks where he -- we can do the same thing  
13 with your witnesses. I'm not talking about a  
14 long break, because if we take long breaks we  
15 will be here until 8 o'clock tonight and I 09:05:46  
16 don't want to do that. We can take a very  
17 short break to use the facility, but on the  
18 hour.

19 MR. ARFFA: I hope we can finish it in  
20 seven hours. There are multiple parties here 09:05:58  
21 who don't have the same interests. Hopefully  
22 we can do it all in seven, but I'm going to  
23 reserve my right to seek or ask for additional  
24 time, if necessary. Hopefully that won't be  
25 necessary. 09:06:11

1 Epstein

2 MR. SUSMAN: Just so our position is  
3 understood, yes, anyone is free to seek any  
4 time, obviously, but you're going to have to  
5 get the judge's permission. 09:06:18

6 MR. ARFFA: That's your position. I  
7 have a different position.

8 MR. SUSMAN: Exactly. Ready.

9 MR. SCHWARTZ: Good morning,  
10 Mr. Epstein. 09:06:28

11 (Discussion off the record.)

12 J E F F R E Y E P S T E I N ,

13 called as a witness, having been duly sworn  
14 by the notary public, was examined and  
15 testified as follows:

16 EXAMINATION BY

17 BY MR. SCHWARTZ:

18 Q. Good morning, Mr. Epstein.

19 A. Good morning.

20 Q. Now you can say it under oath. 09:06:39

21 I take it you are experienced in  
22 investing in hedge funds; is that correct?

23 A. Yes.

24 Q. How long have you been an investor in  
25 hedge funds? 09:06:54

1 Epstein

2 A. More than 20 years.

3 Q. And how many hedge funds have you  
4 invested in?

5 A. More than ten. 09:06:58

6 Q. And in the context of hedge funds, do  
7 you have an understanding of what a lockup is?

8 A. Yes.

9 Q. What is a lockup?

10 A. It's a period of time where your 09:07:12  
11 investment is restricted from being redeemed.

12 Q. In other words, you put your money  
13 in -- correct? -- and then you can't take it out  
14 until the lockup is over?

15 A. If that's what the lockup says. Many 09:07:29  
16 lockups have partial withdrawal rights so...

17 Q. Is it fair to say that as an investor,  
18 given a choice, you would prefer a shorter lockup  
19 to a longer lockup of your funds?

20 A. No. 09:07:54

21 Q. And why would you not -- well, can you  
22 explain that?

23 A. Different investments have different  
24 periods of time to make investments as well as  
25 redeem them. 09:08:09

1 Epstein

2 Q. Is it fair to say that you would prefer  
3 to have greater access to your money over time --  
4 strike that. Let me go back.

5 A. Have you asked a question? 09:08:34

6 Q. I'm trying to understand your last  
7 answer.

8 A. Sorry.

9 Q. I'm not sure what you mean by why --  
10 why different -- the period of time over which you 09:08:49  
11 can make an investment has an effect on your view  
12 as to how long a lockup is. Can you explain?

13 MR. SUSMAN: Is that a question? I  
14 didn't get question.

15 MR. SCHWARTZ: I asked him whether he 09:09:01  
16 can explain his last answer.

17 A. In many instances if you are going to  
18 take a large position in a security, you might  
19 want to buy it over a longer period of time. So  
20 if -- a lockup period sometimes reflects the fact 09:09:15  
21 as well that you might have to accumulate a  
22 position.

23 Q. And isn't it fair to say that you would  
24 like to be able to get quicker access to your  
25 money if you decide to change your investment? Is 09:09:30

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Epstein

it fair to say that during a lockup period you cannot take your money out of an investment?

A. No.

Q. Is it fair to say that during a lockup period -- 09:09:42

A. No, it's not fair to say that.

Q. Is it fair to say that if a lockup applies to a particular tranche of an investment for a period of time, restricting the amount of time you cannot take it out, during that period of time you cannot take out that tranche; is that fair to say? 09:09:52

A. No, it's not.

Q. Explain that to me, please. 09:10:00

A. Lockups are very specific. So sometimes -- you're using the general category of lockups when in fact lockups, like menus, have many different options.

Q. You made investments in the Zwirn fund; is that correct? 09:10:19

A. You mean me -- you're referring to FTC?

Q. FTC, excuse me.

A. Yes.

Q. And when you made your initial 09:10:51

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Epstein

investment, what did you understand the lockup to be?

A. I'm sorry, you'll have to rephrase the question. This is -- the Zwirn fund, is this the Highbridge/ Zwirn? I made many investments in funds having to do with Dan Zwirn. 09:11:01

Q. It's the Highbridge/Zwirn?

A. Would you repeat your question?

Q. What did you understand lockup to be? 09:11:13

A. With Highbridge I?

Q. Yes.

A. My understanding was a two-year lockup.

Q. From when to when?

A. From 2002 until 2004. 09:11:31

Q. And when you made your second investment in that fund, what did you understand the lockup period to be for that investment?

A. I understood I had one capital account, one capital account, and I could make my redemption request any time after the first -- between two thousand -- at the end of 2004 for the 2002 investment. 09:11:46

Q. And that was with respect to each investment you made in the Highbridge fund, the 09:12:01

1 Epstein

2 Highbridge/Zwirn fund? It was governed by a  
3 single lockout -- a single lockup period?

4 A. Correct.

5 Q. Just so I'm clear, it is your testimony 09:12:27  
6 that the lockup -- the period in which you could  
7 withdraw your funds was governed by the date on  
8 which you made your first investment into the  
9 fund?

10 A. Which fund are we talking about? Which 09:12:51  
11 investment are we talking about?

12 Q. We're talking about the Highbridge/  
13 Zwirn fund.

14 A. Which time?

15 Q. Well, how many investments did you make 09:13:02  
16 in the Highbridge/Zwirn fund?

17 A. If you could refresh my recollection, I  
18 would be happy to.

19 Q. Prior to 2005 does it refresh your  
20 recollection that you made four investments? 09:13:10

21 A. If you say so.

22 Q. Well, does it refresh your recollection  
23 that you made an investment on May 1, 2002;  
24 September 1, 2002; December 1, 2002; and June 1,  
25 2003? 09:13:28

1 Epstein

2 A. That sounds right.

3 Q. When could you withdraw those  
4 investments, each of them?

5 A. After the first 2002 investment, two 09:13:38  
6 years after that.

7 Q. Do you recall that -- so after -- let  
8 me see if I can be more specific.

9 Is it your testimony that you could  
10 obtain a withdrawal of your funds at the 09:13:53  
11 quarter -- at the end of the quarter in which you  
12 invested two years after you made your original  
13 investment; so that if you made a May 1, 2002,  
14 investment, those funds could be withdrawn June  
15 30, 2003, on proper notice -- 2004 on proper 09:14:13  
16 notice?

17 A. That's my understanding.

18 Q. And for the investment you made on  
19 September 1, 2002, it is your understanding -- it  
20 was your understanding at the time you made that 09:14:28  
21 investment that those funds could be withdrawn on  
22 June 30, 2004, given proper notice?

23 A. I believe so, yes.

24 Q. And for the investment you made on  
25 December 1, 2002, it was your understanding at the 09:14:47

1 Epstein

2 time you made that investment that if you gave  
3 proper notice you could withdraw that investment  
4 on June 30, 2004?

5 A. That's correct. 09:15:01

6 Q. And for the investment that you made on  
7 June 1, 2003, it was your understanding that you  
8 could withdraw that investment, if you gave proper  
9 notice, on June 30, 2004?

10 A. That's correct. 09:15:14

11 Q. And you understood that to be a rolling  
12 lockup so that if you did not withdraw your money  
13 on June 30, 2004, the next time you could withdraw  
14 your money would be two years after that?

15 A. I don't recall what my understanding 09:15:41  
16 was then. Sorry.

17 Q. Is that your understanding now?

18 A. Yes.

19 Q. And was that understanding based on?

20 A. My understanding is I had one capital 09:15:48  
21 account with D.B. Zwirn, that I was the original  
22 investor -- one of the original investors in  
23 D.B. Zwirn, and the transaction that I structured  
24 early on is that I could withdraw my money in two  
25 years. 09:16:07

1 Epstein

2 Q. And with whom did you structure that  
3 transaction?

4 A. Glenn Dubin.

5 Q. I'm sorry? 09:16:16

6 A. Glenn Dubin.

7 Q. So --

8 A. This was a Highbridge -- you're asking  
9 me about Highbridge I; is that correct?

10 Q. Yes. 09:16:24

11 A. Okay.

12 (Pause.)

13 Q. Just so we're clear, your understanding  
14 of the lockups came from conversations with Glenn  
15 Dubin? 09:17:12

16 A. Yes.

17 Q. At the time you made your initial  
18 investment?

19 A. Yes.

20 Q. And at the time you made your 09:17:23  
21 subsequent investments, did you have conversations  
22 with Glenn Dubin about the lockups for those? And  
23 I'm referring only to the investments that I --  
24 the first four investments.

25 A. I don't recall. 09:17:37

1 Epstein

2 Q. What did Mr. Dubin tell you -- well,  
3 tell us your conversations with Mr. Dubin  
4 concerning the lockups prior to your first  
5 investment. How many were there? 09:17:47

6 A. You've asked two questions, I'm sorry.

7 Q. I'm sorry. How many conversations  
8 prior to making your first investment did you have  
9 with Mr. Dubin about the lockup period prior to  
10 making your first investment? 09:18:00

11 A. Probably one.

12 Q. And what did you say to him and what  
13 did he say to you?

14 A. I would -- I would never lock up my  
15 money for more than two years. So if you want me 09:18:10  
16 to invest in Highbridge I, it will have to be a  
17 two-year lockup, more than a two-year lockup.

18 Q. And what did he say?

19 A. Fine.

20 Q. And did you have a specific 09:18:22  
21 conversation with him about subsequent investments  
22 at that time that you might make in the fund?

23 A. Can you repeat the question?

24 Q. At the time you had that conversation  
25 with him about not wanting to lock up your money 09:18:37

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Epstein

for more than two years, did you have a conversation with him about subsequent investments that you might make in the fund?

A. Yes. 09:18:48

Q. And what was that conversation?

A. That if the performance was attractive I would increase my investments in the fund.

Q. And did you discuss what the lockup would be for those increases? 09:19:07

A. I don't recall.

Q. Did Mr. Zwirn tell you that the lockup for those -- did Mr. Dubin tell you that the lockup for any subsequent investment would be on the same calendar as the lockup for the first investment? 09:19:21

A. No.

Q. Did anybody tell you that?

A. I don't recall. However, my understanding was I was only putting money in for my original investment. I would add to that investment with the same two-year lockup. 09:19:43

Q. And with whom did you have that conversation?

A. Mr. Dubin. 09:19:51

1 Epstein

2 Q. So you said to Mr. Dubin that if I add  
3 money it will be on the same lockup calendar as my  
4 original investment?

5 A. Correct. 09:20:02

6 Q. Meaning I can withdraw any subsequent  
7 investment at the same time I can withdraw my  
8 original investment?

9 A. Correct.

10 Q. And Mr. Dubin confirmed for you that 09:20:14  
11 that was indeed the way the fund was going to be  
12 operated?

13 A. That was my understanding.

14 Q. Can you tell us when this conversation  
15 was with respect to when you made your first 09:20:26  
16 investment?

17 A. It would be prior to the May 2002 first  
18 investment tranche.

19 Q. Did you have any conversations with  
20 Mr. Zwirn about the lockup at that time? 09:20:39

21 A. I never spoke to Dan Zwirn until years  
22 later.

23 Q. Is it fair to say that your only  
24 understanding of what the lockup period was came  
25 from that conversation with Mr. Dubin? 09:20:55

1 Epstein

2 A. No.

3 Q. What else did you rely on?

4 A. I spoke to people in my office, my  
5 in-house counsel. 09:21:08

6 Q. About what?

7 A. Everyone knows I am very disciplined  
8 about not investing money basically with lockups  
9 and especially for more than two years.

10 Q. And why is that? 09:21:20

11 A. Because with an -- with my history of  
12 investing in hedge funds, sometimes they go wrong.  
13 I believe liquidity, especially when there's a  
14 problem, becomes important. Liquidity in hedge  
15 funds, especially with hedge funds, is a primary 09:21:37  
16 concern of mine. And anything more than a  
17 two-year lockup is too risky.

18 Q. Have you ever made a hedge fund  
19 investment where you invested multiple tranches  
20 where each tranche was governed by a separate 09:21:55  
21 lockout -- lockup period?

22 A. I don't recall.

23 Q. Have you made other investments in  
24 hedge funds with multiple tranches where each  
25 tranche lockup was governed by the lockup period 09:22:16

1 Epstein

2 for the first investment?

3 A. I don't recall.

4 Q. You said you made how many other  
5 investments in hedge funds? 09:22:26

6 A. More than ten.

7 Q. And were those single tranches or  
8 multiple tranche investments?

9 A. I don't recall with specificity.

10 Q. And you don't recall, with respect to 09:22:35  
11 any of those hedge funds, what the lockup terms  
12 were with respect to multiple tranches?

13 A. I make my investments based on  
14 recommendations and analysis of usually  
15 performance. The details of the lockups are 09:22:49

16 usually left to others. My discipline is I don't  
17 make investments. In fact, the reason I have a  
18 side letter dated January '05 is that later on  
19 when I was asked to have a three-year lockup I  
20 said absolutely not, I will not invest money, I 09:23:06  
21 only will have two-year money.

22 MR. SUSMAN: Mr. Epstein, I instruct  
23 you try to be responsive to this lawyer and  
24 answer "yes" or "no," if you can, and not give  
25 a talk. We'll be here too long. He knows 09:23:19

1 Epstein

2 what questions to ask.

3 THE WITNESS: Okay.

4 Q. So of the approximately ten hedge fund  
5 investments you have made, the only one, as you 09:23:26  
6 sit here today, that you remember the terms of the  
7 lockup for is this one?

8 A. Yes.

9 Q. Is that because you recently reviewed  
10 those terms or is that because you have an 09:23:47  
11 independent memory of those terms?

12 A. Can you repeat the entire question?

13 Q. Why is it that you remember this one  
14 and not others?

15 A. This is the only one I've had a problem 09:23:58  
16 with.

17 Q. In November 2004 did you remember the  
18 terms of the lockup?

19 A. I don't recall.

20 Q. Did you recall the terms of this lockup 09:24:21  
21 only after you began to have a problem with this  
22 hedge fund?

23 A. Did I recall? I'm sorry, you'll have  
24 to repeat your question.

25 Q. Your testimony is that you remember 09:24:32

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Epstein

this lockup and not others because this is the only one "I've had a problem with."

So my question to you is when did you remember the terms of this lockup, when did you first remember the terms of this lockup. 09:24:43

A. I was told initially when I signed up in 2002 that I would have a two-year lockup. I remember having an agreement in 2005 that all my money would be subject only to a two-year lockup. 09:25:00

Q. Is it possible that you were told in 2002 that the lockup period would be two years from the date of each separate tranche?

A. You're asking me is it possible?

Q. Yes. 09:25:15

A. I do not recall that.

Q. Are you certain that Mr. Dubin did not tell you that?

A. Correct.

MR. ARFFA: Mr. Susman, it may be involuntary, but I notice you tend to shake your head up and down. 09:25:27

MR. SCHWARTZ: As I have noticed.

MR. ARFFA: I would prefer you didn't do that when he asks a question. 09:25:38

1 Epstein

2 THE WITNESS: I was --

3 MR. ARFFA: I'm not talking to you,  
4 Mr. Epstein.

5 THE WITNESS: I haven't seen anything, 09:25:44  
6 I'm sorry.

7 MR. ARFFA: That's your counsel. You  
8 can do whatever you like.

9 THE WITNESS: Not a problem.

10 Q. Let me just go back. 09:25:56

11 Are you certain that Mr. Dubin told you  
12 that the lockup period for the initial tranche  
13 would apply to each additional tranche that you  
14 made, in other words, you'd be able to take them  
15 all out at the same time? 09:26:29

16 A. Yes.

17 Q. What do you recall prompted your desire  
18 to obtain a side letter in 2005?

19 A. My best recollection is that they were  
20 asking investors to have their money locked up for 09:27:24  
21 three years. They were taking in new money. They  
22 asked investors to take their money -- lock it up  
23 for three years. I said absolutely not.

24 Q. And with whom did you have that  
25 conversation? 09:27:35

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Epstein

A. My best recollection is Glenn Dubin.

Q. Do you have that conversation with Mr. Zwirn?

A. No, not to the best of my recollection. 09:27:48

Q. Did anybody else to your knowledge in your office communicate about that to Mr. Zwirn or anybody else at his fund?

A. You'll have to repeat the question.

Q. Did anybody else to your knowledge in your office communicate about that desire not to be locked up for three years to Mr. Zwirn or anybody else at his fund? 09:28:05

A. I don't recall.

Q. What did Mr. Dubin say to you when you expressed that concern to him? 09:28:52

A. He told me that they would -- Stan would send me a letter confirming my understanding.

Q. Anybody else participate in that conversation? 09:29:10

A. I don't recall.

Q. By the way, did anybody else participate in the conversation -- initial conversation you had with Mr. Dubin concerning 09:29:20

Epstein

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lockups in 2002?

A. No.

Q. Was that conversation in person or on the phone?

09:29:27

A. On the phone.

Q. Was the conversation in 2004 in person or on the phone?

A. My best recollection would be on the phone.

09:29:42

Q. What happened after that conversation?

A. What question is that?

Q. With respect to your desire not to have a three-year lockup, what happened after that conversation with Mr. Dubin?

09:29:56

A. Which conversation with Mr. Dubin?

Q. 2004.

A. Are you talking about the end of 2004?

Q. Yes.

A. We received a letter stating that, yes, my one capital account would be subject to only a two-year lockup, where everybody else's would be three, or at least mine said a two-year lockup.

09:30:05

Q. And between the time you spoke to Mr. Dubin and the time you received that letter,

09:30:21

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Epstein

do you recall having any conversations with anybody about that topic?

A. Repeat the question? Sorry.

Q. Between the time you spoke to Mr. Dubin 09:30:44 in late 2004 and the time you received the letter in early 2005, do you recall having any conversations with anybody about that topic?

A. Yes.

Q. With whom? 09:30:58

A. My general counsel.

Q. Was anybody else present when you had that conversation with your in-house counsel?

A. I don't believe so.

Q. I think you also testified that you had 09:31:10 conversations back in 2002 with your in-house counsel about lockups; do you recall? Is that correct?

A. I've spoken to -- most people who work for me know I don't agree to investments basically 09:31:26 more than two years.

Q. Do you recall any conversations with your in-house counsel in 2002 about that topic?

A. Not specifically.

Q. Do you recall any conversations with 09:31:34

1 Epstein

2 anybody other than Mr. Dubin in 2002 about that  
3 topic?

4 A. Yes.

5 Q. With whom? 09:31:43

6 A. Many people I have made investments  
7 with. When I discuss investments, I say having  
8 more than a two-year lockup makes no sense to many  
9 people.

10 Q. If you invest money in May -- if you 09:31:56  
11 would have invested money in May of 2002 and then  
12 you invest additional monies in September 2002, it  
13 would also be a two-year lockup if the monies in  
14 September 2002 could be obtained in September  
15 2006; is that correct -- 2004; is that correct? 09:32:13

16 A. Again?

17 Q. I want to be clear about what a  
18 two-year lockup is. You can have a two-year  
19 lockup with respect to each tranche where that  
20 tranche is locked up for two years. That's a 09:32:29  
21 possibility -- correct? -- in a fund?

22 A. Yes.

23 Q. You could also have a two-year lockup  
24 where each tranche is governed by the date of the  
25 initial lockup for the initial tranche; is that 09:32:42

1 Epstein

2 correct?

3 A. I'm sure it is.

4 Q. I just want to be sure which one you're  
5 saying this fund required. 09:32:50

6 A. I've repeatedly told you what my  
7 understanding was.

8 Q. And you said that you have  
9 conversations with many people about your desire  
10 to have two-year lockups. In those 09:33:04  
11 conversations --

12 A. Less than two-year lockups. I have  
13 many talks about the dangers of having anything  
14 more than a two-year lockup. That's what I said.

15 Q. In those conversations are you talking 09:33:16  
16 about two-year lockups generally or are you being  
17 specific that each tranche needs to be governed by  
18 the two-year lockup on the initial tranche?

19 A. Generally.

20 Q. So the only conversation in which you 09:33:34  
21 discussed that each tranche of this -- of these  
22 investments would be governed by the initial  
23 two-year lockup was with Mr. Dubin prior to your  
24 first investment; is that correct?

25 A. You'll have to repeat the question. 09:33:59

1 Epstein

2 Q. So the only conversation in which you  
3 discussed that each tranche of these investments  
4 in the Highbridge/Zwirn fund would be governed by  
5 the initial two-year lockup date was the 09:34:10  
6 conversation with Mr. Dubin prior to your first  
7 investment; is that correct?

8 A. Correct.

9 Q. It's your testimony that the purpose of  
10 the side letter was to create -- was to assure you 09:34:46  
11 a two-year lockup -- is that correct? -- for  
12 additional investments?

13 A. It was to confirm my two-year lockup in  
14 the face of Dan wanting to raise more money. I  
15 was the largest investor. And this was a 09:35:02  
16 confirmation that I had one capital account  
17 subject to a two-year lockup.

18 Q. And was there any other purpose to the  
19 side letter, to your recollection?

20 A. To encourage me to I think contribute 09:35:17  
21 the additional money.

22 Q. By giving you the assurance it would be  
23 a two-year lockup; correct?

24 A. He reconfirmed my initial -- I always  
25 had a two-year lockup. The letter reconfirmed it, 09:35:33

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Epstein

since everyone else was now going to be subject to a three-year lockup.

Q. So the way Mr. Zwirn encouraged you to contribute additional money was by making that confirmation; is that correct? 09:35:46

A. You'd have to ask Dan Zwirn that.

Q. It's your testimony that the purpose of the letter was to encourage you to contribute additional money. How did it do that? 09:35:56

A. It reconfirmed my understanding that right from the beginning I only had a two-year lockup on my additional monies, so other people were going to be subject to a three-year lockup. Nothing would change for me. 09:36:06

MR. SCHWARTZ: Can I have this marked as I guess Defendants' 1.

(Discussion off the record.)

MR. SUSMAN: This can be on the record, actually, because there will be an agreement that will follow us. Let's just mark all these exhibits 1, 2, 3, 4, 5, continue the marking. We will try to avoid duplicates. 09:36:55

MR. SCHWARTZ: I'm with you. Fine.

MR. SUSMAN: And when we go to the 09:37:02

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hearing, we don't have to re-mark anything.  
So this will be Exhibit 1.

MR. SCHWARTZ: I'm with you.

MR. SUSMAN: I assume everyone else is. 09:37:08

(Discussion off the record.)

(Exhibit 1, letter, marked for  
identification.)

Q. Before we discuss that, I just want  
to -- you've been testifying about your 09:37:40  
conversation with Mr. Dubin and the only  
conversation from which you had an understanding  
about the lockups going back to 2002.

Did you review the documents with  
respect to the investment at the time you got 09:37:53  
them?

A. No.

Q. So your entire understanding of the  
lockups is based on the conversation with  
Mr. Dubin as opposed to conversations with anybody 09:38:02  
else or documents?

A. I believe I said I had conversations  
with my counsel.

Q. I think you testified both ways about  
that. When was the conversation with your 09:38:15

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counsel?

A. Prior to -- as I said before, I believe, prior to 2002 I talked to Glenn Dubin and reconfirmed with my counsel that this investment would be subject to a two-year lockup. 09:38:29

Q. In reconfirming with your counsel, is that what you asked him: Can you confirm that this is subject to a two-year lockup?

A. No. 09:38:43

Q. What did you ask him?

MR. SUSMAN: That is covered by a privilege, so let's --

MR. SCHWARTZ: I didn't volunteer the conversation with counsel. 09:38:56

MR. SUSMAN: Yeah.

MR. SCHWARTZ: I think we've waived the privilege.

MR. SUSMAN: Do not answer the question about the subjects. It's never a waiver of privilege to say you've talked to your lawyer. 09:39:03

And how much you want to bet on that?

MR. SCHWARTZ: Excuse me? It never waives a privilege to say exactly what you said to your lawyer? I think that's -- you 09:39:15

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Epstein

and I have a different understanding of the attorney-client privilege.

MR. SUSMAN: Okay.

MR. SCHWARTZ: Once you testify as to 09:39:19  
the conversation, you've waived the privilege.

MR. SUSMAN: Go ahead.

I've instructed him not to answer the substance.

MR. SCHWARTZ: I heard your 09:39:30  
instruction.

MR. SUSMAN: Go ahead.

MR. SCHWARTZ: I caught the instruction.

Q. Who was your lawyer? 09:39:34

A. Darren Indyke.

Q. And what's his position?

A. In-house counsel.

Q. When did he start to work for you?

A. Fourteen years ago. 09:39:46

Q. And is he still working for you?

A. Yes.

Q. Do you employ other lawyers in-house?

A. No.

Q. Take a look at Exhibit 1. Do you 09:40:08

1 Epstein

2 recall receiving that?

3 A. Not specifically.

4 Q. Did you read it when you received it?

5 A. I just said I don't remember 09:40:30

6 specifically receiving it.

7 Q. Do you remember ever reading it?

8 A. Yes.

9 Q. Prior to this litigation, do you  
10 remember reading it? 09:40:37

11 A. Yes.

12 Q. When do you remember reading it?

13 A. Sometime prior to this litigation.

14 Q. Can you give me an approximate year?

15 A. I would think '06. 09:41:00

16 Q. Do you remember reading it prior or  
17 after demanding withdrawal of funds?

18 A. Again? Can you repeat the question,  
19 sorry?

20 Q. When you read it in '06, do you recall 09:41:15  
21 that you made a demand to withdraw funds in '06?

22 A. Yes, I remember in fact -- yes, sorry.

23 Q. And did you review the letter before  
24 making that demand or after?

25 A. Probably both. 09:41:28

1 Epstein

2 Q. Going back to January 2005, do you  
3 recall discussing the letter with anyone at about  
4 the time it's dated?

5 A. Yes. 09:41:49

6 Q. With whom?

7 A. I think I've answered that question  
8 before, with Glenn Dubin.

9 Q. I don't think I -- I don't think we --  
10 what was your conversation with Glenn Dubin about 09:41:57  
11 the time you received the letter?

12 A. I would only be subject to a two-year  
13 lockup, where everyone else would be subject to a  
14 three-year lockup, and I would have one capital  
15 account. 09:42:09

16 Q. Do you recall confirming with anybody  
17 whether the letter actually accomplished that?

18 A. Yes.

19 Q. With whom?

20 A. Glenn Dubin. 09:42:25

21 Q. Was the fact that you have only one  
22 capital account something that was different from  
23 what happened -- what you had before the letter?

24 A. No, I always had one capital account.

25 Q. And what did you understand the letter 09:43:25

1 Epstein

2 did with respect to your lockup date for that  
3 capital account?

4 A. It reconfirmed that my position would  
5 be different, as I was one of the largest 09:43:36  
6 investors right from the beginning, that I would  
7 not be subject to the new three-year lockup that  
8 they were asking all the other investors now be  
9 subject to a three-year lockup.

10 Q. And did you understand that this would 09:43:48  
11 extend the date upon which you could take your  
12 money out of lockup?

13 A. Again, I'm sorry?

14 Q. Did you understand that this letter  
15 extended the date upon which you could withdraw 09:44:00  
16 your funds?

17 A. I understood this letter to be, because  
18 they wanted additional money, that the additional  
19 money would be subject to the same lockup I always  
20 had, which is the one capital account for two 09:44:13  
21 years that other people would be subject to three.

22 Q. Did you understand that that lockup  
23 would be -- would end two years from the date of  
24 your initial investment in two thousand -- on the  
25 two-year cycle from the date of initial investment 09:44:29

1 Epstein

2 in 2002 or on some other date?

3 A. I don't recall.

4 Q. Can you take a look at the letter,  
5 please.

09:44:41

6 A. Okay.

7 Q. Have you reviewed this letter since the  
8 litigation began?

9 A. I've seen it.

10 Q. Have you reviewed it in preparing for  
11 your deposition today?

09:44:55

12 A. I've seen it.

13 Q. Have you read it?

14 A. I've read it.

15 Q. When was the last time before today  
16 that you read it?

09:45:07

17 A. Sometime in the last two weeks.

18 Q. You see that it states that you shall

19 be permitted to withdraw its, Financial Trust

20 Inc.'s, capital account as of the last business

09:45:32

21 day of the calendar quarter ending at least two

22 years after the company initially purchases this

23 interest and as of the second anniversary of that

24 date.

25 "This interest" is the additional money

09:45:50

1 Epstein

2 you were investing in January of 2005; is that  
3 correct?

4 A. No.

5 Q. What is "this interest"? 09:45:56

6 A. This is in addition to my -- this  
7 letter was meant for my entire capital account.

8 Q. So "this interest" refers to -- when it  
9 refers to at least two years after the company  
10 initially purchases this interest, it is referring 09:46:13  
11 to the initial purchase of the initial interest in  
12 May 2002; is that correct?

13 A. No.

14 Q. What is it referring to?

15 A. My one capital account being subject to 09:46:27  
16 a two-year lockup.

17 Q. And when can you take it out, under  
18 this letter?

19 A. Within two years.

20 Q. Within two years of when? 09:46:38

21 A. Subject to the original deal, a  
22 two-year lockup.

23 Q. So within two years on the same cycle  
24 that you could take the money out prior to  
25 receiving this letter; is that correct? That was 09:46:50

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Epstein

your intention?

A. No. Is that a question? Is that --

MR. ARFFA: That was the question.

Q. That was the question. 09:47:01

A. No.

Q. What is the date you can withdraw your money under this letter? I understand it's a single capital account in your mind. What date can you withdraw it? 09:47:39

A. Prior to January of 2007.

Q. Meaning you can give notice prior to January 2007 to withdraw it on March 31, 2007?

A. Yes.

Q. Did this letter change the schedule upon which you could withdraw your funds? 09:48:13

MR. ARFFA: Mr. Susman, please.

THE WITNESS: Sorry?

MR. ARFFA: Nothing. Just speaking with your counsel. 09:48:25

THE WITNESS: Okay.

Again?

Q. Did this letter change the schedule upon which you could withdraw your funds?

A. No. It reconfirmed that I would be 09:48:40

1 Epstein

2 treated differently than everybody else. This  
3 letter was simply to state your agreement with Dan  
4 Zwirn and the fund and Glenn Dubin is you were  
5 treated differently, as you were the largest and 09:48:53  
6 first investor and you would be subject only to  
7 the original two-year lockup. So therefore, as we  
8 were going out to raise additional money for three  
9 years, you would only be subject to the original  
10 two-year lockup. 09:49:05

11 Q. Let's be clear. The original  
12 investment was May 1, 2002. Under the original  
13 two-year lockup, you could withdraw money at the  
14 end of June 2004; correct?

15 A. Correct. 09:49:33

16 Q. And you could withdraw money at the end  
17 of June 2006; correct?

18 A. Correct.

19 Q. And you could withdraw money at the end  
20 of June 2008; correct? 09:49:45

21 A. That sounds right.

22 Q. After receiving this letter, when could  
23 you withdraw that money? What was the soonest  
24 date you could withdraw that money?

25 A. 2007. That's what it says, my 09:50:04

1 Epstein

2 understanding. Two years after this January '05  
3 letter, two years from January '05 is January '07.  
4 Sorry.

5 Q. So as of January -- as of December 31, 09:50:24  
6 2004, you could withdraw your capital account on  
7 June 30, 2006. But as of January 11, 2005, you  
8 could not withdraw that capital account until the  
9 end of March 2007; is that correct?

10 A. It appears so. 09:50:46

11 Q. So you were committing to keep all of  
12 your money in the fund for an additional number of  
13 months between June 30, 2006, and March 31, 2007;  
14 is that correct?

15 A. This was simply to reconfirm that I had 09:50:59  
16 a two-year lockup on new money and I would be  
17 treated differently than other investors.

18 Q. So you were committing to keep all of  
19 your money in the fund for an additional number of  
20 months between June 30, 2006, and March 31, 2007; 09:51:16  
21 is that correct?

22 A. No. This was -- this was -- sorry.

23 Q. Could you still withdraw your money on  
24 June 30, 2006, from your initial investments?

25 A. I haven't considered it. This was to 09:51:53

1 Epstein

2 simply make my position -- sorry.

3 Q. This was simply to make your position  
4 what?

5 A. To confirm my position that I have 09:52:01  
6 subject to the only two-year lockup, though the  
7 other investors would be subject to a three-year  
8 lockup.

9 Q. And you didn't consider whether you  
10 were in fact committing to keep your money in the 09:52:13  
11 fund for nine additional months?

12 A. No, I did not.

13 Q. That would have been important to you;  
14 isn't that correct?

15 A. At that time I signed up for a new 09:52:24  
16 tranche stock, I believe I'd be subject to a  
17 two-year lockup.

18 Q. Mr. Epstein, I understand that, and you  
19 don't have to keep saying that, because my  
20 questions don't concern the time -- the amount of 09:52:38  
21 time of the lockup; they concern the date on which  
22 the lockup ends. I know that you wanted the  
23 two-year lockup. It says that in the document  
24 that you want a two-year lockup.

25 A. Okay. 09:52:51

1 Epstein

2 Q. You wanted the two-year lockup on a  
3 single capital account; correct?

4 A. That's correct.

5 Q. And under the letter it appears that 09:52:56  
6 you have locked up your money for an additional  
7 nine months; isn't that correct?

8 A. It appears that way.

9 Q. Or is it possible that this letter  
10 permits you to take out your new investment on 09:53:16  
11 June 30, 2006, and that remains the lockup date?

12 A. My understanding was for additional  
13 money I would have one capital account subject to  
14 a two-year lockup, that I could take out my money  
15 during that period of time. 09:53:31

16 Q. Well, let's go back. You made your  
17 first investment on May 1, 2002. You invested \$10  
18 million. Does that sound right?

19 A. That sounds correct.

20 Q. And then you made a second investment 09:53:43  
21 on September 1, 2002, and that was for \$10  
22 million; is that correct?

23 A. Yes, \$10 million, correct.

24 Q. And that was, in your understanding  
25 from your conversation with Mr. Dubin, subject to 09:53:54

1 Epstein

2 a single capital account; correct?

3 A. Correct.

4 Q. And subject to a single lockup date

5 from the first investment; is that correct? 09:54:03

6 A. Correct.

7 Q. Then you made an investment on December

8 1, 2002 -- is that right? -- of an additional \$30

9 million?

10 A. Correct. 09:54:15

11 Q. And in your mind that was subject to a

12 single capital account; correct?

13 A. Correct.

14 Q. And a single lockup date dating from

15 the first investment; correct? 09:54:26

16 A. Correct.

17 Q. And then you made a fourth investment

18 on June 1, 2003, of \$10 million. Does that sound

19 accurate?

20 A. It does. 09:54:38

21 Q. And that was your understanding was for

22 a single capital account; correct?

23 A. Correct.

24 Q. Subject to a single lockup date dating

25 from the initial investment; is that correct? 09:54:49

1 Epstein

2 A. That's correct.

3 Q. And what you wanted to accomplish with  
4 the letter of January 2005 was to assure that you  
5 continued to have a single account and a single 09:54:56  
6 lockup period of two years; is that correct?

7 A. Starting from 2005.

8 Q. So then you were in fact committing to  
9 keep your money in the fund for an additional nine  
10 months; is that correct? 09:55:12

11 A. It seems so.

12 Q. And that's something that you didn't  
13 think about at the time; is that correct?

14 A. Absolutely, correct.

15 Q. Because it doesn't make a lot of sense; 09:55:23  
16 right?

17 A. It makes plenty of sense.

18 Q. Tell me why.

19 A. Because they want additional money.  
20 They were going out to raise additional three-year 09:55:33  
21 money. In fact, it's almost a reup, so subject my  
22 monies to a two-year lockup basically starting  
23 from scratch.

24 Q. But it's your testimony that with all  
25 the additional money you had put into the fund 09:55:47

1 Epstein

2 before that, none of it had a new lockup starting  
3 from scratch; correct?

4 A. Correct.

5 Q. It's only this investment that has a 09:55:54  
6 new lockup starting from scratch?

7 A. Correct.

8 MR. SCHWARTZ: I think it's --

9 A. All the other investors were going --  
10 were going to get a three-year lockup, and I was 09:56:07  
11 going to have to two-year lockup, though I've said  
12 that before.

13 Q. But now you were going to have -- you  
14 were going to be extending your entire  
15 investment -- correct? -- subject to the new 09:56:16  
16 lockup?

17 A. That's correct.

18 MR. SCHWARTZ: This would be -- well.

19 Q. You understood, did you not, that with  
20 respect to the other investments the three-year 09:56:40  
21 period applied only to new money; correct.

22 A. No.

23 Q. What did you understand?

24 A. At the risk of having you once again  
25 tell me I've told you before, I had one capital 09:57:01

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Epstein

account subject to a two-year lockup in 2005,  
where everyone else was going to be subject to a  
three-year lockup.

Q. For only new money, the three-year lockup? 09:57:11

A. No.

Q. You understood that --

A. Sorry, sorry, for other investors.

Q. Yes. 09:57:18

A. I don't know.

MR. SCHWARTZ: Let me mark this as Exhibit 2.

(Exhibit 2, memorandum dated 9/17/04 from Zwirn to limited partners of D.B. Zwirn special opportunities fund, marked for identification.)

Q. Have you seen this document before?

A. No.

Q. This appears to be a memorandum to the limited partners of D.B. Zwirn Special Opportunities Fund; correct? 09:57:55

A. It appears to be.

Q. And you were one of those limited partners; correct? 09:58:05

1 Epstein

2 A. Correct.

3 Q. And it's from Dan Zwirn dated September  
4 17, 2004; is that correct?

5 A. Correct. 09:58:10

6 Q. Can you read the paragraph under  
7 three-year lockup to yourself, please.

8 A. Just the first page?

9 Q. Yeah, just the first paragraph under  
10 three-year lockup. 09:58:32

11 A. I'm done. Yes.

12 Q. So according to Mr. Zwirn, in his  
13 memorandum to the limited partners in November --  
14 on November 17th, 2004, the only money that would  
15 be subject to the three-year lockup would be new 09:58:46  
16 money; correct?

17 A. No.

18 Q. What other money is subject to the  
19 three-year lockup?

20 A. It says any interest purchased will be 09:59:15  
21 subject to its current lockup.

22 Q. Which was two years at that time;  
23 right?

24 A. I don't know.

25 Q. You had a two-year lockup in November 09:59:23

Epstein

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2004; correct?

A. I was treated differently than everyone else. I don't know what everyone else had. Yes.

Q. Were you treated initially from the initial investment? 09:59:38

A. From?

Q. From the time of the initial investment, were you treated differently or just starting in January 2005? 09:59:46

A. I believe -- I don't know.

Q. Well --

A. I don't know what anybody else had. I don't know if anybody else had a side letter.

Q. Will you assume that you were subject to the same limited partnership agreement as everyone else was through the end of January 2004 -- through the end of December 2004 and that everyone was subject to a two-year lockup until that period? Will you assume that for a second, please? 10:00:13

A. You want me to assume it?

Q. Excuse me?

A. You're asking me to assume?

Q. Yes, I'm asking you to assume that. 10:00:19

1 Epstein

2 A. Okay.

3 Q. If that is in fact true, then the only  
4 money that's going to be subject to a three-year  
5 lockup for the other investors is money they 10:00:26  
6 invest after January 2005 -- is that correct? --  
7 after January 1, 2005?

8 A. Whatever other investors had is not  
9 very -- was not very material to me.

10 Q. But it's material to my question, sir, 10:00:38  
11 and I'm asking you to answer your question.

12 A. I shall try again.

13 Q. If it is in fact true that everyone was  
14 subject to the same two-year lockup that you were  
15 subject to prior to January 2005, then the only 10:00:50  
16 money of other investors that is going to be  
17 subject to a three-year lockup, according to this  
18 memorandum, is money they invest after January 1,  
19 2005; correct?

20 A. That's what this authored memorandum 10:01:07  
21 says.

22 Q. And all the money they invested before  
23 January 1, 2005, will be subject to the old  
24 lockup; correct?

25 A. You've asked me to assume that. 10:01:15

1 Epstein

2 Q. Yes. Assuming that the lockup is two  
3 years.

4 A. If you ask me to assume it, I'd assume  
5 it. 10:01:22

6 Q. Well, it says it will remain  
7 indefinitely subject to its current lockup. If  
8 it's two years, that's what it will be; correct?

9 A. Will indefinitely remain subject to its  
10 current lockup. 10:01:32

11 Q. And if its current lockup is two years,  
12 then any money before that time remains subject to  
13 the two-year lockup it was under on December 31,  
14 2004; correct?

15 A. That's what this says. 10:01:44

16 Q. So if everyone else was subject to the  
17 same two-year lockup that you were, the only  
18 person being asked to extend the lockup on money  
19 invested prior to January 2005, to your knowledge,  
20 is you; correct? 10:01:59

21 A. No.

22 Q. Who else is being asked to change their  
23 old lockup?

24 A. Any new interest -- anybody who  
25 purchases a new interest. 10:02:21

1 Epstein

2 Q. The question was if everyone else was  
3 subject to the same two-year lockup that you were,  
4 the only person being asked to extend the lockup  
5 on money he invested prior to January 2005, 10:02:33  
6 according to this memorandum, is you; correct?

7 A. No.

8 Q. Who else is being asked to extend the  
9 lockup period for money invested before 2005,  
10 according to this memorandum? 10:02:52

11 A. Repeat the question.

12 Q. Who else, according to this memorandum,  
13 is being asked to extend the lockup period for  
14 money invested prior to 2005?

15 A. No one. 10:03:14

16 Q. But you were being asked to do that --  
17 correct? -- in the letter of January 11?

18 A. When you say "extend the lockup," I'm  
19 sorry, so we're clear, to me it means extend  
20 lockup from two to three years. 10:03:30

21 Q. I mean to extend the date on which you  
22 can take it out. That's what I mean.

23 A. You'll have to rephrase your question,  
24 [REDACTED] sorry.

25 Q. Okay. You were being asked to extend 10:03:40

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Epstein

the date on which you could take out the money  
that you had invested prior to January 1, 2005;  
correct?

A. I was being asked to give Dan Zwirn 10:03:50  
additional capital. I only decided to give Dan  
Zwirn capital if my one capital account would only  
be subject to a two-year lockup.

Q. And under this letter, as you have 10:04:02  
testified already, you were being asked to extend  
the date on which you could take out that money  
from June 30, 2006, to March 31, 2007, the money  
you had put in before January 1, 2005; correct?

A. No.

Q. Could you still withdraw your money on 10:04:23  
June 30, 2006, that you had placed into the  
investment prior to January 1, 2005?

A. I don't recall. Sorry.

Q. Would you read the agreement sitting 10:04:41  
here today?

A. Again? Full question, please?

Can we have a break?

MR. SUSMAN: Just let him get the  
question.

THE WITNESS: Sorry. 10:04:57

1 Epstein

2 Q. Under this letter it was your testimony  
3 that the date you could now take out your capital  
4 account was May 31 -- March 31, 2007; is that  
5 correct? 10:05:49

6 A. Yes.

7 Q. So you could no longer take out your  
8 money that you had invested prior to January 1,  
9 2005, on June 30, 2006; correct?

10 A. It seems so. 10:06:02

11 Q. And under this memorandum which  
12 Mr. Zwirn sent out, anybody who accepted the terms  
13 of the new agreement was going to remain subject  
14 to the current lockup that they had for money they  
15 invested prior to January 20, 2005; correct? 10:06:24

16 A. This is an offering memorandum. I  
17 don't know what the documents say.

18 Q. Assume the documents say the same  
19 thing.

20 A. What's your question? 10:06:34

21 Q. Under the memorandum -- sorry. Under  
22 the memorandum, anybody who accepted the terms of  
23 the new agreement, assuming they remained the  
24 same, was going to remain subject to the same  
25 lockup period that they had for the money that 10:06:54

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Epstein

they had invested prior to January 1, 2005;  
correct?

A. It seemed so for other investors, yes.

Q. But for you the period on which you 10:07:03  
could withdraw your funds was extended by nine  
months; correct?

A. I was subjected to a one capital  
account withdrawal starting for two years from  
January of '05. 10:07:13

Q. So effectively your lockup date for old  
money had been extended by nine months; is that  
correct?

A. It appears so.

MR. SCHWARTZ: Okay. Let's take a 10:07:22  
break.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: Stand by. We are  
going off the record. The time is 10:06 a.m.  
This is the end of Tape Number 1. 10:07:28

(Recess taken from 10:06 to 10:14.)

THE VIDEOGRAPHER: We are back on the  
record. The time is 10:14 a.m. This is  
beginning of Tape Number 2.

Q. Mr. Epstein, starting with college can 10:15:40

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Epstein

you tell us your educational background?

A. I went to Cooper Union for two years.

Q. Any education after that?

A. No, sir. 10:15:49

Q. When did you leave Cooper Union?

A. '71.

Q. You're an artist?

A. Physics. Sorry.

Q. And what did you do after you left  
Cooper Union? 10:16:07

A. I became -- I was a teacher at the  
Dalton Schools in mathematics and physics.

Q. From when to when?

A. From '74 to '76. 10:16:19

Q. And after leaving Dalton, what did you  
do?

A. I joined Bear Stearns in 1976 until  
1981.

Q. And what jobs did you hold at Bear  
Stearns? 10:16:29

A. I held many jobs at Bear Stearns,  
starting with -- I worked on the floor of the  
American Stock Exchange. I worked on the option  
trading desk. I worked as head of what was called 10:16:40

1 Epstein

2 sophisticated financial instruments. I worked as  
3 retail option trainer. Sorry.

4 Q. A retail option trainer or trader?

5 A. Both, trainer and trader. 10:16:57

6 Q. The positions you just gave me, did you  
7 give them to me in the chronological order in  
8 which you did them?

9 A. No, sir.

10 Q. Can we just redo it and tell us from 10:17:08  
11 the beginning at Bear Stearns to end what  
12 positions you held?

13 A. To the best of my recollection, I  
14 started on the American Stock Exchange floor in  
15 the option trading area. I moved up to the option 10:17:20  
16 trading desk. I then moved up to the block  
17 trading desk. I then moved up to -- I became a  
18 retail broker. I then moved to head of the  
19 options training department. And I became head of  
20 what was called sophisticated financial 10:17:43  
21 instruments.

22 Q. And what are sophisticated financial  
23 instruments, or what were they at Bear Stearns?

24 A. It's what commonly referred to today as  
25 derivatives. 10:17:56

1 Epstein

2 Q. And what were your responsibilities as  
3 head of sophisticated financial instruments?

4 A. To help -- both train brokers in the  
5 products that the firm was selling as well as 10:18:05  
6 craft new types of financial instruments.

7 Q. And when did you leave Bear Stearns?

8 A. 1981.

9 Q. And what prompted you to leave?

10 A. I thought it would be more lucrative 10:18:20  
11 for me to be out on my own.

12 Q. To be out on your own doing what?

13 A. Advising wealthy individuals about how  
14 to invest their money.

15 Q. At the time you left in 1981, did you 10:18:32  
16 have wealthy individuals who were interested in  
17 obtaining your advice?

18 A. Yes.

19 Q. And did you create -- did you set up a  
20 business? 10:18:42

21 A. Yes.

22 Q. And what was the name of that business?

23 A. To the best of my recollection, the  
24 first business was called Intercontinental Assets.

25 Q. And were you the sole proprietor or 10:18:54

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Epstein

were there other individuals with an interest in  
the business?

A. Sole proprietor.

Q. And how long did you work in that  
business? 10:19:01

A. Up until today.

Q. Has the business changed its name?

A. Yes.

Q. What is it now called? 10:19:11

A. Financial Trust Company.

Q. And is Financial Trust Company  
essentially the same business that you created  
when you left Bear Stearns?

A. Essentially. 10:19:26

Q. It's just a different corporate  
structure?

A. It's essentially the same business.

Q. And are you still the sole proprietor?

A. Yes. 10:19:39

Q. How many people work for you?

A. In-house? I'm sorry.

Q. How many people are employed by  
Financial Trust Company?

A. Less than 30. 10:19:53

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Epstein

Q. And where is it located?

A. In the Virgin Islands.

Q. And where does it do business?

A. In the Virgin Islands. 10:19:58

Q. It's only business is in the Virgin Islands?

A. Yes, sir.

Q. So all the employees of the company are located in the Virgin Islands? 10:20:04

A. Yes, sir.

Q. Is that for tax reasons?

A. That's where they live.

Q. Is the reason you have the business in the Virgin Islands for tax reasons? 10:20:19

A. I'm a resident of the Virgin Islands. That's where my business is.

Q. When did it move to -- well, did it start in New York?

A. Financial Trust Company started in the Virgin Islands. 10:20:30

Q. And its predecessor businesses, where were they?

A. In New York.

Q. And in what year did you move to the 10:20:39

Epstein

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Virgin Islands?

A. In the late nineties.

Q. And is that the point at which  
Financial Trust Company became the entity that ran 10:20:47  
the business?

A. Yes.

Q. And what is the business of Financial  
Trust Company?

A. Advising on financial transactions, 10:21:00  
advising wealthy individuals.

Q. Do you have discretion to invest the  
money of wealthy individuals as part of the work  
you do at Financial Trust Company?

A. In some instances, yes. 10:21:16

Q. Was the investment that you made that  
we have been talking about in the Highbridge/Zwirn  
funds an investment of your own money, an  
investment of clients' money or both?

A. Only my own money. 10:21:54

Q. And do you invest clients' money in  
hedge funds?

A. Yes.

Q. And do you invest your own money in  
other hedge funds? 10:22:05

1 Epstein

2 A. Yes.

3 Q. And when you said that you had made  
4 approximately ten hedge fund investments, were  
5 they investments -- did you mean to include both 10:22:14  
6 your money and clients' money in that number ten?

7 A. Yes.

8 Q. Did there come a time when you had a  
9 criminal conviction?

10 A. Yes. 10:22:44

11 Q. When was that?

12 A. In July of 2006.

13 Q. And where was that?

14 A. In Palm Beach, Florida.

15 Q. And it was conviction obtained by 10:22:57  
16 guilty plea or by trial?

17 A. By plea.

18 Q. And to how many counts did you plead  
19 guilty?

20 A. Two. 10:23:10

21 Q. And to what counts did you plead?

22 A. Solicitation of prostitution and  
23 procuring a minor for prostitution.

24 Q. What sentence did you receive on each  
25 of those counts? 10:23:27

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Epstein

A. A total of 30 months to be spent 18 months in incarceration and one year in community control.

Q. And were you incarcerated? 10:23:47

A. Yes.

Q. Where?

A. In Palm Beach.

Q. In what facility?

A. The Palm Beach stockade. 10:23:53

Q. From what period of time to what period of time?

A. From July '06 until July '07. No, sir, excuse me, from July '08 until July '09.

Q. And when did you start serving your sentence of community control? 10:24:12

A. Directly following that period.

Q. And what does that mean?

A. It was an enhanced form of probation.

Q. Can you explain what that means? 10:24:25

A. You must report to a probation officer and give a schedule about where you're going to be.

Q. Was your travel restricted?

A. Yes. 10:24:44

Epstein

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Q. To what restrictions?

A. Travel had to be approved by the probation officer.

Q. During the period that -- have you -- 10:24:57  
you've completed the period of enhanced probation?

A. Yes.

Q. Did you travel outside the country during that period?

A. No. 10:25:07

Q. When did you meet Glenn Dubin?

A. Best recollection is roughly 18 years ago.

Q. How did you meet Glenn Dubin?

A. He was the fiancé of a former girlfriend. 10:25:31

Q. And who was the former girlfriend?

A. Eva Anderson.

Q. And he was introduced to you by Eva Anderson? 10:25:44

A. Correct.

Q. And did you develop a relationship with Mr. Dubin starting 18 years ago?

A. I met him 18 years ago.

Q. Did you become friends? 10:25:55

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Epstein

A. Yes.

Q. When did you become friends?

A. That's a characterization.

Q. Well, as you characterize friends. 10:26:03

A. Probably the year 2000.

Q. Did you become -- ever have -- become business associates with him in any way?

A. You'll have to better define the term "friend," I'm sorry. 10:26:24

Q. You've had business transactions with Mr. Dubin; correct?

A. Yes.

Q. Has he given you business advice?

A. Yes. 10:26:33

Q. Have you given him business advice?

A. I want to be clear, investment -- when you say "business advice." So I've invested money with Highbridge from around the year 2000.

Q. That's around the same time you would have considered Mr. Dubin to have become your friend? 10:26:47

A. "Friend" is a difficult word, so I started to invest with Glenn Dubin in 2000.

Q. Well, why don't you describe the 10:26:57

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Epstein

relationship starting in 2000 that you had with Mr. Dubin.

A. I thought -- I knew that Glenn's track records with Highbridge was substantial, and he had a tremendous reputation. So I had wanted to invest with -- I decided to give Glenn Dubin some money to invest. 10:27:06

Q. And how would you describe your relationship with him starting in 2000? 10:27:17

A. Professional.

Q. Not personal?

A. Less personal more professional.

Q. Did there come a time when it became more personal? 10:27:29

A. Yes.

Q. When did that happen?

A. A number of years later.

Q. Approximately how many?

A. Two. 10:27:38

Q. So from approximately 2002 on how would you describe your relationship with Mr. Dubin?

A. Professional, good friend. He's the husband of my former girlfriend.

Q. He was the husband of your former 10:28:02

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Epstein

girlfriend before 2002 also; correct?

A. Yes.

Q. What changed about your relationship in approximately 2002?

10:28:10

A. I had become -- I started to invest -- I decided to invest money with Glenn, with Highbridge.

Q. You said that you did that around 2000 and that you became -- the relationship became more personal around 2002; is that correct?

10:28:22

A. Yes.

Q. Are you the godfather of one of his children?

A. Yes.

10:28:32

Q. When was that child born?

A. Seventeen years ago.

Q. So in 1994 you became the godfather of one of his children?

A. You use the term "godfather," so I don't know -- there's no official godfather in the Jewish religion. I'm sorry, I'm not -- I'm sorry?

10:28:48

Q. Were you the sondock [phonetic]?

A. I don't know what that means.

Q. The godfather.

10:28:58

Epstein

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A. I'm sorry.

Q. What is your relationship to the child?

A. I'm friends with the mother and father.

Q. Well, I asked the question whether you 10:29:09  
became the godfather. You answered the question  
yes. And then you said you're not really the  
godfather. What are you?

A. I'm a friend of the family, and I have 10:29:21  
a relationship with the children of great cordial  
respect.

Q. And in conversations with you and the  
Dubins, has the word "godfather" been used to  
describe your relationship with the child?

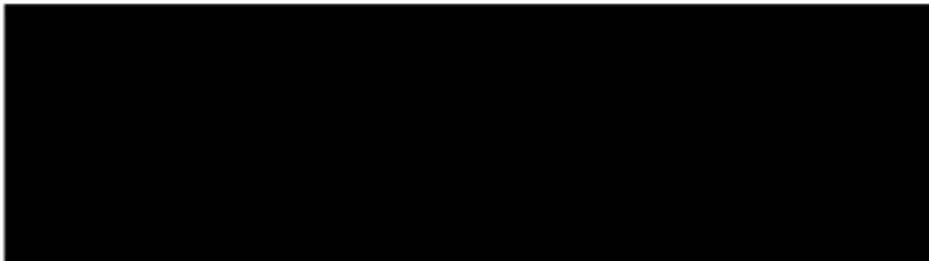
A. Yes. 10:29:38

Q. And in 1994 were you asked, even though  
it's not official in the Jewish religion, to be  
the godfather of the child?

A. No.

Q. When did that word start being used? 10:29:44

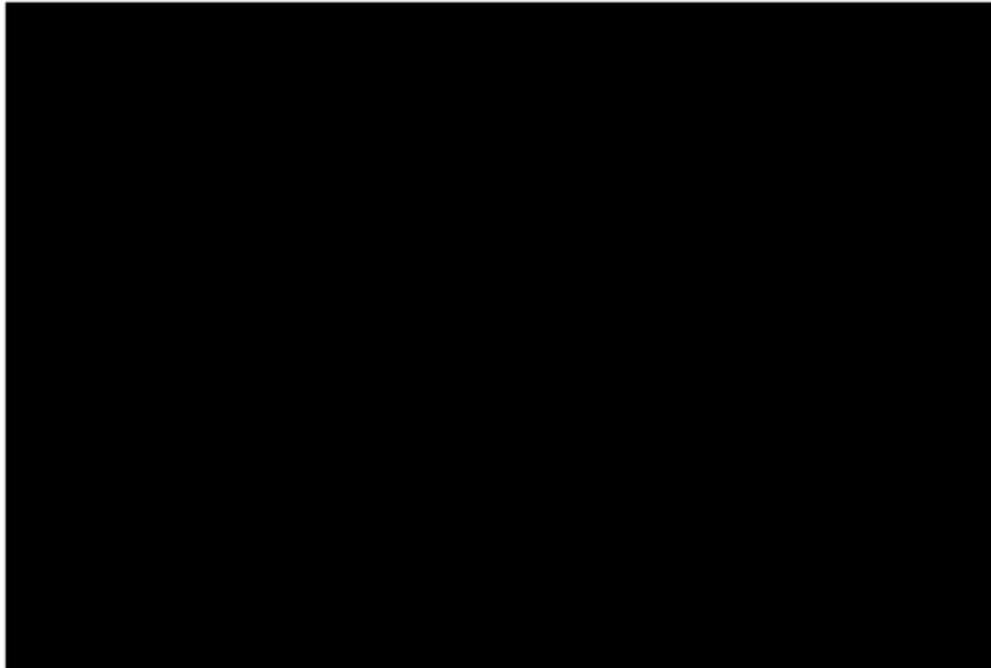
A. I don't recall.



10:29:55

Epstein

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10:30:07

10:30:21

When you say your relationship with them is close, what does that mean?

A. It was close.

Q. How often did you see them?

10:30:31

A. "Them" being, sorry?

Q.



A. Once a month.

Q. And has it been once a month basically throughout their lives?

10:30:41

A. No set schedule.

Q. On average?

A. Once -- on average once every two months.

10:30:53



1 Epstein

2 Q. Would you describe yourself as close to  
3 Mr. Dubin's wife?

4 A. I want to be -- she is a friend.

5 Q. I'm not suggesting anything other than 10:31:07  
6 that, sir.

7 A. She's a very good friend.

8 Q. As is Mr. Dubin; correct?

9 A. He is a friend.

10 Q. So you make the distinction when 10:31:19  
11 describing Mrs. Dubin as a very good friend?

12 A. She's my ex-girlfriend. That's  
13 probably a little different relationship.

14 Q. I have ex-girlfriends I would not  
15 describe as very good friends. 10:31:31

16 A. I'm sorry to hear that, but I'm not  
17 surprised.

18 Q. When were they married, the Dubins?

19 A. Around 18 years ago.

20 Q. Did you attend the wedding? 10:32:01

21 A. Yes.

22 Q. And the first time you did business  
23 with Mr. Dubin was approximately 2000?

24 A. My best recollection, yes.

25 Q. And what happened? What was the 10:32:17

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Epstein

business? How did it come about?

A. My best recollection is I called him and said I had some money to invest, I thought I should become a -- invest in Highbridge, what did he think, and how would he allocate some of the money. 10:32:30

Q. And you made the investment?

A. Yes, sir.

Q. Was it a personal investment or investment for clients? 10:32:41

A. Personal.

Q. And how much did you invest?

A. I don't recall.

Q. Can you give me a range? 10:32:46

A. Probably between 50 and 100 million.

Q. Did you invest additional money with him over the years in Highbridge?

A. Yes, sir.

Q. How many times did you make additional investments? 10:32:58

A. I would say more than 10, less than 30.

Q. Between what period -- in what period starting 2000?

A. Between 2000 and two thousand -- and 10:33:13

Epstein

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today.

Q. And how much have you invested in total in Highbridge?

A. More than 300 million. 10:33:21

Q. And how much do you have in Highbridge now?

MR. SUSMAN: What? I didn't hear that.

Q. How much do you have in Highbridge now?

A. Less than a hundred million. 10:33:33

Q. And it's all your funds?

A. Yes, sir.

Q. Did Mr. Dubin provide advice to you with respect to other investments?

A. Can you define "other investments"? 10:33:54

Q. Do you have an understanding of the word "investment"?

A. Other than what?

Q. Other than the investment in Highbridge. 10:34:09

A. No.

Q. Well, did there come a time when he talked to you about Dan Zwirn?

A. Dan Zwirn was a -- worked -- yes.

Q. When was that? 10:34:23

Epstein

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A. My best recollection is 2002.

Q. And what do you recall the  
conversations with Mr. Dubin in approximately 2002  
about Dan Zwirn? What do you recall about them? 10:34:31

A. Highbridge was a fund of funds, to be  
clear. So one of the conversations was Glenn  
thought I should give some money to a young,  
bright person that worked in one of the Highbridge  
divisions, which I believe was referred to as 10:34:59  
Highbridge/Zwirn.

Q. And you did?

A. Yes, sir.

Q. And was that based upon Mr. Dubin's  
recommendation? 10:35:49

A. Solely.

Q. Did you meet Dan Zwirn before you  
invested with him?

A. No.

Q. When was the first time you met Dan  
Zwirn? 10:36:00

A. To the best of my recollection, two or  
three years later.

Q. In what connection?

A. Glenn Dubin said I should meet Dan 10:36:11

Epstein

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Zwirn; he's been managing the money since 2002. I said I have no interest in meeting Dan Zwirn; he's an employee of Highbridge. Dubin asked me to meet Dan Zwirn. I said fine.

10:36:28

Q. And where did you meet him?

A. He came to my office.

Q. With anybody else?

A. Not to the best of my recollection.

Q. Was anybody else present at the meeting?

10:36:42

A. Not to the best of my recollection.

Q. How long was the meeting?

A. Less than five minutes.

Q. What do you recall taking place?

10:36:47

A. I said hello, now I know what you look like, you can go back home.

Q. Do you recall those being the words you spoke?

A. Yes.

10:36:56

Q. Did you meet Mr. Zwirn again?

A. No.

Q. So you've met Dan Zwirn once?

A. Yes.

Q. Prior to having met him in the meeting

10:37:06

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Epstein

that you just described, had you ever spoken to him?

A. Not to the best of my recollection.

Q. Has there been a cooling off in your friendship with Glenn Dubin over the years? 10:37:14

A. No.

Q. Are you as close to him today as you were, let's say, in 2002?

A. I don't know how to characterize that. 10:37:35

Q. Is the relationship of the same nature as it was in 2002?

A. He is my friend, yes.

Q. How often do you see him?

A. Once every two months. 10:37:52

Q. Was there ever a period where you saw him more often than that?

A. On average, no.

Q. Have you been on vacations with him?

A. I don't think so, no. 10:38:05

Q. Has he visited you in the Virgin Islands?

A. Yes.

Q. When?

A. I would say five years ago. 10:38:15

1 Epstein

2 Q. Just once?

3 A. Yes, once or twice. I can't recall.

4 Q. Do you recall approximately how long he  
5 stayed? 10:38:28

6 A. Either -- I'm not sure he stayed. I  
7 think they maybe just came to visit. It could  
8 have been overnight. I can't recall.

9 Q. How often do you speak to him?

10 A. Again? 10:38:37

11 Q. How often do you speak to him?

12 A. Currently? Or --

13 Q. Currently?

14 A. Not very often.

15 Q. Did you speak to him more frequently in 10:38:54  
16 the early 2000s than you do now?

17 A. No.

18 Q. Has the frequency during your  
19 relationship with him of speaking to him changed  
20 at all? 10:39:05

21 A. Yes.

22 Q. How did it change and when did it  
23 change?

24 A. Some years it was more, if there was a  
25 party for the family. Some years it was less. 10:39:17

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Epstein

Q. Do you speak to his children more often than you speak to him?

A. Yes.

Q. Do you speak to his wife more often than you speak to him? 10:39:27

A. Yes.

Q. How often do you speak to her?

A. Once a week.

Q. By phone? 10:39:43

A. Yes.

Q. How often do you see her?

A. Once every two months.

Q. Do you have social engagements with her apart from engagements with Mr. Dubin? 10:39:51

A. I don't understand the question.

Q. Well, would you go to lunch with her without Mr. Dubin?

A. No.

Q. How often do you speak to the children as opposed to see them? 10:40:00

A. Once every two weeks.

Q. Do you pick up the phone and call them?

A. No.

Q. Do they pick up the phone and call you? 10:40:15

1 Epstein

2 A. No. I'd be talking to the mother, and  
3 she would transfer to the child.

4 Q. Is it fair to say that you've reduced  
5 your investment in Highbridge over time? 10:40:58

6 A. Yes.

7 Q. When?

8 A. Over time.

9 Q. Why?

10 A. I make different allocations to 10:41:08  
11 different investments all the time.

12 Q. Has your reduction in your investment  
13 in Highbridge have anything to do with your  
14 relationship with Mr. Dubin?

15 A. No. 10:41:34

16 Q. So purely for business reasons?

17 A. Yes.

18 Q. Other than investing in Mr. Dubin's  
19 fund, what, if any, other business relationship  
20 have you had with him? 10:42:01

21 A. I helped organize the sale of  
22 Highbridge to JPMorgan.

23 Q. When?

24 A. In I believe it was 2004, late 2004.

25 Q. How did that come about? 10:42:19

Epstein

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A. I was -- I knew JPMorgan very well; I knew Glenn Dubin very well. I thought that a joint -- I initially was going to purchase -- I was attempting to purchase Highbridge myself and decided that it would be a better deal for a joint venture to be done between Highbridge and JPMorgan. 10:42:33

Q. You considered buying Highbridge yourself? 10:42:55

A. Yes, sir.

Q. When did you start considering doing that?

A. I would say 2003.

Q. Did you have conversations with Mr. Dubin about that? 10:43:02

A. Not specifically, no.

Q. Generally?

A. I don't recall.

Q. What efforts did you make, if any, with respect to purchasing Highbridge yourself? 10:43:11

A. I had gone to JPMorgan to ask if they would finance the purchase of Highbridge for me.

Q. What did they say?

A. Let's find -- let's look into -- we'll 10:43:25

Epstein

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consider it.

Q. What happened next?

A. Highbridge and JPMorgan met, and it was decided that it would be a better transaction for both JPMorgan and Highbridge for there to be some type of joint venture or purchase of Highbridge by JPMorgan. 10:43:39

Q. When you say Highbridge and JPMorgan met, who at Highbridge met with JPMorgan? 10:43:54

A. I don't know.

Q. Glenn Dubin?

A. Yes.

Q. And with whom at JPMorgan did he meet?

A. Jes Staley. 10:44:06

Q. And was that the person to whom you had gone to discuss financing your acquisition of Highbridge?

A. Yes.

Q. So let me just make sure I have this right. You considered purchasing Highbridge; correct? 10:44:17

A. Correct.

Q. You consulted with JPMorgan, Mr. Staley, about possible financing; correct? 10:44:27

1 Epstein

2 A. Correct.

3 Q. Mr. Staley asked to meet with  
4 Highbridge; correct?

5 A. Correct. 10:44:40

6 Q. Highbridge met with Mr. Staley;  
7 correct?

8 A. You're saying Highbridge. I just want  
9 to be clear.

10 Q. Mr. Dubin, Mr. Dubin. 10:44:51

11 A. Yes.

12 Q. And out of that meeting or meetings  
13 came a different business plan to make a joint  
14 venture; is that correct?

15 A. Or a purchase, yes, sir. 10:45:05

16 Q. And you abandoned your thought of  
17 purchasing Highbridge?

18 A. Correct.

19 Q. Did you have an interest in the new  
20 business arrangement that was being discussed? 10:45:23

21 A. No.

22 Q. And what did that business arrangement  
23 end up being, to your knowledge?

24 A. A purchase of Highbridge by JPMorgan.

25 Q. And do you know what portion of 10:45:39

1 Epstein

2 Highbridge was owned by Mr. Dubin?

3 A. You'd have to be more specific with  
4 your time frame, sir.

5 Q. At the time that JPMorgan purchased 10:45:49  
6 Highbridge.

7 A. I believe 50 percent.

8 Q. And who owned the other 50 percent?

9 A. I believe it was Henry Swieca.

10 Q. Did he also meet with JPMorgan, to your 10:46:00  
11 knowledge?

12 A. I don't know.

13 Q. Was he an active partner in Highbridge?

14 A. I don't know.

15 Q. Do you know him? 10:46:10

16 A. No.

17 Q. Did you attend the meeting or meetings  
18 between Mr. Dubin and Mr. Staley?

19 A. I don't recall. I don't think so.

20 Q. How many meetings did you have with 10:46:26  
21 Mr. Staley in connection with this transaction or  
22 your contemplated transaction?

23 A. Less than ten.

24 Q. And at any of them was Mr. Dubin  
25 present? 10:46:41

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Epstein

A. Not to the best of my recollection.

Q. Did you continue to meet with Mr. Staley once he had met with Mr. Dubin?

A. Yes. 10:46:50

Q. Concerning what?

A. I met with Mr. Staley often.

Q. How do you know him?

A. I know him for 12 years.

Q. How? 10:47:03

A. He was a party of JP -- he was a younger associate of JPMorgan when I became a client of JPMorgan's.

Q. At the time of the transaction with Highbridge, what was his position? 10:47:15

A. I don't know.

Q. Did you meet with others at JPMorgan besides Mr. Staley?

A. Yes.

Q. With whom? 10:47:27

A. Over what period of time?

Q. Over the period of time that you were considering a transaction with them.

A. No.

Q. It was only Mr. Staley? 10:47:36

1 Epstein

2 A. The best of my recollection.

3 Q. And with respect to the transaction you  
4 were considering, you met with him approximately  
5 ten times? 10:47:45

6 A. Less than ten times.

7 Q. Less than ten times?

8 A. Yes, sir.

9 Q. Less than five times?

10 A. I don't recall. 10:47:51

11 Q. How did you learn that JPMorgan was  
12 interested in either entering a joint venture or  
13 acquiring Highbridge?

14 A. The best of my recollection is  
15 Mr. Staley told me that. 10:48:06

16 Q. In person or on the phone?

17 A. I don't recall.

18 Q. And what did you say when he told you  
19 that?

20 A. I thought it would be a great 10:48:13  
21 investment.

22 Q. You were going to lose your opportunity  
23 to invest -- correct? -- to buy Highbridge?

24 A. Correct.

25 Q. And why were you prepared to do that? 10:48:23

1 Epstein

2 A. Because I thought I would end up with a  
3 piece of the joint venture.

4 Q. It did not end up being a joint  
5 venture; correct? 10:48:33

6 A. I don't know.

7 Q. Do you have a piece of any interest --  
8 do you have a piece of JPMorgan's interest in  
9 Highbridge?

10 A. No, sir. 10:48:42

11 Q. Do you have any interest in Highbridge  
12 other than your investment?

13 A. No, sir.

14 Q. I mean other than they manage some of  
15 your funds. 10:48:49

16 A. No, sir.

17 Q. Did that bother you, that you lost that  
18 opportunity?

19 A. No, sir.

20 Q. Why? 10:48:58

21 A. Because I was compensated for it.

22 Q. You were compensated for what?

23 A. For the introduction of JPMorgan to  
24 Highbridge.

25 Q. And who compensated you for that? 10:49:09

1 Epstein

2 A. Highbridge.

3 Q. And how much did they give you?

4 A. \$20 million.

5 Q. Did Highbridge give you \$20 million 10:49:14

6 personally or did they give it to some -- through  
7 some entity?

8 A. To my entity, Financial Trust Company.

9 Q. August \$20 million went to Financial  
10 Trust Company? 10:49:31

11 A. No, 15 million went to Financial Trust  
12 Company, and 5 million went to Financial Strategy  
13 Group.

14 Q. And who owns Financial Strategy Group?

15 A. I'm not sure. 10:49:41

16 Q. Not you; correct?

17 A. I don't recall if I have an interest in  
18 it.

19 Q. Did you think of that 5 million as your  
20 5 million? 10:49:52

21 A. Yes, sir.

22 Q. Even though you're not sure whether you  
23 have an interest?

24 A. Yes.

25 Q. Can you explain that, please? 10:49:56

1 Epstein

2 A. The people who work at Financial  
3 Strategy basically work for me, work for my  
4 company, work exclusively for my company. The  
5 ownership is unclear to me today. 10:50:07

6 Q. Who received the beneficial -- the  
7 benefit of that \$5 million?

8 A. I did.

9 Q. How?

10 A. Because I would either pay the expenses 10:50:14  
11 of the Financial Strategy Group myself or  
12 Financial Trust Company would, or the money would  
13 be paid directly to them.

14 Q. What is the business of Financial  
15 Strategy Group? 10:50:41

16 A. It provides accounting services and  
17 legal services.

18 Q. For whom?

19 A. For me.

20 Q. For anyone else? 10:50:45

21 A. Some of my clients.

22 Q. Who is the president?

23 A. I don't know.

24 Q. They work out of the Virgin Islands?

25 A. No, they work out of New York. 10:51:02

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Epstein

Q. How many employees do they have?

A. Less than ten.

Q. Who runs the office?

A. Darren Indyke. 10:51:09

Q. What's his position?

A. I don't recall.

Q. He's a lawyer; correct?

A. Yes, sir.

Q. He's the guy you referred to as your 10:51:15  
general counsel -- in-house counsel; correct?

A. Correct.

Q. And he performs that service through  
the strategy group?

A. Again? 10:51:25

Q. He performs that service of being your  
general counsel through Financial Strategy Group?  
They provide legal advice?

A. Yes.

Q. Is that the only entity through which 10:51:34  
he's paid?

A. No.

Q. He's also paid by Financial Trust  
Company?

A. Yes. 10:51:41

1 Epstein

2 Q. Anybody else?

3 A. I don't know.

4 Q. Did he get any of the benefit of the \$5  
5 million that was paid to Financial Strategy Group? 10:51:58

6 A. Yes.

7 Q. What did he receive?

8 A. The same amount of money he would have  
9 received if I paid it directly.

10 Q. And how much is that? 10:52:09

11 A. Are you asking me for his salary?

12 Q. In other words, he just received his  
13 salary?

14 A. Yes.

15 Q. So the \$5 million that was paid to 10:52:19  
16 Financial Strategy Group you perceived as a way to  
17 capitalize the company, essentially?

18 A. Correct.

19 Q. How much did JPMorgan pay for  
20 Highbridge? 10:52:37

21 A. I don't know.

22 Q. Did you ever have any conversations  
23 with Mr. Dubin about how much they paid?

24 A. No.

25 Q. Do you have any guess as to how much 10:52:47

1 Epstein

2 they paid?

3 A. My -- my best understanding -- you're  
4 asking me for a guess?

5 Q. Yes, a guess. 10:52:59

6 A. It was north of a billion dollars.

7 Q. North of a billion?

8 A. Correct.

9 Q. Of which Mr. Dubin would have a 50  
10 percent interest, in your understanding? 10:53:08

11 A. My understanding.

12 Q. What's your guess of north of a billion  
13 based on?

14 A. It had assets under management at that  
15 time of somewhere between 4 and 7 billion dollars, 10:53:19  
16 I think.

17 Q. So do you use a multiple or how do you  
18 come up with north of a billion?

19 A. Because what I was -- I knew what I was  
20 willing to pay. 10:53:35

21 Q. How much were you being to pay?

22 A. North of a billion.

23 Q. How much is that?

24 A. The best of my recollection is 2.5 to 3  
25 billion. 10:53:44

1 Epstein

2 Q. Is it your guess JPMorgan paid more  
3 than 2 or 3 billion dollars for it?

4 A. You're asking me to guess, I'm sorry.

5 Q. You valued it between 2 and 3 billion 10:53:51  
6 dollars?

7 A. Yes, I know I did.

8 Q. Did you ever have a conversation with  
9 Mr. Dubin about your valuation of his company?

10 A. I don't recall. 10:53:59

11 Q. Did you ever have a conversation with  
12 Mr. Dubin in which you told him you might be  
13 interested in buying the company?

14 A. Yes.

15 Q. When was that conversation? 10:54:05

16 A. Early 2003/2004.

17 Q. Before you introduced him to  
18 Mr. Staley?

19 A. Yes.

20 Q. And can you tell us what that 10:54:11  
21 conversation was?

22 A. I thought Highbridge was a tremendous  
23 platform from which you could build a great  
24 business. He had great people working for him.  
25 And I thought it would be a great purchase for me. 10:54:23

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Epstein

Q. And what did he say?

A. I don't recall.

Q. Was he interested in selling?

A. He was interested in exploring his 10:54:30  
opportunities.

Q. Did you understand Highbridge to be his  
most significant asset?

A. Yes.

Q. His interest in Highbridge. 10:54:44

A. Yes, sir.

Q. Do you recall if you and Mr. Dubin  
discussed valuation at all?

A. I don't recall.

Q. How did it come about that you arranged 10:55:22  
a fee for the introduction?

A. I'm sorry, you'll have to repeat the  
question.

Q. How did it come about that you received  
a fee for the introduction? 10:55:34

A. Glenn Dubin came to my house, and he  
said, You should get a fee for the introduction.  
And I said, Pay me what you think is fair. I will  
not negotiate.

Q. At what stage in the transaction did 10:55:52

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Epstein

Glenn Dubin come to you? After he had sold or after he had reached an agreement; do you know?

A. It was after he reached an agreement. That is my best recollection. 10:56:06

Q. And he said, I think \$20 million was fair?

A. Correct.

Q. Or how did he respond?

A. He said, I think the number is \$20 million. 10:56:13

Q. Did you understand what that number was based on?

A. He said, I think the number is \$20 million. 10:56:22

Q. Did you understand it to be essentially a finder's fee?

A. Yes, sir.

Q. Did you have any understanding of what -- how finder's fees are generally based in the sale of financial institutions? 10:56:37

A. I have -- yes.

Q. What's your understanding?

A. It varies quite a bit.

Q. Between what and what? 10:56:46

1 Epstein

2 A. Between zero and the formula that I  
3 think Paul, Weiss put together four years ago.

4 Q. Have you ever acted as a finder in a  
5 transaction like this before? 10:57:03

6 A. I don't recall.

7 Q. Is it possible?

8 A. A transaction like what? Someone  
9 buying something else?

10 Q. The sale of a fund like Highbridge. 10:57:13

11 A. No.

12 Q. Since?

13 A. No.

14 Q. Did you enter any kind of agreement  
15 with Highbridge after the fee was paid? 10:57:40

16 A. Yes.

17 Q. And what was that?

18 A. To invest money, as you know.

19 Q. For them to invest your money?

20 A. Yes. 10:57:56

21 Q. Did you ever enter a consulting  
22 agreement?

23 A. No.

24 Q. Did you ever discuss a consulting  
25 agreement? 10:58:14

1 Epstein

2 A. I believe so.

3 Q. First when was the Highbridge  
4 transaction?

5 A. My best recollection is in late '04. 10:58:18

6 Q. Let's just see if we can pin it down.

7 MR. SCHWARTZ: Can we mark this,  
8 please, as Exhibit 3.

9 (Discussion off the record.)

10 (Exhibit 3, invoice from FTC to  
11 Resnick, marked for identification.)

12 Q. Exhibit 3 appears to be an invoice from  
13 Financial Trust Company to Mr. Ron Resnick at  
14 Highbridge for mergers and acquisitions advice,  
15 amount \$15 million. 10:59:36

16 Do you recognize it?

17 A. Yes, sir.

18 Q. Is that the invoice for the \$15 million  
19 portion of the fee?

20 A. Yes, sir. 10:59:45

21 Q. And that invoice was after the deal  
22 with JPMorgan or about the time of the deal with  
23 JPMorgan?

24 A. About the time.

25 Q. So late 2004 would be about that time? 10:59:53

1 Epstein

2 A. I believe so.

3 Q. What conversations did you have with  
4 Mr. Dubin about a consulting arrangement?

5 A. My best recollection was subsequent to 11:00:04  
6 this.

7 Q. And what were the conversations?

8 A. Whether -- I believe whether they  
9 should consider having me as a consultant moving  
10 forward. 11:00:20

11 Q. Who raised that issue?

12 A. I don't remember.

13 Q. And what happened?

14 A. Nothing.

15 Q. Was there a draft agreement? 11:00:31

16 A. I believe so.

17 Q. And what were you going to consult  
18 about?

19 A. I don't recall.

20 Q. Let me show you a document which we'll 11:00:50  
21 mark as Exhibit 4.

22 (Exhibit 4, draft consulting agreement  
23 with fax cover sheet, marked for  
24 identification.)

25 Q. I've placed in front of you Exhibit 4, 11:01:04

Epstein

1  
2 which is on the letterhead of Highbridge. It  
3 appears to be a fax -- a fax consulting sheet -- a  
4 fax cover sheet and what appears to be a draft  
5 consulting agreement attached, although there's no 11:01:19  
6 fax stamp.

7 Do you recognize this?

8 A. Not specifically, no.

9 Q. You did not end up being a consultant  
10 for Highbridge; correct? 11:01:40

11 A. No, sir.

12 Q. What happened to those discussions?

13 A. Nothing happened. I don't remember.

14 Q. Do you remember it had gone far enough  
15 that somebody drafted a consulting agreement? 11:01:51

16 A. No.

17 Q. Who is Mark Roberts; do you know? He's  
18 one of the cc's?

19 A. No, sir.

20 Q. Do you know who Bill Shepherd is? 11:02:04

21 A. No, sir.

22 Q. Do you know who Rob Caruso is?

23 A. No, sir.

24 Q. Do you know who Yul Tobaly is?

25 A. No, sir. 11:02:16

1 Epstein

2 Q. Bill Bulmer?

3 A. No, sir.

4 Q. Ron Resnick?

5 A. It's only because it says Ron Resnick 11:02:20  
6 on the invoice. The answer is no, I never met  
7 him.

8 Q. Let's go back to your conversations  
9 with Mr. Dubin about investing in the Zwirn fund.  
10 What did he tell you about the fund at that time, 11:02:46  
11 2002, before you invested?

12 A. Highbridge was a fund of funds. And as  
13 we allocated money, he thought that Dan Zwirn  
14 showed great promise and I should give Dan  
15 Zwirn -- Highbridge/Zwirn. Highbridge had 11:03:06  
16 different pockets, and one of the pockets was the  
17 Zwirn fund -- the Highbridge/Zwirn fund, to the  
18 best of my recollection.

19 Q. Let's call it the Zwirn fund so we  
20 can -- so we can keep that pocket, call it the 11:03:19  
21 Zwirn fund so that we can distinguish it from  
22 Highbridge equity?

23 A. I would prefer to call it Highbridge/  
24 Zwirn because later on there's a change, I think.

25 Q. Okay. So let's call it Highbridge/ 11:03:30

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Epstein

Zwirn.

He told you that one of the pockets in which they invested was the Highbridge/Zwirn fund?

A. Yes, sir. 11:03:38

Q. And he told you it was managed by Dan Zwirn?

A. I doubt it.

Q. What did he tell you about Dan Zwirn?

A. He said the Zwirn fund was a fund that I should put some money in. 11:03:44

Q. Did he tell you why?

A. They were going to be doing PIPE investments.

Q. And what did you understand PIPE investments to be? 11:03:54

A. Private investments in private -- in public equities.

Q. Did he tell you that they were going to be investing in anything else? 11:04:09

A. "They," please?

Q. The Highbridge/Zwirn fund.

A. He thought it was a good investment. That's the full extent of the discussion.

Q. Did he tell you anything about their 11:04:19

1 Epstein

2 investment strategy?

3 A. No, sir.

4 Q. Did you have any understanding as to

5 the investment strategy? 11:04:24

6 A. No, sir.

7 Q. Your decision to place the first \$20

8 million was based solely on that conversation?

9 A. Yes, sir.

10 Q. And your decision to make the next \$20 11:04:41

11 million investment was based on what?

12 A. My best recollection is I was

13 allocating additional monies and I said what

14 else -- where should I put the additional 20 or 30

15 million dollars, and he said put 20 million with 11:05:06

16 Zwirn.

17 Q. You were allocating additional monies

18 for what?

19 A. My own personal investments.

20 Q. And so you asked Mr. Dubin where should 11:05:13

21 you put it?

22 A. Yes.

23 Q. You asked for his advice?

24 A. Yes.

25 Q. And he said put it with Zwirn? 11:05:17

1 Epstein

2 A. Some of it with Zwirn, yes.

3 Q. That investment was made, I think we  
4 agreed, in about September 2002, so this would  
5 have been prior to that? 11:05:25

6 A. Yes.

7 Q. And did he tell you anything else about  
8 the fund at that time?

9 A. Not to the best of my recollection.

10 Q. Anything else about the investments the 11:05:38  
11 fund made?

12 A. No.

13 Q. Did you know anything else about the  
14 investments the fund made at that time?

15 A. No. 11:05:44

16 Q. You invested an additional \$30 million  
17 in the fund in December 2002; correct?

18 A. Correct.

19 Q. How did that come about?

20 A. The same. 11:05:58

21 Q. You had a conversation with Mr. Dubin?

22 A. Yes, sir.

23 Q. You wanted to allocate -- you wanted to  
24 make new investments; correct?

25 A. Correct. 11:06:06

1 Epstein

2 Q. Do you have any ideas -- correct? --  
3 and he said Zwirn?

4 A. Zwirn probably is one of three or four  
5 different pockets. 11:06:13

6 Q. When you say "allocate," were you  
7 allocating to pockets of the Highbridge funds?

8 A. As well as other hedge funds.

9 Q. And you were asking his general advice  
10 on what he thought might be a good place to put 11:06:25  
11 some money?

12 A. Yes.

13 Q. When you went to him to discuss that,  
14 did you tell him how much you were going to be  
15 investing in total? 11:06:35

16 A. No.

17 Q. Did you discuss the number that you  
18 would invest in any of the things that he  
19 discussed with you?

20 A. Yes. 11:06:46

21 Q. What did you tell him about that, or  
22 what did he say about that?

23 A. My best recollection is I would say I  
24 have 60 or 80 million dollars and how do you think  
25 I should allocate it. 11:06:57

1 Epstein

2 Q. So let's go back to the original  
3 conversation prior to the May 2002 investment.

4 A. Yes, sir.

5 Q. You weren't coming to talk to him about 11:07:06  
6 \$10 million; you were coming to talk to him about  
7 more than \$10 million?

8 A. I don't recall.

9 Q. In September 2002 do you recall how  
10 much you were discussing? 11:07:17

11 A. No, sir.

12 Q. But the 10 in each of those instances  
13 was not the full amount that you were looking to  
14 invest; right?

15 A. I don't recall specifically. 11:07:25

16 Q. Did he give you any other advice with  
17 respect to where other monies should go?

18 A. I don't recall.

19 Q. I'm going to read you an answer you  
20 gave me a minute ago. "My best recollection is I 11:07:44  
21 would say I have 60 or 80 million dollars and how  
22 do you think I should allocate it."

23 What did that recollection concern?

24 A. A period of time over two years or  
25 three years of investing in Highbridge. 11:08:00

1 Epstein

2 Q. And did he give you any other  
3 recommendations other than the Highbridge/Zwirn  
4 funds during that period of time?

5 A. Yes, sir. 11:08:11

6 Q. And did you follow those  
7 recommendations?

8 A. Sometimes.

9 Q. Can you tell us which recommendations  
10 that he gave you which you followed? 11:08:21

11 A. Highbridge had many pockets. There was  
12 a long short fund, there was a convertible  
13 arbitrage fund, there was a long equity fund.  
14 There were a number of different pockets.

15 Q. And which of those recommendations did 11:08:36  
16 you follow; do you recall?

17 A. Not with specificity.

18 Q. And do you recall why you would follow  
19 some and not follow others?

20 A. It was at that moment I made the 11:08:45  
21 decision.

22 Q. Based on what?

23 A. What I decided at that moment.

24 Q. Based on what?

25 A. My view of the markets, my view of the 11:08:53

1 Epstein

2 products, my view of the people, my view of  
3 Highbridge, my view of risk/reward, my view of  
4 liquidity needs.

5 Q. So at the moments in May, September, 11:09:05  
6 and December 2002 that you invested in the  
7 Highbridge/Zwirn fund --

8 A. Again, sorry? I want to be precise.  
9 Sorry.

10 MR. ARFFA: Speaking of being precise, 11:09:27  
11 I want to make sure at the end of one of the  
12 answers -- I think it was a couple answers  
13 ago -- it said -- you were listing the  
14 factors. You said, My view of risk/reward, my  
15 view of -- I thought it was liquidity needs. 11:09:39

16 THE WITNESS: Liquidity needs, yes,  
17 sir.

18 Q. It didn't come out. Not your fault.  
19 Not even her fault.

20 When you invested in the Highbridge/ 11:09:52  
21 Zwirn fund in 2002 -- well, let's start in May  
22 2002 -- which of those factors played a role:  
23 your view of the products, your view of the  
24 people, your view of Highbridge, your view of  
25 risk/reward, or your view of liquidity? 11:10:22

1 Epstein

2 A. I take into account all those factors,  
3 and I make a decision. If you ask me what  
4 happened eight years ago, it would be hard for me  
5 to pin down exactly which one caused that 11:10:35  
6 decision.

7 Q. The only thing you knew about the fund  
8 is you were being told by Mr. Dubin that it was a  
9 good investment and he told you it did PIPE  
10 investing; correct? 11:10:44

11 A. That's the best of my recollection.

12 Q. So you made the decision based on that  
13 information alone?

14 A. That's correct.

15 Q. Did you have any other information 11:10:51  
16 available to you in September 2002 when he  
17 suggested that you invest with it again?

18 A. No, sir.

19 Q. Did you have any other information  
20 about the fund in December 2002 when he 11:11:00  
21 recommended that you invest in it again?

22 A. I don't -- I wouldn't recall, sitting  
23 here today.

24 Q. How about in June 2003?

25 A. Ask the question again. 11:11:13

1 Epstein

2 Q. Did you have any other information  
3 other than the fact that he was recommending it  
4 and that it did PIPE investing?

5 A. It's possible. 11:11:20

6 Q. And what do you think you had?

7 A. He might have said they're doing very  
8 well.

9 Q. And did you know anything more about  
10 the investments they were making at that time? 11:11:32

11 A. No, sir.

12 Q. We discussed earlier your investment in  
13 January 2005.

14 A. Yes, sir.

15 Q. Putting aside the lockup, how did it 11:11:44  
16 come about that you decided to make an investment  
17 in 2005?

18 A. Glenn Dubin called me and said that  
19 Zwirn had been doing very well, and he recommended  
20 that I up my investment. 11:12:00

21 Q. And did you have any other information  
22 about the fund at that time than you had at the  
23 time of your earlier investments other than what  
24 he told you in that conversation?

25 A. Sitting here today I couldn't recall. 11:12:09

1 Epstein

2 Q. Did you know anything more about its  
3 investment strategy?

4 A. Just if I was going to reup, it was  
5 probably -- he had been doing well. 11:12:20

6 Q. Did you know anything more about its  
7 investment strategy?

8 A. Sorry?

9 Q. Did you know anything more --

10 A. No, I'm sorry. 11:12:29

11 Q. No; is that correct?

12 A. No, that was the answer.

13 Q. Is it fair to say that the only thing  
14 during the period you were an investor in the fund  
15 that you knew about its investment strategy was 11:12:36  
16 that it invested in PIPEs?

17 A. That it had grown substantially to --  
18 as a big part of Highbridge and had taken other  
19 money, it was very successful, that the returns  
20 were solid, and that there was plenty -- plenty of 11:12:51  
21 money and things to buy.

22 Q. Is it fair to say that the only thing  
23 during that period that you knew about its  
24 investment strategy is that it invested in PIPEs?

25 A. No. 11:13:07

1 Epstein

2 Q. What else did you know?

3 A. Again, when you're talking about  
4 strategy, that it had decent returns. It was --  
5 to me it was a pocket of Highbridge's money, 11:13:15  
6 initially. Dan Zwirn was a successful investor.  
7 The returns were solid. The fund was on solid  
8 footing. And it had Highbridge's money under  
9 management.

10 So one of the great -- the biggest 11:13:30  
11 pieces was the fact that it already had 500 or so  
12 or 600 million of Highbridge's money being managed  
13 by Dan.

14 Q. Let me be clear about what I'm asking.  
15 I'm -- 11:13:42

16 A. You're asking about investment  
17 strategy.

18 Q. I'm asking you about -- by "investment  
19 strategy" what I mean is how it makes its  
20 decisions to invest and what it invests in. 11:13:51

21 A. No.

22 Q. So the only thing that you knew  
23 during -- about its investment strategy at the  
24 time that you made each of these investments,  
25 defining investment strategy as I just have, is 11:14:02

1 Epstein

2 that it invested in PIPEs?

3 A. No, it had a wide range of investment  
4 opportunities. It was not limited to PIPEs.

5 It -- you asked me initially. So the answer is I 11:14:15  
6 thought I had additional information that they  
7 were making money in investment strategy.

8 Q. What else did it invest in?

9 A. I don't know.

10 Q. When did you learn it invested in 11:14:25  
11 things other than PIPEs?

12 A. I never learned what it invested in at  
13 all.

14 Q. Just that it had PIPEs and other  
15 investments? 11:14:33

16 A. Correct.

17 Q. But you didn't know what those other  
18 investments were?

19 A. That's correct.

20 MR. SCHWARTZ: Let's take the break. 11:14:40  
21 It's time.

22 THE VIDEOGRAPHER: Stand by. We are  
23 going off the record. The time is 11:13 a.m.

24 This is the end of Tape Number 2.

25 (Recess taken from 11:13 to 11:28.) 11:14:49

1 Epstein

2 THE VIDEOGRAPHER: We are back on the  
3 record. The time is 11:28 a.m. This is the  
4 beginning of Tape Number 3.

5 Q. Did you have an understanding as to the 11:29:41  
6 liquidity of the investments in which Highbridge/  
7 Zwirn was investing?

8 A. When?

9 Q. At any time?

10 A. I would always assume that any fund I 11:29:58  
11 had my money in had ample liquidity.

12 Q. What do you mean by "ample liquidity"?

13 A. Any business has to run itself,  
14 especially in the hedge fund business that has  
15 liquidity both for redemption purposes and for 11:30:12  
16 making more investments.

17 Q. Did you understand it was making  
18 illiquid investments long term?

19 A. "It"?

20 Q. Highbridge/Zwirn. 11:30:38

21 A. I don't understand. I told you what I  
22 understood before.

23 Q. And so you assumed it had ample  
24 liquidity?

25 A. I assume every investment I make, every 11:30:47

1 Epstein

2 responsibly traded hedge fund, always has ample  
3 liquidity.

4 Q. And what does ample liquidity mean?

5 A. It means liquidity sufficient to make 11:30:59  
6 redemptions, liquidity sufficient to make  
7 additional investments, liquidity to pay  
8 management fees, liquidity to run its operation,  
9 liquidity to maintain its position to take  
10 advantage of opportunities that may present 11:31:17  
11 itself.

12 Sorry, are you going to interrupt me?

13 Okay.

14 Liquidity so that in general terms of  
15 investing it's usually not a good idea to have to 11:31:28  
16 have a fire sale.

17 Q. During the time that you were investing  
18 with them, did you understand the lockup periods  
19 to be in any way related to the liquidity of the  
20 investments they were making? 11:31:45

21 A. No.

22 Q. What was the purpose of locking up  
23 funds, in that case?

24 A. Many times the manager simply wants to  
25 make sure that if he's going to take office space 11:31:55

1 Epstein

2 and commit himself to long-term employees he  
3 doesn't want to have all his money pulled out at  
4 the last minute.

5 Q. Did you ever have any conversations 11:32:05  
6 with Glenn Dubin about the liquidity of the  
7 investments in the Highbridge/Zwirn fund prior --  
8 during the period -- prior to your investing or  
9 during the period you were invested?

10 A. Yes. 11:32:22

11 Q. When?

12 A. Best recollection is 2007.

13 Q. Do you recall making a redemption  
14 request in February 2007?

15 A. Yes. 11:32:50

16 Q. Was it before or after that request?

17 A. It was after that request when Glenn  
18 told me that Zwirn was a lying scumbag, that in  
19 fact had mis -- misled him, misled the auditors,  
20 misled everyone, and in fact had been running the 11:33:13  
21 operation with almost zero liquidity, borrowing  
22 from Peter to pay Paul.

23 Later he told me they in fact had no  
24 liquidity in the fund, in the onshore fund, so  
25 they were forced to borrow money from the offshore 11:33:28

1 Epstein

2 fund, borrowing from the right hand to pay the  
3 left hand, not being totally aware of the tax  
4 implications of that horrendous decision.

5 He told me in fact at one point that he 11:33:40  
6 thought that even though Dan Zwirn had told me and  
7 told Zwirn that the reason he didn't want to make  
8 my redemption is because I would have a run on the  
9 bank.

10 It turned out that Dan Zwirn and the 11:33:52  
11 Zwirn funds had no liquidity; in fact, had in fact  
12 turned out had no liquidity to pay their  
13 management fees; in fact had no liquidity to fund  
14 his own airplane. So he decided to take money  
15 from the Highbridge account. 11:34:07

16 Three, he told me in fact that many of  
17 the operations and things in the pipeline to buy  
18 things had to be funded by the offshore account so  
19 that there were monies moving back and forth and  
20 that Dan Zwirn was a bad guy. 11:34:20

21 Q. That conversation took place after the  
22 redemption request; correct?

23 A. Yes.

24 Q. Did he tell you anything about the  
25 actual investments the fund was making at that 11:34:37

1 Epstein

2 time that you did not know before?

3 A. He had advised me that what I initially  
4 found out in late September/early October 2006  
5 that Dan Zwirn was firing Perry Gruss for 11:34:53  
6 supposedly some immaterial bookkeeping entry; that  
7 in fact they had misled me -- this was  
8 afterwards -- and in fact it was not immaterial  
9 but very material; that money had been taken  
10 amazingly so to fund Dan Zwirn's personal airplane 11:35:10  
11 out of the Highbridge managed account.

12 He told me monies in fact had been  
13 taken from the management company and for Dan's  
14 own personal tax purposes he had deferred his fees  
15 to an offshore -- kept in an offshore entity so 11:35:30  
16 that they were having trouble actually keeping the  
17 lights running -- lights on because they had no  
18 money.

19 So in fact the fund had been totally  
20 illiquid. And that was certainly not the 11:35:42  
21 representation that they had made to either Glenn  
22 or myself.

23 Q. When did he tell you this?

24 A. Since '07.

25 Q. This is, again, after February of '07? 11:35:53

1 Epstein

2 A. Best recollection, sir.

3 Q. The last sentence of your answer -- let  
4 me just read it back to you.

5 A. Sure. 11:36:27

6 Q. "And that was certainly not the  
7 representation that they had made to either Glenn  
8 or myself."

9 A. Yes.

10 Q. Who is "they"? 11:36:33

11 A. The Zwirn, Harry Davis, Dan Zwirn --  
12 Harry Davis specifically to me, that the book --  
13 what had been represented to me initially as mere  
14 bookkeeping entry irregularities was in fact not  
15 the case. In fact, there were material problems 11:36:55  
16 with the fund and the fact that they never  
17 represented the idea that when they agreed to my  
18 redemption request that they in fact had no  
19 liquidity.

20 Q. And who told you that? 11:37:05

21 A. Glenn Dubin.

22 Q. And did he tell you he was unaware of  
23 what kind of investments they were making before  
24 that time?

25 A. No. 11:37:17

1 Epstein

2 Q. Did he tell you that he was aware of  
3 the kind of investments they were making?

4 A. I don't recall.

5 Q. My question to you earlier was did he 11:37:21  
6 tell you anything about the actual investments the  
7 fund was making when he spoke to you after  
8 February 2007 that you did not know before.

9 A. You have to repeat again.

10 Q. When you had this conversation with 11:37:34  
11 him --

12 A. Yes, sir.

13 Q. -- after February 2007, did Mr. Dubin  
14 tell you anything about the actual investments the  
15 fund was making that you did not know before? 11:37:44

16 A. Yes. He told me that the -- one of the  
17 accounting firms had been called in to in fact  
18 make sure that the NAV was solid and that the  
19 first initial report was that the NAV was in fact  
20 as represented. 11:38:03

21 Q. So the NAV report was accurate?

22 A. I don't know that.

23 Q. He told you that it was accurate?

24 A. No.

25 Q. You said one of the accounting firms 11:38:32

1 Epstein

2 had been called in to in fact make sure the NAV  
3 was solid and that the first initial report was  
4 that the NAV was in fact as represented.

5 So he was telling you the NAV was in 11:38:54  
6 fact as represented? That had been the conclusion  
7 of the accounting firm?

8 A. Yes.

9 Q. Did he tell you he was unaware of the  
10 investment strategy of the Zwirn funds? 11:39:07

11 A. No.

12 Q. What exactly did he tell you at that  
13 time that he had been unaware of?

14 A. At what time?

15 Q. When he spoke to you in February 2007 11:39:30  
16 or right after February 2007. What are the things  
17 that he said I, Glenn Dubin, did not know?

18 A. I don't recall with specificity. I  
19 remember he being outraged that Glenn -- that Dan  
20 Zwirn had lied on at least four major areas of 11:39:45  
21 representations to Glenn, his words, which was,  
22 one, the fact that his airplane which was  
23 purchased in September of '05 was purchased with  
24 funds from Highbridge.

25 Q. He said he had been lied to about that 11:40:01

1 Epstein

2 by Dan Zwirn?

3 A. That he said Dan Zwirn was a lying  
4 scumbag.

5 Q. Okay. 11:40:08

6 A. He said -- I apologize to the lady,  
7 sorry, and you. But I've been told my best  
8 recollection of exactly what the conversation was.

9 Q. So that's one area, the airplane. What  
10 else? 11:40:23

11 A. The airplane was worse than that,  
12 because in fact what he had said was what was  
13 represented as immaterial was mischaracterized  
14 because it was immaterial in terms of its dollar  
15 values in a \$7 billion fund. 11:40:38

16 So the idea that immateriality was in  
17 fact maybe \$50 or \$100 or \$50,000 in a \$7 billion  
18 fund was in fact mischaracterized as if someone  
19 who had only stolen a thousand dollars was any  
20 less liable than someone who stole a million 11:40:54  
21 dollars.

22 So the immateriality that was expressed  
23 to us, to me, which was in its dollar-diminished  
24 value was mischaracterized strictly as immaterial  
25 fact, was in fact the fact that there was a gross 11:41:06

1 Epstein

2 negligence and a fiduciary obligation of Perry  
3 Gruss, Dan Zwirn, Mr. Kahn, whoever -- I'm  
4 unfamiliar with his first name -- that no one made  
5 disclosure to me at any relevant time so that each 11:41:21  
6 one had breached their fiduciary duties, knowing  
7 in fact -- this was sometime in February '07 --  
8 that sometime in '06 all of these in fact were  
9 known.

10 Let me finish. 11:41:38

11 That in fact the liquidity of the fund  
12 was badly stressed so that the demand that they  
13 had asked me to reduce from my full withdrawal  
14 request to only an \$80 million request was  
15 mischaracterized as merely being -- avoiding a run 11:41:51  
16 on the bank when in fact it turned out there was  
17 no liquidity; and basically there had been very  
18 little accounting procedures followed. Sorry.

19 Q. Did he tell you that he had been lied  
20 to about materiality or is that your conclusion, 11:42:05  
21 that you had been lied to about materiality?

22 A. I don't recall specifically.

23 Q. You don't recall whether he said he had  
24 been lied to about that?

25 A. He said he knew I had been lied to 11:42:19

1 Epstein

2 about it.

3 Q. And the materiality being that there  
4 was a thief, which was something that you would  
5 have considered to be material?

11:42:30

6 A. I would considered the fact -- separate  
7 from a thief, the mere fact that someone was  
8 paying for his airplane from client funds is worst  
9 than a thief in my business.

10 Excuse me, let me finish.

11:42:40

11 The idea that that would have set off  
12 bells and whistles had I known at that period of  
13 time, when Schulte Roth was called in in May of  
14 '06 to investigate already wrongdoing and no  
15 fiduciary in that firm, made me aware -- I was the  
16 largest investor in that fund -- that there had  
17 already been some serious wrongdoing, it was  
18 merely represented to me -- and Glenn confirmed it  
19 was misrepresented -- as immaterial items.

11:42:53

20 There had been many things going on at  
21 the fund. It was not a run on the bank; it was a  
22 liquidity. The airplane had been paid for out of  
23 clients' funds. There had been no money to pay  
24 management, so they were borrowing and prepaying  
25 management fees based on the fact that Dan Zwirn

11:43:09

11:43:23

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Epstein

had decided to have his own money kept offshore for deferral purposes. And there was -- sorry.

Q. Of those things --

A. Yes. 11:43:35

Q. -- which, if any, did he tell you he did not know prior to this phone call in February 2007?

A. I don't recall.

Q. Did he tell you that Dan Zwirn had lied to him? 11:43:57

A. He told me Daniel Zwirn in fact lies to everyone, that Dan Zwirn was a micromanager, that Dan Zwirn wanted to interview --

MR. SUSMAN: Just answer the question. 11:44:10

THE WITNESS: Okay.

Yes.

Q. So I assume your answer is yes.

A. I said yes, sorry.

Q. But you don't recall specifically what he said Dan Zwirn had lied to him about as opposed to you? 11:44:23

A. Do I recall. Yes, he said that Dan Zwirn had said it was only Perry Gruss that had done something improper, is my best recollection. 11:44:45

1 Epstein

2 Q. And did he say that was a lie?

3 A. He thought there were more people  
4 involved in the wrongdoing and that Dan was --  
5 yes. 11:44:54

6 Q. Did he say, Dan lied to me about that?

7 A. Yes.

8 Q. Now, on the other issues that you  
9 raised that you concluded that Dan had lied, did  
10 he tell you that Dan had lied to you or did he 11:45:02  
11 just tell you the facts and you concluded that Dan  
12 had lied to you?

13 A. Both.

14 Q. What did he tell you Dan had lied to  
15 you about? I want to be specific here. What 11:45:14  
16 did -- what did Mr. Dubin tell you: Dan lied to  
17 you about this? What did he say? And what issues  
18 did you conclude, after hearing Mr. Dubin, that  
19 Dan had lied to you about?

20 A. Again, the term "lie," so if you -- Dan 11:45:27  
21 did not tell me about the airplane and its -- the  
22 problems with the funds being taken from a managed  
23 account. So I considered that a lie. Sorry.

24 Q. Did Dubin use that word, that Dan lied  
25 to you about this? 11:45:51

1 Epstein

2 A. Yes.

3 Q. He lied to you about the airplane?

4 A. He lied that the things that he  
5 represented were the reasons that Gruss were fired 11:45:55  
6 were strictly immaterial. He said the phrase that  
7 it was immaterial was a lie.

8 Q. Anything else you recall him using the  
9 word "lie" about?

10 A. The fact that Dan Zwirn had misled me 11:46:12  
11 to believe that there was no issue regarding  
12 liquidity and an eventual -- and a redemption of  
13 my money when in fact there was no liquidity in  
14 the fund.

15 Q. And he told you that Dan Zwirn had lied 11:46:33  
16 to you about that?

17 A. He told me that Dan Zwirn had lied to  
18 me and others.

19 Q. Anything else? Anything else that he  
20 told you Dan had lied to you or to you and others 11:46:46  
21 about?

22 A. Over this period of time, there was  
23 quite a number of lies, so I'm sorry.

24 Q. I'm focusing on this conversation in  
25 which you told us Mr. Dubin told you Dan lied. 11:46:58

1 Epstein

2 And I want to know exactly the things he actually  
3 used the words "lied about" as opposed to you drew  
4 conclusions from things he was saying that you had  
5 been lied to. Anything else? 11:47:12

6 A. Not that I recall.

7 Q. I think we got into this by discussing  
8 whether he had ever in any conversation told you  
9 anything more about the investment strategy and  
10 what was actually being invested in by the fund. 11:47:40

11 And I take it the answer to that is he did not,  
12 Mr. Dubin.

13 A. You'll have to repeat that question for  
14 me.

15 Would you repeat the question for me, 11:47:53  
16 ma'am?

17 Q. Let me rephrase the question. I'm  
18 going to withdraw the question and rephrase it.

19 A. Okay.

20 Q. Other than telling you that the 11:48:06  
21 Highbridge/Zwirn fund invested in PIPEs and other  
22 investments, which he told you at some point,  
23 according to your testimony --

24 A. Yes.

25 Q. -- Mr. Dubin never told you anything 11:48:21

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Epstein

more about the kinds of investments the fund made;  
correct?

A. Correct.

Q. Prior to October 2006 -- 11:48:45

A. Yes.

Q. -- you had met Mr. Zwirn once; correct?

A. Yes.

Q. And you had never spoken to him on the  
phone; correct? 11:48:56

A. To the best --

Q. That you recall.

A. I might have talked to him once about  
something else.

Q. Do you remember a series of phone  
conversations with him beginning in approximately  
October 2006? 11:49:03

A. Yes.

Q. How many separate conversations do you  
remember with him? 11:49:18

A. I would say it's less than six.

Q. During what period are these less than  
six?

A. From late September through November,  
mid-November. 11:49:35

1 Epstein

2 Q. Let's start with the first one. Do you  
3 recall the first one distinctly?

4 A. Distinctly.

5 Q. Do you recall approximately when that 11:49:45  
6 was?

7 A. Late September.

8 Q. Who called whom?

9 A. Dan Zwirn called me in my office.

10 Q. Was there anybody else on the 11:49:57  
11 telephone?

12 A. He called through my secretary.

13 Q. Was she on the phone when you spoke to  
14 him?

15 A. No. 11:50:05

16 Q. What did he say to you and what did you  
17 say to him?

18 A. He told me he was calling me to alert  
19 me to the fact that he was going to fire his CFO  
20 and I would probably read about it in the 11:50:23  
21 newspaper.

22 I said, Why are you calling me to tell  
23 me you're firing the CFO? I have not spoken to  
24 you in years. He said, Well, there was some  
25 reasons I have to -- he's going to get fired, but 11:50:40

1 Epstein

2 the reasons he's being fired are immaterial.

3 Somewhat shocked, I said, Well, I've  
4 not spoken to you ever except for the one time you  
5 were in my office. You are now calling me out of 11:50:55  
6 the blue to tell me you're going to fire your CFO  
7 for something that was immaterial. I said, Well,  
8 why don't you tell me exactly what you consider  
9 immaterial. He said, Sorry, I can't.

10 I am not a patient person. My 11:51:19  
11 reputation for being impatient is somewhat  
12 well-known. I said, Are you crazy? What do you  
13 mean you can't tell me what is immaterial? He  
14 said, I cannot tell you. I said, Based on what?  
15 He said, Based on advice of counsel. 11:51:35

16 I said -- which gave me more pause  
17 because I said, Whose counsel? He said, Harry  
18 Davis of Davis Polk. I said, Are they the fund's  
19 counsel, the CFO's counsel, or your personal  
20 counsel, now that I had my antenna up that there 11:51:53  
21 was a problem. He said they were the fund's  
22 counsel.

23 I said, If that's the case, I am the  
24 largest limited partner in the fund. Those  
25 attorneys are being paid by me. I want to know 11:52:07

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Epstein

what was immaterial. He said, I cannot tell you.  
I said, This is crazy, using some other  
expletives. I want all my money out of that fund  
now. He said, Calm down, let me get back to you. 11:52:25  
I hung up the phone.

Q. Anything else you remember from the  
call?

A. Not that first call.

Q. Based on what did you believe you were 11:52:41  
the largest limited partner in the fund?

A. That's what Mr. Dubin had told me. If  
not the largest, I was the first investor.

Q. Did you use the word "largest" when you  
spoke with Mr. Zwirn? 11:53:03

A. I believe I said, I was your first  
investor.

Q. And you knew that from Mr. Dubin?

A. Yes, sir.

Q. What did you do after the phone call 11:53:16  
with respect to this?

A. I immediately called Glenn Dubin.

Q. Was anybody else on the phone?

A. No, sir.

Q. And by "immediate," as soon as you hung 11:53:24

Epstein

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up?

A. As immediate as my fingers could dial.

Q. Was Mr. Dubin on speed dial, by any chance?

11:53:37

A. No.

Q. What did you say to him and what did he say to you?

A. I said, I just got a call from Dan Zwirn, who I have not spoken to since that time you sent him to my office so I could see his face. He told me he was firing his CFO for something that was immaterial, and he wouldn't tell me what it was. I want my money out. This is nuts.

11:53:46

He said, Relax, relax, let me find out what's going on.

11:54:00

Q. Did he tell you whether he was aware of what was going on?

A. I just relayed the conversation.

Q. What happened next?

11:54:14

A. He called me back, Glenn did.

Q. When?

A. Probably 20 minutes later -- and said, Dan Zwirn will call you again. I said, When? And he said, Tomorrow. This was probably at 4 o'clock

11:54:33

1 Epstein

2 in the afternoon.

3 Tomorrow came and went --

4 Q. Did Mr. --

5 A. Sorry. 11:54:44

6 Q. Did Mr. Dubin say anything else in that  
7 phone call about what had happened or what the  
8 substance of what you had been told?

9 A. In that phone -- my best recollection  
10 is at the first that Dan will call me the next 11:54:54  
11 day.

12 Q. I think you were about to tell us that  
13 you were not called the next day; correct?

14 A. Correct.

15 Q. Did you speak to Mr. Dubin that day? 11:55:03

16 A. I did.

17 Q. When?

18 A. My guess is around 12 o'clock.

19 Q. Noon?

20 A. Yes, sir. 11:55:14

21 Q. You called him?

22 A. Yes.

23 Q. What did you say to him and what did he  
24 say to you?

25 A. I said, Dan Zwirn has not called me. 11:55:20

1 Epstein

2 You promised me he was going to call me.

3 Q. What did Mr. Dubin say?

4 A. I'll get -- he said something to the  
5 effect that it will happen, I'll get right back to 11:55:35  
6 you.

7 Q. Did he say anything else in that call  
8 that you remember?

9 A. No, sir.

10 Q. What happened next? 11:55:40

11 A. Dan Zwirn called me.

12 Q. When?

13 A. Probably a half hour to 45 minutes  
14 later.

15 Q. Were you the only person on the phone 11:55:49  
16 with him?

17 A. Yes, sir.

18 Q. What did he say to you and what did you  
19 say to him?

20 A. He said, I understand -- I understand 11:55:56  
21 you're upset. Let me explain what's happened.

22 There's been some accounting irregularities, and I  
23 had to fire my CFO. I said, You already told me  
24 that. What did he do? He said, Well, the amount

25 of money that's involved only is -- is less than a 11:56:20

1 Epstein

2 couple hundred thousand dollars, a couple of basis  
3 points, in accounting irregularities.

4 I said, Well, why did you fire him? I  
5 at that point thought it was simply journal 11:56:38  
6 entries being made back and forth, my  
7 interpretation. He said, Well, we're going to --  
8 he has to be fired. I said, Fine. I want my  
9 money out. This makes no sense to me. How --

10 He said, Why do you want your money 11:56:55  
11 out? I said, Because this makes no sense. You  
12 can't tell me that attorneys who are attorneys for  
13 the fund are not allowing you to tell me the  
14 details of what's actually happened.

15 He said, Well, it's immaterial. I 11:57:09  
16 said, Not to me. I want my money out. My  
17 discipline's always been at the first smell of  
18 trouble to get my money out. That's what I told  
19 him. He said, Let me talk to Glenn.

20 Q. Anything else you recall from the 11:57:30  
21 conversation?

22 A. I believe I said I want to speak to the  
23 attorney.

24 Q. Anything else you recall from the  
25 conversation? 11:57:46

1 Epstein

2 A. Not sitting here today.

3 Q. So you stated that you thought it was  
4 journal entries. What do you mean?

5 A. Well, it was the CFO -- it had been 11:58:06  
6 portrayed to me as basically mere bookkeeping  
7 inaccuracies, which happens quite often in funds  
8 where you might -- especially if there's an  
9 onshore and offshore fund where if you buy -- with  
10 many clients it's not uncommon for an allocation 11:58:22  
11 to be made after the fact of purchases or sales  
12 and then reallocated.

13 Q. So from the phrase "accounting  
14 irregularities" you assumed these were bookkeeping  
15 inaccuracies? 11:58:38

16 A. Mere -- yes, sir.

17 Q. And when he refused to tell you what  
18 they were, did you conclude they might be  
19 something more?

20 A. I said I wanted to talk to the 11:58:48  
21 attorney. Yes.

22 Q. He told you that it was only a couple  
23 of basis points in terms of money?

24 A. Yes, sir.

25 Q. And when he used the phrase 11:59:01

1 Epstein

2 "immaterial," didn't you understand that to mean  
3 with respect to the amount of money involved?

4 A. Exactly -- I thought in fact both, the  
5 fact that it was immaterial in terms of the 11:59:12  
6 overall process, the overall honesty, the overall  
7 integrity of what's been going on. "Immaterial"  
8 had the double connotation of being both  
9 immaterial to the operation of the fund that had  
10 gone on and immaterial to the size of the number. 11:59:27

11 Q. And that's how you understood Mr. Zwirn  
12 to be using the word?

13 A. I -- yes, sir.

14 Q. What happened after this call?

15 A. My best recollection is some days later 11:59:38  
16 Harry Davis called me.

17 Q. Did talk to Mr. Dubin after the phone  
18 call?

19 A. Yes, I did.

20 Q. Before you talk to Harry Davis? 11:59:55

21 A. My best recollection.

22 Q. How soon after this second phone call  
23 with Mr. Zwirn did you speak to Mr. Dubin?

24 A. Right away.

25 Q. So you got off the phone, you picked up 12:00:06

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Epstein

the phone and called Mr. Dubin again?

A. Yes.

Q. As you had done a couple days earlier?

A. Yes, sir. 12:00:11

Q. In that phone call what did you say to Mr. Dubin and what did he say to you?

A. I said, This is crazy. I am not getting answers. I have 140-50 million dollars with this person, and I'm not getting answers to something that is supposedly immaterial. I need and want answers. 12:00:25

Q. You said "supposedly immaterial"?

A. Yes.

Q. And what did Mr. Dubin say to you? 12:00:34

A. Relax, calm down, let me talk to Dan.

Q. Anything else you remember from the call?

A. Not for that call, sir.

Q. Prior to your talking to the lawyer, did you talk again to Mr. Dubin? 12:00:51

A. I might have.

Q. What do you recall?

A. I was pretty agitated. I don't remember. 12:01:01

1 Epstein

2 Q. Did you talk to anybody else about  
3 these events before talking to the lawyer, Harry  
4 Davis?

5 A. Well, again, since you've cautioned, 12:01:12  
6 yes, I spoke to my in-house counsel.

7 Q. Was anybody else present when you spoke  
8 to them?

9 A. Not to the best of my recollection.

10 Q. Did you speak to anybody other than 12:01:26  
11 Mr. Indyke?

12 A. I could have.

13 Q. And who could you have spoken to?

14 A. Possibly Harry Beller.

15 Q. Who is Harry Beller? 12:01:37

16 A. He's an accountant.

17 Q. What's his position at your firm?

18 A. He's an accountant.

19 Q. Does he have a title?

20 A. No, we don't have titles. 12:01:44

21 Q. What are his responsibilities?

22 A. He's an accountant.

23 Q. I understand what his profession is.  
24 What are his responsibilities?

25 A. He follows the numbers, the 12:01:55

1 Epstein

2 investments.

3 Q. So he's in charge of tracking the  
4 investments numerically, essentially?

5 A. Only numerically. 12:02:09

6 Q. Only numerically?

7 You don't recall whether you spoke to  
8 him or not?

9 A. My best recollection, no.

10 Q. Did there come a time that you spoke to 12:02:27  
11 the lawyer? Did there come a time when you spoke  
12 to the lawyer, meaning Mr. Zwirn's lawyer, the  
13 fund's lawyer?

14 A. Yes.

15 Q. When was that with respect to the 12:02:38  
16 second phone call?

17 MALE SPEAKER: I'm sorry, this was not  
18 Mr. Zwirn's lawyers; the fund's lawyer.

19 MR. SCHWARTZ: The fund's lawyer,  
20 correct. 12:02:47

21 A. This was Harry Davis.

22 Q. When did you speak to Mr. Davis?

23 A. Sometime I would guess early October,  
24 first or second week of October.

25 Q. By phone? 12:02:56

1 Epstein

2 A. Yes, sir.

3 Q. Did you call him or did he call you?

4 A. I think he called me, and I returned  
5 the call. 12:03:05

6 Q. Was anybody else on the call?

7 A. No, to the best of my recollection, on  
8 my side.

9 Q. To the best of your recollection, what  
10 did he say to you and what did you say to him? 12:03:11

11 A. He said, I'm calling to straighten out  
12 the idea that Dan Zwirn told you that things were  
13 immaterial at my direction. We don't really know  
14 what's -- the full extent of what's gone on.

15 I don't think I let him finish the rest 12:03:33  
16 of that sentence. I said, I was told that it was  
17 immaterial. Now if you're telling me something  
18 different, that was a lie. Are you suggesting  
19 that you told -- and you know it. Are you  
20 suggesting that you told Dan Zwirn to lie? 12:03:47

21 He said, I wouldn't characterize it  
22 that way. I said, Yes, I know you're a lawyer.  
23 However, did you tell Dan Zwirn to lie to me? He  
24 said, Well, before we know all the facts, I  
25 represent all the limited partners, not just you. 12:04:04

1 Epstein

2 Q. He told you he represents the limited  
3 partners?

4 A. Yes, that he had to make a decision --  
5 he represented the fund, not just me as a limited 12:04:15  
6 partner.

7 Q. He confirmed for you that he had  
8 advised Mr. Zwirn to characterize what had  
9 happened as immaterial; correct?

10 A. Correct. 12:04:31

11 Q. And he told you that they did not know  
12 the full extent of what's going on; correct?

13 A. Correct.

14 Q. So is it fair to say that you concluded  
15 from that that there might be more going on than 12:04:47  
16 they were aware of at the time; correct?

17 A. With respect to accounting  
18 irregularities only.

19 Q. Did you ask him that question?

20 A. No, I did not. 12:05:00

21 Q. Did he say that to you, that this is  
22 only with respect to accounting irregularities?

23 A. He said the irregularities were  
24 immaterial.

25 Q. He used the phrase also for himself? 12:05:09

1 Epstein

2 A. Yes, he did. In fact, I think he  
3 responded to the exact number -- my best  
4 recollection is a couple hundred thousand dollars  
5 in a several billion dollar fund. 12:05:21

6 Q. So when he used the phrase  
7 "immaterial," it was in the context of giving you  
8 a number; correct?

9 A. It was strictly in the concept --  
10 context of a numerical immateriality, not a legal, 12:05:30  
11 ethical, or professional materiality, yes.

12 Q. Did he tell you what, if anything, was  
13 being done to determine the full extent of what's  
14 going on?

15 A. I don't believe on that call. 12:05:46

16 Q. Did you ever have another call with  
17 him?

18 A. No.

19 Q. Anything else you remember from the  
20 call that you haven't testified to yet? 12:05:55

21 A. Not sitting here at the moment.

22 Q. What did you do after that call with  
23 respect to this?

24 A. I called Glenn Dubin.

25 Q. Again immediately, I take it? 12:06:10

1 Epstein

2 A. Probably -- no, I think I went to  
3 lunch.

4 Q. When you got back from lunch, you spoke  
5 to Mr. Dubin? 12:06:21

6 A. Yes.

7 Q. What did you say to him and what did he  
8 say to you?

9 A. I said, This is ridiculous. I want all  
10 my money out. I can't have somebody I distrust 12:06:33  
11 manage money for me. He is your guy. Make -- you  
12 have to make sure this happens.

13 Q. What did Mr. Dubin say?

14 A. Let me get back to you, I'll find  
15 out -- let me get back to you. 12:06:56

16 Q. So you told Mr. Dubin in that call that  
17 you distrusted Mr. Zwirn; is that correct?

18 A. I told him that I was uncomfortable  
19 with the situation, that I wasn't getting straight  
20 answers, and I wanted all my money -- I was 12:07:14  
21 focused on getting my money out.

22 Q. And one of the reasons you were  
23 focusing on getting your money out is that you  
24 were afraid this was material in a way that was  
25 not just numerical; correct? 12:07:28

1 Epstein

2 A. No, I decided that I was not being told  
3 the full story. It doesn't need to rise to any  
4 great level of mis -- of misappropriation. I  
5 decided that if I'm not being told the full story 12:07:40  
6 and they have \$150 million of my money, I want my  
7 money.

8 Q. And what did Mr. Dubin say to you?

9 A. Let me -- let me see what I can do,  
10 something to the effect of let's -- just relax, 12:07:53  
11 calm down, I'll get back to you.

12 Q. What's the next thing you recall?

13 A. The next thing is that he said -- Glenn  
14 Dubin called me.

15 Q. When? 12:08:08

16 A. Sometime between October 1st and the  
17 15th would be my best -- I'm giving you a series  
18 of calls. I can't tell you exactly the right  
19 sequence -- to say that he understood that I  
20 wanted all my money. He told -- and Dan 12:08:23  
21 understood I wanted all my money.

22 However, Dan suggested that I as the  
23 initial investor as well as a very large investor,  
24 if I demanded all my money, would cause a run on  
25 the bank and that other investors might follow and 12:08:40

1 Epstein

2 it would sort of destroy the fund.

3 Q. What else was said?

4 A. He said, I talked to Dan, and he asked  
5 if you could reduce your full demand of your 134 12:08:59  
6 million to half of that number. I said, Half the  
7 number is 67 million. I want more out, on a  
8 couple of conditions. I need to know is  
9 Highbridge staying in.

10 I understood from Glenn that Highbridge 12:09:23  
11 had more than \$600 million or more than 500 --  
12 between 500 and I think 750 in, and I said, If  
13 you're going to leave Highbridge's money in, I  
14 will leave half my money in.

15 He said, Highbridge is staying in. 12:09:39  
16 They're calling in an accounting firm to make sure  
17 that the assets -- the NAV is as represented. And  
18 I spoke to Dan, and we've agreed -- he agreed to  
19 have you only take out the \$80 million, and I  
20 appreciate it. 12:09:58

21 Q. Is this one phone call or more than one  
22 phone call with Mr. Dubin?

23 A. It could be more. The conversations  
24 with Glenn could be two phone calls. The subject  
25 was the same. 12:10:17

1 Epstein

2 Q. When he first mentions a number to you,  
3 it's half of how much?

4 A. Of my capital account, my single  
5 capital account, of 134 million. 12:10:24

6 Q. So you understood --

7 A. He was proposing a redemption of 67  
8 million.

9 Q. And then you told him that's not  
10 sufficient? 12:10:35

11 A. That's correct. I said I would take --  
12 I would take 80.

13 Q. You said you would take 80 right in  
14 that phone call?

15 A. That's correct. 12:10:41

16 Q. And 80 representing what you had  
17 actually put in?

18 A. No, nothing to do with what I put in.  
19 It was more than half, somewhat more than half.  
20 It was a round number. 12:10:50

21 Q. And did he tell you in that  
22 conversation that that's okay?

23 A. He said he would talk to Dan.

24 Q. And what happened? He called you back?

25 A. He then -- yes, he called me back. He 12:10:58

1 Epstein

2 mode the proposal that I take out only half, 67.

3 I said, Fine, how about 80. He said, Let me see,  
4 and he'll get back to me.

5 He called me back with Dan on the phone 12:11:13  
6 and said yes, the 80 -- I've told Dan you're doing  
7 him a favor, you're leaving half -- more than --  
8 almost half your money in, and you have your  
9 redemption request for \$80 million.

10 Q. Let's take this one step at a time. 12:11:26

11 A. Sure.

12 Q. He calls you. He asks you take out --  
13 that Dan's agreed to let you take out half;  
14 correct?

15 A. I want to be precise. I wanted all my 12:11:39  
16 money.

17 Q. You wanted -- yes. And he said Dan  
18 will let you take out half or there's a run on the  
19 bank?

20 A. No, he said Dan will ask you as a 12:11:49  
21 favor, not to take out -- as a favor, not to take  
22 out all your money. Take out half the money  
23 because if you request all of it you could trigger  
24 a run on the bank.

25 Q. You said the least you would be willing 12:12:03

1 Epstein

2 to take out was \$80 million?

3 A. Correct.

4 Q. And you asked him in that phone call

5 whether Highbridge was staying in the fund? 12:12:10

6 A. Correct.

7 Q. And he told you they were?

8 A. Yes. I was concerned that since I  
9 would have an additional 53 million-54 million  
10 dollars in there that I wanted to make sure that 12:12:19  
11 the balance of my money was also safe.

12 Q. And you considered that to be a  
13 material condition for your leaving in the balance  
14 of your money?

15 A. It was not a condition; it was a 12:12:27  
16 decision.

17 Q. A material fact for you to decide to  
18 leave in --

19 A. Yes, sir.

20 Q. -- the rest of your money? 12:12:37

21 A. Yes.

22 Q. And you said to him, If you leave in  
23 your money, I will leave in mine?

24 A. I did not say that.

25 (Pause.) 12:13:39

1 Epstein

2 Q. You said that if he left in  
3 Highbridge's money you would leave -- strike that.

4 Here is your testimony.

5 A. Sure. 12:13:53

6 Q. I understand from -- that he's saying  
7 to you, "I understand from Glenn that Highbridge  
8 had more" -- no, this is -- "I understand from  
9 Glenn that Highbridge had more than \$600 million  
10 or more than 500 -- between 500 and I think 750 12:14:04  
11 in. And I said if you're going to leave  
12 Highbridge's money in, I'll leave half my money  
13 in."

14 A. Yes.

15 Q. "And I said if you're going to leave 12:14:08  
16 Highbridge's money in, I will leave half my money  
17 in." Did you say that?

18 A. I misspoke, then. It was not a  
19 condition. I said for my decision process, since  
20 Highbridge was leaving some of its money in, I 12:14:19  
21 would be more -- I was comfortable leaving my 53  
22 additional in.

23 Q. That was an important fact to you?

24 A. Very.

25 Q. After he tells you he's going to get 12:14:34

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Epstein

back to you; correct?

A. Which? There's a couple of times.

Q. On this phone call --

A. Yes, sir. 12:14:42

Q. -- where you said 67 isn't going to do  
it --

A. Correct.

Q. -- he says I'll get back to you.

A. Yes. 12:14:47

Q. Did you have any conversations before  
he got back with you about anybody else about this  
matter?

A. Potentially my in-house counsel, just  
the people who work with me. 12:14:56

Q. Do you remember whether you actually  
had conversations with him?

A. I do not recall with specificity, but I  
probably -- I do not recall.

Q. Did you talk to anybody about the  
lockup at that point? 12:15:04

A. No.

Q. When was the next time you spoke to  
Mr. Dubin?

A. He called me back with Dan Zwirn on the 12:15:28

1 Epstein

2 phone.

3 Q. How much after this last conversation  
4 was that?

5 A. Either -- I don't recall specifically 12:15:36  
6 if it was the same day or the next day, but it was  
7 very soon afterwards.

8 Q. And he calls you?

9 A. Yes.

10 Q. And he announces, I have Dan on the 12:15:45  
11 phone?

12 A. I will get Dan on the phone.

13 Q. And so while you're on the phone, he  
14 conferences Dan in?

15 A. Yes. 12:15:53

16 Q. Anybody else on the phone that you knew  
17 of other than the three of you?

18 A. Not to the best of my knowledge, no.

19 Q. Tell us the conversation that ensued  
20 and who said what. 12:16:03

21 A. Glenn said, Jeffrey, Dan's on the  
22 phone, and he's agreed. He thinks -- there's a  
23 thank you -- I think Dan said, Thank you for  
24 basically reducing your demand to only the \$80  
25 million, and we're doing what we can to find out 12:16:22

1 Epstein

2 sort of all the details of what's going on. We've  
3 called in a firm to make sure that the NAV, so  
4 your other \$53 million is safe, so you shouldn't  
5 be concerned. And if you would like, we can set 12:16:35  
6 up a meeting with Harry and you, and we can go  
7 through every position we have so that you can  
8 make sure it's okay.

9 Q. And that was Glenn Dubin speaking?

10 A. No, Dan Zwirn. You asked me -- they 12:16:53  
11 were both on the phone.

12 Q. Yes, I did. I just want to be --

13 A. Yeah, right.

14 Q. Can we go back to the conversation  
15 again, because I may have missed it, and be 12:17:03  
16 specific as to who said what.

17 A. Sure. Dan said, Thank you for reducing  
18 the demand to \$80 million. That will help. It  
19 will avoid the run on the bank. And with respect  
20 to making sure that you feel comfortable with 12:17:16  
21 respect to the balance of your money there, your  
22 additional 53 or 54 million dollars, we can set up  
23 a meeting if you'd like with Harry Beller, my  
24 accountant, and you and Glenn and the accountants  
25 to give you some comfort that the balance of the 12:17:32

1 Epstein

2 NAV is represented -- has been sort of well  
3 thought through.

4 Q. Did Mr. Zwirn in that conversation use  
5 the phrase "run on the bank"? 12:17:44

6 A. Yes, my best recollection.

7 Q. What did he say about that?

8 A. Thank you for reducing your demand to  
9 the \$80 million; otherwise there could have been a  
10 run -- as you know -- I think as of Glenn -- my 12:17:56  
11 best recollection would be as of Glenn mentioned  
12 to you, that could have caused a run on the bank.  
13 It was sort of a thank-you call, I agreed to the  
14 80 million.

15 Q. Did Glenn say anything on the call? 12:18:06

16 A. No.

17 Q. Did Mr. Zwirn say anything else that  
18 you recall as you sit here?

19 A. To set up a meeting so my staff can go  
20 through with the accounting firm all the positions 12:18:16  
21 one by one.

22 Q. Anything else that you recall?

23 A. No, sir.

24 MR. SCHWARTZ: Steve, I have 12:20.

25 MR. SUSMAN: Okay. 12:18:24

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Epstein

THE WITNESS: Thank you, guy.

THE VIDEOGRAPHER: Stand by. We are  
going off the record. The time is 12:17 p.m.

This is the end of Tape Number 3. 12:18:34

(Time noted: 12:17 p.m.)

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A F T E R N O O N   S E S S I O N

(Time noted: 1:51 p.m.)

THE VIDEOGRAPHER: We are back on the  
record. The time is 1:51 p.m. This is the 01:52:45  
beginning of Tape Number 4.

J E F F R E Y   E P S T E I N ,

resumed as a witness, having been previously  
sworn by the notary public, was examined and  
testified further as follows:

EXAMINATION CONTINUED BY

MR. SCHWARTZ:

Q. Mr. Epstein, when we broke off, you had  
just finished telling us about a conversation on a  
conference call with Mr. Zwirn and Mr. Dubin. 01:52:58

With respect to this matter, what  
happened next?

A. Do you want to bring me back to --  
which call, I'm sorry?

Q. I'll read you your testimony. 01:53:13

A. Please. Thank you.

(Discussion off the record.)

Q. Sure. Dan said, Thank you for reducing  
the demand to 80 million. That will help. It  
will avoid a run on the bank. And with respect to 01:54:22

1 Epstein

2 making sure that you feel comfortable with respect  
3 to the balance of your money there, your  
4 additional 53 or 54 million dollars, we can set up  
5 a meeting if you like with Harry Beller -- it came 01:54:31  
6 out here as CK -- et cetera, et cetera.

7 Do you remember? That's the  
8 conversation we're talking about?

9 A. Yes, sir.

10 Q. That's the conversation with the three 01:54:44  
11 of you; correct?

12 A. Yes, sir.

13 Q. What happened next?

14 A. In terms of?

15 Q. In terms of this whole matter, in terms 01:54:48  
16 of your investment.

17 A. My best recollection is we then filled  
18 out a redemption request for \$80 million. I  
19 submitted it on November 13th, I believe.

20 Q. Who did you instruct to do that, if 01:55:09  
21 anyone?

22 A. I would agree -- most likely Darren  
23 Indyke.

24 Q. Do you know if he used a form or he  
25 used his own letter? 01:55:25

1 Epstein

2 A. I don't know.

3 Q. When did you send that with respect to  
4 the conversation with Mr. Zwirn and Mr. Dubin?

5 A. I personally don't send things. 01:55:36

6 Q. Do you have an understanding as to when  
7 it was sent with respect to the timing of the  
8 conversation with the three of you?

9 A. It would be shortly thereafter.

10 MR. SCHWARTZ: We're going to mark this 01:56:19  
11 as Exhibit 5.

12 (Exhibit 5, letter dated 11/13/06 from  
13 FTC and Zwirn, Bates-stamped JE 2000, marked  
14 for identification.)

15 (Discussion off the record.) 01:56:31

16 MR. SCHWARTZ: Exhibit 5 is a  
17 memorandum on the letterhead of Financial  
18 Trust Company and Zwirn dated November 13,  
19 2006, with the Bates number JE 2000.

20 Q. Do you recognize that to be your 01:56:46  
21 signature?

22 A. I recognize the signature.

23 Q. Is it yours?

24 A. It could be Harry Beller signing for  
25 me. 01:56:55

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Epstein

Q. Did you read this before it went?

A. I couldn't -- I don't recall.

Q. Would Harry Beller be authorized to sign something you hadn't read on your behalf? 01:57:03

A. Yes.

Q. Is that similar to the way you would have signed it?

A. Yes.

Q. Harry has developed an ability to mimic your signature? 01:57:14

A. Remarkably so.

Q. The date of this is November 13, 2006. Does that help you date the conversation in which the three of you -- you, Mr. Dubin, and Mr. Zwirn -- discussed your redemption? 01:57:27

A. Yes.

Q. How does it help?

A. It would be before this.

Q. Do you have a ballpark as to how early or before? 01:57:38

A. No. It could be as much as -- no.

Q. As much as how much?

A. Anywhere between October 15th and November 13th. I don't remember the first 01:57:50

1 Epstein

2 telephone call, the telephone call with respect to  
3 the 80 million, how long after that was this  
4 letter.

5 Q. So the first sentence, the only 01:57:57  
6 sentence, above the instructions says, as per our  
7 conversation, I hereby instruct you to immediately  
8 liquidate an interest in the amount of \$80 million  
9 of Financial Trust Company's interest in  
10 D.B. Zirwn Special Opportunities Fund, L.P., and 01:58:13  
11 then it gives wire instructions; correct?

12 A. That's what it says.

13 Q. When were you expecting your position  
14 to be liquidated?

15 A. Immediately. 01:58:26

16 Q. And is that what you were asked --  
17 prior to sending this and the conversation that  
18 you had with Mr. Dubin and Mr. Zirwn, did you have  
19 any other conversations with Mr. Dubin or  
20 Mr. Zirwn about the investment? 01:58:48

21 A. [REDACTED] sorry, you have to repeat the  
22 question.

23 Q. Prior to sending this memorandum or  
24 having it sent --

25 A. Yes. 01:59:06

1 Epstein

2 Q. -- and after the conversation you had  
3 with Mr. Dubin and Mr. Zwirn together, did you  
4 have any other conversations with Mr. Dubin or  
5 Mr. Zwirn about the investment? 01:59:15

6 A. I don't recall. If you have something  
7 to show me that might refresh my recollection,  
8 please, feel free.

9 Q. I do feel free to do that.

10 A. Okay. Thank you. 01:59:46

11 Q. Well, did you ever have a conversation  
12 in which Mr. Zwirn identified the particular  
13 issues as to why Mr. Gruss had been terminated?

14 A. Yes.

15 Q. When was that? 02:00:02

16 A. Sometime in October.

17 Q. So it was before you sent this  
18 redemption?

19 A. My best recollection.

20 Q. And was it before the conversation in 02:00:13  
21 which you discussed \$80 million with Mr. Dubin and  
22 Mr. Zwirn?

23 A. I don't recall.

24 Q. What do you recall Mr. Zwirn saying to  
25 you in that conversation? 02:00:28

1 Epstein

2 A. There was a conversation -- and I can't  
3 pin down exactly when in October; it was I think  
4 after October 15th, around the 20th -- that he  
5 said that there was monies that were improperly 02:00:40  
6 moved from the onshore fund -- from the offshore  
7 fund to the onshore fund, that there were more  
8 details of what was perceived or presented as an  
9 accounting problem, that the onshore fund was --  
10 had borrowed money from the offshore fund and the 02:01:04  
11 interest rate wasn't -- was going to be adjusted.

12 Therefore there was a bunch of journal  
13 entries that were going to have to be done, and  
14 the amount of money, however, was only a couple of  
15 basis points of an adjustment. So that was really 02:01:18  
16 the issue.

17 Q. That's the only thing he told you?

18 A. That I can recall, yes, sir.

19 Q. Did he tell you that in certain months  
20 over a two-year period management fees earned by 02:01:37  
21 DBZ Co. were advanced after they had been earned  
22 but prior to when they were payable?

23 A. I remember hearing about that. I  
24 can't -- I don't recall with specificity whether  
25 it was on the telephone call or some time later. 02:01:51

1 Epstein

2 Q. But you do remember him telling you is  
3 that on one occasion where fund assets  
4 constituting approximately one basis point were  
5 used to pay for nonfund expenses? Do you recall 02:02:04  
6 him telling you that?

7 A. No.

8 Q. Do you recall him telling you that  
9 funds were returned within 45 days?

10 A. No. 02:02:13

11 Q. Do you recall him telling you that the  
12 management company paid the interest on those  
13 funds?

14 A. No.

15 Q. Excuse me, that interest was paid by -- 02:02:25  
16 to the LP by the management company? You don't  
17 recall him telling you that?

18 A. No, I have a recollection of him saying  
19 that there were, again, accounting errors that  
20 someone -- someone had received too much money, 02:02:38  
21 whether it be the management company, and they had  
22 made the appropriate journal entries/refund.

23 Q. Do you recall him telling you in words  
24 or substance that in the earlier phone call --  
25 that in an earlier phone call in which he told you 02:02:55

1 Epstein

2 about Perry Gruss's departure he had not disclosed  
3 the two issues we discussed because they were  
4 deemed immaterial and in consultation with our  
5 advisors but they now had additional information 02:03:09  
6 to tell you?

7 A. No.

8 Q. Do you recall him telling you in any  
9 phone call that there was a reporting error of  
10 approximately \$3 million expense that was 02:03:17  
11 misapplied in March \$2006 and subsequently  
12 reversed in April and May \$2006?

13 A. No.

14 Q. Do you recall him ever telling you that  
15 there were -- that they had become aware of 02:03:30  
16 certain interfund transfers over a 13-month period  
17 that should not have occurred?

18 A. That's what I just described.

19 Q. And did he tell you that those  
20 transfers were approximately \$108 million? 02:03:45

21 A. I don't believe that was the number --  
22 the transfers were over \$108 million?

23 Q. Transfers were approximately --

24 A. No.

25 Q. Excuse me, that the average amount of 02:03:57

1 Epstein

2 the transfers outstanding during the period were  
3 approximately \$108 million.

4 A. No.

5 Q. Did he tell you that the interest rate 02:04:03  
6 of the transfers totaled approximately \$8 million?

7 A. No.

8 Q. Did he tell you they had not been  
9 properly booked, that they were now being properly  
10 booked, and that the LP would be reimbursed with 02:04:16  
11 interest by January?

12 A. No.

13 Q. Did he tell you the management company  
14 would bear the cost of the interest?

15 A. No. 02:04:24

16 Q. When the November 13th memorandum went  
17 out, were you aware that it had been sent?

18 A. Could you repeat -- when it went out,  
19 I'm sorry?

20 Q. It's dated November 13. Do you have 02:05:06  
21 any reason to believe -- take a look at the second  
22 page. You see a fax -- second page of Exhibit 5.

23 A. Yes.

24 Q. Do you see that it went out on November  
25 13 at 6:09 p.m.? 02:05:19

1 Epstein

2 A. Okay.

3 Q. Did you know at or about the time that  
4 it went out that it had actually been sent?

5 A. No. 02:05:27

6 Q. Is that something Mr. Beller would have  
7 told you: We made the redemption request?

8 A. I would have said, after the telephone  
9 call with Dan and Glenn: Make sure I get my  
10 money, but that's probably all. 02:05:41

11 Q. And that's all you would have said to  
12 Mr. Beller?

13 A. Correct.

14 Q. And he wouldn't have reported to you  
15 his efforts to get that money? 02:05:46

16 A. I don't think so.

17 Q. Do you recall at or about this time  
18 scheduling any meetings with Mr. Zwirn or  
19 attempting to schedule meetings with Mr. Zwirn?

20 A. I remember Mr. Zwirn attempting to 02:06:39  
21 schedule a meeting.

22 Q. What do you remember about that?

23 A. As per the last conversation, I think  
24 he was attempting to have a follow-up to convince  
25 me -- or to let me and Harry Beller with Glenn 02:06:52

1 Epstein

2 Dubin and someone else, to the best of my  
3 recollection, review each position one at a time.

4 Q. And did that meeting take place?

5 A. No. 02:07:10

6 Q. Why?

7 A. I felt it was a waste of time, because  
8 in fact the securities would have to be -- would  
9 take a great deal of time, in any large hedge fund  
10 to be valued, that in fact if Highbridge was 02:07:21  
11 staying in, eventually that asset -- I agreed the  
12 \$80 million, he had agreed the \$80 million.

13 The net asset value would be what it  
14 was, but it would take a while for an accounting  
15 firm to go through a complicated \$4 billion 02:07:35  
16 portfolio. By the time November 22nd or 23rd -- I  
17 think he wanted it ten days or two weeks later --  
18 it wouldn't be enough time. So the information  
19 would have been a waste of my time.

20 As I told you before, I don't have a 02:07:47  
21 lot of patience.

22 Q. Did Mr. Beller ever tell you that on or  
23 about November 13, 2006, he had a phone call with  
24 Dan Zwirn in which Dan Zwirn explained to him the  
25 lockups that applied to your account? 02:08:21

1 Epstein

2 A. My best recollection was -- ask me the  
3 question again, sorry?

4 Q. Did Mr. Beller ever tell you that on or  
5 about November 13, 2006, he had a phone call with 02:08:35  
6 Dan Zwirn in which Dan Zwirn explained to him the  
7 lockups that applied to your account?

8 A. Yes.

9 Q. Was anybody else present when  
10 Mr. Beller explained this to you? 02:08:51

11 A. Not to my best recollection.

12 Q. Where was this conversation?

13 A. My best guess was in my office.

14 Q. One or more conversations?

15 A. It was in response to me asking if I 02:08:59  
16 need to get my additional monies out how long  
17 would it take me to get my additional monies out.  
18 I want to make sure that since now something's  
19 odd, I'm not sure I'm being told the truth, that  
20 if I need my additional \$54 million how long -- 02:09:16  
21 when can I get it?

22 Q. And what did he tell you?

23 A. He was going to find out.

24 Q. And did he report back to you?

25 A. I don't recall. 02:09:26

1 Epstein

2 Q. Why was it important to you to have a  
3 unified -- a single date on which you could  
4 withdraw all of your funds, a single lockup date  
5 for all your tranches? 02:09:46

6 A. I always -- I don't understand the  
7 question.

8 Q. You testified earlier --

9 A. Yes.

10 Q. -- that you understood both before and 02:09:54  
11 after January 2005 --

12 A. Yes, sir.

13 Q. -- that there was a single lockup  
14 period that applied to all the tranches of your  
15 investments with this fund. 02:10:04

16 A. Correct.

17 Q. Why was that important to you?

18 A. In the event that -- again, I -- what  
19 was important to me was that my money not be  
20 locked up for more than two years and, if problems 02:10:16  
21 develop, I'm able to get my money quickly.

22 Q. Wouldn't you have wanted to get  
23 whatever part of your money you could quicker at  
24 an earlier time if you could?

25 A. That's not the way I think about it. 02:10:29

1 Epstein

2 Q. Going back to the conversations with  
3 Mr. Beller, you told him that you wanted him to  
4 talk to Zwirn --

5 A. I didn't say that.

02:10:44

6 Q. -- or you told him you wanted to find  
7 out about the remainder of your money, and to the  
8 best of your recollection, he never reported back  
9 to you about any communications he had?

10 A. Correct.

02:10:54

11 Q. Did he at any time tell you that he had  
12 conversations with people -- either with Mr. Zwirn  
13 or people at Mr. Zwirn's office about the lockups?

14 A. Yes.

15 Q. When did he tell you that?

02:11:13

16 A. When the -- I believe somewhere after  
17 the first of the year of February when they said  
18 they weren't going to give me my \$80 million back.  
19 They had been -- that he was apoplectic that he  
20 had been misled by Dan Zwirn that somehow I'm  
21 not -- I wasn't -- not only was I not getting my  
22 full amount, my initial demand, but now the \$80  
23 million was now in some type of controversy.

02:11:33

24 Q. Between November 13 and January 1, did  
25 you have any conversations with anybody about

02:11:56

1 Epstein

2 getting your \$80 million?

3 A. I assumed I was getting my \$80 million.

4 MR. SUSMAN: That wasn't the question.

5 THE WITNESS: Sorry. 02:12:06

6 MR. SUSMAN: "Yes" or "no."

7 Q. Did you have any conversations with  
8 anybody about getting the \$80 million?

9 A. I don't recall.

10 Q. Did you ever say to Harry Beller: 02:12:11

11 Harry, call these guys and find out where the \$80  
12 million is --

13 A. I don't think so.

14 Q. -- in words or substance?

15 A. I don't think so. 02:12:21

16 Q. Did you ever say to Glenn Dubin: You  
17 guys promised me \$80 million, where is it, in  
18 words or substance?

19 A. No.

20 Q. You were expecting to be paid 02:12:30  
21 immediately; correct?

22 A. No, I was expecting to be paid around  
23 March.

24 Q. And why were you expecting to be paid  
25 around March? 02:12:37

1 Epstein

2 A. Because I understood that in most  
3 things -- most hedge funds take some time to get  
4 accountings done properly, and before they pay out  
5 a check, I thought I was money good for my \$80 02:12:46  
6 million and it would happen -- as in every  
7 transaction I have ever engaged in, when someone  
8 tells me I'm getting paid, I usually get paid.

9 Q. So when the letter used the word  
10 "immediately," you understood that to be sometime 02:13:00  
11 around March?

12 A. It meant basically sell -- keep my  
13 position -- yes, I'm sorry, yes.

14 MR. SCHWARTZ: Mr. Susman, you are  
15 nodding and shaking your head at different 02:13:13  
16 times depending on what's going on. I don't  
17 know whether Mr. Epstein sees you or not; I  
18 imagine he doesn't. But I would ask you do  
19 not do it.

20 Q. Do you have any recollection of these 02:14:05  
21 meetings concerning the NAV actually being set up  
22 and then canceled at your instance?

23 A. I remember seeing a document that  
24 reflected such a thing.

25 Q. Do you have any memory independent of a 02:14:19

Epstein

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document?

A. No.

Q. Did you have any conversations that you recall with Dan Zwirn between the last conversation you relayed to us in which Mr. Dubin was involved and the end of the year?

02:14:26

A. The end of that year?

Q. The end of 2006.

A. Not to the best of my recollection.

02:14:49

Q. Do you recall calling Dan Zwirn on November 14?

A. No.

Q. Do you recall telling Glenn Dubin that you wanted to talk to Dan Zwirn on November 14th, or thereabouts?

02:16:03

A. No, I don't recall.

Q. Do you recall speaking with Dan Zwirn and asking him to bring certain deliverables to him when he comes to your office?

02:16:16

A. What's a deliverable?

Q. The answer is no?

A. No.

Q. Did you ask him to bring anything with him? Did you ever ask him to bring anything to

02:16:26

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Epstein

your office, any statements, any records?

A. Me?

Q. Yes.

A. No.

02:16:34

Q. Do you recall wanting to do an assignment of the partnership interests in D.B. Zwirn Special Opportunities Fund from Financial Trust Company to JEEPERS?

A. Yes, sir.

02:16:54

Q. What was the purpose of that, sir?

A. I -- it was to -- D.B. Zwirn had a New York-sourced income that was -- showing New York-sourced income. As my business is a Virgin Islands entity, I wanted to be extra clear that I was not in an active trade or business myself and through Financial Trust Company in New York. So we formed a wholly owned subsidiary called JEEPERS.

02:17:16

Q. Which was the wholly owned subsidiary of Financial Trust Company?

02:17:31

A. Yes, sir.

Q. Financial Trust Company is located where?

A. The Virgin Islands, U.S. Virgin

02:17:38

1 Epstein

2 Islands.

3 Q. And the subsidiary was a U.S. Virgin  
4 Islands subsidiary?

5 A. It's a qualified sub S, is my best 02:17:44  
6 recollection.

7 Q. Can you tell us what professionals  
8 advised you with respect to that?

9 A. The accountants.

10 Q. Who were they? 02:17:57

11 A. George Delson & Associates.

12 Q. That's the outside accounting firm you  
13 used?

14 A. Yes, sir.

15 Q. Did you discuss with any outside 02:18:03  
16 counsel in getting this assignment?

17 A. I don't think so.

18 Q. Was this on the advice of --

19 A. When you say "outside counsel," my  
20 outside counsel? 02:18:14

21 Q. Yes, your outside counsel?

22 A. Not Davis Polk or anybody else who was  
23 I think somebody else. The answer is no.

24 Q. Let's start with your outside counsel.

25 A. I don't think so. 02:18:24

1 Epstein

2 Q. Did you discuss with anybody else's  
3 outside counsel?

4 A. I think -- my -- no, no.

5 Q. Did you undertake this at -- whose idea 02:18:31  
6 was this?

7 A. I don't recall.

8 Q. Had you asked the accountants to look  
9 into it, or had they come to you and said, We've  
10 looked? 02:18:47

11 A. I don't know which happened first.

12 Q. Who else did you talk to about it other  
13 than your accountants?

14 A. I might have spoken -- I don't recall  
15 with specificity, but it wasn't a secret, so there 02:19:12  
16 was conversations about it, maybe Glenn Dubin.

17 Q. Was there going to be an immediate tax  
18 savings to having done this?

19 A. No, not to the best of my knowledge.

20 Q. So the purpose was prophylactic and not 02:19:30  
21 actually to gain a savings?

22 A. That's correct.

23 Q. You viewed this as important to the  
24 company to do?

25 A. I viewed it as professional to do. 02:19:42

1 Epstein

2 Q. And you understood that you needed --  
3 that you needed D.B. Zwirn Special Opportunities  
4 Fund's consent to be able to do it?

5 A. Again? 02:20:01

6 Q. Did you understand that you needed the  
7 fund's consent to be able to do it?

8 A. I don't know specifically.

9 Q. Did you talk to Mr. Dubin about  
10 obtaining the fund's consent to do it? 02:20:13

11 A. I believe so.

12 Q. What did you say to Mr. Dubin about  
13 that?

14 A. That I wanted to get it done.

15 Q. Did Mr. Dubin tell you you need the 02:20:26  
16 consent of the fund to do it?

17 A. I don't recall.

18 Q. You sought the consent of the fund;  
19 correct?

20 A. I don't know -- I don't know if -- I 02:20:35  
21 believe we sought the consent of the fund. You're  
22 asking me if it was required. I don't know if it  
23 was required.

24 Q. Did you ask Mr. Dubin to speak to  
25 Mr. Zwirn about getting this document? 02:21:00

1 Epstein

2 A. It's possible.

3 Q. Did you in any way indicate to  
4 Mr. Dubin that you would be prepared to relinquish  
5 your \$80 million withdrawal if the fund helped you 02:21:18  
6 with that?

7 A. Definitely not.

8 Q. Did the fund provide assistance in  
9 doing this for you?

10 A. Assistance, I'm sorry? 02:21:32

11 Q. Do you know if the fund undertook any  
12 activity so that you could do this?

13 A. I believe they agreed to the  
14 assignment.

15 Q. Is that all you recall? 02:21:39

16 A. Yes.

17 Q. And you recall no conversations with  
18 anybody other than your accountants about this, as  
19 you sit here today?

20 A. Again, I could have spoken to Glenn 02:21:57  
21 saying I wanted to get it done by the end of the  
22 year, would be the only thing I could remember.

23 Q. Well, did you ever tell Glenn to make  
24 sure that Zwirn wrapped it up?

25 A. It's possible. 02:22:15

1 Epstein

2 Q. Do you recall that?

3 A. It's possible.

4 Q. I didn't ask whether it was possible; I  
5 asked whether you recall it. 02:22:21

6 A. Not with specificity, no.

7 Q. Do you recall generally?

8 A. Yes. I wanted to get it done by the  
9 end of the year.

10 Q. And do you recall being a little 02:22:29  
11 impatient that it wasn't getting done by the end  
12 of the year?

13 A. I'm always impatient.

14 Q. Do you recall telling Mr. Dubin to tell  
15 them to wrap it up? 02:22:37

16 A. I wanted the transaction done by the  
17 end of the year. So it's possible that I said  
18 make sure it gets done by the end of the year.

19 Q. And you needed their consent to get it  
20 done by the end of the year; correct? 02:22:47

21 A. I don't know.

22 Q. Well, would you have told Mr. Dubin to  
23 make sure it gets done by the end of the year if  
24 you didn't need their consent to do it? It was  
25 your understanding at the time that you needed 02:22:55

1 Epstein

2 their consent; correct?

3 A. I don't know.

4 Q. So you would have told Mr. Dubin to  
5 make sure they get it done by the end of the year 02:23:07  
6 even though you may not have needed their consent?

7 A. Right.

8 Q. Would you have discussed with your  
9 in-house counsel whether their consent was needed?

10 A. I don't recall. 02:23:24

11 Q. Is that the kind of topic you would  
12 have taken up with your in-house counsel?

13 A. I don't think so.

14 Q. Would you have discussed with your  
15 accountants whether you needed the consent? 02:23:36

16 A. I would just say get it done.

17 Q. And part of getting it done appears to  
18 have been getting their consent. Who advised you  
19 with respect to that?

20 A. I would say get it done, and I assume 02:23:46  
21 it gets done.

22 Q. Well --

23 A. You're asking me...

24 Q. When you put in a new telephone line in  
25 your office, you don't call Mr. Dubin and say get 02:23:57

1 Epstein

2 it done, do you?

3 A. Mr. Dubin?

4 Q. Yes, Mr. Dubin.

5 A. No. 02:24:03

6 Q. You called Mr. Dubin here, and you said  
7 get it done with Zwirn; correct?

8 A. You're going to raise your voice now?  
9 Sorry.

10 Q. Are you going to answer the question, 02:24:12  
11 sir?

12 A. Repeat the question?

13 Q. You called Mr. Dubin and you said get  
14 it done with Zwirn; correct?

15 MR. SUSMAN: If you know. 02:24:21

16 A. No.

17 Q. What did you say to him?

18 A. My best recollection was I said  
19 something about let's see if we can wrap it up.

20 Q. And when you buy a new telephone 02:24:29  
21 system, you don't ask him to wrap it up; correct?

22 A. Correct.

23 Q. You felt you needed Zwirn's approval;  
24 correct?

25 A. No. 02:24:37

1 Epstein

2 Q. Just wrap it up, ambiguous, doesn't  
3 matter who you wrap it up with, is that -- what  
4 does "wrap it up" mean?

5 A. Try to get it finished. 02:24:46

6 Q. With whom?

7 A. Zwirn.

8 Q. In fact, it was finished; right?

9 A. I believe so.

10 MR. SCHWARTZ: Exhibit 6, please. 02:25:18

11 (Exhibit 6, assignment, marked for  
12 identification.)

13 MR. SCHWARTZ: How much time have we  
14 been on the record since lunch?

15 THE VIDEOGRAPHER: Thirty-three 02:25:26

16 minutes.

17 Q. Do you recognize this to be the  
18 assignment?

19 A. That's what it says.

20 Q. And it is in fact consented to by 02:25:44

21 D.B. Zwirn Partners and Zwirn Holding --

22 D.B. Zwirn Partners by the holding company?

23 A. Yes.

24 Q. And it was executed prior to the end of  
25 the year; correct? 02:26:05

1 Epstein

2 A. Correct.

3 Q. Do you have any recollection of having  
4 spoken to Mr. Dubin on the subject of the  
5 withdrawal of your accountant or part of your 02:26:46  
6 accountant between the time of the three-way call  
7 and the end of the year?

8 A. I have no specific recollection.

9 Q. In fact, you have no recollection of  
10 having any conversation in that time period with 02:27:07  
11 anybody other than telling Mr. Beller to get it --  
12 to effectuate the withdrawal; correct?

13 A. Correct.

14 Q. So let's switch years. Let's focus on  
15 January 2007. Did you have any telephone calls 02:27:25  
16 with Mr. Dubin, or meetings with Mr. Dubin, in  
17 January 2007 concerning the issue of the  
18 withdrawal of part of your capital account or all  
19 of your capital account?

20 A. Not to the best of my recollection. 02:27:45

21 Q. How about internally, conversations  
22 with anybody?

23 A. I don't recall.

24 Q. How about with Mr. Zwirn?

25 A. I don't recall. 02:27:58

Epstein

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Q. Did you have any conversations in January 2007 with Mr. Zwirn at all that you recall?

A. No. 02:28:03

Q. Did you have any conversations with anybody at Zwirn's fund in January 2007 that you recall?

A. Not that I can recall here.

Q. To your knowledge did Mr. Beller have any conversations with anybody at Mr. Zwirn's fund in January 2007? 02:28:22

A. No.

Q. Are you aware that he had any conversations concerning your capital account balance in that time period with people at the Zwirn fund? 02:28:37

A. No.

Q. Did you learn in January 2007 that Mr. Dubin had informed the Zwirn -- Mr. Zwirn that that fund was no longer to manage any Highbridge accounts? 02:29:10

A. No.

Q. Did you ever learn that?

A. Yes. 02:29:31

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Epstein

Q. When did you first learn that?

A. A couple months ago.

Q. How did you learn that?

A. I think on document review. 02:29:34

Q. Document review from this case?

A. Yes, sir.

Q. Other than with your counsel, have you had any conversations about that with anyone?

A. Not to the best of my recollection. 02:29:48

Q. Have you spoken to Mr. Dubin since that time of learning that?

A. Yes.

Q. Did you mention it to him?

A. No. 02:29:58

Q. How did you react when you learned it?

A. I was surprised.

Q. Were you angry?

A. No, I was surprised.

Q. Why were you surprised? 02:30:14

A. Because I didn't know about it.

Q. He in fact told you he was going to keep his money in?

A. That's correct.

Q. And about two and a half months or 02:30:24

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Epstein

three months after he told you that, he didn't;  
correct?

A. I don't know that for a fact.

Q. You don't know that for a fact? Is 02:30:32  
that what you said?

A. Yes.

Q. Well, if he didn't, he would have  
misled you; correct?

A. You have to repeat the full question 02:30:40  
for me, please.

Q. If he had made a decision after telling  
you he was going to keep his money in to pull his  
money out, that is something you would have  
expected him to tell you; isn't that correct? 02:30:56

A. Yes.

Q. And if he made that decision prior to  
telling you he was going to keep his money in, he  
would have lied to you; correct?

A. No. 02:31:12

Q. That would not have been a lie?

A. No.

Q. Why is that?

A. If you'd repeat the question, the  
answer is no. 02:31:24

1 Epstein

2 Q. If he had made the decision prior to  
3 telling you he was going to keep his money in,  
4 that he was not going to keep his money in, when  
5 he told you he was going to keep his money in, 02:31:33  
6 that would have been a lie; correct?

7 A. Your question's confusing me. I'm  
8 sorry.

9 Q. Did you have a conversation with  
10 Mr. Zwirn at some time approximately -- Mr. Dubin 02:31:51  
11 sometime in approximately October of 2006 --

12 A. Correct.

13 Q. -- in which you asked him whether  
14 Highbridge is going to keep its money in; correct?

15 A. Correct. 02:32:01

16 Q. And he said yes?

17 A. Correct.

18 Q. If in fact he knew at that time that it  
19 was not going to keep its money in, that would  
20 have been a lie; correct? 02:32:09

21 A. That's correct.

22 Q. Did you ask anybody in the January 2007  
23 time frame, either in-house or at Zwirn or  
24 Mr. Dubin, when am I getting my 30 -- my \$80  
25 million? 02:32:37

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Epstein

A. No.

Q. When was the next time the \$80 million came up?

A. The best of my recollection is when I was told in February that somehow the 80 million was not -- the 80 million was not going to be paid. 02:32:41

Q. And you were told that by Mr. Beller?

A. Yes. 02:32:54

Q. I know that I asked you about this before, but can you tell us again, so we don't have to go back and look, what did Mr. Beller tell you about that?

A. Do you want to go back to what you asked me before so she can read it back? 02:33:06

Q. It's going to take a lot of energy to find it. We don't have a search mechanism.

A. They said that they -- Zwirn had made some representation that I wasn't even going to get my \$80 million now. 02:33:19

Q. Did he give you any more specifics about that?

A. No, not to the best of my recollection.

Q. Did he tell you it was Dan Zwirn who 02:33:34

1 Epstein

2 made the representation to him?

3 A. No.

4 Q. Did he tell you he had received a  
5 redemption schedule? 02:33:40

6 A. No.

7 Q. Are you aware that anybody at your shop  
8 ever received a redemption schedule, from Zwirn?

9 A. Yes.

10 Q. When? 02:33:55

11 A. Repeat the question, I'm sorry.

12 Q. Prior to February -- prior to -- prior  
13 to your demand to withdraw all your funds in  
14 February 2007, were you aware that anybody at your  
15 shop had ever received a redemption schedule? 02:34:11

16 A. No.

17 Q. When Mr. Beller had this conversation  
18 with you in approximately February, what did you  
19 do next?

20 A. I said get -- demand all the money out 02:34:27  
21 right now.

22 Q. Did you call Mr. Dubin?

23 A. I believe so.

24 Q. What did you say to Mr. Dubin?

25 A. Something to the effect that this is 02:34:41

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Epstein

crazy, I want all my money, again.

Q. What did Mr. Dubin say to you?

A. Let me check into it.

Q. What happened next? 02:34:58

A. I was told that they weren't going to honor the \$80 million request.

Q. You were told that by whom?

A. I believe again by Harry first.

Q. Anyone else after Harry? 02:35:21

A. Glenn Dubin.

Q. What did Mr. Dubin say to you?

A. I think I reviewed that conversation.

Q. No.

A. He said Dan Zwirn is a lying scumbag. 02:35:28

Q. That's the conversation?

A. That's the -- that's the first nice phraseology, yes, that's the first time I heard.

Q. That's the conversation you told us about this morning? 02:35:39

A. Yes.

Q. And that conversation came before you actually made the request to withdraw your funds, all your funds?

A. No, I told you when Harry told me about 02:35:45

1 Epstein

2 the 80 million was going to be not honored, I  
3 immediately demanded all my money.

4 Q. Then you had a conversation after the  
5 demand was made with Mr. Dubin which you related 02:35:54  
6 to us this morning?

7 A. Correct.

8 Q. Conversations with anybody else?

9 A. Not that I can recall.

10 Q. Do you recall calling Dan Zwirn around 02:36:32  
11 February 13th, 2007?

12 A. Not specifically.

13 Q. Do you recall trying to reach Dan Zwirn  
14 by phone in February 2007?

15 A. It's possible. 02:36:47

16 Q. Why were you calling him?

17 A. My guess is [REDACTED] been told he wasn't  
18 going to pay me even my \$80 million.

19 Q. What were you planning to tell him?

20 A. I was going to be very forceful and say 02:37:01  
21 I want all my money immediately.

22 Q. Why did you give up the effort to reach  
23 him?

24 A. I probably talked to Glenn, but I don't  
25 remember specifically. I believe Dan Zwirn was 02:37:17

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Epstein

ducking my telephone calls, that's correct. He wasn't returning my phone calls.

Q. Did you speak to Mr. Dubin about that?

A. Yes, I did. 02:37:40

Q. What did you tell him?

A. That Dan Zwirn was ducking my phone calls, that they had not even agreed -- they had decided not to pay me my \$80 million. I want all my money, again. 02:37:54

MR. SCHWARTZ: Mark a document as

Exhibit 6 -- 7.

(Exhibit 7, e-mails, marked for identification.)

Q. I'm showing you an e-mail chain, the top e-mail of which is an e-mail from Harry Beller to you dated February 13, 2007. 02:39:11

A. Uh-huh.

Q. And he's forwarding to you an e-mail that he received from Cara Howe at D.B. Zwirn & Company. Do you see that? 02:39:27

A. Yes, sir.

Q. Do you remember receiving this?

A. No, sir.

Q. Do you know what Mr. Beller was 02:39:51

1 Epstein

2 referring to when he says, This looks very  
3 suspicious?

4 A. As I said, I believe I was calling Dan  
5 Zwirn. I think Harry was calling Dan Zwirn. No 02:40:00  
6 one was returning telephone calls. I think he got  
7 this e-mail in response to a bunch of unreturned  
8 telephone calls, basically saying don't -- don't  
9 reach out for Dan Zwirn anymore, speak to somebody  
10 else, call David Lee. 02:40:19

11 Q. So you believe that this e-mail was  
12 sent because you wanted to talk to Dan and they  
13 were trying to deflect you to David Lee?

14 A. It wasn't me. I think this was Harry.

15 Q. Harry. When you got that, is that what 02:40:37  
16 you believed?

17 A. I didn't get it.

18 Q. It was forwarded to you; right? Are  
19 you jeeproject@yahoo.com?

20 A. Yes. He only says this looks 02:40:49  
21 suspicious. I don't know if the attachments came  
22 with it.

23 Q. Did you speak to him about it?

24 A. "Him" being who?

25 Q. Harry Beller. 02:41:00

Epstein

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A. Probably.

Q. Do you have a recollection of it?

A. No.

Q. Let me show you another e-mail. 02:41:10

(Exhibit 8, e-mails with attachment,  
marked for identification.)

Q. Exhibit 8 is an e-mail chain forwarded  
to you by Glenn Dubin on February 14th; is that  
correct? 02:42:11

A. That's what it says, yes.

Q. And it has, in fact, an attachment to  
it; correct? It notes that on the front page. It  
says right at the top: attachments.

A. Yes, sir. 02:42:23

Q. And there is an attachment to this  
e-mail; correct?

A. Yes.

Q. And I note that this is produced by  
Highbridge Capital and that the Bates numbers are  
consecutive between the e-mail and the attachment. 02:42:35

A. Okay.

Q. Do you remember receiving this?

A. No. This -- no. The entire document?  
There's a bunch of different e-mails in here so... 02:42:58

1 Epstein

2 Q. Do you remember receiving an e-mail  
3 from Glenn Dubin on or about February 14th, 2007,  
4 attaching a redemption schedule for your  
5 investment? 02:43:12

6 A. No.

7 Q. Let me show you Exhibit 9.

8 (Exhibit 9, e-mails, marked for  
9 identification.)

10 Q. This is an e-mail chain with the top 02:44:11  
11 e-mail being an e-mail from Mr. Dubin to you dated  
12 February 14th at 11:29 a.m. Do you see that?

13 A. Yes, sir.

14 Q. And do you see that below that, if you  
15 go two e-mails down, is the chain that was in 02:44:23  
16 Exhibit 8 that Mr. Dubin forwarded you. It starts  
17 in the middle of the first page with "FYI." It's  
18 the same chain that Exhibit 8 is. It may be  
19 easier, Mr. Epstein, if you compare Exhibit 8 to  
20 Exhibit 9. 02:44:43

21 A. Okay.

22 Q. You'll see the text of Exhibit 8 starts  
23 from an e-mail from Mr. Dubin to you which is the  
24 third e-mail down on Exhibit 9?

25 A. Is this the one that says, Note we have 02:44:55

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Epstein

made him \$47 million in gains and now 50 consecutive up months?

Q. Go up two e-mails.

A. Yes. 02:45:05

Q. Do you see where it says FYI?

A. Yes.

Q. From that e-mail down is Exhibit 8; correct?

A. Yes. 02:45:11

Q. I just want to be clear for the record.

A. Got it.

Q. So this is your reply to Exhibit 8; right? It starts with your reply to Exhibit 8, the next e-mail up? There's an e-mail from Epstein to Dubin -- 02:45:19

THE WITNESS: Right here.

Q. There's an e-mail from Epstein to Dubin dated February 14th, 2007, 11:42 a.m., the second e-mail on the page; right? 02:45:32

A. Yes.

Q. That appears to be your reply to Mr. Dubin, having forwarded you the chain in Exhibit 8; correct?

A. Correct. 02:45:37

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Epstein

Q. Do you recall replying --

MR. SUSMAN: There's no exhibit --  
there's no attachment to Exhibit 9. I think  
you're suggesting that somehow he saw this 02:45:46  
attachment. It's not attached to Exhibit 9.

MR. SCHWARTZ: It is attached to  
Exhibit 8.

MR. SUSMAN: I understand that.

MR. SCHWARTZ: Sometimes when you -- 02:45:55

MR. SUSMAN: He's already talked about  
Exhibit 8.

MR. ARFFA: The last page of Exhibit 9  
it references attachments, whether or not it  
was actually attached. 02:46:03

MR. SCHWARTZ: And when you reply to an  
e-mail with -- when you reply to an e-mail  
with attachments, the attachments don't go.  
When they're forwarded, they do go. That's  
how Outlook and most systems work. 02:46:13

A. Okay.

Q. There's no -- sir, just go back to  
Exhibit 8 so we can be clear. On Exhibit 8 the  
e-mail that -- do you have Exhibit 8 in front of  
you? 02:46:30

1 Epstein

2 A. Yes, sir, yes, sir.

3 Q. The e-mail Mr. Dubin sends to you  
4 actually has the word attachments: financial  
5 trust.11.13.06.xls; correct?

02:46:37

6 A. I see that, yes.

7 Q. And the same e-mail which is replied to  
8 in Exhibit 9 does not have those words,  
9 attachments, et cetera; correct?

10 A. Correct.

02:46:54

11 Q. Do you recall sending this e-mail to  
12 Mr. Dubin?

13 A. Yes.

14 Q. Do you now recall receiving the prior  
15 e-mail from Mr. Dubin?

02:47:04

16 A. No, no.

17 Q. What do you recall?

18 A. I recall getting a statement that -- at  
19 this time that Dan Zwirn was trying to say that he  
20 had sent things months ago, and I said the e-mail  
21 to which he refers was -- this was supposedly sent  
22 months ago.

02:47:22

23 What I am in essence saying is Dan  
24 Zwirn once again is full of shit, many conflicting  
25 conversations, and I want to all my money. That's

02:47:36

1 Epstein

2 what this is saying.

3 Q. Do you know what e-mail --

4 A. The e-mail to which he refers is the  
5 concept was supposedly sent months ago. There 02:47:46  
6 were many conflicting conversations since then.  
7 After yesterday -- not necessarily with me. When  
8 I was promised to get a firm answer, we heard  
9 nothing except the e-mail we received this morning  
10 copied to you. 02:47:58

11 Q. Mr. Dubin said --

12 A. He said, Fine, take all your money out.  
13 You have to feel comfortable. Obviously you do  
14 not. Take all your -- I think what Mr. Dubin says  
15 here, I understand, you should put in a redemption 02:48:21  
16 and move on. You need to feel comfortable with  
17 who's managing your money. I understand -- it  
18 says, I want out.

19 Q. Mr. Dubin doesn't refer to any terms of  
20 the redemption; correct? 02:48:35

21 A. I beg your pardon?

22 Q. He doesn't refer to what the terms of  
23 the redemption would be -- correct? -- it just  
24 says put in a redemption and move on?

25 A. Yes. 02:48:44

1 Epstein

2 Q. In your e-mail where you refer to  
3 conflicting conversations, what are the  
4 conversations you're talking about?

5 A. How much -- I believe this was how much 02:49:06  
6 money he in fact made me in a period of time.

7 Q. And who had those conversations been  
8 among?

9 A. My best recollection was that the --  
10 when they talked about having a net asset value 02:49:18  
11 made solid, there was different numbers between  
12 127 and 134. I think -- what I remember hearing  
13 is the numbers consistently changed month by  
14 month.

15 Q. Were you involved in any of those 02:49:32  
16 conversations?

17 A. I was told that.

18 Q. By whom?

19 A. Harry.

20 Q. By anybody else? 02:49:38

21 A. No, sir.

22 Q. Were you ever told that any -- you were  
23 not directly involved in these conversations?

24 A. No.

25 Q. This was all Mr. Beller reporting to 02:49:45

Epstein

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you?

A. Correct.

Q. And the reason that you are telling Mr. Dubin that you want out is because you can't get a firm answer on this issue; isn't that correct? That's what the e-mail says; correct? 02:50:10

A. What I was suggesting, again, is that I had enough of Dan Zirwn and his firm bullshitting us, lying to us, misleading us. I want all my money out. 02:50:26

Q. What you say, This is why I want out.

A. Correct.

Q. The e-mail to which he refers was sent months ago. There were many conflicting conversations since then. After yesterday when I was promised to get a firm answer, we heard nothing except the e-mail received only this morning, copied to you; correct? That's what it says? 02:50:36  
02:50:47

A. Yes.

Q. And it makes reference to no other issue about getting out -- is that correct? -- except what's there?

A. You have to repeat the question, I'm 02:50:58

1 Epstein

2 sorry.

3 Q. It states a reason for wanting to get  
4 out and states nothing further; correct?

5 A. No. 02:51:07

6 Q. It does state something further?

7 A. Yes.

8 Q. What does it state further?

9 A. It says there were many conflicting  
10 conversations since then. 02:51:19

11 Q. And those were the conversations about  
12 the valuation; correct?

13 A. It was the valuation, and my  
14 recollection is that it goes back to when I can  
15 get my additional \$53 million out. Sorry. 02:51:25

16 Q. You testified a moment ago that the  
17 conflicting conversations were about the  
18 valuation. Are you changing that testimony?

19 A. Yes, sir. You just refreshed my  
20 recollection. Thank you. 02:51:40

21 Q. What was it that I said that refreshed  
22 your recollection?

23 A. Because there were many conflicting  
24 statements, and the concept was I wanted to know  
25 when I could get the rest of my money out, all 02:51:48

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Epstein

along, and then in fact I think this refreshed my recollection that they were saying you can't get your \$80 million and there's a crazy redemption schedule for the rest.

02:52:00

Q. What did I say that refreshed your recollection?

A. I don't know specifically.

Q. But I refreshed your recollection?

A. But thank you.

02:52:06

Q. And the \$80 million isn't referred to anywhere here; is that correct?

A. That's correct. It says total, I want all of it out. It says I want out, which is all of it.

02:52:18

Q. There is nothing in the text of the e-mail that refers to \$80 million; is that correct?

A. That's correct, that's correct.

MR. SCHWARTZ: This would be a good time for a break.

02:52:31

THE VIDEOGRAPHER: Stand by. We are going off the record. The time is 2:51 p.m. This is the end of Tape 4.

(Recess taken from 2:51 to 3:04.)

02:52:51

1 Epstein

2 THE VIDEOGRAPHER: We are back on the  
3 record. The time is 3:04 p.m. This is the  
4 beginning of Tape Number 5.

5 Q. After the last e-mail chain that I 03:06:05  
6 showed you, did you have any conversations with  
7 Mr. Dubin before sending your notice of  
8 withdrawal?

9 A. I don't recall.

10 Q. Up to February 14th -- up to February 03:06:39  
11 14th, 2007, other than the conversations that  
12 you've testified about with Mr. Zwirn, do you  
13 recall any other conversations with him?

14 A. Through the date -- there was some  
15 conversation, I believe, with respect to George 03:06:58  
16 Mitchell, but I'm not sure if it was in that  
17 period of time.

18 Q. What was that conversation?

19 A. It was a conversation about him hiring  
20 Senator Mitchell. 03:07:08

21 Q. You just don't recall when it was?

22 A. No, sir.

23 Q. Other than that possible conversation  
24 about Senator Mitchell?

25 A. No. 03:07:16

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Epstein

Q. No others?

A. No.

Q. Are there any other conversations with  
Mr. Dubin about the funds -- about the -- about  
this fund prior to February 14th, 2007, that you  
recall? 03:07:19

A. Not that I recall.

MR. SCHWARTZ: Make this Exhibit 10,  
please. 03:07:46

(Exhibit 10, letter, marked for  
identification.)

Q. Do you recognize Exhibit 10?

(Pause.)

A. I've read it. 03:08:28

Q. Do you recognize it?

A. No, sir.

Q. Did you sign it?

A. It appears so.

Q. Could that be Mr. Beller signing for  
you? 03:08:37

A. It could be.

Q. If you signed it, would you have read  
it?

A. Not necessarily. 03:08:47

1 Epstein

2 Q. Do you know who prepared it?

3 A. No.

4 Q. Did you have any conversations with Dan  
5 Zwirn after this letter was sent? 03:09:03

6 A. Not that I recall. With regard to the  
7 investments?

8 Q. With regard to the investments.

9 A. Yes, not that I recall.

10 Q. Any conversations about anything else 03:09:10  
11 with him?

12 A. I'm not sure of the time frame that  
13 Senator Mitchell called, which is in the back of  
14 my mind, but I don't have a specific recollection.

15 Q. Did you ever have a conversation with 03:09:28  
16 you, Dan Zwirn, and Mr. Dubin's wife?

17 A. I don't remember -- I don't recall  
18 that.

19 Q. You don't recall that sometime in early  
20 2007 the three of you had a conference call? 03:09:43

21 A. No. No.

22 Q. The answer is no? I'm sorry.

23 A. No.

24 Q. Have you ever given testimony before  
25 the Securities and Exchange Commission? 03:10:03

1 Epstein

2 A. Yes.

3 Q. Relating to what?

4 A. I think it was in 1979 with respect to  
5 option trading in St. Joe Minerals. 03:10:20

6 Q. Have you ever given testimony at any  
7 other time to the Securities and Exchange  
8 Commission?

9 A. Not that I recall.

10 Q. Were you subpoenaed by the Securities 03:10:38  
11 and Exchange Commission in connection with your  
12 investments -- in connection with this fund?

13 A. No, sir.

14 Q. Following the February 14th letter  
15 withdrawing -- withdrawal of your capital account, 03:11:09  
16 did you have any conversations with Mr. Dubin  
17 about this matter?

18 A. Yes.

19 Q. When? You had the conversation you  
20 testified to earlier this morning; correct? 03:11:27

21 A. Yes.

22 Q. Other than that conversation.

23 A. Yes.

24 Q. How many?

25 A. Can you repeat the question? 03:11:36

1 Epstein

2 Q. How many?

3 A. That's not a question.

4 Q. Conversations with Mr. Dubin other than  
5 the one you testified to this morning did you have 03:11:49  
6 with him concerning this matter.

7 A. Fifteen or twenty.

8 Q. Over what period of time?

9 A. Two years.

10 Q. Do you recall any of them specifically? 03:12:09

11 A. Yes.

12 Q. What's the first one you recall  
13 specifically?

14 A. I couldn't tell you it was the first  
15 call. The time order isn't consistent. Glenn 03:12:24

16 Dubin said that Dan Zwirn was a liar, a cheat,  
17 it's amazing that the SEC found him -- found no  
18 substantial violation, he must done a very good  
19 job. Sorry, that he misled everybody, he was a  
20 micromanager, that even the idea of the airplane 03:12:58  
21 expenses, nothing Dan Zwirn had told him turned  
22 out to be accurate.

23 Q. Was that one conversation?

24 A. No, it was many conversations, sorry.

25 Q. This was many conversations? 03:13:17

1 Epstein

2 A. I'm conglomerating many conversations  
3 over a period of time.

4 Q. The conversation with him about the SEC  
5 not finding anything substantial, is what you 03:13:24  
6 said, when was that?

7 A. That was recently, after the SEC gave  
8 Dan a pass.

9 Q. He called you up?

10 A. No. 03:13:34

11 Q. You called him up?

12 A. It was on a telephone call. I don't  
13 know who called.

14 Q. Who raised the issue?

15 A. I did. 03:13:41

16 Q. What did you say?

17 A. How is it possible that the SEC didn't  
18 call me and ask me to testify against this  
19 scumbag. That's what I said.

20 Q. And in response to that he said what 03:13:51  
21 you said he said, that it's amazing that they  
22 didn't find a substantial violation?

23 A. And that they didn't call you.

24 Q. Did they call him?

25 A. I don't know. 03:14:01

1 Epstein

2 Q. Did you ask him?

3 A. No.

4 Q. Are you aware whether they found an  
5 insubstantial violation that Mr. Zwirn had 03:14:08  
6 committed?

7 A. No.

8 Q. Are you aware that they found any  
9 violation that Mr. Zwirn committed?

10 A. No. 03:14:15

11 Q. In fact, are you aware that he didn't  
12 commit a violation?

13 A. No.

14 Q. Any other conversations you remember  
15 with Mr. Dubin about this matter? 03:14:24

16 A. They all basically came down to the  
17 same -- again, conglomerate a bunch of  
18 conversations, it was all the fact that Dan Zwirn  
19 was a crook.

20 Q. Did you ever have a conversation with 03:14:36  
21 Perry Gruss?

22 A. Yes.

23 Q. When was that?

24 A. In the past two months.

25 Q. Who was present? 03:14:49

1 Epstein

2 A. I believe just Mr. Gruss and me.

3 Q. Who set up the meeting?

4 A. I did.

5 Q. How? 03:15:05

6 A. I called him.

7 Q. And asked if he would meet with you?

8 A. Yes.

9 Q. Where did you meet?

10 A. My house. 03:15:12

11 Q. In New York?

12 A. Yes, sir.

13 Q. How long was the meeting?

14 A. Five minutes.

15 Q. What did you say to him and what did he 03:15:18

16 say to you?

17 A. I said tell me about Dan Zwirn. He  
18 said, Dan Zwirn is a very bad guy. He was a  
19 micromanager. The fund has monstrous liquidity  
20 problems. There was never going to be -- even 03:15:42  
21 though he told you there was going to be a run on  
22 the bank, that was not true.

23 The fact is that the fund had no money,  
24 it had no liquidity, that it had been borrowing  
25 from the offshore fund because in fact it deferred 03:15:56

1 Epstein

2 fees to benefit Zwirn's personal tax position,  
3 that the -- he thought that the SEC might file an  
4 investigation against him, Perry Gruss, sometime  
5 in the future. 03:16:18

6 That Mr. Kahn had showed up on most of  
7 the e-mail with respect to the airplane which  
8 Schulte Roth had been -- I believe it was, Schulte  
9 Roth had been called in in May of '06, my best  
10 recollection, sir, to deal with the issues of the 03:16:38  
11 airplane, which was never disclosed to me; that --

12 Q. "You" -- "me" meaning you?

13 A. Yes, sir.

14 That I -- that there had been a lawsuit  
15 I believe he told me he had filed against Zwirn, 03:16:59  
16 but I'm not sure of that; that as everyone else  
17 knew that Dan was a micromanager; that he --  
18 though the SEC found he didn't know anything about  
19 the airplane, that was his position, it was  
20 ridiculous. 03:17:19

21 Dan Zwirn was the only one who could  
22 make investments. Dan Zwirn ran the company very  
23 tightly; that Dan Zwirn never had any real cash;  
24 that after -- after the conversations with me with  
25 respect to my redemption, it became even -- he 03:17:42

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Epstein

wasn't there. But most of the blame was going to be put on him, something like that.

Q. Anything else you remember?

A. No. 03:17:58

Q. In five minutes were you sitting down? Were you standing up? Did you actually invite him in?

A. I have very little patience. I invited him in. 03:18:09

Q. That's already been established.

A. I sat down.

Q. You sat down?

A. Yes.

Q. And he made a speech and then left? 03:18:13

A. Yes.

Q. Did you ask him any questions?

A. Not very many.

Q. So it was just tell me about Dan Zwirn, and this is what he said? 03:18:21

A. That's correct.

Q. Did he tell you of any instance in which he communicated with Dan Zwirn about anything that he was doing that was improper?

A. No. 03:18:31

1 Epstein

2 Q. He told you that Dan Zwirn knew about  
3 the airplane in the spring of 2006 because Schulte  
4 Roth was called in to look at it then?

5 A. That's my best recollection. 03:18:48

6 Q. Did he tell you that he had ever  
7 communicated to Dan Zwirn anything about the  
8 airplane prior to the spring of 2006?

9 A. As I said before, he told me that Dan  
10 Zwirn was a micromanager, he knew everything, and 03:19:00  
11 Mr. Kahn was the person in fact who got fired  
12 but -- over the airplane. And it was never -- it  
13 was never disclosed to me that in fact there was  
14 no liquidity in the fund. Sorry.

15 Q. Did he ever tell you -- two things are 03:19:15  
16 established: Some people think that Dan Zwirn is  
17 a micromanager, and you're impatient.

18 A. Correct.

19 Q. My question to you is did he ever tell  
20 you that he communicated anything to Dan Zwirn 03:19:28  
21 about the airplane prior to the spring of 2006.

22 A. No.

23 MR. SIFFERT: Or even in 2006.

24 Q. Or anything after the spring of -- did  
25 he ever tell you he communicated anything to Dan 03:19:53

Epstein

Zwirn about wrongdoing after the spring of 2006  
face-to-face?

A. No.

Q. Do you know who Ron Tutor is? 03:20:11

A. No.

MR. SUSMAN: How do you spell that?

MR. SCHWARTZ: T-U-D-O-R. I'll check

it. T-U-T-O-R.

Q. You reached settlement with the fund at 03:20:42  
some point; correct?

A. Correct.

Q. Did you have any conversations with  
Mr. Dubin about that?

A. Yes. 03:20:50

Q. What was that?

A. I told him I reached a settlement.

Q. What did he say?

A. Good.

Q. Anything else you remember? 03:21:05

A. No, sir.

Q. Have you and Mr. Dubin ever gone back  
and discussed since February 2007 the call that  
you've testified about that the three of you --  
Mr. Zwirn, Mr. Dubin, and you -- had on the phone 03:21:22

1 Epstein

2 concerning the \$80 million?

3 A. Yes.

4 Q. When did you discuss that?

5 A. I've discussed it since November -- 03:21:28  
6 sorry, since February 2007.

7 Q. With Mr. Dubin?

8 A. Yes, sir.

9 Q. Have you gone back and told him what  
10 your memory of it was? 03:21:41

11 A. He's told me of his memory, as well as,  
12 yes, sir.

13 Q. Did your memories jibe?

14 A. Yes, sir.

15 Q. Did you ever ask Mr. Dubin to contact 03:21:48  
16 Mr. Gruss for you?

17 A. I might have.

18 Q. Did he?

19 A. I don't know.

20 Q. Let me show you a document, please, 03:21:59  
21 which is Exhibit 11.

22 (Exhibit 11, e-mails with attachment,  
23 marked for identification.)

24 Q. That's an e-mail chain with the top  
25 e-mail being from you to Mr. Dubin dated December 03:23:00

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Epstein

6, 2009, enclosing -- attaching an e-mail from  
Mr. Dubin to you and another one from you to  
Mr. Dubin.

Do you recall these? 03:23:22

A. I see them now.

Q. You see the bottom e-mail, Jeffrey  
Epstein to Glenn Dubin Sunday, December 6, 2009,  
2:05?

A. Yes, sir. 03:23:32

Q. Do you recall sending that?

A. I sent it.

Q. Do you recall sending that?

A. No, not really.

Q. It's cc'd to Mr. Glenn Dubin and  
Mr. Susman; is that correct? 03:23:40

A. Yes.

Q. Does this refresh your recollection  
that you in fact asked Mr. Dubin to meet with  
Perry Gruss and put questions to him? 03:23:53

A. No, sir.

Q. Did Mr. Dubin ever get back to you with  
answers to these questions?

A. I don't recall.

Q. Well, he says in his response to you: 03:24:09

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Epstein

I'll get e-let you know how it goes. Did he ever let you know how it went?

A. I'm sorry, I only have --

Q. He responds. 03:24:26

A. Okay.

Q. The top of your e-mail is his response.

A. I see it.

Q. Did he ever tell you how it went?

A. I don't think so. 03:24:34

Q. And then you asked him whether -- to find out whether he would agree to meet with you or your lawyers.

A. That's correct.

Q. Did Mr. Dubin ever tell you whether Mr. Gruss had agreed to do that? 03:24:45

A. I think -- I think we decided at that time it was not a good idea.

Q. "We" being who?

A. Me. 03:25:05

Q. Why?

A. I don't recall.

Q. Why was it a good idea recently but not a good idea in 2009?

A. My best recollection is that the -- 03:25:15

1 Epstein

2 Perry Gruss was still at this point being  
3 investigated by the SEC, and I thought maybe, on  
4 further reflection, it would be a good idea to  
5 meet with him at that time. 03:25:39

6 Q. You met with Perry Gruss before he  
7 received word that he was going to be charged by  
8 the SEC; is that correct?

9 A. That was more than a year after this  
10 was written. 03:25:47

11 Q. But before he was charged; correct?

12 A. Correct.

13 Q. And so as far as you knew, he was still  
14 under investigation by the SEC; is that correct?

15 A. I gave it little thought. 03:25:54

16 Q. So in 2009 you thought it might not be  
17 a good idea because he might still be under  
18 investigation by the SEC; correct?

19 A. Correct.

20 Q. And in 2011 or 2010 it was okay -- 03:26:05

21 A. '11.

22 Q. -- even though he still might be under  
23 investigation by the SEC?

24 A. 2011.

25 Q. What had changed? 03:26:17

1 Epstein

2 A. My decision.

3 Q. Did you discuss that decision with  
4 Mr. Dubin?

5 A. I don't recall. 03:26:22

6 Q. Did you discuss it with anybody other  
7 than your counsel?

8 A. I don't think so.

9 Q. Take any notes of your conversation  
10 with Perry Gruss? 03:26:29

11 A. No.

12 Q. I take it you don't take notes?

13 A. Yes, that's correct.

14 Q. Doesn't go with impatience?

15 A. Correct. 03:26:38

16 Q. Did you ever meet with any other  
17 potential witnesses in this case other than those  
18 that work for you?

19 A. You'll have to give me a list. I'm  
20 sorry, I don't know who the potential witnesses  
21 are. 03:27:01

22 Q. Did you ever meet with anybody else  
23 about this case other than people who work for you  
24 or Mr. Dubin?

25 A. Again? 03:27:08

Epstein

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Q. Did you ever meet with any -- put aside your lawyers. Did you ever meet with anybody else about this case other than people who work for you or Mr. Dubin?

03:27:17

A. No.

Q. Mr. Gruss would be the only one?

A. To the best of my recollection, yes, that I'm aware of.

Q. Did you ever speak with anyone -- put aside meeting -- other than Mr. Gruss?

03:27:41

A. No.

Q. Were you aware of a lawsuit between Mr. Dubin and Mr. Zwirn?

A. Again?

03:28:00

Q. Were you aware of a lawsuit between Mr. Dubin and Mr. Zwirn?

A. When?

Q. At any time.

A. Yes.

03:28:12

Q. What were you aware of?

A. That there was a lawsuit between Mr. Dubin and Mr. Zwirn.

Q. What did you know about the lawsuit?

A. Very little.

03:28:19

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Epstein

Q. Who told you about the lawsuit?

A. I don't recall.

Q. Was it Mr. Dubin who told you about the lawsuit?

03:28:29

A. No.

Q. Do you know what it was about?

A. No.

Q. Do you know what happened to the lawsuit?

03:28:44

A. I believe I read it was settled.

Q. Where did you read that?

A. In the documents.

Q. That were produced in this case?

A. Yes, sir.

03:28:54

Q. Is that where you know about the lawsuit from?

A. Yes, sir.

Q. Now, you've told us that Mr. Dubin told you that he was misled by Mr. Zwirn; correct?

03:29:04

A. Correct.

Q. How many times did he tell you that?

A. More than five, less than a hundred.

Q. So I take it it was a frequent topic of conversation after February 2007?

03:29:19

1 Epstein

2 A. He might have said it repeatedly in the  
3 same conversation.

4 Q. It was fair to say he was angry?

5 A. Fair. 03:29:29

6 Q. And did he tell you specifically the  
7 things that he personally was misled about?

8 A. I believe I testified to that this  
9 morning.

10 Q. I would like to list the things that 03:29:46  
11 Mr. Dubin personally was misled about.

12 MR. SUSMAN: I think that was totally  
13 answered this morning right out of the bag.  
14 That was the first --

15 MR. SCHWARTZ: Then I'm going back and 03:30:03  
16 getting more detail. I don't think I asked  
17 that question.

18 MR. SIFFERT: Mr. Susman, it will take  
19 longer to do that.

20 MR. SCHWARTZ: It's my deposition, and 03:30:12  
21 I've asked the question. It's a question I  
22 have not asked before, and I would like an  
23 answer to it.

24 He testified about a single  
25 conversation this morning. I did not go into 03:30:18

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Epstein

detail and ask him follow-ups. Nor did I ask him about any of the other between 10 and 100 conversations in which Mr. Dubin might have said this.

03:30:29

Q. In any of those conversations, did he tell you specifically the things that he was misled about as opposed to things that he thought you may have been misled about?

A. The purchase of the airplane.

03:30:38

Q. How did he tell you he was misled about that?

A. He said if he would have known about the airplane he would have taken all his money out right away.

03:30:48

Q. And when did he tell you he knew about the airplane for the first time?

A. I don't specifically recall.

Q. Do you have any reason to believe that he knew about the airplane before you did?

03:31:00

A. Yes.

Q. And what is that?

A. I think it was Glenn that told me about the airplane.

Q. And do you have any reason to believe

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Epstein

that Mr. Dubin found out about the airplane at or about the same time that Mr. Zwirn did?

A. No.

Q. Would you believe that he would not from what he told you? 03:31:21

A. Yes.

Q. What else did he tell you he was misled about?

A. He told me basic -- in general terms, again, that he was misled by Dan Zwirn about most things, that Dan Zwirn didn't know how to tell the truth. 03:31:28

Q. I'm asking specifically.

A. Okay. That the fact that there was a monstrous cash shortage and that the fund was really totally illiquid, that there had been -- so he was misled about that. 03:31:38

Q. Anything else?

A. Yes. The -- I believe he had told me that the same concept of he was initially told the thing was immaterial and turned out to be material. I'm sorry. 03:31:58

Q. I'm sorry, I didn't mean to interrupt you. 03:32:11

1 Epstein

2 A. Okay.

3 Q. I think you just finished saying, "I  
4 believe he told me the same concept of he was  
5 initially told the thing was immaterial and turned 03:32:18  
6 out to be material."

7 A. That's correct.

8 Q. Did he tell you that he would have been  
9 aware that Schulte Roth had been asked to look  
10 into the airplane? 03:32:25

11 A. Yes.

12 MR. SUSMAN: I think you asked him to  
13 make a list. Why don't you let him make a  
14 list.

15 MR. SCHWARTZ: That's fine. 03:32:36

16 MR. SUSMAN: So you don't say later you  
17 forgot to tell me something.

18 Q. Anything else in the list, sir?

19 A. The concept was the funds were illiquid  
20 and that in fact badly managed, that the -- sort 03:32:47  
21 of the concept of the fear of being run on the  
22 bank was really a fear that they didn't have the  
23 liquidity to make my first \$80 million withdrawal,  
24 that the airplane was -- the money was taken from  
25 the Highbridge-managed account. 03:33:07

1 Epstein

2 And had he known that there was funny  
3 business -- that, again, the dollar value might  
4 have been immaterial. But the fact that monies  
5 were purloined from the clients' account was 03:33:21  
6 extremely material, and had he known that he would  
7 have taken and advised me to take all my money out  
8 as soon as he found out about it.

9 Q. Anything else?

10 A. Not that I can recall. 03:33:43

11 Q. Did he tell you that he was surprised  
12 to find out that the fund had -- that the funds'  
13 investments were almost all in illiquid  
14 investments?

15 A. No. 03:33:52

16 Q. Did he tell you that he knew that they  
17 were in illiquid investments?

18 A. No.

19 Q. Nor did he tell you that in 2002;  
20 correct? 03:34:07

21 A. The concept of -- what he told me was  
22 the fact that some of your investments are  
23 illiquid has little bearing on the fact of the  
24 fund itself being illiquid. The fact that a  
25 responsible fiduciary would never have their 03:34:22

1 Epstein

2 entire portfolio in only illiquid investments and  
3 no liquidity.

4 So the concept -- it's an issue of  
5 proportion. The concept was they had maxed out 03:34:33  
6 their fund early.

7 Q. Did he tell you when he used the phrase  
8 "illiquid" what he meant?

9 A. They didn't have the money to pay me  
10 back. 03:34:47

11 Q. They didn't have the money to pay you  
12 back when?

13 A. Even the first time that Dan Zwirn  
14 convinced him to have him convince me to reduce my  
15 initial demand from the entire amount to 80 03:35:00  
16 million.

17 Q. Did he ever tell you what his view of  
18 the lockup period for the funds was?

19 A. No.

20 Q. Did he ever tell you that he was aware 03:35:26  
21 that the fund was maintaining investments in  
22 lockups on an investment-by-investment basis as  
23 opposed to on an investor-by-investor basis?

24 A. No.

25 Q. Would you be surprised to hear that he 03:35:38

Epstein

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knew that?

A. No.

Q. Why?

A. You asked me if I'd be surprised. 03:35:50

Q. And I asked you why.

A. [REDACTED] not surprised by anything anymore.

Q. Because your view of Mr. Dubin has changed over time?

A. No. I just don't get surprised. 03:35:59

Q. Were you involved in obtaining an affidavit from Mr. Dubin for this litigation?

A. I asked Glenn if he would provide an affidavit.

Q. In fact, you sent him the affidavit you wanted him to provide; right? 03:36:24

A. No.

MR. SCHWARTZ: Exhibit 12, please.

(Exhibit 12, document on Epstein letterhead, marked for identification.) 03:37:00

Q. I ask you to look at Exhibit 12.

A. Yes.

Q. Is this document on your letterhead?

A. Yes, sir.

Q. This is one of your homes in Palm 03:37:10

1 Epstein

2 Beach?

3 A. Yes, sir.

4 Q. And Lesly Groff is your personal  
5 assistant? 03:37:18

6 A. Yes, sir.

7 Q. Did you send a draft of the affidavit  
8 from Mr. Dubin to sign?

9 A. No, sir.

10 Q. Did Ms. Groff? 03:37:31

11 A. Yes, sir.

12 Q. And did you request her to do that,  
13 sir?

14 A. I don't think so.

15 Q. So she would write, Jeffrey requested I 03:37:41  
16 send you the attached, even though you had not  
17 requested her to do that?

18 A. Yes.

19 Q. She did that on her own initiative? Is  
20 that your testimony? 03:37:53

21 A. My testimony is that I did not ask her  
22 to do it.

23 Q. Well, can you explain to me why she  
24 would do it if you didn't ask her to do it?

25 A. No. 03:38:03

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Epstein

Q. Did you read this affidavit before Mr. Dubin signed it?

A. I don't believe so.

Q. Did you ever see it before Mr. Dubin signed it? 03:38:21

A. I could have.

Q. But you do not believe that on or about February 2nd, 2010, you requested that she send this affidavit to Mr. Dubin? 03:38:36

A. That's correct.

Q. Did you have a conversation with Mr. Dubin about the affidavit before it was sent to him, before February 10th, or on February 10th?

A. Again? 03:39:17

Q. Did you have a conversation with Mr. Dubin about the affidavit before he executed it?

A. Yes.

Q. How many conversations? 03:39:24

A. Probably less than five.

Q. Did you discuss with him what should go into the affidavit?

A. No.

Q. What did you discuss with him? 03:39:37

1 Epstein

2 A. I asked him if he would file an  
3 affidavit in this case.

4 Q. And you mentioned that to him less than  
5 five times, but that's in essence what you said to 03:39:45  
6 him?

7 A. Yes.

8 Q. And he said he would?

9 A. Yes.

10 Q. Who drafted the affidavit? 03:39:50

11 A. I don't know.

12 Q. Was it drafted by your counsel?

13 A. I don't know.

14 Q. Do you know how it arrived at your Palm  
15 Beach home? 03:39:58

16 A. I don't know if it arrived at my Palm  
17 Beach home.

18 Q. Do you know how it arrived in your  
19 personal assistant's hands?

20 A. No. 03:40:10

21 Q. Mr. Dubin told you that if he had known  
22 about the airplane he would have pulled his money  
23 out; correct?

24 A. Correct.

25 Q. And in the phone call in October or 03:40:22

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Epstein

November that you and Mr. Dubin and -- that you had with Mr. Dubin about withdrawing your funds, you asked him if he was going to keep his money in the account; correct?

03:40:36

A. I asked him if he was keeping Highbridge's money in the account.

Q. And he said he was; correct?

A. Yes.

MR. SCHWARTZ: Give me just a second, sir.

03:41:02

THE WITNESS: Sure.

(Pause.)

Q. Let me show you Exhibit 12 -- 13.

(Exhibit 13, memorandum dated 2/13/08 with fax cover sheet, marked for identification.)

03:42:25

Q. You see Exhibit 13 is a fax from JEEPERS to Dan Zwirn attaching a memorandum on JEEPERS' letterhead dated February 13, 2008?

03:42:36

A. Yes.

Q. Have you seen this before?

A. Not to the best of my recollection.

Q. Did anyone on or before February 13th, 2008, discuss with you the possibility of sending

03:43:08

1 Epstein

2 such a memorandum?

3 A. They might have.

4 Q. Do you have any recollection?

5 A. No, not sitting here today. 03:43:16

6 Q. Do you have a recollection of  
7 discussing it with Mr. Dubin?

8 A. No.

9 Q. Do you have any understanding as to why  
10 he's a cc on this? 03:43:26

11 A. All my dealings with Dan Zwirn were  
12 through Glenn Dubin, virtually.

13 MR. SCHWARTZ: I am going to pass. I'm  
14 done.

15 THE WITNESS: Thank you. 03:43:45

16 MR. SCHWARTZ: Thank you.

17 MR. ARFFA: Do you want me to go? Do  
18 you want to take a break?

19 THE WITNESS: No.

20 (Pause.) 03:44:15

21 THE VIDEOGRAPHER: We're going off the  
22 record. The time is 3:43 p.m.

23 (Recess taken from 3:43 to 3:45.)

24 THE VIDEOGRAPHER: We are back on the  
25 record. The time is 3:45 p.m. 03:46:33

Epstein

EXAMINATION BY

MR. ARFFA:

Q. Good afternoon, Mr. Epstein.

A. Good afternoon, Mr. Arffa. 03:46:46

Q. I'm Alan Arffa. I'm from Paul, Weiss and represent the current manager, as you know, of the fund.

A. Yes, sir.

Q. Mr. Epstein, you characterize yourself as a sophisticated investor? 03:46:54

A. Yes.

Q. FTC is the vehicle through which you generally invest or just in this instance?

A. Generally, sir. 03:47:06

Q. Are you aware that each time you made an investment you executed on behalf of FTC a subscription -- a set of subscription documents?

A. No, sir.

Q. Let me just mark one of them to show you. 03:47:21

(Exhibit 14, subscription document, marked for identification.)

Q. So it's your testimony you didn't read -- have you ever seen Exhibit 14 before 03:47:36

1 Epstein

2 today?

3 A. Yes, sir.

4 Q. Did you read it at the time it was

5 executed in I believe it was late 2002 -- 03:47:42

6 A. No, sir.

7 Q. -- I'm sorry, May of 2002?

8 A. No, sir.

9 MR. SUSMAN: Do you have another copy  
10 of that? 03:47:57

11 MR. ARFFA: Sure.

12 (Pause.)

13 Q. Just if you look on page 17, do you  
14 recall whether or not you signed the document at  
15 the time, which appears to be April 2002? 03:49:15

16 A. I don't recall.

17 Q. Do you know if this is something you  
18 signed or Mr. Beller signed for you?

19 A. He could have signed for me.

20 Q. I think I may have asked you this 03:49:33  
21 already, but do you recall if FTC executed a set  
22 of subscription documents each time it made its  
23 investments in the fund?

24 A. You've asked me that before. The  
25 answer is no. You've asked me that before. The 03:49:45

1 Epstein

2 answer is no, sorry.

3 Q. But in any event are you aware that in  
4 these documents, FTC certified that it had in  
5 excess of \$25 million in investments? 03:49:58

6 A. Yes, sir.

7 Q. And that was true at the time, I  
8 assume?

9 A. Yes.

10 Q. So it's true that as of the time of 03:50:08  
11 your investments you and FTC had over \$25 million  
12 in money?

13 A. Yes.

14 Q. I don't want to pry too much, but  
15 approximately -- 03:50:18

16 A. Not the word too much.

17 Q. But are you a billionaire?

18 DI MR. SUSMAN: You don't need to answer  
19 that question.

20 Q. Do you have hundreds of millions of 03:50:26  
21 dollars?

22 A. I have hundreds --

23 DI MR. SUSMAN: You don't have to answer  
24 that question.

25 MR. ARFFA: Well, I believe it is 03:50:30

1 Epstein

2 relevant.

3 MR. SUSMAN: I instructed him not to  
4 answer. If you want to call the judge right  
5 now, we can do that. 03:50:35

6 MR. ARFFA: I don't want to waste my  
7 time right now with that, but we can do it at  
8 the hearing. That's fine.

9 MR. SUSMAN: Bet you won't.

10 Q. You said that the -- 03:50:45

11 MR. ARFFA: Oh, I bet I will.

12 MR. SUSMAN: How much?

13 Q. You said that the entity itself was  
14 a -- as I understand when you left Bear Stearns,  
15 you started this business -- correct? -- FTC or 03:50:53  
16 its predecessor?

17 A. Its predecessor.

18 Q. And that business has, I believe from  
19 your prior testimony, since that time, so for 30  
20 years or so, been an advisor to wealthy 03:51:07  
21 individuals; is that fair?

22 A. That's fair.

23 Q. Does the entity itself then have just  
24 your money, just the fees that it earns?

25 A. Yes, sir. 03:51:21

1 Epstein

2 Q. So in other words that entity does not  
3 hold money for your clients and invest that money?

4 A. That's correct.

5 Q. So all of the money in FTC is your 03:51:33  
6 money?

7 A. That's correct.

8 Q. And it makes its money by charging fees  
9 to people for whom it provides investment advice;  
10 fair? 03:51:42

11 A. That's correct, sir.

12 Q. Are you a licensed investment advisor?

13 A. No, sir.

14 Q. Do you hold any licenses?

15 A. No, sir. 03:51:48

16 Q. Fair to say by the time you made the  
17 investment here you had been working in the  
18 financial world for something in the order of 30  
19 years?

20 A. Yes, sir. 03:51:59

21 Q. Could you give us a sense of the  
22 amounts of money for which you've provided advice,  
23 again, very rough number? I'm not going for  
24 anything specific.

25 A. Billions of dollars. 03:52:16

1 Epstein

2 Q. Now, the entity FTC we've talked about,  
3 are you -- do you recall your specific title there  
4 or position that you hold?

5 A. I believe I'm chairman or president or 03:52:40  
6 potentially both.

7 Q. And you are the sole owner, though;  
8 correct?

9 A. Yes. It's all my money.

10 Q. Right. 03:52:52

11 And it's incorporated in the British  
12 Virgin Islands; correct?

13 A. No.

14 Q. Sorry?

15 A. No. 03:53:02

16 Q. Okay. That's incorporated where?

17 A. United States Virgin Islands.

18 Q. Sorry, correct. U.S. Virgin Islands.

19 U.S. Virgin Islands; correct?

20 A. Yes, sir. 03:53:12

21 Q. JEEPERS also is a wholly owned  
22 subsidiary?

23 A. It's a qualified -- I believe it's a  
24 qualified sub S, yes.

25 Q. I want to ask you about that. 03:53:22

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Epstein

A. Okay.

Q. Just start with the corporation itself  
is a Virgin Islands corporation; correct?

A. It's an LLC, I believe. 03:53:29

Q. A Virgin Islands LLC, sorry; correct?

A. Yes.

Q. I think we've referred a couple times  
to the fact that it's an S Corp.; is that fair?

Or it's a, sorry, subchapter S subsidiary; is that  
fair? 03:53:48

A. You have to ask a better question, [REDACTED]  
sorry.

Q. Okay. Let me just show you this form.

(Exhibit 15, document, marked for  
identification.) 03:54:13

A. Yes.

Q. You see here it's referred to as a  
corporation, subsidiary corporation, for which --

well, let me start have you ever seen this form  
before? 03:54:44

A. I must have.

Q. Is that your signature there?

A. Yes, it is.

Q. JEEPERS, according to this, is a 03:54:51

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Epstein

corporation? Do you see that? JEEPERS, Inc.?

A. Yes, sir.

Q. At least at this time, let's say, was a corporation; correct?

03:55:02

A. Yes.

Q. And at least as of that time there was an election made by FTC to treat JEEPERS as a subchapter S subsidiary; correct?

A. Correct.

03:55:17

Q. And did you understand that was for the purpose of avoiding corporate taxes on that entity; otherwise you'd have to pay corporate taxes on its earnings, and then you'd have to pay taxes on whatever income you received from it; correct?

03:55:28

A. I believe so.

Q. Could you just look at the assignment that's Exhibit 6. Do you have that?

A. Yes, sir.

03:55:51

Q. I can't remember, did you say that was your signature or you thought that was someone signing for you on that document?

A. It looks like someone signing for me.

Q. Could you look at the -- isn't it true

03:56:01

1 Epstein

2 that in the assignment both FTC and JEEPERS in  
3 fact represented to the fund that the assignee was  
4 not an S corporation or other pass-through entity  
5 for New York State income tax purposes? Do you 03:56:18  
6 see that on the first page?

7 A. I'm sorry?

8 Q. You see that on the first page in the  
9 fourth paragraph?

10 A. Yes. 03:56:28

11 Q. Each of the assignor and assignee does  
12 represent that, and if you go to number 3, the  
13 assignee is not an S corporation or other  
14 pass-through entity for New York State income tax  
15 purposes. Do you see that? 03:56:39

16 A. Yes.

17 Q. Isn't that representation inaccurate?

18 A. No.

19 Q. Do you know?

20 A. No, I don't believe so. 03:56:48

21 Q. And why not?

22 A. This is -- this says the U.S. Internal  
23 Revenue Code.

24 Q. I'm going to try to talk about some of  
25 the subjects we talked about earlier today but 03:57:07

1 Epstein

2 hopefully not repeat them.

3 A. Okay.

4 Q. I was a little unclear on your  
5 testimony at the beginning on lockups, sort of the 03:57:25  
6 purpose of lockups. You understand that money --  
7 you've heard of lockups -- you had heard of  
8 lockups before you invested in the fund; correct?

9 A. Yes, sir.

10 Q. And you understood the purpose of a 03:57:37  
11 lockup from what -- you understand why managers  
12 want lockups; correct?

13 A. There are many reasons.

14 Q. Right. One of the reasons would be a  
15 manager can have time to implement a particular 03:57:51  
16 strategy, for example?

17 A. Correct.

18 Q. And they don't want to have to  
19 prematurely -- in their view prematurely exit  
20 investments that they've made; correct? 03:58:04

21 A. Correct.

22 Q. And they might have -- I think you said  
23 one reason is they may want to buy an -- lease an  
24 office space, buy equipment and have expenses and  
25 they don't want to have everybody pull out at once 03:58:18

1 Epstein

2 and then they're stuck with all these unnecessary  
3 expenses; correct?

4 A. Correct.

5 Q. Now, investors, on the other hand -- 03:58:29

6 A. What?

7 Q. Investors, as opposed to the managers.

8 A. Yes.

9 Q. They would rather be locked up as  
10 little as possible; right? 03:58:38

11 A. Different instances, not necessarily.

12 Q. Not necessarily.

13 MR. ARFFA: Can I just mark this.

14 (Exhibit 16, document, marked for  
15 identification.) 03:59:15

16 Q. I just want to -- this I just took off  
17 a Web site. If you go down to the middle of the  
18 page, there's a discussion of lockups, lockup --  
19 it says, Lockups are periods usually commencing  
20 from the time of the investment during which 03:59:27

21 investors are precluded from redeeming their  
22 investment. Lockups may range from one to three  
23 years depending on the liquidity of the underlying  
24 investments.

25 Some funds may permit investors to 03:59:38

1 Epstein

2 redeem even during the lockup period provided the  
3 investor pays an early redemption charge. All  
4 redemption charges paid by exiting investors  
5 usually and should accrue to the benefit of the 03:59:49  
6 fund in order to compensate the remaining  
7 investors for possible harm created by  
8 destabilizing the asset base.

9 Now I want to call your attention to  
10 the next paragraph: Managers desire lockups in 04:00:00  
11 general because a stable asset base eases pressure  
12 for smoother return streams for fear that  
13 investors may pull capital because of poor short-  
14 term results and permits the deployment of capital  
15 over longer time horizons. 04:00:14

16 Let me just top you there. Do you  
17 agree with that?

18 A. That's what it says.

19 Q. But do you agree with it? Are those  
20 reasons that managers desire lockups? 04:00:25

21 A. That's what it says.

22 Q. I'm asking for your opinion as a  
23 seasoned, sophisticated investment professional.

24 A. I think managers prefer lockups so that  
25 they can be in certain areas assured of getting 04:00:38

1 Epstein

2 their performance fees over a longer period of  
3 time.

4 Q. And the second -- is that another  
5 reason in addition to the ones you gave me before? 04:00:52

6 A. I think that was in addition -- I think  
7 I added that one this morning. I had that as  
8 well, sorry.

9 Q. Then the next sentence says, quote, For  
10 obvious reasons investors generally desire higher 04:01:04  
11 liquidity. Do you see that?

12 A. I see that.

13 Q. Do you agree with that?

14 A. No.

15 Q. No. You think investors generally 04:01:11  
16 desire less liquidity?

17 A. No, no.

18 Q. So which is it? They generally desire  
19 less or they generally desire higher liquidity?

20 A. I think investors is a very broad 04:01:25  
21 category of statements. There are many different  
22 types of investors.

23 Q. So some investors prefer to be locked  
24 up for long term?

25 A. Very long term. 04:01:35

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Epstein

Q. And some prefer not to be locked up at all?

A. That's correct.

Q. Is it your testimony, from what you said earlier, you prefer to be locked up for two years? That's your preference? 04:01:39

A. No longer than two years.

Q. No longer than two years?

A. Correct. 04:01:48

Q. Would you rather be locked up within the two-year period as little as possible or as close to the two years as possible?

A. Every investment's a different investment. 04:01:57

Q. So it would depend on the investment?

A. That's correct.

Q. So some investments you might want to be locked up on a six-month basis; correct?

A. Yes. 04:02:07

Q. Whereas others you might want to be locked up for two years; correct?

A. That's correct.

Q. Do you understand when you invest in a hedge fund that each investment that's made has to 04:02:25

1 Epstein

2 be separately tracked and accounted for by the  
3 hedge fund? Do you understand what I'm saying?

4 A. No.

5 Q. Let me try it again. Do you know when 04:02:40  
6 you invest in a fund that the investment manager  
7 has to track the profits and losses and the fees  
8 applicable to each investment when it's made?

9 A. No.

10 Q. Okay. Let me take an example. You 04:02:58  
11 know hedge fund managers receive fees; correct?

12 A. Yes.

13 Q. And there are management fees that are  
14 paid; correct?

15 A. Correct. 04:03:09

16 Q. Those are a percentage of the assets  
17 held; it could be 1.5 or 2 percent; correct?

18 A. It could be.

19 Q. And then there are also incentive fees;  
20 correct? 04:03:21

21 A. Sometimes.

22 Q. Sometimes. Don't most hedge funds  
23 generally have 20 percent incentive fees?

24 A. I don't know what most hedge funds  
25 have. 04:03:30

1 Epstein

2 Q. Did you know what Zwirn had when you  
3 invested in it?

4 A. I believe it had 20 percent.

5 Q. Meaning they were going to take as a 04:03:37  
6 fee 20 percent of the gain -- correct? -- on the  
7 investors fund?

8 A. Yes.

9 Q. So let me get back to my first  
10 question, which is don't they have to therefore 04:03:56  
11 keep track -- didn't up understand that hedge fund  
12 managers have to keep track of each investment in  
13 order to properly assess the performance fees?

14 A. No.

15 Q. So you're telling -- so let's say you 04:04:10  
16 invest -- give me -- can I give you an example?

17 A. Please.

18 Q. You invested \$10 on January 1st;  
19 correct?

20 A. Yes. 04:04:20

21 Q. June 1st it's now worth 20; okay?

22 A. Yes.

23 Q. Now, June 1st you make another  
24 investment of 10.

25 A. Yes. 04:04:29

1 Epstein

2 Q. Okay? That investment, the 10, is flat  
3 for the rest of the year; okay? In other words,  
4 once it goes to 20, they gained a hundred percent,  
5 right, that hundred percent gain through June. 04:04:41

6 A. Yes.

7 Q. And then June through December, flat.

8 A. Yes.

9 Q. For the first investment, right --

10 A. Yes. 04:04:49

11 Q. -- that investment made a hundred  
12 percent; right?

13 A. You say made a hundred percent.

14 Q. Received a hundred percent return in  
15 that year. 04:04:57

16 A. How are you defining return?

17 Q. They got 10; now it's worth 20.

18 A. Is that a gain?

19 Q. Is that a gain? I guess in my world,  
20 yes. I would rather have my counts go up. 04:05:06

21 A. Okay.

22 Q. So isn't it true the manager has to  
23 assess -- is allowed to assess a 20 percent fee,  
24 in my example, on the first investor's gain, the  
25 10 -- additional 10 they received in that year? 04:05:23

1 Epstein

2 A. Every fund is different.

3 Q. Do you know how the Zwirn hedge fund  
4 worked?

5 A. No, not specifically. 04:05:31

6 Q. Do you know if they, in my example,  
7 would be able to take the 20 percent fee on the 10  
8 gain for investment one?

9 A. I assume you mean if they mispriced the  
10 assets so that in fact what was really valued at 04:05:41  
11 10 they valued at 20, you're suggesting he was  
12 able to take a percentage fee on something that  
13 was reported as a value increase as opposed to a  
14 gain?

15 A gain is normally a taxable event. So 04:05:53  
16 if in fact the stock simply went up from 10 to 20  
17 in your example, it isn't necessarily a gain; it's  
18 an increase in value.

19 Q. Whether or not it is a real gain,  
20 doesn't the hedge fund account for it by taking a 04:06:06  
21 fee against that paper gain?

22 A. Every hedge fund's different.

23 Q. Did you know how the Zwirn fund worked  
24 in that regard?

25 A. No, sir. 04:06:14

1 Epstein

2 Q. And isn't it true in my example  
3 investment two, assuming the hundred did work how  
4 I'm saying where they take 20 percent on the gain,  
5 investment two, which went in in June where you 04:06:26  
6 put in 10 and it was still 10 at the end of the  
7 year, no fee gets assessed as to that investment;  
8 isn't that true?

9 A. You say "that investment."

10 Q. Right, as to that 10. 04:06:37

11 A. Every hedge fund is different.

12 Q. In my example where they are  
13 assessing --

14 A. You're telling me in your example they  
15 don't assess a fee, then they don't assess a fee. 04:06:47  
16 Every hedge fund is different.

17 Q. I'm saying assume a world that a hedge  
18 fund manager at the end of the fiscal year is  
19 allowed to assess a 20 percent incentive fee with  
20 respect to the profits relating to that 04:07:03  
21 investment. Wouldn't they have to track each  
22 investment separately?

23 A. In that example, yes.

24 Q. And similarly, in the second for  
25 investment two, they wouldn't get any performance 04:07:15

1 Epstein

2 fee -- right? -- it was flat? They wouldn't get  
3 the performance incentive. They might get the  
4 management fee but not the incentive fee; correct?

5 A. That's correct. 04:07:25

6 Q. Similarly, isn't it true that hedge  
7 funds have to track investments separately to  
8 understand the losses that may be attributable to  
9 that account -- to that investment, sorry?

10 A. Every hedge fund is different. 04:07:41

11 Q. Do you know how the Zwirn fund worked  
12 in terms of dealing with losses?

13 A. No, sir.

14 Q. Let's take an example. Let's say you  
15 put in 10 at the beginning of the year; okay? 04:07:53

16 A. Yes, sir.

17 Q. At the end of the year, it's 8. You  
18 lost money.

19 A. Yes, sir.

20 Q. No investment fee, under my scenario -- 04:08:01  
21 correct? -- no performance fee, sorry, under that  
22 scenario -- correct? -- there's a loss?

23 A. That's correct.

24 Q. You put in -- second investment you put  
25 in another 10 on that date; okay? 04:08:15

1 Epstein

2 A. Yes.

3 Q. With me? Now, in the second year the  
4 fund shows returns of 50 percent, let's call it.

5 So on that first investment that was 8 at the end 04:08:27

6 of year one, that investment's now at 12; right?

7 Do they -- is that correct? Are you with me so  
8 far?

9 A. I'm with you.

10 Q. Do you know whether the fund takes -- 04:08:41

11 can charge -- whether hedge funds generally assess

12 the performance incentive fee on the full 8 to 12

13 rise, the 4, or do they only assess it on the 2

14 from what you originally invested?

15 A. Every hedge fund is different. 04:09:05

16 Q. Do you know how that worked in the  
17 Zwirn fund?

18 A. No, sir.

19 Q. Do you know whether the Zwirn fund in

20 fact utilized a concept of a loss recovery account 04:09:12

21 to deal with the kind of situation I was just

22 describing?

23 A. No, sir.

24 Q. And do you know whether the Zwirn fund

25 in fact would only give you the -- would only 04:09:23

1 Epstein

2 assess the fee on the amount that was higher than  
3 what you originally put in?

4 A. No, sir.

5 Q. Do you know whether they took into 04:09:32  
6 account the losses?

7 A. I don't know what they did.

8 Q. Do you know the concept high watermark?  
9 Have you ever heard that in connection with a  
10 hedge fund? 04:09:44

11 A. Yes, sir.

12 Q. Okay. What's that?

13 A. It's different for every hedge fund.

14 Q. But the high watermark concept is  
15 again -- the same concept I was describing -- 04:09:51  
16 right? -- that you look at the high watermark, not  
17 maybe how it just did over the last fiscal year,  
18 because you may have made money. But if compared  
19 to another point in time there were losses, you  
20 take those into account; right? 04:10:05

21 A. Yes, sir.

22 Q. And in my example the second investment  
23 where you put in the 10, got a 50 percent return  
24 at the beginning of the year, then you would get  
25 the fee on that fully assessed on the gains on 04:10:19

1 Epstein

2 that investment; correct?

3 A. In your hypothetical, potentially, yes.

4 Q. So didn't you understand -- well, did  
5 you or didn't you have any understanding 04:10:29

6 whatsoever as to whether Zwirn fund, Zwirn's fund,  
7 because of the way performances fees were assessed  
8 and gains and losses were allocated, was tracking  
9 separately each investment for the reasons I've  
10 just described? Did you have any concept of that? 04:10:48

11 A. No, sir.

12 Q. Did you ever discuss that with anyone?

13 A. No, sir.

14 Q. And never asked anybody about anything?

15 A. No, sir. 04:10:56

16 Q. Do you recall there was a point in time  
17 where a one-year plus option was added to the  
18 fund; do you recall that?

19 A. No, sir.

20 Q. Do you recall declining to take the 04:11:06

21 one-year plus -- it was a redemption option where  
22 at the end of the year investors were given an  
23 option to say, okay, I want -- you can redeem me  
24 in one year but it's fixed at whatever's in the

25 fund attributable to me and I have to -- I don't 04:11:24

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Epstein

actually get it all in one year; I get it as those investments are sold off, but it's frozen in time at that point.

Do you recall that option? 04:11:36

A. No, sir.

Q. And you don't recall discussing that with anyone?

A. No, sir.

Q. Do you know who declined it on your behalf? 04:11:40

A. No, sir.

Q. You don't recall signing something?

A. No, sir.

Q. You don't recall discussing it with anyone? 04:11:47

A. No, sir.

Q. You certainly don't recall ever being under the impression that that option applied to you; is that fair? 04:11:56

A. Never discussed it.

Q. And I take it you had no -- I take it from what you said earlier today you didn't have an understanding that the lockups at the Zwirn fund were applied by the investment -- on an 04:12:21

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Epstein

investment-by-investment basis; correct?

A. That's correct.

Q. I think you already went through you had a discussion about that with Mr. -- was it Dubin? 04:12:33

A. Yes, sir.

Q. And Mr. Dubin told you it would always be whatever the first investment was?

A. That was my understanding. 04:12:42

Q. Okay. So even if you put your money in a year and a half later, it was always -- the redemption right was always triggered by the two years from the initial investment?

A. Yes, sir. 04:12:55

Q. What understanding, if any, did you have about other investors in the fund? Do you know whether they had lockups by investment?

A. The only time I believe I understood anything about any other investors was when they said before that January 11th, '05, letter that when other investors would have a three-year lockup that I would not continue to be involved in the fund unless I continued to have only a two-year lockup. 04:13:12  
04:13:27

1 Epstein

2 Q. But other than that --

3 A. No.

4 Q. -- before that memo --

5 A. No, sir. 04:13:32

6 Q. -- did you have any understanding  
7 whether their lockup were by investments or the  
8 initial date when they first put in money?

9 A. No, sir.

10 Q. You never discussed that with anyone? 04:13:44

11 A. No, sir.

12 Q. Did you think it was important to  
13 understand whatever the redemption rights were?

14 A. No, sir. Separate from the fact they  
15 could not be locked up for more than two years. 04:13:57

16 Q. That was important to you?

17 A. Yes.

18 Q. You didn't want to go beyond two?

19 A. That's correct.

20 Q. Had you previously invested in any 04:14:07  
21 hedge funds that had lockups?

22 A. I don't recall.

23 Q. Do you recall whether you invested in  
24 hedge funds that definitely did not have lockups?

25 A. Yes. 04:14:18

1 Epstein

2 Q. Did you do any research on lockups when  
3 you made this investment?

4 A. No, sir.

5 Q. Have you ever done any research on 04:14:25  
6 lockups?

7 A. No, sir.

8 Q. Okay. I think you've mentioned a  
9 couple times -- you just mentioned again -- that  
10 at some point you learned that there was a switch 04:14:41  
11 to a three-year lockup; correct?

12 A. Yes, sir.

13 Q. And you didn't like that; right?

14 A. Yes, sir.

15 Q. You wanted to be relieved of that; 04:14:51  
16 fair?

17 A. "Relieved" is a word --

18 Q. You didn't want that.

19 A. I wouldn't agree to it.

20 Q. You didn't want that to apply to you? 04:15:02

21 A. That's correct.

22 Q. By the way, do you recall there being a  
23 switch in the fee, the management fee, from 1.5 to  
24 2 and you also asked that that stay with 1.5?

25 A. Initially, yes. 04:15:14

1 Epstein

2 Q. And do you recall that was -- was that  
3 around the same time as this two- to three-year  
4 change?

5 A. I don't remember. 04:15:22

6 Q. But you did ask it stay at 1.5?

7 A. Correct.

8 Q. Let's see. When you learned about the  
9 three-year lockup and you said, I just want two,  
10 is that something you said to Mr. Dubin? This is 04:15:41  
11 now the end of 2002, beginning of '05 -- I'm  
12 sorry, end of 2004, beginning of '05.

13 A. Yes, sir.

14 Q. That refreshes your recollection.

15 To whom did you express this view: No, 04:15:56  
16 I'm staying at a two-year lockup?

17 A. To Mr. Dubin as well as my in-house  
18 people.

19 Q. I'm sorry if this was asked before.  
20 Had Mr. Dubin approached -- this was -- eventually 04:16:12  
21 became a \$20 million investment; correct?

22 January -- in January 1 of '05, you invested 20  
23 million -- added \$20 million to the fund; correct?

24 A. Correct.

25 Q. And that \$20 million investment, was 04:16:26

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Epstein

that something that -- I think you testified earlier Mr. Dubin recommended to you; fair?

A. Yes.

Q. And when he recommended it, did you say, Okay, but it's got to stay on a two-year cycle? 04:16:39

A. Yes.

Q. And do you know whether he went back to Mr. Zwirn and got approval for that? 04:16:54

A. I don't recall.

Q. So you didn't have any direct discussions with Mr. Zwirn about the two-year lockup for that money?

A. No. 04:17:04

Q. Did you have any discussion with anyone else at Zwirn about that money?

A. No.

Q. Do you know whether any of your other employees had any discussion with Zwirn about that January 1, '05, investment? 04:17:16

A. Yes.

Q. And that was the -- and then there was a side letter -- this was the genesis of the side letter; correct? 04:17:44

1 Epstein

2 A. I believe so.

3 MR. SUSMAN: It's time for a pit stop.

4 MR. ARFFA: Oh, okay.

5 THE VIDEOGRAPHER: Stand by. We're 04:17:53

6 going off the record. The time is 4:14 p.m.

7 This is the end of Tape 5.

8 (Recess taken from 4:14 to 4:24.)

9 THE VIDEOGRAPHER: We are back on the  
10 record. The time is 4:24 p.m. This is the 04:25:26

11 beginning of Tape Number 6.

12 Q. Mr. Epstein, when is the first time you  
13 recall ever learning that at least the Zwirn fund  
14 was taking the position that in fact a two-year  
15 lockup applied with respect to each of your 04:25:48

16 investments separately?

17 A. February of '07.

18 MR. ARFFA: Can you mark this as the  
19 next.

20 (Exhibit 17, e-mail dated 11/13/06 from  
21 Zwirn to Dubin, marked for identification.)

22 Q. I want to show you Exhibit 17. I  
23 understand this wasn't to you. It's from Dan  
24 Zwirn to Glenn Dubin on November 13, 2006.

25 A. Yes. 04:26:33

Epstein

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Q. And it says, Spoke calmly as possible  
to Harry --

A. Yes.

Q. -- re the facts of lockups, et cetera. 04:26:37

A. Yes.

Q. Would be very good for you to call  
Jeffrey.

Do you see that?

A. Yes, sir. 04:26:44

Q. Do you recall -- I mean, does this  
refresh your recollection that maybe in fact much  
earlier, somewhere around November of 2006, if not  
earlier, but certainly on November 13 Dan Zwirn  
had walked Harley Beller through the different 04:27:00  
lockups the fund believed applied with respect to  
your investments?

A. No. This -- my best recollection --

MR. SUSMAN: Whoa. No question.

A. No. 04:27:14

MR. SUSMAN: We want to get out of  
here.

Q. Do you recall having discussion with  
anyone at or around this time, the time of this  
e-mail, November of 2006, about how exactly the 04:27:21

1 Epstein

2 fund believed the redemptions -- the two-year  
3 lockup worked with respect to your investments?

4 A. Again, I'm sorry?

5 Q. Do you recall having a discussion with 04:27:38  
6 anyone around this time, which is November of  
7 2006, about how exactly the fund believed the  
8 two-year lockup worked with respect to your  
9 investments?

10 A. Yes. 04:27:53

11 Q. Okay. And what discussion do you  
12 recall?

13 A. This was -- this was regarding the \$53  
14 million.

15 Q. You're saying by this time -- by the 04:28:05  
16 time Mr. Zwirn called and walked Harry Beller  
17 through, you had already made your decision that  
18 you were taking out 80 and you were leaving in a  
19 53?

20 A. That's correct. 04:28:23

21 Q. And you had conveyed to Mr. Beller and  
22 to Mr. Dubin and through Mr. Dubin to Mr. Zwirn?

23 A. Not through Mr. Dubin. Mr. Zwirn was  
24 on the phone.

25 Q. Okay. And you believe this happened 04:28:32

1 Epstein

2 after the phone call?

3 A. Yes.

4 Q. Do you recall what they said at that  
5 time about how the remaining 53 would be handled? 04:28:45

6 A. There would be some lockups.

7 Q. Do you recall whether it was one or  
8 two?

9 A. There would just be some lockups on the  
10 53. 04:28:56

11 Q. And do you recall how -- you made a  
12 number of different investments -- correct? -- in  
13 the fund; is that fair? Hello?

14 A. Yes.

15 Q. Do you recall which of that 80, how was 04:29:08  
16 that 80 going to be allocated? Did you have a  
17 discussion as to was the 80 coming from the  
18 earlier investments or the later investments?

19 A. I think I've given you my best  
20 recollection of the phone calls how it would be 04:29:20  
21 made.

22 Q. To be clear, you don't recall any  
23 discussion like on the subject I was, like where  
24 was the 80 going to be coming from?

25 A. That's correct. 04:29:32

1 Epstein

2 Q. Which investments it was going to be  
3 coming from?

4 A. No, sir.

5 Q. And you don't exactly recall the 04:29:39  
6 lockups to which you were subject going forward on  
7 the 53?

8 A. No.

9 Q. Putting aside the discussion that you  
10 had with Mr. Epstein and Mr. Zwirn, what was your 04:30:21  
11 understanding as to the 80? Was that available at  
12 that time or was that subject to lockups, absent  
13 that communication?

14 A. I want to be kind to you. I didn't  
15 have a conversation with Mr. Epstein. 04:30:37

16 Q. I'm sorry. Let me try that again.  
17 Good point.

18 A. Okay.

19 Q. Putting aside your discussion with  
20 Mr. Dubin and Mr. Zwirn, what was your 04:30:44  
21 understanding as to the 80? Was that available at  
22 that time or was it subject to lockups had you  
23 never had that conversation you say you had with  
24 Dubin and Zwirn?

25 A. My understanding was that I was going 04:31:00

1 Epstein

2 to get my \$80 million. There was a problem at the  
3 fund. In fact, to some extent it was -- it was  
4 never discussed about which tranche. It was \$80  
5 million. 04:31:17

6 Q. But had you not had that conversation  
7 earlier in the day before the conversation, before  
8 you had any conversation with Dubin and Zwirn or  
9 Dubin or Zwirn, did you believe the 80 was there  
10 for you or was it subject to some kind of lockups? 04:31:30

11 A. I believed my 80 was subject to a  
12 lockup, but as long as it was done before the end  
13 of the year.

14 Q. But as long as you exercised it by the  
15 end of that year, you were okay? 04:31:42

16 A. The quarter ending --

17 MR. ARFFA: Please don't nod,  
18 Mr. Susman.

19 Q. Go ahead.

20 A. Yes. 04:31:50

21 Q. Yes, as long as you did it by the end  
22 of the year, you had the 80?

23 A. I don't want to say by the end -- by  
24 the quarter.

25 Q. By the end of that quarter? 04:31:59

1 Epstein

2 A. Yeah.

3 Q. Okay. But you don't recall any of the  
4 other details about the 80 or the lockups or --

5 A. No. 04:32:09

6 Q. -- which year?

7 A. No.

8 Q. Did you have any -- I'm not sure if you  
9 were asked this. Do you have any notes, memos,  
10 any piece of paper that you can point us to about 04:32:22  
11 this conversation? Let's start with you didn't  
12 write any note of it; correct?

13 A. I don't write notes.

14 Q. Did you do a memo of it?

15 A. Just the instructions. 04:32:34

16 Q. Did you do any --

17 A. No, I didn't make any notes.

18 Q. -- memo of the meeting?

19 A. No, sir.

20 Q. Did you tell other people in your 04:32:42  
21 office about the conversation?

22 A. I would have said to either Harry or  
23 Darren that Dan agreed to the \$80 million, let's  
24 get it done.

25 Q. Have you ever seen any piece of paper 04:32:54

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Epstein

where they wrote down this is what was agreed in  
this conversation?

A. Not that I've ever seen.

Q. And have you ever seen any record from 04:33:01  
Mr. Dubin of what was said in that conversation?

A. No.

Q. You've never seen any notes or memo or  
anything from him; correct?

A. Not to the best of my knowledge. 04:33:10

Q. Mr. Zwirn, have you ever seen any  
document, any memo, any note from -- on the Zwirn  
fund side recording what was said in this  
conversation?

A. I don't recall. 04:33:29

Q. Did you ever ask to see -- did you ever  
ask him: Do you guys have a tape --

A. No.

Q. Did you ask him whether conversations  
were taped? 04:33:40

A. No.

Q. Did you ask him whether they had any  
memos of the conversation?

A. No.

Q. Sorry, one other thing on the 04:33:58

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Epstein

assignment that occurs thereafter. Do you recall why the assignment was made retroactive?

A. What exhibit number, I'm sorry?

Q. Go back to 6, sorry. 04:34:12

A. Okay.

Q. Do you see on page 3 of 4 it says the effect of --

A. I'm sorry.

Q. It's the second-to-last page of the exhibit. Do you see it says the effective date of the assignment shall be January 1, 2006? 04:34:25

A. Yes.

Q. Do you know why it was made effective retroactively? 04:34:47

A. No, no, sir.

Q. You agree this was executed on December 29, 2006; correct?

A. Yes.

MR. ARFFA: I think that's all I have. 04:35:12

Thank you very much.

THE WITNESS: Pleasure.

MR. SIFFERT: I have no questions.

MR. SUSMAN: We're done? Thank you.

THE VIDEOGRAPHER: Please stand by. We 04:35:24

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Epstein

are going off the record. The time is 4:34  
p.m. This is the end of Tape Number 6.

(Time noted: 4:34 p.m.)

\_\_\_\_\_

JEFFREY EPSTEIN

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_ 2011.

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C E R T I F I C A T E

STATE OF New York )  
: ss.  
COUNTY OF New York )

I, LAURIE A. COLLINS, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That JEFFREY EPSTEIN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of April 2011.

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LAURIE A. COLLINS, RPR

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- - - - - I N D E X - - - - -

WITNESS:	EXAMINATION BY:	PAGE
Jeffrey Epstein	Mr. Schwartz	9

----- TRANSCRIPT MARKINGS -----

DIRECTIONS: 237:18, 237:23

MOTIONS:

REQUESTS:

RULINGS:

TO BE FURNISHED:

----- EXHIBITS -----

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	from Zwirn to limited partners of	
	D.B. Zwirn special opportunities fund	
Exhibit 3,	invoice from FTC to Resnick	97
Exhibit 4,	draft consulting agreement	98
	with fax cover sheet	
Exhibit 5,	letter dated 11/13/06 from	158
	FTC and Zwirn, Bates-stamped JE 2000	

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4	Exhibit 8, e-mails with attachment	194
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