

LANGLER SIFFERT & WOHL LLP
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TELEPHONE
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November 1, 2011

BY E-MAIL AND BY HAND

The Honorable Anthony J. Carpinello
JAMS

Re: Fortress VRF I LLC and Fortress Value Recovery Fund 1 LLC v. Jeepers, Inc.
JAMS Ref. No. 1425006537

Dear Judge Carpinello:

Daniel B. Zwirn submits this letter in response to Claimants' letter to Your Honor dated October 31, 2011.

In their October 31 letter, Claimants try to paint Mr. Zwirn as having "reconsidered" his position with respect to the release that was contained in the settlement that was read into the record on July 25, 2011 (the "Settlement Terms"). This is simply not true. On July 25, 2011, Mr. Zwirn believed that he was releasing Claimants only from claims related to those that had been brought by Mr. Epstein in the Arbitration, and not any potential claim for fraud or breach of fiduciary duty brought by a Fund investor other than Mr. Epstein. Claimants apparently have a different interpretation of the Settlement Terms, as reflected in their proposed language. We alerted Claimants' counsel of our concern shortly after they circulated the first draft of the settlement agreement to all counsel, so the notion that Mr. Zwirn is now trying to gain something more than he agreed to in July is unfounded. We also informed Claimants' counsel yesterday – prior to the parties' letters to Your Honor – that if the release language contained only the Settlement Terms, Mr. Zwirn would sign the settlement agreement. Claimants' letter followed.

Claimants' proposed language is far broader than the Settlement Terms. For example, Claimants propose that the Zwirn Parties release Claimants from all claims "that could have been asserted in the arbitration." This language is not contained in the Settlement Terms, and is overbroad for at least two reasons: first, given Claimants' position at the hearing that they represented the interest of all investors, Claimants could have tried to bring claims against Mr. Zwirn on the other investors' behalf; Mr. Zwirn did not intend to release Claimants from their indemnification obligations with respect to such claims. Second, the Zwirn Parties and Claimants (and their affiliates) are parties to numerous agreements in connection with the

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transfer of the management of the funds that the Zwirn Parties managed. The Zwirn Parties did not intend to release Claimants or their affiliates from a claim for any breach of those agreements that the Zwirn Parties could have brought in this forum.

The additional language that Claimants have proposed “to address the concerns of the Zwirn Parties” exacerbates those same concerns and suffers from a series of deficiencies. For example, Claimants’ proposal allows for a carve-out from the release only for “claims brought solely by third parties not involved in or related in any way to the parties to this Arbitration.” Pursuant to this language, the Zwirn Parties would still release Claimants from their indemnification obligations for claims brought by other Fund investors for fraud or breach of fiduciary duty because the other Fund investors are indisputably related to the Claimants. In addition, the proposed carve-out is limited to the Zwirn Parties’ release of the Fund, and not any of Claimants’ affiliates that have obligations to the Zwirn Parties but that the Zwirn Parties would otherwise be releasing under Claimants’ proposal.

Claimants’ proposed language would limit the continuing indemnification obligations Claimants owe the Zwirn Parties, and potentially relieve Claimants from liability to the Zwirn Parties under unrelated agreements between the parties regarding, for example, the use of the funds’ performance data, access to information and access to former employees. These limitations were not contemplated at the time of the Arbitration, nor were the Settlement Terms intended to extend as far as Claimants now propose.

We respectfully submit once again that our proposed language be adopted, or that in the alternative, Your Honor adopt the language in the Settlement Terms.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Siffert" with a circled "DR" or similar initials to the right.

John S. Siffert

cc: Allan Arffa, Esq. (by email)
Chet Lipton, Esq. (by email)