

Dear Judge Carpinello:

Respondent, Counterclaimant and Third-Party Claimant Financial Trust Company, Inc. and Jeepers, Inc. ("FTC") submit this letter in advance of the call with Your Honor on July 13, 2011 to discuss the order of opening statements.

All parties apparently agree that FTC should put on its evidentiary case first; the Fund has abandoned that role. The only dispute is whether FTC's opponents should be able to open first (the Fund) and last (the Zwirn entities)—and presumably close too. Allowing the Fund and Zwirn to bookend FTC in this fashion makes no sense. The Fund provides no explanation for why it should maintain the right to open and close the case after having abandoned its role as plaintiff in every other facet of the litigation.

The Fund is merely a declaratory judgment plaintiff. FTC is the real plaintiff, bearing the burden of proof on the critical issues, and thus realignment of the parties is fully justified. *See, e.g., Saudi Basic Indus. Corp. v. Mobil*, 2003 WL 25849476, at \*2 (Del. Sup.) ("Similarly, the Court is not reluctant to realign the order of proof where a party resorts to a preemptive strike via declaratory judgment for the purpose of securing priority as to forum, when realignment makes clear the true posture of the case. Under the circumstances presented, the Court is compelled to look beyond the pleadings and allocate the burden of proof to the party that must prove the ultimate issue at trial, ExxonMobil.") (attached as **Exhibit A**).

As a result, FTC respectfully requests that it be permitted to open and close the case, and FTC will present its evidentiary case first.

Sincerely,

Stephen D. Susman