

**JUDICIAL ARBITRATION AND MEDIATION SERVICE
NEW YORK, NEW YORK**

FORTRESS VRF I LLC and
FORTRESS VALUE RECOVERY FUND I LLC,
Claimants,

v.

JEEPERS, INC.

Respondents,

and

FINANCIAL TRUST COMPANY, INC., and
JEEPERS, INC.,

Ref. No.: 1425006537

Counter-Claimants and
Third-Party Claimants,

v.

FORTRESS VALUE RECOVERY FUND I LLC,

Counter-Respondents,

and

D.B. ZWIRN PARTNERS, LLC,
D.B. ZWIRN & CO, L.P.,
DBZ GP, LLC, ZWIRN HOLDINGS, LLC,
and DANIEL ZWIRN,

Third-Party Respondents.

**THIRD-PARTY RESPONDENTS' RESPONSE TO FINANCIAL TRUST COMPANY,
INC.'S AND JEEPERS, INC.'S STATEMENT OF COUNTERCLAIM AND THIRD-
PARTY CLAIM**

1. D.B. Zwirn Partners, LLC (n/k/a Irvington Associates, LLC) ("the Fund GP"),
D.B. Zwirn & Co, L.P. (n/k/a Irvington Management, L.P.) ("the Investment Manager"), DBZ
GP, LLC (n/k/a Irvington GP, LLC) ("the Investment Manager GP"), Zwirn Holdings, LLC

(n/k/a Irvington Holdings, LLC) (“the Holding Company”) and Daniel Zwirn (“Zwirn”) (together, “Third-Party Respondents”) generally deny the allegations in Financial Trust Company, Inc.’s (“Financial Trust”) and Jeepers Inc.’s (“Jeepers”) (together, “Third-Party Claimants”) Statement of Counterclaim and Third-Party Claim.

2. Among other things, Zwirn never promised Jeffrey Epstein (“Epstein”) that the Fund would honor a withdrawal request for \$80 million, or any withdrawal request that was not made in accordance with the contractual requirements applicable thereto. The allegation that Zwirn so promised is a recent fabrication: Epstein and Third-Party Claimants did not reference such a promise in any subsequent communications concerning their withdrawal requests, and never documented the promise in any of their communications with any Third-Party Respondent. Also, Zwirn’s disclosures to investors were neither misrepresentations, misleading nor negligent.

FIRST AFFIRMATIVE DEFENSE

3. Epstein communicated to the Fund GP that the November 13, 2006 request for partial withdrawal (the “Partial Withdrawal Request”) from the D.B. Zwirn Special Opportunities Fund L.P. n/k/a/ Fortress Value Recovery Fund I LLC (“the Fund”) was withdrawn so long as the Fund GP consented to and the Investment Manager assisted with the transfer of Financial Trust’s interests in the Fund, and did so prior to the end of 2006. In reliance on that representation, the Fund GP approved the transfer and the Investment Manager undertook substantial efforts to facilitate the transfer, and Financial Trust’s interests were transferred to Jeepers before the end of 2006.

4. By reason of the foregoing, Third-Party Claimants are estopped, in whole or in part, from denying that the Partial Withdrawal Request had been withdrawn.

SECOND AFFIRMATIVE DEFENSE

5. In mid-November, in late January, and on March 27, 2007, Third-Party Claimants were informed that the Partial Withdrawal Request would not be honored; on March 27, 2007, Third-Party Claimants were informed that the withdrawal request made on or about February 14, 2007 would not be honored; and on May 15, 2007, when any withdrawal request effective as of the end of the first quarter of 2007 would have been payable, no payment from the Fund to Third-Party Claimants was made.

6. Third-Party Claimants were informed of all accounting or financial irregularities of which Third-Party Claimants now complain by no later than March 26, 2007.

7. By reason of the foregoing, the claims of Third-Party Claimants against Third-Party Respondents are barred in whole or in part by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

8. Third-Party Claimants' investments in the Fund were made at five different times, and each investment was subject to successive two-year lock-up periods. In November 2006, those investments would not have been available for withdrawal until substantially into the future, including as late as year-end 2008. Had Third-Party Claimants given effective notice for a complete withdrawal request in November 2006, most of the withdrawals would not have been payable until substantially into the future, if at all. Further, in no circumstances could investments be withdrawn immediately from the Fund.

9. By reason of the foregoing, an alleged oral contract in November 2006 to permit Third-Party Claimants to make a partial withdrawal of \$80 million in exchange for a promise not to make a complete withdrawal request would fail for lack of consideration.

FOURTH AFFIRMATIVE DEFENSE

10. Third-Party Claimants' Statement of Counterclaim and Third-Party Claim fails to state a claim for breach of contract as to the Investment Manager, the Investment Manager GP, Holding Company, and Zwirn because they were not parties to the contract.

FIFTH AFFIRMATIVE DEFENSE

11. Third-Party Claimants' Statement of Counterclaim and Third-Party Claim fails to state a claim for promissory estoppel as to the Investment Manager, Investment Manager GP, and Holding Company because none of these parties had any obligation to make payment on a withdrawal request made by an investor in the Fund.

SIXTH AFFIRMATIVE DEFENSE

12. Third-Party Claimants' Statement of Counterclaim and Third-Party Claim fails to state a claim for fraud as to the Investment Manager, Investment Manager GP, and Holding Company because the Statement of Counterclaim and Third-Party Claim does not allege that these parties made any misrepresentations to the Third-Party Claimants.

SEVENTH AFFIRMATIVE DEFENSE

13. Third-Party Claimants' Statement of Counterclaim and Third-Party Claim fails to state a claim for breach of fiduciary duty as to the Investment Manager, Investment Manager GP, or Holding Company because the Statement of Counterclaim and Third-Party Claim does not allege that these parties owed or breached a fiduciary duty to the Third-Party Claimants.

EIGHTH AFFIRMATIVE DEFENSE

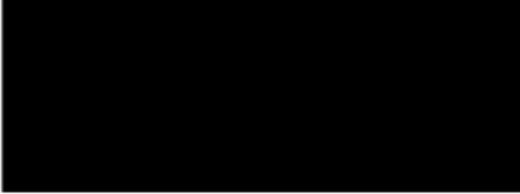
14. Third-Party Claimants' Statement of Counterclaim and Third-Party Claim fails to state a claim for negligent misrepresentation as to the Investment Manager, Investment Manager GP, and Holding Company because the Statement of Counterclaim and Third-Party Claim does not allege that these parties made any misrepresentations to the Third-Party Claimants.

Dated: New York, New York
June 25, 2010

COOLEY LLP

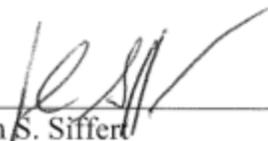
By: 
Alan Levine
William O'Brien
Arastu K. Chaudhury

1114 Avenue of the Americas
New York, New York 10036



Attorneys for Third-Party Respondents D.B. Zwirn Partners, LLC (n/k/a Irvington Associates, LLC), D.B. Zwirn & Co., L.P. (n/k/a Irvington Management, L.P.), DBZ GP, LLC (n/k/a Irvington GP, LLC), and Zwirn Holdings, LLC (n/k/a Irvington Holdings, LLC).

LANKLER SIFFERT & WOHL LLP

By: 
John S. Siffert
Daniel E. Reynolds
Andrew S. Lee

500 Fifth Avenue
New York, New York 10110



Attorneys for Third-Party Respondent Daniel Zwirn