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October 31, 2011

BY EMAIL

Hon. Anthony J. Carpinello (Ret.)
Arbitrator, JAMS
620 Eighth Avenue, 34th Floor
New York, NY 10019

VRF I LLC v. Jeepers, Inc., JAMS Ref. No. 1425006537

Dear Judge Carpinello:

On behalf of Claimants Fortress VRF I LLC ("VRF I LLC") and Fortress Value Recovery Fund I LLC (the "Fund") (and together with VRF I LLC, "Claimants"), we write in response to Your Honor's request for a summary of the dispute that will be the subject of the upcoming mediation before Your Honor this Wednesday November 2, 2011 at 2pm.

As discussed further below, only one issue remains to be resolved among all of the parties. That issue concerns the release of Claimants by Third-Party Defendants Daniel B. Zwirn, D.B. Zwirn Partners LLC, D.B. Zwirn & Co. L.P., DBZ GP LLC and Zwirn Holdings LLC (collectively, the "Zwirn Parties"). In Claimants' view, the Zwirn Parties are unfairly seeking to narrow the scope of the release they previously agreed to provide to Claimants.

The Current Settlement Agreement

As Your Honor may recall, the parties reached an agreement to settle the Arbitration, and entered the terms of this agreement into the record of the Arbitration on July 25, 2011 (the "Current Settlement Agreement"). See Settlement Terms to be Read

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into Record (attached as Ex. 1). While the Current Settlement Agreement contemplated a more extensive set of settlement documents, the Current Settlement Agreement, by its express terms, was and currently remains fully binding upon the parties. *Id.* ¶ 7.

In the more than three months since the parties agreed to the Current Settlement Agreement, the parties have negotiated a more extensive settlement agreement (the "New Agreement"). Numerous issues have been resolved, and all parties to the Current Settlement Agreement, apart from the Zwirn Parties, are ready to sign the attached draft of the New Agreement (Attached as Ex. 2). The Zwirn Parties, however, have raised an issue, which remains outstanding, regarding the scope of the releases from the Zwirn Parties to Claimants.

To understand that issue, it is necessary to start with the Current Settlement Agreement, which contains the following provisions:

1. This proceeding, and all claims, counterclaims and third-party claims in it shall be dismissed with prejudice, with each Party to bear its own costs and attorney's fees, except to the extent Claimants have any indemnification obligations to any of the Zwirn Parties for reasonable attorney's fees and costs in connection with this proceeding (the "Legal Bills"). . . .
6. The Zwirn Parties, on the one hand, and the Claimants, on the other, will exchange releases, including standard language as to releasing affiliates and other related persons, *for any claims relating in any way to the matters at issue in this proceedings* except for any claims for breach of this settlement agreement or the payment of the Legal Bills.

(Current Settlement Agreement, Ex.1, at 1-2.) (Emphasis added.)

Draft New Agreement

Consistent with, and faithful to, these provisions of the Current Settlement Agreement, Claimants have included the following language in the proposed New Agreement:

Except as provided in Paragraph E of this Section III of the Settlement Agreement, the Zwirn Parties, on behalf of themselves and, to the fullest extent permitted by law, each of their past, present and future parents, subsidiaries and affiliates, each of the predecessors, successors and assigns of those entities, and each of the above entities' past, present and future agents, employees, officers, directors, partners, members,

managers, trustees, administrators, supervisors, liquidators, shareholders, representatives, attorneys, auditors, accountants and any and all other individuals or entities who have at any time acted, or purported to act on behalf of any of the foregoing (collectively, the “Zwirn Releasors”), hereby forever, irrevocably and unconditionally release and discharge:

(1) except with respect to any indemnification obligations Claimants may have to the Zwirn Releasors for reasonable attorneys’ fees and costs incurred in connection with the Arbitration, the Claimants Released Parties from, and covenant not to sue any of the Claimants Released Parties for or with respect to, any and all claims, causes of action, and demands of any nature, character or kind, whatsoever, whether known or unknown, whether at law or equity, and whether of a direct, indirect or derivative nature, which any of the Zwirn Releasors ever had, now have, or ever may have against any of the Claimants Released Parties, which constitute, concern or otherwise relate to:

- (a) any matter or thing asserted or at issue in, or otherwise relating to, the Arbitration, including but not limited to:
 - (i) all claims, counterclaims and cross-claims that were asserted, or that could have been asserted, in the Arbitration;
 - (ii) all claims relating to the matters at issue in the Arbitration; and
 - (iii) all claims relating to the litigation of the Arbitration, including but not limited to all such claims seeking the recovery of attorneys’ fees, costs and other litigation expenses or seeking sanctions of any kind and on whatever grounds, except, for the sake of clarity, with respect to any indemnification obligations Claimants may have to the Zwirn Releasors for reasonable attorneys’ fees and costs incurred in connection with the Arbitration; or
- (b) any Additional Agreement, as defined in Section VI.C(2) below.

(Draft New Agreement, Ex. 2, at 9.)

It is also important to note that similar language is used in other portions of the New Agreement for other releases—including the release of the Zwirn Parties by

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Claimants—that was based on release language in the Current Settlement Agreement similar to that governing the release from the Zwirn Parties to Claimants.

The Zwirn Parties' Issue

Despite all this, the Zwirn Parties have now decided that the release language contained in the Current Settlement Agreement could be read in a way they now believe is overly broad. As Your Honor may recall, the Zwirn Parties are parties to certain agreements with the Fund (containing, among other things, certain indemnification provisions) that were entered into prior to, or in connection with, the transition of management of the Fund from the Zwirn Parties to VRF I LLC and affiliates. The Zwirn Parties have now expressed a concern that the release language both in the Current Settlement Agreement, and as proposed for the New Agreement, might be read to prevent them from receiving indemnification under their prior agreements with the Fund in the event of a third-party claim brought against them in which certain of the allegations in such a claim were somewhat similar to those asserted by Mr. Epstein (or his company, Jeepers, Inc.) in the Arbitration.

Claimants believe the proposed release language for the New Agreement quoted above accurately captures the agreement parties reached at the conclusion of the Arbitration and set forth in the Current Settlement Agreement. They also believe it to be extremely difficult to predict in advance exactly what new third-party claims could be brought against the Zwirn Parties, how the pre-Arbitration agreements between the Fund and the Zwirn Parties might (or might not) apply to such claims, and how the currently proposed release language might (or might not) apply to such claims. Therefore, they believe it most appropriate to leave the release language in the proposed New Agreement (quoted above) as is, particularly given that it accurately reflects Parties' Current Settlement Agreement on this point.

Nonetheless, in the spirit of compromise and to address the concerns of the Zwirn Parties, Claimants have proposed the following additional language that would immediately follow the release language in the proposed New Agreement quoted above:

(2) For the avoidance of doubt, the releases granted by the Zwirn Releasers in this Section III.C(1) are not intended to release the Fund from indemnification obligations, if any, that the Fund would otherwise have to the Zwirn Releasers in relation to claims (i) brought solely by third parties not involved in or related in any way to the parties to this Arbitration, (ii) not assigned or otherwise transferred by any of the other of the parties to this Arbitration, and (iii) not arising out of, or related to, the Arbitration or any Additional Agreement.

Without any real explanation, and apparently unwilling to abide by their prior agreement in the Current Settlement Agreement on this point, the Zwirn Parties have rejected this language. Instead, they have insisted on proposing language that,

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rather than clarifying relevant language of the release language, entirely rewrites it in ways that would sharply curtail the scope of the bargained for release that the Zwirn Parties have already provided to Claimants.

Conclusion

Claimants believe that either (a) no additional language should be added to the proposed release language for the New Agreement, quoted above, or (b) at most, the clarifying language Claimants have proposed and quoted above is sufficient to address the Zwirn Parties' new concerns. Most importantly, Claimants do not believe it appropriate to alter the existing release to their disadvantage merely because the Zwirn Parties have reconsidered their position.

We look forward to mediating this final issue with you.

Respectfully submitted,



Allan J. Arffa

Enclosures

cc: Harry Susman, Esq.
John Siffert, Esq.
Daniel Reynolds, Esq.
William Schwartz, Esq.
William O'Brien, Esq.
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