

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC, vs.
Jeepers, Inc.

Expert Report

Daniel Strachman

June 14, 2011

1. My name is Daniel Strachman. I am currently Managing Director of The Answers and Company Group. I have been asked by Susman Godfrey LLP counsel for Jeepers Inc. to opine on how the hedge fund industry tracks lock-ups and processes withdrawal requests.
2. The Answers & Company Group is a strategic consulting and educational firm that I founded in 2001 which focuses on providing services to the investment management industry. I have been working in the investment management industry since 1995. I began my career in the investment management industry at Cantor Fitzgerald and Co., where I was a Vice President of the Institutional Property Group. In this position, I was responsible for buying and selling large loan portfolios that were thereafter "securitized," i.e. pooled to combine the collateral for mortgage backed and asset backed securities. I left Cantor Fitzgerald and Co. in 1998 to become Senior Vice President of Sales for Winstar Government Securities, an odd-lot Government bond dealer. In this position, I was responsible for developing, marketing and maintaining trading relationships with institutions around the country. In late 1999, Winstar Government Securities was sold to Fahnstock and Company Inc. Upon completion of my contract, I joined Orbitex Financial Services Group, Inc. as Director of Product Development and Marketing. In this position, I was responsible for product development and marketing of the firm's investment management products, including oversight of the creation and distribution of all marketing material for the firm's investment products. These investment products include mutual funds,

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC, vs.
Jeepers, Inc.

Expert Report

Daniel Strachman

June 14, 2011

separate accounts, sub-advised mutual funds and hedge funds. I left Orbitex Financial Services Group, Inc. in 2001.

3. In September of 2001, I launched The Answers and Company Group to provide strategic consulting and educational services to the investment management industry. In that position, I work with clients to create, develop and market new investment products both in the United States and abroad. These products include both fixed income and equity hedge funds. The firm's clients include both large and small investment management firms as well as financial services companies seeking help with new product development, marketing, distribution and expansion of market share. As part of these services, I provide advice and guidance on the creation and distribution of material for particular investment products including both fixed income and equity funds. My experience includes working not only with investment managers but also with investors about their expectations and understanding of various types of funds and both initial and on-going manager and strategy due diligence.
4. While maintaining my responsibilities at The Answers and Company Group, from December 2007 to April 2009, I worked for Morgan Stanley & Co., Inc. in business development for its Morristown, NJ office.
5. Prior to working in the investment management industry, I was a reporter at the American Banker newspaper, writing about banking systems and technology.

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC, vs.
Jeepers, Inc.

Expert Report

Daniel Strachman

June 14, 2011

6. I am the author of eight books on investment strategy, including:

- Fund of Funds Investing: A Roadmap to Portfolio Diversification (Wiley 2009) with Richard Bookbinder
- The Long and Short of Hedge Funds (Wiley 2008)
- The Fundamentals of Hedge Fund Management (Wiley 2007)
- Julian Robertson: A Tiger the land of Bulls and Bears (Wiley 2004)
- Essential Stock Picking Strategies (Wiley 2002)
- Getting Started In Hedge Funds -First Edition (Wiley 2000) – Second Edition (Wiley 2005) – Third Edition (Wiley 2010)

7. I graduated from Clark University with a Bachelor of Arts in 1993.

8. I received remuneration in the amount of \$625.00 per hour for my services. Payment for my services was not contingent on my opinions.

9. I have arrived to my opinions based on material provided to me by Susman Godfrey L.L.P. counsel for Jeepers Inc. and upon my personal knowledge, experience, and research into this matter.

Expert Report

Daniel Strachman

June 14, 2011

10. I have reviewed the documents listed on Exhibit A to my declaration. From my work in the industry, I am also familiar with the circumstances surrounding the closure and liquidations of the investment funds operated by D. B. Zwirn & Co. ("Zwirn").

11. Throughout my engagement in this matter I have reviewed documents and investment memoranda for a number of funds, including but not limited to the documents listed in Exhibit A. It is clear from reviewing this material as well as my experience in the hedge fund industry, that provisions for lock-ups and procedures for withdrawals on initial and subsequent investments are governed by the language of the fund's governing documents as authored by the firm's fund Counsel.

12. When reviewing fund documents it is common to find very clear language that provides for policies and procedures regarding the manner in which the fund manager allows for withdrawals based on the fund's lock-up provision. The two most common methods for calculating an investor's lock-up are the tranche-by-tranche method and the single capital account method. Using either method, the contract language governs the procedures surrounding withdrawal requests.

13. The language in the January 11, 2005 letter from Daniel Zwirn to Jeffrey Epstein states:

In accordance with section 9.1 of the Amended and Restated Limited Partnership Agreement, dated as of May 1, 2003 (as amended to the date hereof, the "Agreement") of the Fund, the

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC, vs.
Jeepers, Inc.

Expert Report

Daniel Strachman

June 14, 2011

General Partner hereby agrees that Financial Trust Company, Inc. (the "Company") shall be permitted to withdraw its Capital Account as of the last Business Day of the calendar quarter ending at least two years after the Company initially purchased this Interest and as of the second anniversary of that date thereafter upon not less than 120 days' prior written Notice to the General Partner.

14. The letter makes no reference to the tranche-by-tranche method of calculating lock-ups nor does it reference the creation of additional Capital Accounts to track lock-ups.

15. Furthermore, at the end the letter it states:

"Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement."

16. "Capital Account" as defined by the Second Amended and Restated Agreement of Limited Partnership in Article 6.1 does not refer to additional investments being credited to a separate capital account. The document is silent as to additional capital accounts being used to track lock-ups and as such, it is my opinion that the fund was not employing a Tranche-by-Tranche method of calculating lock-ups but rather was utilizing a single capital account to track an investor's lock-up period.

Expert Report

Daniel Strachman

June 14, 2011

17. In my experience, Offering Memorandum and Limited Partnership Agreements typically clearly state how lock-ups are tracked there is no set standard for how funds calculate lock-up periods for subsequent investments made by the same investor. For instance, I have reviewed Financial Trust Company's ("FTC") Mr. Epstein's other hedge fund investments held for the period 1999 to the present to see how these funds tracked lock-ups.¹ Some of his investments use a Single Capital Account method while some of his investments use a Tranche-by-Tranche method. In Exhibit B, I have attempted to summarize the relevant language addressing how subsequent investments were handled. Noticeably, funds employing a tranche-by-tranche method employ specific language informing investors of this treatment. This sort of language is conspicuously absent from the January 11, 2005 Letter Agreement between Zwirn and FTC.

18. I have been informed that the Zwirn Fund has suggested that every hedge fund must track each investment separately in order to calculate, for example, the high-water mark. This is simply not true. For example, FTC itself invested in hedge funds where the governing documents adopt a tranche-by-tranche approach for redemptions but expressly say that investments will not be segregated for purposes of calculating the high-water mark.

¹ I requested that FTC gather the offering documents (both the offering memorandum or prospectus as well as any limited partnership agreement) for FTC's hedge fund investments for the 10-years preceding this dispute. Given the time frame of this request, I understand that FTC was not able to locate the material for every one of these investments. However, I am informed that FTC provided me with copies of every offering memorandum or prospectus and limited partnership agreement that it had in its possession for the hedge fund investment that FTC made during this period.

Expert Report

Daniel Strachman

June 14, 2011

~~18.19. In other words, each investment utilizes the language of the Offering Memorandum and Limited Partnership document. The fund managers and the investors must rely on the language of the document to determine how lock-up provisions are tracked.~~

~~19. There is no set guideline or industry standard and all investors and manager rely exclusively on the Offering Memorandum and Limited Partnership Agreement to satisfy withdrawal requests. In short, each fund operates within the confines of its Offering Memorandum and Limited Partnership Agreement. Over my ten-plus years, working with and writing about hedge fund managers both in the United States and abroad, I have seen documents written many different ways. In all cases the procedures of the investment manager are based exclusively on the language contained in the fund documents.~~

~~20.~~

~~21. It is my opinion that the manager, acting out of desperation, in an effort to stem massive redemption requests and the subsequent failure of its organization, failed to operate under the language of the Letter of January 11, 2005 and the Amended and Restated Limited Partnership Agreement.~~

~~22.~~

~~23. The manager's subsequent change to the language in the updated Offering Memorandum and Limited Partnership Agreement is a clear attempt to alter the terms of the investment.~~

~~24.~~

Fortress VRF I LLC and Fortress Value Recovery Fund I LLC, vs.
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Expert Report

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25:20. ~~It is clear to me that the language is very simple and provides the investor with the ability for a complete withdrawal after the two-year anniversary of its initial investment with 120 days prior written notice.~~