

PRIVILEGED AND CONFIDENTIAL

**DKI WORKING NOTES OF RELEASE IN FAVOR OF DUBIN
RELEASED PARTIES**

BACKGROUND

Pursuant to the Settlement Term Sheet, which was incorporated into the record at the Arbitration hearing, you agreed that:

“The Epstein Parties will also provide full, general releases to Glenn Dubin and the Zwirn Parties, including standard language as to affiliates and other persons (except as to any claims for breach of this Settlement Agreement”

The settlement agreement drafted by Arffa had a general release in favor of Glenn, HCM, HCC, JPM, etc. (the “Dubin Release”), which I advised Windels should be limited to a release only of claims that could be raised in the Arbitration (notwithstanding the fact that the term sheet says that the Epstein Parties will provide full, general releases to Dubin). First Windels and then Condren advised that Dubin, Highbridge, JPM wanted a much broader general release consistent with what they understood to be your stated desire to move on to the future and put the past behind us. The balance that Condren and Windels have struck so far between my telling them we need for the release to be limited to the arbitration issues and their desire for a general release is set forth in the excerpts from the Settlement Agreement that I have provided below. The OPERATIVE RELEASE LANGUAGE I have excerpted below combines the Dubin Release from Arffa’s current draft of the settlement agreement with Condren’s and Windel’s modification of the general release portion of the Dubin Release. The combined OPERATIVE RELEASE LANGUAGE is as follows:

OPERATIVE RELEASE LANGUAGE

“Except as provided in Paragraph E of this Part III of the Settlement Agreement, the Epstein Parties[I HAVE DEFINED THIS TERM FOR YOU BELOW JEFFREY], on behalf of themselves and, to the fullest extent permitted by law, each of the Epstein Released Parties [I HAVE DEFINED THIS TERM FOR YOU BELOW JEFFREY], hereby forever, irrevocably and unconditionally release and discharge:

- (1) Glenn Dubin, Dubin Swieca Asset Management, LLC, Highbridge Capital Management, LLC, Highbridge Capital Corporation, JPMorgan Chase & Co. and JPMorgan Asset Management Holdings Inc., and each of their past, present and future parents, subsidiaries and other

affiliates, each of the predecessors, successors, heirs and assigns of each of those entities or individuals, and each of the above entities' or individuals' past, present and future agents, employees, officers, directors, partners, members, managers, trustees, administrators, supervisors, liquidators, shareholders, representatives, attorneys, auditors, accountants, heirs 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 (the "Dubin Released Parties," except that, for the sake of clarity, the Zwirn Parties and any individuals or entities that are directly or indirectly controlled by one or more of the Zwirn Parties, shall not be considered Dubin Released Parties) **[JEFFREY, NOTE THAT THERE IS A SEPARATE ZWIRN PARTIES RELEASE ELSEWHERE IN THE SETTLEMENT AGREEMENT]** from, and covenant not to sue any of the Dubin 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 Epstein Released Parties had, now has or will ever have against the Dubin Released Parties, which constitute, concern or otherwise relate to:

- (a) any matter or thing from the beginning of time to the date of this Settlement Agreement, but excluding any claim or cause of action against any of the Dubin Released Parties where any of the Epstein Parties do not have actual or constructive knowledge of facts giving rise to such claim or cause of action and where such claim or cause of action is in connection with any investment, interest, unit, or thing of value which, as of the Effective Date, (i) is owned or held by or on behalf of any of the Epstein Parties in any of the Dubin Released Parties, or (ii) is or was held or custodied in any account maintained by or on behalf of any of the Epstein Parties with any of the Dubin Released Parties. "Constructive knowledge" for this purpose is defined as knowledge that any of the Epstein Parties using reasonable care and diligence should have based on information contained in materials that are or were in the possession of any of the Epstein Parties;
- (b) 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; and
- (c) any fund or account the Zwirn Parties now manage or formerly managed, and any fund or account now or formerly managed by Claimant Fortress VRF I LLC or its affiliates."

Notice in paragraph (1) above the broad scope of persons who are included in the definition of "Dubin Released Parties."

The definition of the "Epstein Parties" and the "Epstein Released Parties" as used in the OPERATIVE RELEASE LANGUAGE above is as follows:

The Epstein Parties means Jeffrey Epstein, Jeepers, Inc. and Financial Trust Company, Inc.

The Epstein Released Parties means "the Epstein Parties and each of their past, present and future parents, subsidiaries and other affiliates, each of the predecessors, successors, heirs and assigns of each of those entities or individuals, and each of the above entities' and individuals' past, present and future agents, employees, officers, directors, partners, members, managers, trustees, administrators, supervisors, liquidators, shareholders, representatives, attorneys, auditors, accountants, heirs 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."

Note as well how broad is the scope of those included in the definition of the "Epstein Released Parties."

DISCUSSION OF PROBLEMATIC RELEASE PROVISION

Paragraph (a) above is Condren's and Windel's response to my request to limit the wide sweeping scope of a general release in favor of Dubin, Highbridge and JPM and all the Dubin Released Parties. Paragraph (a) essentially contains a general

release followed by a carve-out that provides that the general release by the Epstein Released Parties does not release Dubin, Highbridge, JPM and the other Dubin Released Parties from any claim or cause of action where you, FTC or Jeppers do not have actual knowledge or constructive knowledge (i.e., what you should have known based on information contained in materials in your possession) of the facts giving rise to that claim or cause of action. However, the carve-out applies only to any "investment, interest, unit, or thing of value which, as of the Effective Date, (i) is owned or held by or on behalf of any of the Epstein Parties in any of the Dubin Released Parties, or (ii) is or was held or custodied in any account maintained by or on behalf of any of the Epstein Parties with any of the Dubin Released Parties."

I have two problems with this. First, to the extent, for example, that we are talking about claims with respect to assets in a JPM trading account which were sold or disposed of prior to the date of the release, then arguably the carve-out does not apply because the assets are not owned or held, etc. as of the effective date of the release and as a result the general release would apply to release JPM from a claim as to such prior owned or held assets. Second, the "Constructive knowledge" definition holds you responsible for any information contained in any document in your "possession" (whatever that means), regardless of whether or not you read it or even had any reason to read it. Moreover, the definition of "Constructive Knowledge" includes knowledge **you should have using reasonable care and diligence** based on facts contained in materials in your possession. I would argue that this means that if you have knowledge of a fact that should reasonably make you dig deeper to find out about an issue, then you would be precluded from bringing a claim arising out of that issue. This inquiry notice goes beyond simply being familiar with every statement contained in every document or email in your possession. Let's talk about how hard you want me to push back on these two points.