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February 24, 2011

BY E-MAIL AND FEDEX

The Honorable Anthony J. Carpinello
JAMS
620 Eighth Avenue, 34th Floor
New York, New York 10018

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

Dear Judge Carpinello:

Third-Party Respondents Daniel B. Zwirn, D.B. Zwirn & Co. L.P. (“DBZ”), DBZ GP, and Zwirn Holdings, LLC submit this letter in response to Third-Party Claimants Financial Trust Company, Inc. and Jeepers, Inc.’s (collectively, “Jeepers”) request for permission to depose Perry Gruss, DBZ’s former Chief Financial Officer.

We submit that Jeepers has not met its burden to show good cause why Mr. Gruss’s deposition should be taken, and Your Honor should deny permission to take his deposition.¹

In its February 14, 2011 letter, Jeepers tries to portray Mr. Gruss as indispensable to its case. A fair reading of Jeepers’ claims reveals that the proffered testimony is—at best—tangential and would lead to a diversion from the central issues in the case.

The primary issue in this case is when Jeepers was entitled to redeem its investment in the D.B. Zwirn Special Opportunities Fund (the “Fund”). Jeepers alleges that during a conversation with Mr. Zwirn on November 13, 2006, Jeffrey Epstein, Jeepers’ owner, asked to redeem Jeepers’ entire investment (worth approximately \$135 million at that time). Jeepers alleges that Mr. Zwirn promised that if Mr. Epstein sought to redeem only \$80 million of Jeepers’ investment, that request would be honored quickly.² We contend that Mr. Epstein’s allegations are a recent fabrication and that Mr. Zwirn made no such promise to Mr. Epstein. Jeepers further claims that it was permitted to redeem its entire investment on November 13, 2006, which the Third-Party Respondents also dispute.

¹ We note that the standards for discovery in this arbitration are very different from those in federal or state court litigation. In their partnership agreement, the parties specifically agreed that “prearbitration discovery shall be limited to the greatest extent provided by the rules of JAMS,” which provide that parties are limited to one deposition of an opposing party. The test for additional depositions is not mere relevance; rather, as Your Honor stated during our February 8, 2011 conference call, “good cause” must be shown. Jeepers has not met that burden.

² See Jeepers’ Third-Party Complaint at Paragraph 37.

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Jeepers seeks damages based on its interpretation of the governing documents and the November 13, 2006 conversation for the following:

- breach of contract and promissory estoppel for the Fund's failure to honor Mr. Zwirn's alleged promise and subsequent written redemption requests;
- fraudulent inducement because Mr. Zwirn did not intend to honor his alleged promise when it was made on November 13, 2006; and
- breach of fiduciary duty and negligent misrepresentation arising out of those same allegations.

Jeepers has two additional tangential theories of recovery. The first is Jeepers' contention that Mr. Zwirn participated in certain financial impropriety at DBZ in 2004 and 2005, and failed to disclose that to Jeepers. On the February 8, 2011 conference call, Mr. Susman noted, in support of this fraud theory against Mr. Zwirn, that the Securities and Exchange Commission ("SEC") has conducted a four-year investigation into accounting improprieties at DBZ, and that the SEC had deposed Mr. Zwirn on several occasions about his involvement in and knowledge of those improprieties. During the call, I specifically asked Mr. Susman if Jeepers' fraud theory would still stand if the SEC issued a termination letter to Mr. Zwirn. Mr. Susman acknowledged that the basis for Jeepers' fraud claim would be severely weakened if the SEC wrote such a letter. On February 23, 2011, the SEC in fact issued a written letter of termination. The SEC Staff stated that it "did not intend to recommend any enforcement action by the Commission" against Mr. Zwirn. There is no basis for Jeepers' claim, in any event. Gibson Dunn & Crutcher LLP ("Gibson Dunn") conducted a five-month independent investigation of DBZ and concluded that Mr. Zwirn was not involved in or aware of the accounting improprieties. In light of the Gibson Dunn findings and the SEC letter of termination, it is fair to say that Jeepers has articulated no reasonable basis or need to explore its discredited theory through a deposition of Mr. Gruss.

By way of background, Mr. Gruss was the CFO of the Zwirn entities. He effectively was terminated by DBZ on October 4, 2006, shortly after an internal investigation by Schulte Roth & Zabel LLP ("Schulte Roth") concluded that Mr. Gruss was responsible for two instances of financial misconduct. Soon after Mr. Gruss departed, additional instances of Mr. Gruss' misconduct were brought to the attention of DBZ senior management, and DBZ retained Gibson Dunn to perform an independent investigation into any and all instances of financial improprieties at DBZ. Mr. Zwirn delegated authority over the investigation to others at DBZ, and authorized an unlimited scope and unlimited budget for the investigation. In late October 2006, DBZ disclosed what it had learned up to that point to investors—including Mr. Epstein—and self-reported the misconduct to the SEC as Gibson Dunn began its investigation.

The Gibson Dunn-led investigation lasted five months and cost \$20 million. The investigation was headed by Barry Goldsmith, a partner at Gibson Dunn who had formerly served as Executive Vice President for Enforcement of NASD and as Chief Litigation Counsel at the SEC. Gibson Dunn, with the assistance of Deloitte & Touche, reviewed over a million documents and interviewed 23 witnesses, including Mr. Gruss on five separate occasions. Gibson Dunn made two presentations to the SEC of its findings. Third-party Respondents have produced to Jeepers the PowerPoint slides and underlying documents that Gibson Dunn used in those presentations.³ Gibson Dunn concluded that Mr. Gruss directed improper transfers of investor money both to DBZ and between the funds DBZ managed. Gibson Dunn further concluded that there was no evidence that Mr. Zwirn was aware of the improper conduct.⁴

Jeepers' counsel's assertion that the third-party respondents are trying to bury Mr. Zwirn's misconduct in discovery materials is belied by the discovery materials themselves. Third-Party Respondents have produced the Gibson Dunn presentations, which provide Jeepers with a roadmap to any misconduct at DBZ. Moreover, if Jeepers is permitted to pursue its claim that Counter-Respondent and Third-Party Respondents are liable because Mr. Zwirn participated in and/or knew of Mr. Gruss's misconduct, it is more accurate to say that it is Jeepers who will inundate this tribunal with the same evidence that the Gibson Dunn investigation considered when it found that Mr. Zwirn neither participated in nor was aware of Mr. Gruss' misconduct. In order to rebut Jeepers' assertions, we would have to offer the very evidence that Gibson Dunn considered in rendering its report. Clearly, it will not be possible to present all of the evidence relevant to this claim within the four days scheduled for the hearing. As we explained in our conference call, the result will be a "trial within a trial" on issues wholly irrelevant to the issues at the heart of Jeepers' claims.

Jeepers also alleges that Mr. Zwirn should have known and disclosed the alleged fact that Mr. Gruss "confessed" his misconduct to Mr. Zwirn in the spring of 2006. It is noteworthy that Mr. Gruss made no such allegation in the Gruss Action. Moreover, as the Gibson Dunn investigation confirmed, in the spring of 2006 neither Mr. Zwirn nor senior management was aware of the most serious of Mr. Gruss's offenses, such as the unauthorized transfer of moneys from the Offshore Fund to pay for investments by the Onshore Fund, and the failure properly to account for those transfers. That misconduct did not come to light until after Mr. Gruss's termination in October 2006.

³ A copy of each of the PowerPoint presentations is enclosed.

⁴ Despite these findings, Mr. Gruss has sued Mr. Zwirn and DBZ in a matter pending in the Southern District of New York captioned Gruss v. Zwirn, et al., 09 Civ. 6441 (PGG) (the "Gruss Action"). In the Gruss Action, Mr. Gruss claims that Mr. Zwirn and DBZ somehow defamed him by reporting Gibson Dunn's conclusions to DBZ's investors and that his partnership interest in DBZ was forfeited unjustly. DBZ has counterclaimed against Mr. Gruss for breach of contract and breach of fiduciary duty, claiming that Gruss' misconduct caused damages in excess of \$45 million. Contrary to Jeepers' suggestion, nowhere in his complaint does Mr. Gruss point to any conversation or document that even suggests Mr. Zwirn's participation in Mr. Gruss's misconduct.

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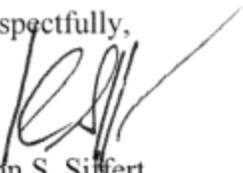
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We submit that the request for a subpoena for Mr. Gruss's deposition testimony should be denied.

Respectfully,

A handwritten signature in black ink, appearing to read "JS", with a long, sweeping horizontal line extending to the right.

John S. Siffert

Enclosures

cc: Stephen D. Susman, Esq.
Allan Arffa, Esq.
William O'Brien, Esq.
William Schwartz, Esq.