JAMS ARBITRATION

IN THE MATTER OF	§	
	§	
FINANCIAL TRUST COMPANY, INC.,	§	
JEEPERS, INC.,	§	Case No. _____
	§	
	§	
	§	
v.	§	
	§	Arbitrators: _____
D.B. ZWIRN SPECIAL OPPORTUNITIES	§	
FUND, L.P. k/n/a FORTRESS VALUE	§	
RECOVERY FUND I LLC,	§	
D.B. ZWIRN PARTNERS, LLC,	§	
D.B. ZWIRN & CO., L.P.	§	
ZWIRN HOLDINGS, LLC, and	§	
DANIEL ZWIRN.	§	

FINANCIAL TRUST COMPANY, INC.'S AND JEEPERS INC.'S
STATEMENT OF CLAIM

1. Claimants Financial Trust Company, Inc. ("FTC") and Jeepers, Inc. ("Jeepers") (collectively, "Claimants"), submit the following statement of their claims against D.B. Zwirn Special Opportunities Fund, L.P. k/n/a Fortress Value Recovery Fund I LLC, D.B. Zwirn Partners, LLC, Zwirn Holdings, LLC, D.B. Zwirn & Co., L.P., and Daniel Zwirn.

Introduction

2. At all times relevant to the claims stated herein, Claimants FTC and Jeepers were owned and managed by Jeffrey Epstein ("Epstein"), a wealthy and successful investor.

3. Starting in 2002, Epstein (through FTC) began investing in D.B. Zwirn Special Opportunities Fund, L.P. ("Fund"), which was managed primarily by Daniel Zwirn ("Zwirn"). Epstein began making these investments based on the advice of Glenn Dubin, who helped start the Fund and owned a minority interest in the Fund's general partner.

4. Between 2002 and 2005, FTC invested a total of $80 million in various tranches in the Fund.. By 2006, FTC's investment was worth almost $140 million.

5. In October 2006, Zwirn contacted Epstein to report that Zwirn had fired the Fund's Chief Financial Officer due to an accounting irregularity which Zwirn initially characterized as "nonmaterial" and insisted did not implicate him. Despite Zwirn's effort to downplay the issue, Epstein was concerned enough that he no longer wanted exposure to the Fund.

6. During a series of heated telephone calls, Epstein demanded a complete withdrawal of his investment, and Zwirn begged Epstein to refrain because such a redemption could cause a "run on the bank."

7. On November 13, 2006, Zwirn, Epstein, and Dubin participated in a call. During the call, Zwirn agreed that if Epstein would request a withdrawal of only $80 million, the Fund would honor the request. Dubin will corroborate Epstein's version of events.

8. Based on Zwirn's promise and his characterization of the events at the Fund, FTC made a request for an $80 million withdrawal on November 13, 2006.

9. After waiting months, the Fund refused to honor the withdrawal demand. Instead, the Fund provided a tortured series of excuses.

10. At the same time, the Fund revealed that the problems initially revealed by Zwirn were much more significant.

11. Ultimately, these issues forced the Fund to suspend all redemptions and wind down. The Fund is currently valued at a mere fraction of its 2007 valuation.

12. Meanwhile, FTC has learned that Zwirn was not honest about the scope of the Fund's problems or his role.

13. Had the Fund lived up to its obligations and Zwirn's promises, FTC would have received at least $80 million in 2007 while retaining an interest in the Fund valued today at about $9.8 million. Had the Fund and Zwirn provided truthful disclosures to Epstein in 2006, FTC would have received its entire $139 million investment back in 2007. Instead, FTC has received none of its investment back.

Arbitration Provision

14. Pursuant to the Second Amended and Restated Agreement of Limited Partnership for the Fund, "[t]he Partners agree that in the event of any dispute arising between the parties, such dispute shall be settled by arbitration to be conducted in the county and state of the principal office of the General Partner at the time of such dispute in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS") applying the laws of the State of Delaware." The principal office of the General Partner is located in New York, New York.

The Parties

Claimants

15. At all relevant times, Claimant FTC was a corporation organized and existing pursuant to the laws of the United States Virgin Islands. FTC is a financial consulting firm. FTC, through the work of Jeffrey Epstein, provides financial consulting services to third-parties, and FTC also invests its own funds. FTC made the following investments in D.B. Zwirn Special Opportunities Fund, L.P.:

- $10 million investment on April 4, 2002;
- $10 million investment on September 1, 2002;
- $30 million investment on December 1, 2002;
- $10 million investment on June 1, 2003; and
- $20 million investment on January 1, 2005.

16. At all relevant times, Claimant Jeepers Inc. was a wholly-owned subsidiary of FTC. On January 1, 2007, FTC assigned its entire interest in the Fund to Jeepers Inc. with the consent of the Fund. The assignment was made retroactively effective January 1, 2006.

Respondents

17. At all relevant times, Respondent D.B. Zwirn Special Opportunities Fund, L.P. k/n/a Fortress Value Recovery Fund I LLC ("Fund") was a limited partnership formed under the laws of the State of Delaware. In July 2009, management of the Fund was turned over to Fortress Investment Group, a publicly-traded investment management firm, and the Fund was converted from a limited partnership to a limited liability company and renamed "Fortress Value Recovery Fund I LLC."

18. At all relevant times, Respondent D.B. Zwirn Partners, LLC, was the general partner of the Fund.

19. At all relevant times, Respondent Zwirn Holdings was the controlling member of the Fund's general partner D.B. Zwirn Partners, LLC. As outlined below, the other member of the Fund's general partner was an entity owned by Glenn Dubin and his partner.

20. At all relevant times, D.B. Zwirn & Co., L.P. was the investment manager for the Fund.

21. Daniel Zwirn controlled all aspects of the Fund by virtue of his ownership of Zwirn Holdings, LLC., which gave him control over the Fund's general partner and his ownership of D.B. Zwirn Partners, LLC, the Fund's investment manager. Zwirn had the power to bind the Fund and his statements are attributable to the Fund. For simplicity, Claimants will use the name "Zwirn" to refer to Daniel Zwirn, the Fund, and the various entities owned and controlled by Zwirn.

Statement of the Claim

22. In 2002, Epstein was introduced to Daniel Zwirn by Glenn Dubin. Dubin and his partner Henry Swieca started Highbridge Capital Corporation, a very successful investment management firm. Epstein had a long-standing relationship with Dubin, and Highbridge provided investment advisory services to Epstein.

23. After working for Highbridge, in 2002, Zwirn started his own hedge fund with Highbridge's assistance. Initially, the Fund was called the Highbridge/Zwirn Special Opportunities Fund, L.P. Highbridge not only invested with the new fund but also took an ownership interest in its general partner.

24. Dubin convinced Epstein to become an early investor in the Fund. The Fund was formed in April 2002 and commenced operations in May 2002. On April 4, 2002, FTC invested $10 million in the Fund. On September 1, 2002, FTC invested another $10 million, and on December 1, 2002, FTC invested an additional $30 million. During 2003, FTC made another investment of $10 million on June 1, 2003.

25. At the time these investments were made, the Fund imposed a two-year lock-up on investors. Specifically, the Limited Partnership Agreement as amended provided that complete or partial

> withdrawals of a Limited Partner's Capital Account may be made as of the last Business Day of the calendar quarter ending at least two years after the Limited Partner initially purchases Interests and as of the second anniversary of that date thereof.

The Limited Partnership Agreement defined a "Capital Account" by providing that "[a] 'Capital Account' shall be maintained for each Partner," and that such account shall constitutes the Partner's "Initial Capital Contribution" plus adjustments for performance of the Fund and increased by any "Additional Capital Contribution." Thus, each limited partner had a single two-

year, rolling lock-up period for its entire investment running from when the partner initially invested. For example, FTC's initial investment occurred on April 4, 2002. The quarter ending after the two-year anniversary would have been June 30, 2004 (and thereafter June 30, 2006, June 30, 2008, etc.).

26. From 2002 to 2005, the Fund reported strong performance. In late 2004, the Fund announced that investments made on January 1, 2005 forward would be subject to a three-year lock-up. On November 17, 2004, the Fund circulated a memo outlining the change and provided a Supplemental Offering Memorandum. The Supplemental Offering Memorandum explained:

> a Limited Partner that purchases an Interest on or after January 1, 2005 (including Interests purchased on or after January 1, 2005 by Limited Partners admitted to the Fund prior to such date) may not withdraw part or all of its capital account relating to any portion of the Interest purchases on or after January 1, 2005 prior to the last business day of the calendar quarter ending at least three years after the date on which the Interest was purchased and as of each third anniversary of that date thereafter.

The Supplement further stated, "For purposes of determining the withdrawal date for investments made on or after January 1, 2005, a separate capital account will be established for each such Interest." This language obviously introduced the concept of distinct withdrawal period that applied to a distinct investment tranche—namely, a three-year lock-up that applied to each investment made after January 1, 2005.

27. In late December 2004, FTC decided to invest an additional $20 million. Since the Fund accepted investments on the first day of the month, the investment would be made effective January 1, 2005. FTC did not want to be subject to a three-year lock-up and wanted a two-year withdrawal period for its entire investment.

28. FTC and the Fund therefore agreed to a letter agreement on January 5, 2005 ("2005 Letter Agreement"). The 2005 Letter Agreement provided:

> 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 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 purchases this Interest . . . upon not less than 120 days' prior written Notice to the General Partner.
>
> Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement.

Although the term "this Interest" was not defined, the obvious intent was that "this Interest" referred to the January 1, 2005 investment. Thus, the 2005 Letter Agreement provided that FTC could withdrawal its Capital Account on March 31, 2007—*i.e.*, the quarter ending after the two-year anniversary of January 1, 2005. FTC would have to give 120-days written notice, which would mean giving notice by December 2, 2006.

29. In October 2006, Zwirn contacted Epstein. The two had not spoken about anything of substance since 2002. Zwirn informed Epstein that the Fund's Chief Financial Officer, Perry Gruss, had been terminated over an accounting transaction that was "nonmaterial." Zwirn specifically mentioned that $3 million in investor money had been used to pay for a private jet that Zwirn owned personally. Zwirn explained that the money was repaid quickly and that the CFO had approved the transaction without Zwirn's knowledge. Nevertheless, Zwirn acknowledged this transaction should not have occurred and that the CFO had been terminated as a result. Sensing that something was not right, Epstein responded by telling Zwirn that Epstein would demand a complete withdrawal of his investment. Epstein had until December 2, 2006 to give notice of such withdrawal. Zwirn urged Epstein not to make such a request. The call ended without any resolution.

30. In late October, Zwirn called Epstein again. This time Zwirn informed Epstein that the Fund was going to conduct an internal investigation in the wake of the CFO's firing.

Zwirn again maintained that he had no knowledge of the accounting issues and did not reveal any specific problem other than the airplane issue. Epstein demanded to know why Zwirn previously had characterized the issues as "nonmaterial" when now an independent review was required. Zwirn insisted that he had used the "nonmaterial" language on the advice of counsel, Shulte Roth & Zabel (the Fund's outside counsel). Epstein demanded that Zwirn get the lawyers from Shulte on the phone so that Epstein could confirm Zwirn's story. At the end of the call, Epstein remained concerned about the issues with the Fund. At the same time, Epstein had no reason to believe that Zwirn was involved in or aware of the misconduct when it occurred.

31. Zwirn was a fiduciary to FTC and thus had a duty to make full disclosure to Epstein.

32. Epstein, then, contacted Dubin, who owned an interest in the Fund's General Partner and was Zwirn's mentor and partner. Epstein recounted to Dubin what had occurred. Epstein also informed Dubin that Epstein still wanted to withdrawal his entire investment.

33. On or about November 13, 2006, Dubin, Epstein, and Zwirn participated in a three-way call. During the call, Epstein again explained that he wanted to withdrawal his entire investment in the Fund, which at that point Epstein believed to be valued between $130 to $140 million. Zwirn begged Epstein to refrain because such a withdrawal could cause a "run-on-the-bank." When Epstein indicated that he still wanted his money back, Zwirn proposed as a compromise that Epstein make only a partial redemption request and that if Epstein made such a request, the Fund would honor it quickly. Based on this promise and based on the previous description of the issues with the Fund, which allegedly did not implicate Zwirn directly, Epstein responded that he would demand slightly less than half his investment or $80 million. (This amount represented the amount of original capital that FTC invested.) Zwirn agreed to honor

such a request. Zwirn's promise to honor the request was clear and unambiguous. Dubin, who witnessed the conversation, will confirm this.

34. On the evening of November 13, 2006, FTC sent by fax a written notice to Zwirn demanding withdrawal of "$80 million of Financial Trust Company's interest in D.B. Zwirn Special Opportunities Fund, L.P." The notice also was mailed by certified mail to D.B. Zwirn at 745 Fifth Avenue, 18th Floor, New York, New York 10151, to comply with the notice provision of the Limited Partnership Agreement. The November 13, 2006 notice was sent in reliance on Zwirn's promise to honor such request. In reliance on such promise, FTC refrained from making a complete withdrawal request.

35. Between November 13, 2006 and December 2, 2006 (the last day when FTC could have given notice under the 2005 Letter Agreement for a March 31, 2007 withdrawal), neither Zwirn nor the Fund explained that this notice somehow failed to comply with the 2005 2005 Letter Agreement or was technically deficient.

36. Later in December 2006, FTC informed the Fund that it wanted to assign its interest to Jeepers because of a tax issue that had arisen. The Fund agreed to a written assignment that was retroactive to January 1, 2006. The Fund requested that Jeepers complete a Subscription Agreement even though Jeepers was not making any investment or acquiring an interest from the Fund. The form Subscription Agreement contained a representation by the investor that they were aware of the standard withdrawal rights of any investor. Before the sentence that repeats the standard withdrawal provisions of the Limited Partnership Agreement, Jeepers inserted by hand: "Subject to any more favorable right granted to FTC to which rights Investors has succeeded as assignee, the following shall apply." (For simplicity, Claimants use "FTC" to refer to "Jeepers" in the remainder of this claim.)

37. In February 2007, the Fund indicated that it was not going to honor FTC's November 13, 2006 request. The Fund indicated that the 2005 Letter Agreement was not binding. Moreover, the Fund claimed that each of FTC's investments was subject to a different two-year lock-up and that the January 1, 205 investment was subject to a three-year lock-up. Specifically, the Fund claimed that FTC could withdrawal on the following schedule:

Investment Date	**Withdrawal Date**
April 4, 2002	June 30, 2008
September 1, 2002	September 30, 2008
December 1, 2002	December 31, 2008
June 1, 2003	June 30, 2007
January 1, 2005	March 31, 2008

The Fund claimed that each investment represented a distinct "Capital Account" subject to its own withdrawal period calculation. And given the ways the dates fell, only one of FTC's investments (the June 1, 2003) investment could be withdrawn during 2007.

38. The Fund's position was wrong. To begin with, there was zero basis for the Fund to claim the 2005 Letter Agreement was not effective. The Fund's argument that each investment was subject to a different lock-up was belied by the Fund's governing documents. The Limited Partnership Agreement clearly stated that each limited partner had a single "Capital Account," which would include both initial and subsequent investments, and that an investor could withdrawal that "Capital Account" on the two-year anniversary of the initial purchase.

Not surprisingly, the Fund always reported in every communication FTC as owning a single Capital Account. The one exception was investments made after January 1, 2005, which were subject to a three-year lock-up. The Supplemental Prospectus made clear, "For purposes of determining the withdrawal date for investments made on or after January 1, 2005, a separate capital account will be established for each such Interest." No such language was used for investments made before January 1, 2005.

39. As a result of the Fund's apparent unwillingness to abide by its agreements, on February 14, 2007, Epstein wrote the Fund a letter demanding a complete withdrawal of FTC's entire investment. Epstein's letter noted that at a minimum, the Fund was required to honor the $80 million demand made on November 13, 2006.

40. On March 26, 2007, the Fund reported the results of the internal investigation that was launched in October 2006. It turned out that the internal controls at the Fund were in disarray and that the problems were much more significant than a $3 million temporary use of investor money to buy an airplane. The most glaring problem was that the Fund had been borrowing money from an offshore sister fund without any documentation. The advances totaled over $100 million. The Fund also explained that Zwirn's management company had overcharged the Fund for operating expenses by $12 million. The Fund also reported that there were additional examples of Fund money being used to pay personal expenses of management.

41. On March 27, 2007, the Fund finally responded in writing to FTC's withdrawal requests. After taking months to analyze the issue, the Fund's outside counsel explained the Fund's position. First, the Fund conceded that the 2005 Letter Agreement was enforceable and permitted complete withdrawals of FTC's investment on the last day of the quarter ending after the rolling two-year anniversary of the January 1, 2005 investment—*i.e.*, March 31, 2007.

However, the Fund noted that Jeepers' February 14, 2007 request for a complete withdrawal was not timely because it was not given with 120-days notice. According to the Fund,

> [T]he 2005 Letter Agreement permitted Financial Trust to withdrawal under Section 9.1 as of March 31, 2007 (and as of the second anniversary of that date thereafter) on 120 days prior written notice. Because the February 14, 2007 Letter seeking complete withdrawal was not provided 120 days prior to March 31, 2007, it did not constitute valid notice.

Of course, the only reason that FTC had not complied with the 120-days notice requirement for a complete withdrawal was because in November 2006, Zwirn had begged FTC to refrain from making a complete withdrawal demand and promised to honor a lesser request. For the Fund to wait months to assert the notice requirement would be grossly inequitable.

42. With regard to the November 13, 2006 request to withdrawal $80 million, the Fund's counsel concocted another "gotcha." The Fund acknowledge that the $80 million request was made within the 120-day notice period. However, the Fund deemed this notice invalid because it was for a "partial" withdrawal. According to the Fund,

> The 2005 Letter Agreement did not provide Mr. Epstein with any such right as of March 31, 2007, because partial withdrawals are governed by Section 9.2 of the Limited Partnership Agreement, which was not covered by the 2005 Letter Agreement.

To explain, Section 9.1 of the Limited Partnership Agreement addresses "complete withdrawals" and Section 9.2 addresses "partial withdrawals." (There is no substantive difference between the provisions.) The 2005 Letter Agreement begins with the introductory clause, "In accordance with Section 9.1 of the Amended and Restated Limited Partnership Agreement . . . ." The Fund claimed that as a result of this reference to Section 9.1, the 2005 Letter Agreement only authorized "complete withdrawals."

43. The Fund's waiting to assert this newly minted position was outrageous. In November 2006, Zwirn had promised to honor a partial withdrawal request in an effort to

prevent FTC from making a *complete* withdrawal request. The Fund's effort to reject the $80 million request on the grounds that it was *not* a *complete* withdrawal request was the ultimate in gamesmanship. Worse, the Fund waited to express its view of the 2005 Letter Agreement until after the deadline expired for FTC to change the November 13, 2006 request from a partial to complete request.

44. The Fund's reading of the 2005 Letter Agreement also was baseless. To begin with, the introductory phrase "In accordance with Section 9.1" simply acknowledged that the agreement was authorized pursuant to the penultimate sentence of Section 9.1, which gave the General Partner the discretion to alter withdrawal rights. *See* Limited Partnership Agreement § 9.1 ("Withdrawals may also be made at such other times with the consent of, and upon such terms of payment as may be approved by, the General Partner in its sole discretion."). Moreover, the Limited Partnership Agreement is careful to distinguish between a "complete" and "partial" withdrawal when intending to distinguish between the two. Had the Fund intended to limit FTC's rights, it knew how to do so. The 2005 Letter Agreements however give FTC the right to "withdraw" without any limiting language. Indeed, it makes no sense that the Fund would have agreed to give FTC special rights to withdraw only its entire account but not a lesser amount. Obviously, a partial withdrawal is much preferable from the Fund's perspective to a complete withdrawal.

45. Between the end of March and the end of 2007, the Fund continued to report good performance. However, due to the accounting issues, the Fund was unable to produce audited financial statements for 2006. According to the Fund, at the end of 2007, it received massive requests for withdrawals by investors who were frustrated by the inability of the Fund to produce audited financials. As a result, in February 2008, the Fund announced that it would suspend all

withdrawal payments. In March 2008, the Fund announced that it would wind down the Fund. FTC now was stuck in the Fund along with all other investors.

46. During 2008 and 2009, the Fund's investments suffered greatly and the value of the Fund dropped precipitously from the 2006 and 2007 valuations.

47. In July 2009, management of the Fund was taken over by Fortress Investment Group, and Zwirn was removed from direct involvement in the Fund.

48. In the interim, FTC has learned that Zwirn and the Fund were not honest with Epstein in the October 2006 about the scope of the Fund's problems and Zwirn's involvement in those problems. For example, according to the former CFO, Zwirn was fully aware of the improper transactions allegedly uncovered by the internal investigation and revealed to investors in late March 2007. Had the Fund been honest with Epstein in October and November 2006 about the scope of the problems and Zwirn's role, Epstein would have demanded a complete withdrawal of FTC's investments, which according to the Fund's March 27, 2007 letter, the Fund would have been obligated to honor.

49. [Moreover, in the interim, the Fund has breached its fiduciary duties to FTC by engaging in transactions that have the effect of frustrating FTC's ability to obtain its Capital Account. Specifically, the Fund has entered into a formal note with an offshore sister fund that prohibits any payments by the Fund until the note is repaid. This note was entered into *after* FTC perfected its claim to its Capital Account and *after* the money purportedly covered by the note was advanced. As a result, the note should be declared void.]

50. Had the Fund allowed FTC to make a full withdrawal on March 31, 2007, FTC would have received $139 million.

51. Had the Fund honored FTC's $80 million demand for withdrawal on March 31, 2007, FTC would have received $80 million and retained an interest in the Fund that is worth today an estimated $9.8 million. [1]

52. Even if the Fund's explanation of FTC's contractual rights were accepted, then the Fund should have paid FTC $45 million in 2007, leaving FTC with a remaining interest in the Fund valued today at an estimated $14 million. According to the Fund's March 27, 2007 letter, FTC had the undisputed right to withdraw two of its investments in 2007: (1) FTC's January 1, 2005 investment could have been withdrawn on March 31, 2007 by giving notice before December 2, 2006; and (2) FTC's June 1, 2003 investment could have been withdrawn on June 30, 2007 by giving notice before March 3, 2007. The value of those two investments was $45 million on their respective withdrawal dates. On November 13, 2006, FTC gave notice of its intent to withdraw $80 million. Given that the Limited Partnership Agreement provides no rule on the form notice must take (even if such a requirement existed, compliance with such a formality would be excused under Delaware law), this request for $80 million was sufficient to put the Fund on notice of FTC's desire to withdraw at least the $45 million that the Fund conceded FTC had the right to withdraw. The Fund has refused to pay even this money out to FTC.

[1] [I got this number by assuming that $80 million was removed from a $139 million Capital Account as of March 31, 2007. That would represent a 57.5% cut in FTC's ownership interest. Since the $139 million Capital Account represented 8.6567% of the Fund, I presume the $80 million reduction would leave FTC with a 3.97% ownership interest of a $249 million Fund.]

Causes of Action

53. As a result of the above, Respondents are liable to Claimants for fraud, breach of fiduciary duty, constructive fraud, negligent misrepresentation, promissory estoppel, and breach of contract.

Conclusion

54. As a result of Respondents' fraudulent and otherwise unlawful conduct, Claimants have been damaged in an amount not less than $139 million plus interest and other damages, and are also entitled to rescissionary damages, plus interest, together with the attorneys' fees and costs of this proceeding.

Dated: New York, New York
February __, 2010

Respectfully submitted,

SUSMAN GODFREY L.L.P.

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PROOF OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served by email and first class mail, this _____ day of _____, on:

_____
Stephen D. Susman