

AFFIDAVIT OF GLENN DUBIN

STATE OF FLORIDA)
) **ss.:**
COUNTY OF PALM BEACH)

Glenn Dubin, being duly sworn, deposes and says:

1. I am over twenty-one years of age and am competent to testify to the matters stated in this affidavit because I have personal knowledge of the facts and statements herein. Each of the facts and statements herein is true and correct.

2. From 2002 and at least through 2007, an entity that I controlled, formerly known as Highbridge Capital Management, LLC and now known as Dubin & Swieca Asset Management, LLC (“DSAM”), owned an interest in the general partner and in the investment manager of D.B. Zwirn Special Opportunities Fund, L.P. (the “Zwirn Fund”). The Zwirn Fund was named after Daniel Zwirn (“Zwirn”). While Zwirn was responsible for the day-to-day management of the Zwirn Fund, after Zwirn spun off his business from DSAM, DSAM and I helped raise capital for the Zwirn Fund, we, as Highbridge Capital Management, LLC, allocated assets of my firm, Highbridge Capital Corporation, to a managed account managed by Zwirn’s company (which was then also the investment manager of the Zwirn Fund), and Zwirn would consult with me about various issues relating to the Zwirn Fund.

3. One of the first investors that I directed to invest in the Zwirn Fund was Jeffrey Epstein (“Epstein”). Epstein was both a personal friend of mine and a major client of my firm, Highbridge Capital Corporation. Between 2002 and 2005, Epstein (through an

entity called Financial Trust Company, Inc.) made a total capital investment of \$80 Million in the Zwirn Fund.

4. In early September 2006, Zwirn informed me that he was firing the Zwirn Fund's then Chief Financial Officer, Perry Gruss. Zwirn told me that he discovered various irregularities at the Zwirn Fund, including that investors' money was used to pay for an airplane that would be owned by Zwirn's company.

5. During October 2006, Zwirn told me that he made various attempts to contact each investor and explain the situation to them. One of those investors was Epstein.

6. After receiving one of Zwirn's calls, Epstein called me very upset. Epstein said that Zwirn had initially described the irregularities as "nonmaterial", but on a subsequent call, Zwirn's description of the issues made it clear to Epstein that the problems were indeed material. When Epstein confronted Zwirn about his earlier description, Zwirn explained that Zwirn's counsel had told Zwirn to use that "non-material" language. Epstein felt that Zwirn had lied to him. Given the situation, Epstein told me that he wanted to redeem Financial Trust Company, Inc.'s entire investment in the Zwirn Fund immediately and that Epstein had made that demand to Zwirn.

7. In response, I talked to Zwirn about Epstein's demand. Zwirn was concerned that such a withdrawal could cause a "run-on-the-bank." Zwirn asked me to help convince Epstein to reduce his demand to one-half of Financial Trust Company, Inc.'s total capital account in the Zwirn Fund at the time, which I agreed to do.

8. Subsequently, I participated in a three-way call among Zwirn, Epstein, and

myself. During this call, Epstein again demanded the withdrawal of all of Financial Trust Company, Inc.'s investment from the Zwirn Fund. Zwirn responded that such a withdrawal could cause a "run-on-the-bank." Zwirn pleaded with Epstein to reduce his withdrawal demand to request the return of Financial Trust Company, Inc.'s \$80 Million of initial invested capital only. Zwirn promised that if Epstein reduced his withdrawal to only the initial invested capital, Zwirn would honor it quickly. Given my prior discussion with Zwirn, I urged Epstein to accept Zwirn's proposal as a way of resolving the dispute. During these discussions with Epstein, Zwirn did not dispute that Epstein had the right to the total withdrawal of all of Financial Trust Company, Inc.'s investment in the Zwirn Fund. I assumed that Epstein's withdrawal would be accomplished quickly. I, myself, have never encountered a provision that only allowed total withdrawals, as opposed to partial withdrawals, from an investment fund. It is my understanding that after this conversation, Epstein made a written demand to withdraw \$80 Million of Financial Trust Company, Inc.'s investment in the Zwirn Fund. It is also my understanding that the Zwirn Fund—at Zwirn's direction—refused to honor this request, claiming that this demand was for a partial withdrawal of Financial Trust Company, Inc.'s investment in the Zwirn Fund and would need to be dealt with differently than a total withdrawal, and that the Zwirn Fund would not now honor the partial withdrawal, even though Epstein's demand for the partial withdrawal was made at the specific request of Zwirn.

Glenn Dubin

Sworn to before me this ____ day of January, 2010.

(Seal) _____
Notary Public