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May 25, 2011

9:35 a.m.

Deposition of ELISE HUBSHER, held at
the offices of Susman Godfrey, 560 Lexington
Avenue, New York, New York, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

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A P P E A R A N C E S:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Claimants and Witness
1285 Avenue of the Americas
New York, New York 10019-6064
BY: ALLAN J. ARFFA, ESQ.
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SUSMAN GODFREY L.L.P.
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Suite 5100
1000 Louisiana Street
Houston, Texas 77002-5096
BY: HARRY P. SUSMAN, ESQ.

COOLEY GODWARD KRONISH LLP
Attorneys for D.B. Zwirn Partners, LLC,
D.B. Zwirn Co., L.P., and DBZ GP, LLC
1114 Avenue of the Americas
New York, New York 10036-7798
BY: WILLIAM J. SCHWARTZ, ESQ.

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A P P E A R A N C E S (continued):

LANKLER SIFFERT & WOHL LLP
Attorneys for Daniel Zwirn
500 Fifth Avenue,
New York, New York 10110-3398
BY: JOHN S. SIFFERT, ESQ.
DANIEL E. REYNOLDS, ESQ.
ANDREW S. LEE, ESQ.

ALSO PRESENT:

MEGAN JOHNSON, ESQ. (Fortress)
DAVID SANDERS, Videographer

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THE VIDEOGRAPHER: My name is David Sanders of Veritext. The date today is May 25th, 2011, and the time is 9:35 a.m.

This deposition is being held in the office of Susman Godfrey, located at 560 Lexington Avenue, New York, New York. The caption of this case is Fortress VRF I LLC, et al., versus JEEPERS, Inc., et al., Reference Number 1425006537, in the Judiciary Arbitration and Mediation Service. The name of the witness is Elise Hubsher.

09:34:31

09:35:01

At this time the attorneys will identify themselves and the parties they represent, after which our court reporter, Laurie Collins of Veritext, will swear in the witness and we can proceed.

09:35:22

MR. SUSMAN: Harry Susman for JEEPERS and FTC.

MR. ARFFA: I'm Allan Arffa from Paul, Weiss, Rifkind, Wharton & Garrison LLP. We represent the claimants in this matter. And I'm here also today on behalf of the witness.

09:35:38

MR. SCHWARTZ: William Schwartz from Cooley LLP. I represent the Zwirn entities.

09:35:52

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MR. SIFFERT: John Siffert, Lankler
Siffert & Wohl, for Mr. Zwirn personally. And
together with me is Mr. Reynolds and Mr. Lee.

MR. ARFFA: And also with me is Hannah 09:36:04
Sholl from Paul, Weiss.

E L I S E H U B S H E R ,
called as a witness, having been duly sworn
by the notary public, was examined and
testified as follows:

EXAMINATION BY

MR. SUSMAN:

Q. Can you state your name for the record,
please?

A. Elise Hubsher. 09:36:20

Q. Ms. Hubsher, what's your educational
background?

A. Educational background, did you say?

Q. Yes.

A. I graduated college from Vassar College 09:36:29
with a major in mathematics, and honors, and went
on to Wharton School at the University of
Pennsylvania for an MBA.

Q. When did you get your MBA?

A. When? 09:36:44

1 Hubsher - Confidential

2 Q. Yeah.

3 A. 1980.

4 Q. 1980.

5 When did you go to work for Dan Zwirn 09:36:47
6 or his management company?

7 A. In 2006, the end of August 2006.

8 Q. Can you in summary fashion give me your
9 education -- work history, rather, from when you
10 got your MBA in 1980 to when you started working 09:37:10
11 for Mr. Zwirn?

12 A. Sure. I went from Wharton to work for
13 Data Resources, an econometric forecasting firm,
14 worked as a consultant there for four years. I
15 moved from there to Goldman Sachs, where I was on 09:37:24
16 the sales and trading desk, primary in the futures
17 group.

18 From there -- I worked there for four
19 years and then moved to JPMorgan, where I worked
20 for 15 years, in several different functions, 09:37:37
21 primarily in sales and trading. I worked on the
22 futures team, and then I coheaded the equity
23 derivatives marketing team and was participating
24 in an interdepartmental pension consulting group.

25 I moved from there to Northwater 09:37:58

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2 Capital, which is a fund of funds that's
3 headquartered in Toronto. I headed up the New
4 York office, where I was responsible for marketing
5 to U.S. investors. And I was a member of the 09:38:11
6 investment committee. We invested directly in
7 hedge funds.

8 Q. And how long were you at Northwater
9 Capital before you --

10 A. For three years. 09:38:22

11 Q. For three years.

12 A. Yes.

13 Q. So roughly from about 2003 to 2006?

14 A. Yes.

15 Q. Prior to working at Northwater Capital 09:38:31
16 you mentioned you had been in various sales jobs
17 at JPMorgan and Goldman Sachs. Did that involve
18 selling of hedge fund investments to investors?

19 A. It did not. It was in the securities
20 division. It involved selling futures, swaps, 09:38:45
21 derivatives of all sorts, and securities, fixed
22 income and equity securities, to hedge funds, to
23 pension funds and to other large investors.

24 Q. In terms of either the marketing or
25 managing of hedge funds, was Northwater Capital 09:39:02

1 Hubsher - Confidential

2 your first introduction to that?

3 A. Yes.

4 Q. Then you went to work at Dan Zwirn's

5 management company you said in August of 2006? 09:39:16

6 A. Correct.

7 Q. And what was your job there?

8 A. I was the head of the marketing and

9 investor relations group.

10 Q. And how long did you remain in that 09:39:27

11 position?

12 A. Until Fortress took over the management

13 of the Zwirn funds on June 1st of 2009.

14 Q. And what is your current position with

15 Fortress? 09:39:41

16 A. I am in the capital formation group, a

17 managing director, responsible for marketing to

18 credit investors in Fortress's hedge funds and

19 private equity vehicles.

20 Q. What are credit investors? 09:39:55

21 A. They're investors -- Fortress has

22 several businesses, and I'm focused on the credit

23 business.

24 Q. Does that mean you're marketing to

25 investors who want to invest in hedge funds who in 09:40:04

1 Hubsher - Confidential

2 turn invest --

3 A. Yes.

4 Q. -- in credit of one sort or another?

5 A. It's Fortress's opportunistic credit 09:40:12

6 investing business, and I am marketing to
7 investors' interest in investing in those funds.

8 Q. Does any of your current
9 responsibilities have to do with marketing what's
10 left of the Zwirn fund? 09:40:26

11 A. Yes. I do investor relations for all
12 the investors in the Zwirn funds, former Zwirn
13 funds, now value recovery fund.

14 Q. I assume they're not marketing to new
15 investors -- 09:40:44

16 A. No.

17 Q. -- in these value recovery fund is what
18 it's called?

19 A. Yes. The fund --

20 MR. ARFFA: You have to wait until he 09:40:49
21 finishes so the record's clear. So wait until
22 he's finished with the question, and then go
23 ahead and answer.

24 THE WITNESS: Okay.

25 Q. I'm not sure what the question was, but 09:40:59

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2 I think I got the answer.

3 A. Okay.

4 Q. Is the description you just gave me of
5 your responsibilities at Fortress, has that 09:41:08
6 remained the same since you got to Fortress or has
7 it changed?

8 A. It's evolved. I initially was more
9 focused solely on the investor relations with the
10 former -- well, former Zwirn investors, current 09:41:21
11 value recovery fund investors. And now I'm more
12 focused on marketing to new clients and focused on
13 the Fortress funds.

14 (Ms. Johnson joins proceedings.)

15 Q. Why did you leave Northwater Capital to 09:41:37
16 go work for Dan Zwirn?

17 A. They refocused their marketing team to
18 the Toronto team, and I felt that it would be a
19 good time to seek opportunities elsewhere.

20 Q. And how did you find the Zwirn fund? 09:41:53

21 A. At Northwater, we were invested in the
22 Zwirn funds, and the former co-CIO of Northwater
23 was aware that Zwirn was looking for a head of
24 marketing and had recommended me to Dan and that I
25 speak to Dan. 09:42:12

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2 Q. You said Northwater Capital had
3 invested in the Zwirn fund.

4 A. Uh-huh.

5 Q. Which of the Zwirn funds had it 09:42:20
6 invested in?

7 A. The offshore fund.

8 Q. How long had it been invested in the
9 offshore fund at the time you went to work for
10 Zwirn? 09:42:32

11 A. I'm not certain.

12 Q. Were you involved in making that
13 investment decision?

14 A. I was not.

15 Q. How large was the investment? 09:42:38

16 A. I don't exactly recall. It was --

17 MR. ARFFA: I'm just going to caution
18 you here. I don't know if this is regarded as
19 confidential or not by I guess your former
20 employer. And to the extent you have 09:42:53

21 information about it from the current
22 employer, we would regard it as -- we've taken
23 the position the information about the current
24 investors is confidential.

25 THE WITNESS: Okay. 09:43:03

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2 Q. Roughly how large was it?

3 MR. SUSMAN: I'm going to show the
4 witness a list in a moment of all of the
5 investors and the amount, so it's going to be 09:43:13
6 moot. So I don't have to go through it.

7 MR. ARFFA: Someone else apparently
8 must have produced that to you.

9 MR. SUSMAN: Yeah.

10 MR. ARFFA: Well -- 09:43:23

11 MR. SUSMAN: All I want to know is a
12 ballpark, Allan. I don't need the amount
13 exactly.

14 Q. Was it about \$150 million?

15 A. I honestly don't recall. It might have 09:43:38
16 been.

17 Q. It was actually \$149,577,000 as of --

18 A. Okay.

19 Q. So there you go.

20 MR. SUSMAN: That's something we're 09:43:52
21 going to take up, by the way.

22 MR. ARFFA: I understand that's your
23 position.

24 MR. SUSMAN: Fair enough.

25 MR. ARFFA: For now we need to reserve 09:43:56

1 Hubsher - Confidential

2 our position.

3 Q. While you were at Northwater --

4 MR. ARFFA: I don't remember if under
5 the current confidentiality order there's some 09:44:06
6 requirement where we designate testimony. I
7 don't recall if it's at the hearing or maybe
8 after I get a transcript. But to the extent
9 I'm required to designate it, I would
10 designate, and I understand it's subject to 09:44:17
11 your objection.

12 MR. SIFFERT: I don't think there's a
13 requirement. It is confidential because we're
14 in arbitration.

15 MR. SUSMAN: We'll take it up later. 09:44:26

16 Q. So were you involved in any way in
17 supervising the investment that Northwater had
18 made into the Zwirn fund?

19 A. I was on the investment committee, so I
20 would monitor, along with the committee, all 09:44:40
21 investment in the fund of funds.

22 Q. But you weren't involved in actually
23 making the investment itself?

24 A. I was not.

25 Q. You're on the investment committee, so 09:44:53

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2 I gather that that meant you reviewed the terms of
3 various hedge fund investments that you made.

4 A. I did.

5 Q. Would one of those terms that you would 09:45:06
6 review in evaluating a hedge fund investment in
7 Northwater be withdrawal rights that you had in a
8 hedge fund?

9 A. Yes.

10 Q. While you were at Northwater, did 09:45:15
11 Northwater invest, to your knowledge, in any fund
12 that had rolling lockups?

13 A. Well, they invested in the Zwirn fund,
14 which had a rolling lockup.

15 Q. Other than the Zwirn fund? 09:45:28

16 A. I'm not certain.

17 Q. How many hedge funds did Northwater
18 invest in during your tenure?

19 A. Forty or so.

20 Q. And the only one of the 40 that you can 09:45:39
21 recall that had a rolling lockup was the Zwirn
22 fund?

23 A. Others had lockups, but I just don't
24 recall if they had rolling lockups.

25 Q. Now, when you say you recall that the 09:45:54

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2 Zwirn fund had a rolling lockup, is that something
3 you were aware of while you were at Northwater or
4 is that something you became aware of once you
5 went to work for the Zwirn fund itself? 09:46:07

6 A. I don't think I said I recalled that
7 they had the rolling lockup. But -- can you ask
8 me the question again? Sorry.

9 Q. Yeah. Did you -- do you recall when
10 you were at Northwater you were aware of what the 09:46:14
11 withdrawal rights were for the Zwirn fund itself?

12 A. I was aware that it was a long-dated
13 lockup because it was appropriate for the
14 investments that they were investing in, which
15 were illiquid. 09:46:26

16 Q. Other than what you've just told me, do
17 you have any other recollection of the lockups for
18 the Zwirn fund or how they worked, while you were
19 at Northwater?

20 A. I don't have any recollection. I 09:46:41
21 focused more on the portfolio and not on the
22 lockups.

23 Q. You're aware that at some point within
24 Zwirn people became aware of certain accounting
25 irregularities involving Perry Gruss, the former 09:47:13

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2 CFO?

3 A. Yes.

4 Q. When did you first hear about some

5 issue with Perry Gruss? 09:47:22

6 A. Just before the first set of calls were
7 made, or somewhere around that time frame.

8 (Discussion off the record.)

9 Q. Are you saying that the first time you
10 heard about some issue with Perry Gruss was before 09:48:02
11 the investor calls were made?

12 A. Yes.

13 Q. And do you recall roughly when the
14 investor calls were made?

15 A. They were in October I think towards 09:48:12
16 the end of October -- middle to the end of
17 October.

18 Q. And you participated --

19 A. Of 2006.

20 Q. Right. 09:48:21

21 And you participated in some of those
22 calls?

23 A. I did. I listened.

24 Q. We'll get to that in a minute.

25 Prior to -- how did you hear about this 09:48:26

1 Hubsher - Confidential

2 Gruss issue?

3 A. I don't recall exactly who, but either
4 Dan, David, or Lawrence told me of them.

5 Q. In what context? Was there a meeting 09:48:43
6 where they brought you in and told you about it or
7 did they just come into your office and tell you?

8 A. I don't recall.

9 Q. At some point did they have a meeting
10 where they sat you down and explained to you what 09:48:59
11 the issues were?

12 A. Prior to making the first call, we went
13 through a script as to what had -- what we were
14 going to -- not we, what Dan was going to say.

15 Q. And who was at the meeting where he 09:49:15
16 went through the script?

17 A. I don't recall. It would have been
18 possibly Dan, David, Lawrence, or just Dan, or one
19 of them.

20 Q. Prior to -- the period right before the 09:49:33
21 investor calls started to be made --

22 A. Yes.

23 Q. -- had you gotten -- had you heard from
24 anybody at the fund, sort of internal gossip, that
25 there was some issue with the accounting 09:49:43

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2 department or an investigation underway, anything
3 like that?

4 A. Not that I recall.

5 Q. So it was shortly before the investor 09:49:49
6 calls were made you were brought in and told by
7 one of Mr. Zwirn or one of the higher-ups in the
8 management company that there was some problem?

9 A. Yes.

10 Q. And it involved Perry Gruss? 09:50:01

11 A. Yes.

12 Q. Can you tell me what else you recall
13 them telling you about it?

14 A. I just recall that Perry had separated
15 from the firm, and in that context the explanation 09:50:10
16 was made before we were making calls to explain
17 that he had left.

18 Q. Was it also explained that he had --
19 Mr. Gruss had done something wrong?

20 A. We reviewed the script, which was clear 09:50:26
21 about two items that were uncovered and that Perry
22 had separated from the firm.

23 Q. And what was your reaction to hearing
24 about this, that the CFO had been fired and there
25 were some issues? 09:50:51

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2 A. My reaction was that it was important
3 to communicate that.

4 Q. You were a newly hired investor
5 relations person, and two months into the job, I 09:51:05
6 suppose, they have an investor relations problem.

7 A. Yes.

8 Q. You did participate in the first set of
9 calls to investors?

10 A. I did. 09:51:16

11 Q. How about the second set?

12 A. I did.

13 Q. So in both ones --

14 A. Yes.

15 Q. -- you participated. 09:51:22

16 And you say there were two issues you
17 learned about -- was it before the first set of
18 calls?

19 A. The first set of calls.

20 Q. And those two issues were what? 09:51:34

21 A. Let me think about it. The one was
22 management fees were -- actually, the management
23 fees were accrued but not yet payable but were
24 taken and that there was an asset that was paid
25 from one of the funds that was not from the fund. 09:52:06

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2 Q. Did you know what that asset was?

3 A. I didn't.

4 Q. You subsequently found out?

5 A. I subsequently found out. 09:52:18

6 Q. And when you made the calls -- at the
7 time you made the first set of investor calls, did
8 you have any idea what the asset was that was
9 bought with investor funds that didn't belong to
10 the fund? 09:52:30

11 A. I don't believe I did.

12 Q. Did you ask Mr. Zwirn or anyone what is
13 this asset that was purchased with investor funds?

14 A. I don't recall. We were very just
15 focused on the process of making the calls. 09:52:43

16 Q. And did it strike you as odd that you
17 didn't know what the asset was that had been
18 bought with investor funds?

19 MR. ARFFA: Objection to the form.
20 You can answer. 09:53:00

21 THE WITNESS: What?

22 MR. ARFFA: You can answer.

23 THE WITNESS: At some point I learned
24 of it, and I -- I don't remember when and
25 didn't feel odd during the period. 09:53:08

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2 Q. After the first set of investor
3 calls -- or strike that.

4 At some point there was a second set of
5 investor calls. 09:53:22

6 A. Right.

7 Q. Why were the second set of investor
8 calls made?

9 A. I believe that the firm had engaged
10 Gibson & Dunn and Deloitte & Touche to do further 09:53:32
11 investigation, and they found additional items
12 that, as a result of those, they had decided that
13 they would make a second set of calls.

14 Q. What were the additional items that
15 they had found? 09:53:51

16 A. Let's see. There was -- I just forgot.
17 There was some accounting whereby an expense was
18 applied to a fund and then reversed in the
19 subsequent two months. And there was one other.
20 It will come back to me, but it's just -- 09:54:28

21 Q. Was it interfund transfers?

22 A. Interfund transfers, yes.

23 Q. Fair enough.

24 And you say that in the calls you
25 listened? 09:54:39

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2 A. Yes.

3 Q. You did not speak?

4 A. I didn't speak.

5 Q. Who did you listen to talking? 09:54:42

6 A. To Dan.

7 Q. So Dan made all of the calls, and you
8 just were listening --

9 A. Yes.

10 Q. -- on some of them? 09:54:49

11 A. Yes.

12 Q. Did you listen to all of them?

13 A. Most of them.

14 Q. And why were you listening to the calls
15 that Dan was making? 09:54:59

16 A. To make certain that he was consistent
17 in his message.

18 Q. Did anyone else listen to the calls?

19 A. I don't think so. Possibly David or
20 Lawrence might have listened if it weren't 09:55:11
21 available.

22 Q. Did you listen to any call -- well,
23 strike that.

24 Had you -- you know who Jeffrey Epstein
25 is now? 09:55:24

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2 A. Yes.

3 Q. And Financial Trust Corporation?

4 A. Yes.

5 Q. Did you listen to any of the calls that 09:55:29

6 Mr. Zwirn made to Mr. Epstein or any of his

7 representatives?

8 A. Yes.

9 Q. How many calls did you listen to?

10 A. Two, I think. 09:55:38

11 Q. And who were the calls with?

12 A. With Jeffrey Epstein.

13 Q. Mr. Epstein individually and Dan?

14 A. Yes.

15 Q. And what do you recall from those -- 09:55:56

16 from listening to those calls?

17 A. I recall Dan going through the script

18 that he was going through with every other

19 investor. I recall Mr. Epstein trying to get more

20 details and Dan resisting that. 09:56:12

21 Q. How was Mr. Epstein trying to get more

22 details?

23 A. He was asking what was really going on

24 and asking for more -- more information.

25 Q. Was Mr. Epstein agitated or could you 09:56:33

1 Hubsher - Confidential

2 tell anything from the tone of his voice about his
3 reaction to this news?

4 MR. ARFFA: Objection to form.

5 You can answer. 09:56:41

6 A. He was trying hard to get the
7 information so...

8 Q. Did he raise his voice at all to
9 Mr. Zwirn?

10 A. It sounded as if he were animated. 09:56:57

11 Q. Did he cut him off when he was trying
12 to explain things and ask him questions?

13 A. He may have. I'm not sure. I don't
14 recall.

15 Q. That wouldn't be out of character, I 09:57:07
16 will tell you.

17 Did he -- and you say -- so Mr. Epstein
18 was asking for more information from Mr. Zwirn,
19 and Mr. Zwirn was resisting providing information
20 to him? 09:57:21

21 A. Correct.

22 Q. And did that cause Mr. Epstein to get
23 even more animated?

24 A. I just don't recall. I recall very
25 vividly asking again and again for more 09:57:34

1 Hubsher - Confidential

2 information.

3 Q. In terms of the investor calls that you
4 listened to, what was the reaction of most of the
5 investors, generally?

09:57:45

6 A. They were very appreciative that Dan
7 personally called them and made the outreach and
8 alerted them, and they were interested in Dan
9 continuing to communicate with them.

10 Q. Were they animated in the way
11 Mr. Epstein was or were many of them much more --

09:58:08

12 A. Many were much more routine.

13 Q. So is one of the reasons why you
14 remember the calls with Mr. Epstein because he
15 was -- it stuck out in your mind because of his
16 reaction --

09:58:25

17 A. Yes.

18 Q. -- to the calls? Fair?

19 A. It stuck out because he was really
20 trying to get Dan to do something that Dan was not
21 going to do.

09:58:33

22 Q. During the calls that you listened to,
23 did Mr. Epstein ever ask you why Mr. Zwirn had
24 characterized some of these issues as immaterial?

25 A. I don't recall that.

09:58:56

1 Hubsher - Confidential

2 Q. Do you recall whether Mr. Epstein ever
3 asked to speak to Schulte Roth & Zabel during the
4 calls?

5 A. I don't recall that either. 09:59:04

6 Q. During the calls that you listened to,
7 did Mr. Epstein ever ask to get some of his money
8 back out of the fund?

9 A. I don't -- I don't recall that.

10 Q. You were listening to these calls? 09:59:21

11 A. Yes.

12 Q. Was one of your responsibilities also
13 to take notes of the calls?

14 A. We took a few notes. Mostly it was
15 whether we got through or not and whether we went 09:59:29
16 through all the points.

17 Q. When the calls ended with Mr. Epstein,
18 did he ask for Mr. Zwirn to provide him with more
19 information or to follow up?

20 A. I don't recall. 09:59:48

21 Q. Other than the two calls you said you
22 listened to where Jeffrey Epstein participated,
23 did you listen to any -- participate in any other
24 calls between Mr. Zwirn and any representative of
25 Mr. Epstein during the 2006 time period? 10:00:14

1 Hubsher - Confidential

2 A. I don't -- I don't believe so.

3 Q. Did you ever speak to a man named Harry
4 Beller during the 2006 time period?

5 A. Yes. Directly, though. 10:00:28

6 Q. I'm sorry?

7 A. Directly. You asked with din.

8 Q. Yes. Okay.

9 Did you speak to Mr. Beller about the
10 issues related to Mr. Gruss? 10:00:38

11 A. No.

12 Q. What did you talk to Harry Beller
13 about -- I'm trying -- I know it's been a while,
14 but during this 2006 time period.

15 A. Actually I don't know if it was 2006. 10:00:49

16 During the course of my tenure at Zwirn, I have
17 had situations with Harry Beller, primarily about
18 capital balances.

19 Q. Have you ever spoken to Darren Indyke?

20 A. I have, yes. 10:01:08

21 Q. Have you spoken to Mr. Indyke when you
22 were working for Zwirn --

23 A. No.

24 Q. -- as opposed to Fortress?

25 A. Not that I recall. 10:01:19

1 Hubsher - Confidential

2 Q. At some point did you hear that Jeffrey
3 Epstein was demanding some of his money back from
4 the fund?

5 A. Yes. 10:01:31

6 Q. When do you first recall hearing that?

7 A. When he sent a letter.

8 Q. Do you remember how much he was asking
9 for back in the letter?

10 A. \$80 million. 10:01:47

11 Q. How did you learn of the \$80 million
12 request?

13 A. I believe it came in to Dan, and I saw
14 the letter.

15 Q. Do you recall who gave you the letter,
16 or a copy of it? 10:02:04

17 A. I'm not certain, and I'm not sure they
18 gave it to me. I may have been sitting in the
19 room and it was there.

20 Q. An \$80 million request I assume was a
21 fairly significant redemption request for an
22 investor at that point in time? 10:02:20

23 A. Yes.

24 Q. And what discussion do you recall
25 internal to the Zwirn fund was had once they 10:02:32

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2 received the \$80 million request?

3 A. Just looking at it and trying to
4 determine whether it was a valid request.

5 Q. So I'm clear, prior to seeing the 10:02:49
6 letter with the \$80 million request --

7 A. Yes.

8 Q. -- had you had any hint that
9 Mr. Epstein was going to ask for any money back?

10 A. Not that I recall. 10:02:59

11 Q. So when you saw the letter, that was
12 news to you that he wanted money out?

13 A. Yes.

14 Q. You say there was a discussion about
15 whether it was a valid request? 10:03:14

16 A. Yes. It I believe said immediately,
17 which is not the practice. And generally when we
18 receive requests, we prepare a schedule by tranche
19 as to what might be available for redemption.

20 Q. Who was this discussion with about 10:03:35
21 whether it was a valid request?

22 A. I don't know if there was really a
23 discussion around whether it was a valid request.
24 It came in, we looked at it, and we tried to
25 figure out what to do with it. 10:03:52

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2 Q. Well, who was the "we"?

3 A. Well, I think -- let me think about
4 this for a minute. I would imagine -- but I'm not
5 positive -- that Dan, David, and Lawrence had some 10:04:08
6 conversation around it. And they would then have
7 asked what the schedules were.

8 Q. Who would they have asked?

9 A. Me and my team.

10 Q. So do you recall participating in a 10:04:35
11 discussion with Mr. Zwirn and Mr. Lee and Lawrence
12 about whether it was a valid request or --

13 A. No, not around whether it was a valid
14 request. It said something about being immediate,
15 which just isn't the terms of the -- of the fund. 10:04:49

16 Q. Did the people within the investor
17 relations department have any discussion about
18 Mr. Epstein's request?

19 A. No.

20 Q. You said that generally when you got 10:05:09
21 requests for redemption you would prepare a
22 schedule to see what was available for redemption;
23 is that right?

24 A. Yes.

25 Q. So what would typically happen if 10:05:25

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2 Mr. Zwirn or someone got a request, they would ask
3 the investor relations then to prepare the
4 schedule?

5 A. Yes. 10:05:34

6 Q. Prior to Mr. Epstein's \$80 million
7 request, how many requests for redemptions had
8 been made while you were even at the fund?

9 A. Good question.

10 Q. Had there been any? 10:05:51

11 A. Not -- I'm actually not sure of the
12 timing. That would be our practice.

13 Q. As the investor relations person, do
14 you recall what decision was made about how to
15 deal with Mr. Epstein's \$80 million request? 10:06:21

16 A. About a day or two or three or, you
17 know, a short while after it was received, we were
18 told that there was a focus now on helping
19 Mr. Epstein with a tax issue and that the request
20 was not really going to be pursued because there 10:06:48
21 was going to be work on the tax issue and as a
22 quid pro quo they would remove the request to
23 withdraw their 80 million immediately.

24 Q. Who told you that?

25 A. I believe David Lee. It might have 10:07:10

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2 been Dan.

3 Q. Mr. Lee or Mr. Zwirn's telling you that
4 the withdrawal request had in effect been
5 withdrawn or wasn't going to be pursued in return 10:07:29
6 for the fund helping Mr. Epstein with the tax
7 issue, that information was conveyed to you within
8 days of receiving the request itself?

9 A. I'm not a hundred percent certain, but
10 shortly after. 10:07:44

11 Q. So after you were told that by Mr. Lee
12 or Mr. Zwirn, did you do anything else about
13 Mr. Epstein's request?

14 A. No.

15 Q. Did you understand or did anyone 10:07:56
16 explain to you what the tax issue was that the
17 fund was going to help Mr. Epstein with?

18 A. No. I think it had to do with New York
19 State tax.

20 Q. Mr. Epstein had put in writing that he 10:08:20
21 wanted this \$80 million. You'd seen that request.

22 A. Yes.

23 Q. Did you ever see in writing anything
24 from the fund back to him that said, We understand
25 your request has been withdrawn, or something to 10:08:34

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2 that effect?

3 A. Everyone was very careful not to write
4 anything that had to do with the taxes or anything
5 related to it. So I would be surprised if 10:08:46
6 anything would have been written of that nature.

7 Q. Well, if an investor makes a request
8 for \$80 million in writing, would it be the fund's
9 practice typically to respond in writing to that
10 request in some fashion? 10:09:09

11 MR. ARFFA: Objection to form.

12 You may answer.

13 A. Well, as you said, there hadn't been
14 any before, but even afterwards we would not
15 necessarily put something in writing, especially, 10:09:25
16 as I understood it, there was a dialogue ensuing,
17 and that often happened with withdrawals and
18 didn't go into writing.

19 Q. I guess my question is did you ask
20 anyone, Do we need to respond in writing to 10:09:42
21 Mr. Zwirn -- or Mr. Epstein or inquire why -- what
22 the fund was going to do about the request.

23 A. I did not.

24 Q. You just had been told by Mr. Zwirn or
25 Mr. Lee, one of them, that it had been -- 10:09:56

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2 Mr. Epstein was going to withdraw it or not pursue
3 it because he had had this discussion about
4 solving this tax problem?

5 A. And they were in continued dialogue 10:10:05
6 with him over several issues.

7 Q. Great.

8 At some point in time afterwards, did
9 you hear that Mr. Epstein still wanted his money
10 back? 10:10:17

11 A. No, not for a long while.

12 Q. But at some point did you then learn
13 that he did want his money back?

14 A. When over a year later there was some
15 other correspondence about it. 10:10:30

16 Q. Your recollection is it was almost a
17 year later before Mr. Epstein --

18 A. Yes.

19 Q. -- started asking for his money back
20 again? 10:10:39

21 A. Yes.

22 Q. And what was your recollection about
23 how he asked for or what he asked for a year later
24 after the \$80 million request?

25 A. I believe he was asking to withdraw his 10:10:52

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2 balances, or there was some discussion about --
3 maybe the 80 million resurfaced. I actually --
4 I'm not sure.

5 Q. Did you have any discussions ever with 10:11:07
6 Mr. Epstein or any of his representatives about
7 what his withdrawal rights were, while you worked
8 at Zwirn?

9 A. No.

10 Q. What were the withdrawal rights of 10:11:27
11 investors in the Zwirn domestic fund as of
12 2006/2007, the best of your recollection?

13 MR. ARFFA: Objection to form.

14 But you can answer.

15 A. Well, the withdrawal rights changed at 10:11:48
16 the end of -- in the middle of 2005. So in 2006
17 you -- if you were an investor after May -- I
18 think it was --

19 Q. I actually asked you a poor question.
20 What I'd like to know is what were the 10:12:06
21 withdrawal rights of the various investors in the
22 domestic fund, not the -- I understand the current
23 rights in 2006 may have been different. But there
24 were investors with various types of rights. I
25 just want to know what your best recollection is 10:12:18

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2 of what all the rights were.

3 MR. ARFFA: Objection to form. I'm
4 confused by that. Do you mean --

5 MR. SUSMAN: I'll ask another question. 10:12:27

6 MR. ARFFA: She said it changed, but as
7 between -- at a certain point.

8 Q. As of 2006 there were two-year
9 investors, three-year investors, and one-year
10 liquidity plus investors; right? 10:12:37

11 A. That's right.

12 Q. Can you explain to me what those
13 various withdrawal options were and how they
14 worked?

15 A. Sure. For two-year investors with 120 10:12:44
16 days' notice, they were able to withdraw at the
17 then current NAV on the quarter end following the
18 two-year anniversary; and every two years
19 thereafter, with 120 days' notice they could
20 withdraw for the NAV of that quarter end. 10:13:09

21 For the three-year investors, it was
22 essentially the same only it was every three
23 years, rolling.

24 And for the one-year plus with 120
25 days' notice, they could withdraw at the end of 10:13:23

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2 every calendar year, but the investment
3 essentially rolled off over time as investments
4 were realized.

5 Q. You say that they could withdraw on the 10:13:40
6 two-year anniversary. The two-year anniversary of
7 what, for the two-year investors?

8 A. Of the subscription. For each
9 subscription, they would have a two-year window
10 with 120 days' notice they could get their money 10:13:53
11 out based upon the quarter end following the
12 two-year anniversary. And then that quarter end
13 every two years thereafter with 120 days' notice,
14 they could withdraw.

15 Q. And what is it that they could 10:14:08
16 withdraw?

17 A. They could withdraw that subscription,
18 the current value of that subscription, at that
19 date.

20 Q. Your understanding of the withdrawal 10:14:20
21 rights --

22 A. Yes.

23 Q. -- where did you get it from?

24 A. From the practice of the firm, from the
25 expectation of the investors, from the documents. 10:14:32

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2 Q. And how did you learn the practice of
3 the firm?

4 A. Through the accounting team, through
5 the -- through the practice. We would look 10:14:46
6 through and figure out what subscription was
7 available for redemption. We would check with
8 accounting to make sure that they agreed. And
9 then we would determine the redemption amount and
10 whether or not a redemption request was valid. 10:15:04

11 Q. Did you ever yourself go and look at
12 the limited partnership agreement to see if the
13 description of the redemption rights there matched
14 your understanding of the practice of the firm?

15 A. I have read the descriptions. 10:15:17

16 Q. Was there ever any discussion internal
17 to Zwirn about whether the withdrawal rights or
18 withdrawal window applied to the entire capital
19 account as opposed to a tranche-by-tranche
20 approach? 10:15:39

21 A. No, with the exception of when it was
22 brought up after the fact with Jeffrey Epstein.
23 So in the context of the questions that he asked.

24 Q. So as I understand it, you're saying
25 the only time it came up is when Mr. Epstein took 10:15:55

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2 the position --

3 A. Yes, that's correct.

4 Q. -- as to how the withdrawal rights

5 work, it should apply to the capital account? 10:16:05

6 A. Yes.

7 Q. What I'm asking is do you recall

8 whether there was ever any discussion within the

9 firm that applying the withdrawal rights to the

10 entire capital account was a plausible 10:16:13

11 interpretation of the withdrawal rights.

12 MR. ARFFA: Objection to form.

13 You may answer.

14 A. No, not that I recall.

15 Q. Was there ever any discussion or 10:16:23

16 consideration of adopting an interpretation of the

17 withdrawal rights so that it applied to the entire

18 capital account?

19 A. No.

20 MR. ARFFA: I was going to object to 10:16:38

21 form.

22 Give me a minute, by the way, to object

23 if I'm going to.

24 THE WITNESS: Okay.

25 (Pause.) 10:17:17

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Q. Let me, before I turn to the documents -- as part of your job as an investor relations person, have you had discussion with investors in the domestic fund about Mr. Epstein's claim that he is entitled to \$80 million or more?

10:17:25

A. We had discussions about a request for a withdrawal by an investor. I don't recall if we said it was 80 million at the time.

Q. The discussions that you're talking about, when did they take place?

10:17:50

A. As the fund was winding down and it became clear that it was an open item.

Q. Have you had discussions about this arbitration with investors in the fund?

10:18:06

A. Since the arbitration began, we have disclosed that there is an arbitration.

Q. I understand in some of the written materials that have been sent to investors there was a discussion.

10:18:25

A. And we've said it in words as well.

MR. ARFFA: Again, wait until he finishes with the question.

Q. And what discussions have you had with investors about this arbitration?

10:18:32

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2 A. If they have asked, we -- I -- I have
3 generally spoken with them and explained that
4 there is an arbitration, it's still open, and
5 there are no -- no resolution at this point in 10:18:48
6 time.

7 Q. And how much money have you explained
8 to them is at stake?

9 A. They're aware that the original
10 settlement was 45 million and that the arbitration 10:18:59
11 is somewhere between 140 and zero.

12 Q. How many investors would you say have
13 called you and asked questions about it, aside
14 from whatever written materials they've gotten?

15 A. Well, it's hard to estimate. I get 10:19:24
16 asked questions frequently over time so...

17 Q. In particular about this dispute?

18 A. Yes.

19 (Exhibit 31, e-mails, marked for
20 identification.) 10:19:49

21 Q. I'm going to show you what I've marked
22 as Exhibit 31. Exhibit 31 is -- the first page,
23 it's an e-mail from Cara Howe to David Lee and
24 yourself on October 18th, 2006.

25 And what is Cara Howe? 10:20:41

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2 A. Cara is a member of the investor
3 relations team.

4 Q. She worked for you?

5 A. Yes, she did. 10:20:47

6 Q. You can see where it's forwarded from
7 Mr. Lee, this e-mail. The attachment has actually
8 got a name: Cashflows 10.03.06.

9 A. Oh, it is an attachment?

10 Q. Well, there is an attachment. 10:21:13

11 A. Right. It was forwarded. Okay.

12 Q. Do you recall what the purpose of this
13 analysis was?

14 A. We did this frequently just so that the
15 management team knew what potentially could be 10:21:24
16 redeemed at any -- any point in time.

17 Q. Well, when you said you did it
18 frequently, this was done in October of 2006.

19 A. Yes.

20 Q. Had it been done -- apparently as of 10:21:39
21 October 3rd, 2006. Had it been done, to your
22 knowledge, at any time prior to this analysis
23 while you were -- during your month-and-a-half
24 tenure?

25 A. I'm aware that it was done prior. I 10:21:54

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2 can't remember if it was through my tenure. But
3 there was a report that had been provided over a
4 period of time that I'm aware of, even before I
5 joined.

10:22:06

6 Q. Was there any discussion within the
7 fund during mid-October 2006 about concern that
8 investors might start redeeming in some
9 significant number?

10 A. I don't recall exactly, but if we're
11 making calls, it's possible.

10:22:28

12 Q. It was a concern that, in response to
13 hearing about Mr. Gruss being fired, some
14 investors might start asking for their money back?

15 MR. ARFFA: Objection to form. The
16 question is do you actually recall there being
17 such a concern at that time.

10:22:39

18 A. I don't recall that.

19 Q. You say the analysis was done
20 regularly -- strike that.

10:22:57

21 If you could, look at page 3 of Exhibit
22 31. It's a graph that shows money that's
23 available for redemption.

24 MR. ARFFA: Could you give the Bates
25 stamp, because --

10:23:22

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2 MR. SUSMAN: Yes. DBZOCO_FTC 4268.

3 Q. It shows that there's a huge amount of
4 money that's available to be redeemed on September
5 of 2007.

10:23:42

6 A. Yes.

7 Q. The reason for that is because of the
8 one-year liquidity plus money?

9 A. Correct.

10 Q. One didn't have to prepare a redemption 10:23:51
11 schedule to know that a large portion of the money
12 invested in the fund was this one-year liquidity.
13 Is that -- it was common knowledge, wasn't it, in
14 the fund?

15 MR. SCHWARTZ: Objection. 10:24:02

16 MR. ARFFA: Objection to form. You may
17 answer.

18 A. Yes, I'm sure that people knew that
19 December -- December of every year would be a
20 larger number. 10:24:10

21 Q. So even though the firm had these
22 long-term lockups, in fact an overwhelming
23 majority of the money was subject to a one-year
24 lockup; right?

25 MR. SCHWARTZ: Objection to form. 10:24:26

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2 MR. ARFFA: Objection to form.

3 You may answer.

4 A. Well, the one-year lockup was actually
5 quite a long -- a long redemption, because there 10:24:32
6 was no cash that was required to be paid out at
7 all and the -- it was a perfect asset-liability
8 match there.

9 So no new investments would be made for
10 those investors, and the portfolio that they held 10:24:50
11 would roll off as cash was generated. So it was
12 actually a redemption option that did not require
13 any cash come out of the portfolio.

14 Q. I understand that it didn't have
15 liquidity in the sense that you could be paid 10:25:07
16 cash. But as cash became available under the
17 one-year liquidity option, it was paid out to
18 investors?

19 A. As the specific investments rolled off,
20 then it would be paid out. 10:25:21

21 Q. It allowed you to ask for your money
22 back every year, although it was unclear when you
23 would actually get the money?

24 A. Correct. It wouldn't require the sale
25 of any assets. 10:25:33

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2 Q. It could be a month or a year?

3 A. Or two or three.

4 MR. SCHWARTZ: Objection to form.

5 (Exhibit 32, document, marked for 10:25:55
6 identification.)

7 Q. I show you Exhibit 32. Do you recall
8 ever seeing Exhibit 32 before?

9 MR. ARFFA: Again, Harry, just so we're
10 clear, we obviously still are still taking the 10:26:14
11 position this is confidential. So to the
12 extent I forget to designate anything on the
13 transcript, I want to be clear we're
14 designating this document and the conversation
15 about it as confidential. 10:26:26

16 A. Yes, I have.

17 Q. Did your department maintain this?

18 A. Yes.

19 Q. Who in your department would have
20 maintained it? 10:26:34

21 A. I think Kelly Anderson.

22 Q. It's got up here on the -- there's some
23 columns. One says DB, and one says PG. Do you
24 know what those stand for?

25 A. Oh, yes, I do. A discussion around 10:26:51

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2 Perry Gruss, his separation; and then there was an
3 issue around one of the traders, David Becker, who
4 was involved in an SEC investigation.

5 Q. If you look in the parentheses -- 10:27:13
6 I'm sorry, under the column has contact been made
7 re PG since 10/11, there is an indication that
8 says yes and then there's -- it says, exact notes
9 in WG.

10 What is WG? 10:27:30

11 A. That's the client relationship
12 management database.

13 Q. But what does WG stand for?

14 A. I can't remember the first one, but
15 it's something gardener, guard -- I can't 10:27:42
16 remember. I just can't remember.

17 Q. And so would you -- was it your
18 practice to record from these conversations -- it
19 says, exact notes in WG -- to record some kind of
20 exact notes of the conversation in the database? 10:28:04

21 MR. ARFFA: Objection to form.

22 You may answer.

23 A. It says that's what we did, so that's
24 what we did.

25 Q. So, for example, if you look down under 10:28:13

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2 Financial Trust Company, Jeffrey Epstein, go
3 across that line, and it says, yes, DZ spoke with
4 or left message - exact notes in WG?

5 MR. SCHWARTZ: Can you show us where 10:28:27
6 the line is?

7 MR. SUSMAN: It's like probably about
8 10 lines down, 12 lines. The easiest way to
9 find it is look for a number that says 123
10 million in the investment column. 10:28:37

11 A. Okay.

12 Q. See Financial Trust?

13 A. Yep.

14 Q. You follow that across?

15 A. Yep. 10:28:43

16 Q. DZ spoke with or left message - exact
17 notes in WG.

18 A. Uh-huh.

19 Q. So there should be some exact notes of
20 that conversation in some database, if that's 10:28:52
21 what's recorded here?

22 A. Yep.

23 Q. Okay. And can you tell from this -- it
24 just says DZ spoke with or left a message, no
25 indication of your participation, but you did 10:29:07

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2 participate?

3 A. I listened, yes.

4 Q. Yes. And you would have been the

5 person taking the notes, I presume? 10:29:13

6 A. Yes.

7 Q. Do you know why it says --

8 A. Well, Dan might have taken notes. I'm
9 not sure.

10 Q. Then it says -- I assume -- would you 10:29:18
11 have been the person to have entered the notes
12 into the database?

13 A. I think Kelly might have.

14 Q. Then it says under those columns, DB
15 and PG. Under PG there's a yes, and I gather that 10:29:30
16 means that Mr. Epstein was told about Perry Gruss?

17 A. Right.

18 Q. Do you recall why there's a no under
19 the DB column?

20 A. The David Becker, generally it wasn't 10:29:42
21 an outreach of calls. If investors called in,
22 we -- there wasn't a concerted effort to call
23 about it.

24 MR. SUSMAN: Okay. Why don't we take a
25 break. 10:29:56

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2 THE VIDEOGRAPHER: The time is 10:31
3 a.m. This ends Tape 1 in the videotaped
4 deposition of Elise Hubsher. We are off the
5 record.

10:30:07

6 (Recess taken from 10:31 to 10:47.)

7 THE VIDEOGRAPHER: The time is 10:47
8 a.m. This begins Tape 2 in the videotaped
9 deposition of Elise Hubsher. We are on the
10 record.

10:46:25

11 (Exhibit 33, document, marked for
12 identification.)

13 Q. I show you Exhibit 33. Do you recall
14 seeing this document before?

15 MR. ARFFA: Again, just the same
16 designation as confidentiality.

10:46:49

17 A. Yes.

18 Q. Do you recognize the handwriting?

19 A. Yes.

20 Q. Whose handwriting is it?

10:47:00

21 A. Dan's.

22 Q. All of this you recognize as being
23 Dan's handwriting: Some of it says all dates off
24 by one?

25 A. Yeah.

10:47:22

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2 Q. Is that what you recognize as being
3 Dan's too?

4 A. That could be different, but the
5 other -- everything else looks like Dan's. 10:47:28

6 (Exhibit 34, contact sheet by investor,
7 marked for identification.)

8 Q. I show you Exhibit Number 34. Do you
9 recognize Exhibit 34? I realize it's a little bit
10 tough to understand because almost all of it has 10:48:10
11 been redacted.

12 A. I think I do. It's hard -- hard to
13 know.

14 Q. Do you recognize the -- oh, I'm sorry.
15 Well, what do you recognize Exhibit 34 as? 10:48:39

16 A. It would be a contact sheet by
17 investor.

18 Q. Would this have been for the second set
19 of investor calls?

20 A. It probably is. It's really hard for 10:48:52
21 me to tell.

22 Q. Down on the first page, there's an
23 entry for Financial Trust Company, and then there
24 is some handwriting. Can you recognize that
25 handwriting? 10:49:06

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2 A. That's tough.

3 Q. Okay.

4 A. It would probably be easier if I saw a
5 bunch of them. It could be mine, but I'm not 10:49:18
6 sure.

7 Q. Would you have had a sheet like this in
8 front of you as you were listening to the calls?

9 A. Yes.

10 (Exhibit 35, document, marked for
11 identification.)

12 Q. I show you Exhibit 35. Exhibit 35, do
13 you recognize the handwriting on this as Dan
14 Zwirn's handwriting?

15 A. Yes. 10:50:24

16 Q. Great.
17 As with the first set of calls and the
18 second set of calls when you listened, would you
19 take notes and would those notes have been entered
20 into the database? 10:50:44

21 A. Likely.

22 (Exhibit 36, second amended and
23 restated limited partnership agreement for
24 domestic fund, marked for identification.)

25 Q. Exhibit 36. 10:51:07

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2 (Discussion off the record.)

3 Q. Do you recognize Exhibit 36 as the
4 second amended and restated limited partnership
5 agreement for the domestic fund? 10:51:36

6 A. Yes.

7 Q. If you could turn to page 19 of the
8 document. It's BRF 193 is the Bates number,
9 Section 9.1. I think you told me earlier that
10 your understanding of the withdrawal rights was 10:51:59
11 based in part at least on a review of the limited
12 partnership agreement; is that right?

13 A. Yes.

14 Q. Can you tell me what are the languages
15 in 9.1 that would tell an investor, a two-year 10:52:16
16 investor, that they could withdraw on a tranche-
17 by-tranche basis as opposed to withdrawing their
18 entire capital account?

19 MR. ARFFA: I'm going to object to the
20 form. She's not a lawyer. 10:52:32

21 But you can do your best with the
22 question, if you can.

23 (Pause.)

24 A. Well, just within the portion that
25 describes the withdrawal of the two-year. So it 10:53:56

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2 says withdrawal of a capital account can be made
3 not less than 120 days prior to written notice to
4 the general partner as of the last business day of
5 the calendar year quarter ending at least two 10:54:14
6 years after they initially purchased the interest.

7 Q. What language in there would tell an
8 investor that what they could withdraw was their
9 particular investment plus its appreciation as
10 opposed to withdrawing the entire capital account? 10:54:33

11 MR. ARFFA: Objection to form.

12 A. You know, I haven't really spent a lot
13 of time dissecting this, but I can tell you what
14 the practice has been and how it's been
15 interpreted. And I can also use my experience 10:54:48
16 with Northwater and other funds.

17 The withdrawals generally apply to each
18 tranche as it's invested, and each tranche is --
19 has its own withdrawal rights based on the
20 subscription date. And that's generally the case 10:55:09
21 because once you invest the fund manager needs to
22 know that they have the money to invest for that
23 period of time.

24 Q. I understand all those bases for your
25 understanding of the withdrawal rights. What I'm 10:55:29

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2 asking is is there anything in the language itself
3 in the agreement that you relied on to --

4 MR. SIFFERT: Asked and answered.

5 Q. -- reach your understanding. 10:55:40

6 MR. SIFFERT: Asked and answered.

7 Q. If so, please point the language out.

8 MR. SIFFERT: She just did.

9 MR. ARFFA: Objection to form. She did
10 read the language that she believes applied. 10:55:50

11 If you want her to read it again, she can read
12 it again into the record.

13 A. I can read it again. Let's see.

14 Complete withdrawal of the limited partner's
15 capital account may be made on not less than 120 10:56:07

16 days' prior written notice to the general partner
17 as of the last business day of the calendar year
18 quarter ending at least two years after the
19 limited partner initially purchased interest and
20 as of each second anniversary of that date thereof 10:56:23
21 provided.

22 Q. Did the fund maintain capital
23 accounts --

24 MR. ARFFA: "Thereafter," I think she
25 meant, instead of "thereof." 10:56:37

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2 THE WITNESS: "Thereafter," I'm sorry.

3 Q. Strike that.

4 Did the fund maintain capital accounts
5 on an investment-by-investment basis as opposed to 10:56:46
6 investor-by-investor?

7 MR. ARFFA: Objection to form.

8 You may answer.

9 A. There -- there is -- each tranche, each
10 subscription, is followed separately, noting which 10:56:59
11 investor that belonged to. So there would be an
12 investor, and they may have had several
13 subscriptions. Each subscription was tracked
14 separately in order to properly track withdrawals
15 and incentive fees. 10:57:16

16 Q. Did you ever see a document that showed
17 capital accounts reported to investors on an
18 investment-by-investment basis or tranche-by-
19 tranche basis?

20 MR. ARFFA: Objection to form. 10:57:29

21 You may answer.

22 MR. SIFFERT: Other than what she's
23 testified.

24 A. The -- the quarterly account statements
25 for onshore investors summed up each subscription, 10:57:39

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2 and the account statement was provided, as a
3 total.

4 Q. Was there ever, to your knowledge --
5 strike that.

6 Did the fund to your knowledge ever
7 create and record loss recovery accounts for any
8 investor?

9 A. I'm not familiar with a loss recovery
10 account. 10:58:06

11 (Exhibit 37, PowerPoint presentation,
12 marked for identification.)

13 Q. Let me show you Exhibit 37. Exhibit 37
14 appears to be a PowerPoint presentation that
15 describing the Zwirn fund. 10:58:45

16 A. Yes.

17 Q. Is that fair?

18 A. Yes.

19 Q. My question is is this sort of a --
20 when you would make presentations to investors, 10:58:53
21 would you use this particular PowerPoint
22 presentation or did you adapt it for a particular
23 investor.

24 MR. ARFFA: Objection to form.

25 You may answer. 10:59:02

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2 A. There was one presentation book. This
3 was -- this was I believe it. I haven't looked
4 through the whole thing but...

5 Actually, there were two forms of it. 10:59:15

6 One was for an investor, and one was for a
7 noninvestor. And the one for the noninvestors did
8 not have offering terms.

9 Q. After, say, October of 2006, did you
10 make presentations to prospective investors in the 10:59:36
11 fund?

12 A. Yes.

13 Q. There were people still interested in
14 investing even after that point in time?

15 A. Yes. 10:59:46

16 Q. When you would make the presentation,
17 would you put like the actual date of the
18 presentation and the person's -- investor's name
19 on it, the PowerPoint, before you made the
20 presentation? 10:59:56

21 A. Not necessarily.

22 Q. You would just use a version of Exhibit
23 37, in effect?

24 A. Yes.

25 Q. Okay. 11:00:03

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2 (Exhibit 38, document, marked for
3 identification.)

4 Q. Let me show you what we're marking as
5 Exhibit 38. Have you seen this Exhibit 38, this 11:00:22
6 document, before?

7 A. I believe so, yes.

8 Q. Do you recall receiving it back in
9 November of 2006?

10 A. Not specifically. 11:00:55

11 Q. Did Mr. Lee explain to you why he was
12 asking for Mr. Epstein's redemption schedule?

13 A. Well, I don't recall whether this was
14 before or after the request for the 80 million,
15 so -- I don't recall the timing. 11:01:23

16 Q. Let me show you Exhibit 5, previously
17 marked. You recognize Exhibit 5 as the \$80
18 million request?

19 A. Yes.

20 Q. If you turn, I think, to the next page 11:01:54
21 of Exhibit 5, you'll actually see a fax
22 transmission that has a time on it, 1809.

23 A. Uh-huh.

24 MR. ARFFA: You have to verbalize the
25 answer. Say "yes" if it's "yes." 11:02:12

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2 A. Yes, I see it.

3 Q. Does looking at that refresh your
4 recollection as to whether or not this request
5 from Mr. Lee to get Mr. Epstein's redemption
6 schedule actually came before the \$80 million
7 request was sent?

11:02:19

8 A. That's clear from the time stamps, yes.

9 Q. I think you testified earlier that when
10 you saw the \$80 million request it was in writing
11 that was the first you had gotten any indication
12 Mr. Epstein wanted to withdraw money?

11:02:34

13 A. That was my recollection.

14 Q. Do you have any recollection of being
15 asked earlier in the day for redemption schedules
16 or any sort of discussions about what
17 Mr. Epstein's redemption rights were prior to
18 receiving the request?

11:02:49

19 A. I don't recall, but clearly I was -- we
20 were asked to prepare a schedule.

11:03:03

21 Q. And if you look at Exhibit 5, that's
22 just the request itself right there.

23 A. Yes.

24 Q. I think you said you got it and read
25 it.

11:03:18

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2 A. Yes.

3 Q. The first line says, As per our
4 conversation, I hereby instruct you to immediately
5 liquidate an interest in the amount of \$80 11:03:29
6 million.

7 First of all, did you ask Mr. Zwirn
8 what the conversation was that was being alluded
9 to?

10 A. Not that I recall. 11:03:41

11 Q. You said that you found the request odd
12 because it said immediately.

13 A. Yes.

14 Q. Anything else about it that you found
15 odd or unusual? 11:03:54

16 A. No. He was asking for 80 million
17 immediately and to wire proceeds. So that's
18 unusual.

19 Q. What's unusual, I'm sorry?

20 A. To ask for an immediate liquidation of 11:04:21
21 an interest and to wire immediately. So that
22 certainly was unusual.

23 Q. Is there anything about the form of the
24 request that made it objectionable to you or
25 caused you concern? 11:04:46

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2 MR. ARFFA: Well, objection to form.

3 MR. SCHWARTZ: Objection to form.

4 A. It was a request --

5 MR. ARFFA: When you say "form," are 11:04:54

6 you including the amount; or are you not
7 talking about the amount, you're just talking
8 about the sort of format?

9 Q. It's on a fax memo. Is there
10 anything -- is it your understanding that 11:05:04

11 Mr. Epstein, in order to make a request, had to
12 fill out some particular form?

13 A. Oh, sure. The -- the valid form of
14 redemption was to fill out -- there were special
15 documents for redemptions. 11:05:17

16 Q. And investors would in fact send in
17 requests in letters asking for money from time to
18 time?

19 A. Generally in e-mail.

20 Q. Right. And then you would typically, 11:05:27
21 what, send them back the correct form?

22 A. We would probably call them.

23 Q. And tell them, Hey, you need to send it
24 in in this correct form?

25 A. We would ask them about the request, 11:05:37

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2 and then we'd, you know, go through what the form
3 was and suggest that they fill it out.

4 Q. How would an investor know that you --
5 you said there was a required form? 11:05:49

6 A. Uh-huh.

7 Q. How would an investor know that there
8 was a required form?

9 A. It's part of the document package when
10 you invest. So many investors are aware of that 11:05:58
11 and fill out the form, and others, when a request
12 comes in, we would call and inform them of it.

13 Q. And why is it that you never -- didn't
14 call Mr. Epstein back up and say, Hey, you need to
15 use the required form to make this request? 11:06:18

16 A. Well, the dialogue was with the senior
17 managers. And as I stated before, shortly after
18 this came in, we, in my group, had understood that
19 it was a request that was going to be withdrawn or
20 had been withdrawn because of the quid pro quo on 11:06:35
21 the tax issue.

22 (Exhibit 39, document, marked for
23 identification.)

24 Q. Exhibit 39. You recognize Exhibit 39
25 as Ms. Howe putting together the redemption 11:07:01

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2 request -- or redemption schedule of FTC that
3 Mr. Lee had just requested you get?

4 MR. ARFFA: Just again I note for the
5 record that we would designate this as 11:07:18
6 confidential as well, because it includes
7 other investors on it.

8 A. Yes.

9 Q. Do I understand correctly that you
10 didn't necessarily have a redemption schedule 11:07:43
11 handy for an investor; you went and prepared it if
12 there was a request?

13 A. Yes.

14 Q. And Mr. Arffa points out that there
15 are -- in the schedule itself there are additional 11:07:56
16 investors listed.

17 Do you know why Arden Alternative
18 Advisors is listed here?

19 A. I don't. It was probably a broader
20 request. 11:08:08

21 Q. And then under the categories it's got
22 subscription and then additional contribution.
23 What is the difference?

24 A. The subscription is an initial
25 subscription, and all subscriptions thereafter 11:08:23

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2 were additional.

3 Q. Who was responsible for maintaining
4 this debt information?

5 A. Well, the account group maintained it 11:08:36
6 on their databases, and we created a tracking
7 system as well so that we could answer questions
8 for investors.

9 Q. Who is in charge of the accounting
10 group that maintained this information? 11:08:50

11 A. Well, initially Perry Gruss, and
12 thereafter Bob Sumberac.

13 Q. Did you ever endeavor to check the
14 information you were getting from the accounting
15 group that make sure it was accurate? 11:09:04

16 A. Yes. We actually created a product and
17 engaged Veritas to make sure that the investor
18 relations database and the accounting database
19 were in sync.

20 Q. When was that done? 11:09:19

21 A. I don't recall whether it was 2007 or
22 2008.

23 Q. When you say that the information I
24 guess came originally from the accounting
25 department -- 11:09:47

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2 A. Which information?

3 MR. ARFFA: Objection to form.

4 Q. That's what I'm trying to figure out.

5 What information would you get from the accounting 11:09:51
6 department and what information would the investor
7 relations department --

8 A. This information --

9 MR. ARFFA: Wait until he's finished.

10 A. Sorry. Okay. Would you repeat that? 11:10:01

11 Q. Would all of the information on the
12 schedule, the redemption schedule, have come from
13 the accounting department?

14 MR. ARFFA: Objection to form.

15 You may answer. 11:10:10

16 A. This information was generated from the
17 investor relations group.

18 MR. SIFFERT: Pointing to what exhibit?

19 THE WITNESS: I am pointing to Exhibit
20 39, as it relates to the tranches, the 11:10:25
21 different subscriptions, the redemption dates,
22 the initial investment amounts. Then the
23 information for the sum of the current values
24 of each subscription would have come from
25 accounting. 11:10:43

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2 Q. Do you see on Exhibit 39 -- is it 39 or
3 40 that you're looking at?

4 A. Thirty-nine.

5 Q. Thirty-nine. Do you see a sum of the 11:11:01
6 current value --

7 A. That's the total.

8 (Unintelligible discussion interrupted
9 by the reporter.)

10 Q. The total amount you would get from 11:11:09
11 accounting, you call it the sum of the investments
12 or it's also been the capital account value?

13 MR. ARFFA: Objection to form.

14 You may answer.

15 A. It would be the value that the account 11:11:19
16 statement would have as of 9/30/06.

17 Q. But other than that the rest of the
18 information, like the initial date of the
19 investment and liquidity, redemption date, that
20 would all come from investor relations? 11:11:37

21 A. On this form, yes.

22 Q. And would be maintained in some
23 investor relations database?

24 MR. ARFFA: Objection to form.

25 You may answer. 11:11:46

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2 A. It was -- at this stage it was likely
3 developed from going to the subscriptions and
4 creating a spreadsheet for it, for this particular
5 purpose. 11:11:58

6 Q. Do you know why it is that you would
7 not have an investment value for each of the
8 tranches as opposed to just the total?

9 MR. ARFFA: Objection to form.

10 And when you say why is it that "you," 11:12:13
11 are you talking about her group?

12 MR. SUSMAN: This spreadsheet, why.

13 MR. ARFFA: She said the spreadsheet
14 does have the total.

15 A. What we had access to was simply the 11:12:24
16 subscription documents, which had the initial
17 investment amount for each subscription. And
18 that's what's on the form, reporting on a
19 quarterly basis was based on the total of the
20 current value of each subscription. 11:12:45

21 So the value is the sum of the values
22 of each subscription.

23 Q. And if somebody wanted to pull out
24 the -- say Mr. Epstein the April 1, 2002,
25 investment, \$10 million, how do you know how much 11:13:03

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2 he could withdraw?

3 A. I would ask accounting.

4 Q. And did accounting maintain those
5 numbers? 11:13:14

6 A. Yes.

7 Q. For each investment?

8 A. Yes, it had to because of both
9 withdrawals and incentive fees.

10 Q. Did you see the documents where 11:13:20
11 accounting maintained those numbers?

12 A. I saw spreadsheets.

13 Q. Were those spreadsheets regularly
14 created or were they something that was created
15 only when there was an issue about an investor 11:13:28
16 wanting to redeem?

17 A. It had to be --

18 MR. ARFFA: Objection to form.

19 You may answer. Go ahead.

20 A. It had to be created -- it had to be 11:13:37
21 updated in order to create statements every
22 quarter.

23 Q. You mean a calculation -- I'm sorry.

24 You're saying -- are you saying that
25 you actually saw regularly documents that would 11:13:48

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2 show the current value of each tranche?

3 A. I -- I don't overlook the accounting
4 group every quarter or every month, but I did
5 occasionally go and look at spreadsheets that were 11:14:01
6 updated.

7 (Exhibit 40, document, marked for
8 identification.)

9 Q. Let me show you Exhibit 40. Do you
10 recognize Exhibit 40 as you forwarding the 11:14:45
11 schedule that Mrs. Howe prepared to Dan Zwirn and
12 David Lee?

13 A. Yes.

14 (Exhibit 41, document, marked for
15 identification.) 11:15:02

16 Q. Let me show you Exhibit 41.

17 (Exhibit 42, document, marked for
18 identification.)

19 Q. And I'll show you Exhibit 42 as well.

20 (Pause.) 11:16:16

21 Q. Have you had a chance to take a look at
22 these exhibits, Ms. Hubsher? When you do, just
23 let me know.

24 A. Okay. I've looked at them.

25 Q. So did Exhibit 40, 41, and 42 refresh 11:16:52

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2 your memory that during the day of the 13th you
3 were asked to prepare a redemption schedule for
4 FTC, you did -- your department did, you sent it
5 to Mr. Zwirn, later in the day you were apparently 11:17:05
6 asking to update the spreadsheet?

7 A. Yes.

8 Q. And then towards the end of the day
9 Mr. Zwirn even -- then asked you to adjust it,
10 each piece, for the growth that had been created, 11:17:21
11 which is Exhibit 42? It's the last one.

12 MR. ARFFA: Objection to the form.

13 A. Yes, I see he asked throughout the day
14 for information.

15 Q. He was asking for information about 11:17:44
16 FTC's redemption rights. This was all before the
17 actual \$80 million request was sent?

18 MR. ARFFA: Objection to form.

19 You may answer.

20 A. Yes. 11:17:54

21 Q. What I'm really asking is do you
22 remember why all this activity was going on
23 regarding FTC's redemption rights.

24 A. I don't remember discussions, but we're
25 preparing redemption information. 11:18:11

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2 Q. So it's still your memory that, again,
3 you're asking for information but the first time
4 you heard FTC actually wanted to withdraw money
5 was when you saw the request for 80 million? 11:18:24

6 A. That was my recollection, but...

7 Q. Does seeing these documents change your
8 recollection? Do you remember any discussions
9 prior to the \$80 million request?

10 A. I don't remember them, but I see that I 11:18:38
11 prepared information so -- I just don't remember.

12 Q. I'm not trying to be tricky; I'm just
13 trying to get what you remember.

14 A. That's my memory.

15 MR. ARFFA: He is trying to trick you, 11:18:50
16 but that's okay.

17 MR. SUSMAN: I trick myself.

18 (Exhibit 43, document, marked for
19 identification.)

20 Q. I show you Exhibit 43. 11:19:07

21 (Pause.)

22 Q. Do you recall seeing Exhibit 43, or
23 receiving it?

24 A. I recall seeing it, yes.

25 Q. Is it something that you've seen 11:19:56

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2 recently or do you have a memory of getting it at
3 the time?

4 MR. ARFFA: Exclude from your answer
5 anything we discussed. 11:20:06

6 THE WITNESS: Yeah.

7 MR. ARFFA: And I think you can answer,
8 though, do you recall this from the time,
9 Exhibit 43.

10 THE WITNESS: I do. I do recall it. 11:20:13

11 Q. What is it that you recall about
12 Mr. Beller asking and making inquiries in February
13 2007 about the capital account balance?

14 A. I recall that he spoke with Cara and
15 asked about the December capital balance, which 11:20:33
16 was not yet finalized. And I believe we
17 endeavored to give him an estimate, which we did
18 not like doing because we really hadn't calculated
19 the capital balance. So we would have indicated
20 that it was preliminary. 11:20:54

21 Q. And did Mr. Beller -- at some point,
22 then, you gave him a different valuation that was
23 more --

24 A. At some point. There were several
25 revisions. Even -- even aside from the fact that 11:21:09

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2 it was an estimate, there were several revisions
3 of the December number, for a variety of reasons.
4 So there would have been several numbers.

5 Q. And do you recall what Mr. Beller's 11:21:22
6 reaction was to the revisions in the number?

7 A. He was angry.

8 Q. And what was the reaction within Zwirn
9 to Mr. Beller being angry about the number -- the
10 capital balance number being revised? 11:21:39

11 MR. ARFFA: Objection to form. You may
12 answer.

13 A. Well, within investor relations, we
14 prefer that all communications with Mr. Beller go
15 through David Lee. And the reaction was to 11:21:52
16 explain to him why the revisions had occurred.

17 Q. And why is it that investor relations
18 decided that they would prefer if Mr. Lee dealt
19 with Mr. Beller?

20 MR. SCHWARTZ: Objection to form. 11:22:14

21 MR. ARFFA: Objection to form also.

22 But you may answer.

23 A. He was aggressive and belligerent, and
24 he was talking to junior people. So we felt it
25 would be more appropriate that he spoke with 11:22:29

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2 David.

3 Q. Was he aggressive or belligerent to
4 you?

5 A. To my team, primarily. 11:22:37

6 Q. Did you actually speak with him?

7 A. I don't recall. I might have.

8 MR. ARFFA: At this point.

9 THE WITNESS: At this point, I don't
10 recall. I have had conversations with him. 11:22:51

11 Q. In the e-mail Ms. Howe reports that
12 Mr. Beller asked me to put this in writing and
13 told him I would discuss with others and get back
14 to him.

15 A. Uh-huh. 11:23:09

16 Q. And then in the second paragraph she
17 again says, I have explained to him that all the
18 numbers are preliminary, and once again he asked
19 for this in writing, which we have not provided.

20 A. Right. 11:23:20

21 Q. What was the reluctance to put the
22 explanation in writing to Mr. Beller?

23 MR. SCHWARTZ: Objection.

24 MR. ARFFA: Objection to form.

25 You may answer. 11:23:33

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2 A. We were -- we generally don't give
3 estimates, and we felt that it would be best if he
4 communicated with -- with David Lee. We would --
5 we would probably have been thoughtful about a 11:23:50
6 disclaimer -- if we were going to provide
7 estimates, we would be thoughtful about a
8 disclaimer. It would have taken quite some time
9 to come up with the right form to provide that
10 information. 11:24:04

11 Q. After this February 12th, 2007, e-mail
12 where Mr. Beller is asking for this preliminary
13 information, do you recall how it was Mr. Beller's
14 concerns were resolved?

15 MR. ARFFA: Objection to form. 11:24:31

16 But you may answer.

17 MR. SCHWARTZ: Objection to form.

18 A. I recall that David Lee had discussions
19 with Mr. Beller.

20 (Exhibit 44, e-mails, marked for
21 identification.)

22 Q. I show you Exhibit 44. This is an
23 e-mail from Mr. Lee in which you were cc'd early
24 on the morning of February 14th. So this is about
25 a day and a half after Exhibit 43. 11:25:25

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2 A. Okay.

3 Q. He's asking you for detailed redemption
4 roll-off schedule for Jeffrey Epstein.

5 Do you recall why he was asking -- 11:25:34
6 making this request?

7 MR. ARFFA: Objection to form.

8 You may answer.

9 A. In support of the request to redeem.

10 Q. What request to redeem? 11:25:42

11 A. I'm sorry, we're in February, not in
12 November. Sorry.

13 I don't recall whether it was the prior
14 or the new request for withdrawal, which came in
15 at this time. 11:26:13

16 (Exhibit 45, e-mails, marked for
17 identification.)

18 Q. Let me show you Exhibit 45. Exhibit 45
19 includes an e-mail that David Lee is forwarding to
20 various people, including yourself, at about 2 11:27:04
21 o'clock on February 14th.

22 A. Yep.

23 Q. And then attached is a letter.

24 You had testified earlier that you
25 thought Mr. Epstein, after making the \$80 million 11:27:15

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2 request a year later asked for all of his money
3 back.

4 A. Yes.

5 Q. Does looking at this refresh your 11:27:22
6 memory that --

7 A. It was sooner.

8 Q. -- it was a couple months afterwards?

9 A. Yes.

10 Q. Again, my question is do you recall 11:27:30
11 anything between February 12th, when this e-mail
12 that Mr. Beller's upset about the capital
13 accounts, any discussions about Mr. Epstein
14 withdrawing his money or his capital account from
15 February 12th and when you received Exhibit 45 on 11:27:51
16 February 14th.

17 A. I don't recall.

18 Q. Obviously from Exhibit 44 there was
19 some -- Mr. Lee that morning was asking you on
20 February 14th to prepare a roll-off schedule. 11:28:07

21 A. Yes.

22 Q. Do you recall any discussions
23 internally that Mr. Epstein might be asking to
24 withdraw money again or anything of that sort,
25 other than being asked to prepare a roll-off 11:28:20

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2 schedule?

3 A. I don't recall it.

4 Q. By the way, on Exhibit 45 who is Seth

5 Liebowitz? 11:28:37

6 A. He was internal counsel for D.B. Zwirn.

7 Q. By the way, when you say Mr. Liebowitz

8 was internal counsel, was there any particular

9 area that he provided advice about or was he just

10 generally a lawyer you would look to if issues 11:29:12

11 came up?

12 MR. ARFFA: Objection to form.

13 You may answer.

14 A. He focused more on the investor

15 documents as opposed to investments in the fund. 11:29:29

16 (Exhibit 46, document, marked for
17 identification.)

18 Q. I show you Exhibit 46. Who is

19 Anderson -- or Kelly Anderson?

20 A. She was an assistant on my team. 11:29:53

21 Q. The morning of February 14th, she's

22 asking you to call Seth Liebowitz re Financial

23 Trust Company. Do you recall what -- why you were

24 calling him or what you're being asked to call him

25 about? 11:30:13

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2 MR. ARFFA: Well, careful here. If
3 he's an in-house lawyer and you had a
4 discussion with him, that would be privileged.

5 THE WITNESS: Privileged. 11:30:20

6 MR. ARFFA: So in answering the
7 question I don't want you to reveal anything
8 you actually discussed with Mr. Liebowitz.

9 THE WITNESS: I don't recall the
10 conversation, so that makes it easy, I guess. 11:30:30

11 MR. ARFFA: Okay.

12 (Exhibit 47, document, marked for
13 identification.)

14 Q. I show you Exhibit 47. Now, you've
15 written -- this is still February 14th. This is 11:31:19
16 9:37 in the morning. And you write to Mr. Lee and
17 Tallah Woykowski and you say, We are working on
18 this as we need the current numbers, I believe
19 that is, AB should provide this shortly.

20 A. Uh-huh. 11:31:43

21 MR. ARFFA: You have to verbalize your
22 answer.

23 A. Yes.

24 Q. What did you mean by "we need the
25 current numbers"? 11:31:48

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2 A. You provided another exhibit that
3 suggested that Dan asked for updated values for
4 each of the investments. And as I said before,
5 the accounting team provides that. And AB is a 11:31:59
6 woman in the accounting group. So we were -- we
7 had asked for the numbers but had not yet received
8 them.

9 Q. In fairness, Mr. Zwirn had made that
10 request back in November of 2006. 11:32:16

11 A. Okay. Fair enough.

12 Q. Okay?

13 A. Yes.

14 Q. But here you are in February, and you
15 want the current numbers; right? 11:32:23

16 A. Yes. Well, they would have changed,
17 certainly.

18 Q. Do you recall whether you ever got the
19 current numbers back in November of 2006, current
20 values? 11:32:35

21 A. I believe we did, but I don't see them
22 in any of the e-mails here.

23 (Exhibit 48, e-mails, marked for
24 identification.)

25 Q. Let me show you Exhibit 48. This is an 11:32:47

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2 e-mail February 14th, and Mr. Zwirn has asked you
3 to update for the total as well as appreciated
4 value for each tranche.

5 A. Uh-huh. 11:33:24

6 Q. And then Alisa --

7 A. Butchkowski.

8 Q. Butchkowski -- the court reporter is
9 going to kill us -- provides them. If you look
10 attached to this, there is the spreadsheet that 11:33:38
11 has a number on it on the current values. It says
12 current tranche value, over --

13 MR. ARFFA: What are you looking at?

14 Q. See the part that's shaded on page --
15 on the spreadsheet at the top? It says current 11:34:02
16 tranche value.

17 A. Yes. It's hard to see that. Yes.

18 Q. Below it there's a whole bunch of
19 numbers. Do you know what that is? Do you have
20 any idea? 11:34:10

21 A. It's -- it's from accounting. I don't
22 know.

23 Q. Do you have any idea how accounting
24 derived the current tranche value?

25 A. No. I don't do the accounting. 11:34:21

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2 Q. Do you have any idea whether this was a
3 calculation that accounting did specially for
4 Mr. Epstein in this request or was it something
5 that you think that accounting always maintained 11:34:35
6 regularly?

7 A. Well, it's clearly in answer to a
8 specific request, but there's no way for me to
9 know that.

10 (Exhibit 49, e-mails, marked for
11 identification.)

12 Q. I show you Exhibit 49. Exhibit 49 is
13 a -- I want to focus on your e-mail to David Lee,
14 Dan Zwirn, March 10th, 2007. It's the bottom
15 e-mail. 11:35:57

16 A. Okay.

17 Q. It says, Please see the attached
18 spreadsheet with more detail than you might need.
19 The first tab cover sheet shows the timing
20 differences under each interpretation of the 11:36:06
21 two-year rolling options. Below is the difference
22 in potential redemption timing considering the new
23 minus the original interpretation.

24 Then it says, difference redemption of
25 new scheme versus original scheme. 11:36:19

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2 A. Uh-huh.

3 Q. Do you recall what this spreadsheet
4 was -- in this e-mail was referring to?

5 A. I was asked to prepare the redemption 11:36:30
6 schedule as we always interpreted it and then
7 consider if Jeffrey Epstein -- the interpretation
8 that Jeffrey had was implemented or was
9 considered, then what would it look like.

10 Q. Did anybody explain to you why they 11:36:57
11 wanted you to perform this analysis?

12 A. I don't recall.

13 Q. Was there -- the point of the analysis
14 was to see if you adopted Mr. Epstein's -- or what
15 you understood to be Mr. Epstein's interpretation 11:37:23
16 of the withdrawal rights, what impact that would
17 have on the rights of all of the investors to
18 withdraw; right?

19 A. There was no consideration of an
20 adoption of it. It would be what the impact would 11:37:36
21 be if there was a different redemption
22 alternative.

23 Q. In other words, how much money could
24 investors get out and win under Mr. Epstein's
25 interpretation versus the fund's interpretation? 11:37:52

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2 A. Yes.

3 Q. You were instructed to perform that
4 analysis; right?

5 A. Yes. 11:37:57

6 Q. But nobody told you why they wanted it
7 done?

8 MR. ARFFA: Objection to form.

9 But you may answer.

10 A. To look at the difference between the 11:38:04
11 timing of redemptions with one interpretation
12 versus another.

13 MR. ARFFA: No, the question is whether
14 you recall anyone telling you why.

15 THE WITNESS: Oh. I don't. 11:38:17

16 Q. How did you come to understand what
17 Mr. -- strike that.

18 What was your understanding of what
19 Mr. Epstein's view of the redemption rights was?

20 A. He felt that his subscription -- his 11:38:33
21 initial subscription would drive the redemption
22 date of all his subscriptions.

23 Q. So that it was your understanding he
24 read the documents to say on the anniversary of
25 your first subscription you could withdraw your 11:38:52

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2 entire capital account?

3 MR. ARFFA: Objection to the form.

4 You may answer.

5 Q. Right? 11:38:59

6 A. Would you repeat that?

7 Q. Yeah. You understood his position to
8 be on the anniversary of your first investment you
9 could withdraw your entire capital account?

10 MR. ARFFA: Objection to form. 11:39:09

11 You may answer.

12 A. I understood that he thought he could
13 redeem his entire subscription based upon his
14 initial subscription.

15 Q. And by "entire subscription," do you 11:39:26

16 mean his -- every subscription he ever made?

17 A. Yes, every investment, the initial and
18 subsequent subscription.

19 Q. You wrote -- there's a sentence -- see
20 the big box that's redacted? 11:39:43

21 A. Yep.

22 Q. Right above that there's a sentence you
23 say, Below are the redeemers who could clearly
24 redeem more should the interpretation of the two
25 year rolling change to the entire capital account. 11:39:53

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2 A. Right.

3 Q. So you understood Mr. Epstein's view
4 was you can withdraw your entire capital account
5 upon this two-year anniversary?

11:40:01

6 A. Yes.

7 MR. ARFFA: Objection to form.

8 Q. And your understanding was --

9 MR. ARFFA: Give me a minute.

10 THE WITNESS: Oh, sorry.

11:40:07

11 Q. Strike that.

12 Your understanding was the anniversary
13 Mr. Epstein said triggered --

14 A. Can I just clarify what I said before?

15 Q. Yes.

11:40:16

16 A. So what I understood was he could -- he
17 thought he could withdraw every subscription based
18 upon the initial subscription date.

19 Q. Fair enough.

20 And the anniversary that you understood 11:40:35

21 Mr. Epstein believed to be relevant was the
22 anniversary of your first subscription?

23 A. Yes.

24 Q. Right?

25 And so it's in -- I understand now.

11:40:45

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2 So it's your testimony that you were
3 attempting to model --

4 A. Yes.

5 Q. -- Mr. Epstein's interpretation versus 11:40:52
6 the fund's interpretation; correct?

7 A. Yes.

8 Q. Why is it, then, that the
9 interpretation that you modeled here was what
10 would happen if you allowed an investor to 11:41:11
11 withdraw their entire capital account on the next
12 anniversary that occurred in time? You recall
13 that's what you modeled?

14 In other words, if an investor had a
15 redemption -- an anniversary coming up of June 11:41:30
16 30th, 2007, you modeled them to say they could
17 withdraw their entire capital account on that
18 date. Does that make sense?

19 MR. ARFFA: Well, objection to form.

20 The question is whether you recall 11:41:43
21 whether that's how the modeling was done. I
22 think that's really what he's asking you.

23 A. Oh.

24 MR. ARFFA: He's saying the modeling
25 was done that way. Do you recall that? 11:41:52

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2 A. The modeling was done so that if you
3 were standing at whatever point in time we were
4 standing --

5 MR. ARFFA: Hold on. Are you repeating 11:42:02
6 now or are you actually testifying as to how
7 the modeling was done?

8 A. Could you repeat it again? I'm not
9 sure --

10 Q. Do you recall what you modeled was if 11:42:10
11 you were standing in March of 2007, okay, assume
12 that whatever the earliest redemption date
13 somebody had, as of that date, they could with
14 withdraw their entire capital account at that
15 point in time? That's what you actually modeled? 11:42:26

16 A. I'm not sure -- I'm not sure I
17 understand.

18 Q. Okay. If you did model that, what I
19 just described, that would not be Mr. Epstein's
20 interpretation, as you understood it; it would be 11:42:37
21 something different; correct?

22 MR. ARFFA: Well, I object to form.

23 A. I'm so confused.

24 MR. ARFFA: I think you're very
25 confused. 11:42:45

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2 MR. SIFFERT: She said she didn't
3 understand.

4 MR. SUSMAN: Fine.

5 MR. ARFFA: No, but she's confused as 11:42:47
6 to whether also -- whether you're giving
7 Mr. Epstein's -- I also want you to be clear
8 you have to be certain that that's what you
9 understood at the time was Mr. Epstein's
10 interpretation and not what you today 11:43:00
11 understand.

12 Q. Why don't you turn to page --

13 MR. SIFFERT: Since you're about to run
14 out of tape, might I suggest that off the
15 record we clarify these questions? 11:43:11

16 MR. SUSMAN: Let me just in a few
17 minutes --

18 Q. Turn to page 2 of Exhibit 49. And you
19 have redemption schedule based on tranche
20 retention date original. Do you understand that's 11:43:21
21 what happens if -- that's the fund's original
22 interpretation?

23 MR. ARFFA: What's the Bates stamp
24 you're on?

25 MR. SUSMAN: DBZCOFTC_11224. 11:43:32

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2 A. Okay.

3 MR. ARFFA: If you talk to yourself
4 like that, she's not going to know whether she
5 should write it down or not. 11:43:46

6 (Discussion off the record.)

7 Q. That's modeling the fund's original
8 interpretation, if you will, a tranche-by-tranche
9 redemption?

10 A. Yes. 11:43:56

11 Q. And then below you model this new
12 interpretation, which is redemption schedule based
13 on earliest tranche redemption date by entity. Do
14 you recall what that was to say what was the
15 earliest tranche redemption date available after 11:44:11
16 March of 2007 and then say on that date the
17 investor can pull out their whole capital account,
18 not just the tranche?

19 MR. SCHWARTZ: Objection to form.

20 MR. ARFFA: Objection to form also. 11:44:29

21 A. I'm sorry, it's still confusing to me
22 what you're asking.

23 Q. Yeah. Do you understand that you would
24 say, under this model --

25 A. Yeah. 11:44:36

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2 Q. -- if standing in March FTC had an
3 anniversary coming -- of an investment, one
4 tranche, coming up in June of 2007 that would be
5 the earliest tranche redemption date available? 11:44:47

6 A. I don't think that's the way.

7 Q. And you assumed that on that date you
8 could pull -- FTC could pull out their whole
9 capital account? Do you understand that concept?

10 A. I think so. 11:45:00

11 MR. ARFFA: Objection to form.

12 Q. That was not the concept that
13 Mr. Epstein -- that wasn't Mr. Epstein's
14 interpretation -- correct? -- as you understood
15 it? 11:45:08

16 MR. ARFFA: Well, objection to form.

17 And again I want you to be clear
18 whether or not that was what your
19 understanding of Mr. Epstein's interpretation
20 was at that time as opposed to what he may 11:45:14
21 know now.

22 A. Okay. I'm just totally confused by the
23 question so -- because I just feel like it's a lot
24 of semantics. So --

25 MR. SIFFERT: Harry -- 11:45:27

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2 A. Can we just clarify what --

3 MR. SIFFERT: Harry --

4 MR. SUSMAN: We'll take a break, and we
5 can start back. Change the tape. 11:45:33

6 THE VIDEOGRAPHER: The time is 11:47
7 a.m. This ends Tape 2 in the videotaped
8 deposition of Elise Hubsher. We are off the
9 record.

10 (Recess taken from 11:47 to 12:07.) 11:45:46

11 THE VIDEOGRAPHER: The time is 12:07
12 p.m. This begins Tape 3 in the videotaped
13 deposition of Elise Hubsher. We are on the
14 record.

15 Q. All right, Ms. Hubsher, if we can go 12:05:55
16 back to Exhibit 49, and let's see if with a little
17 more time we can go through this real quick.

18 A. Okay.

19 Q. If you turn to page DBZCOFTC_11233.

20 A. Yes. 12:06:12

21 Q. It's 11233.

22 A. Oh.

23 Q. Actually, and if you want to, you can
24 go look at -- well, let's just look. It says
25 JEEPERS, and it has various investments. Then 12:06:51

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2 there's this Column G that has dates on it.

3 A. Yep.

4 Q. All right? And if you look at 11227,

5 it tells you available for redemption date. 12:07:13

6 That's what Column G is.

7 A. I see.

8 Q. Turn back to 11233. Those dates that

9 are there are the available for redemption dates

10 for these JEEPERS investment. Follow? 12:07:26

11 A. Yes.

12 Q. And so -- and that's -- those dates are

13 consistent with the fund's view of when the

14 various tranches could be withdrawn.

15 A. Okay. 12:07:41

16 Q. And that's the old interpretation that

17 you modeled?

18 A. Okay.

19 Q. You'll see the earliest date a

20 redemption is available is June 30th, 2007. 12:07:53

21 A. On this schedule.

22 Q. Yeah. Okay.

23 Then if you go to --

24 MR. SIFFERT: That's on 33.

25 Q. Thirty-three. Then go to 11290. What 12:08:11

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2 you've done is you've put in as the date available
3 for redemption, that's June 30th date for every
4 one of the tranches.

5 A. Wait a minute. Okay. 12:08:40

6 Q. Okay.

7 So does that refresh your memory that
8 the new interpretation that you were modeling was
9 one that assumed on the earliest -- you would go
10 to the earliest date of redemption that was 12:08:55
11 available and assume on that date the investor
12 could withdraw all of their capital account, in
13 effect?

14 MR. SCHWARTZ: Objection to form.

15 MR. ARFFA: Objection to form. 12:09:05

16 A. No.

17 Q. What's that?

18 A. No.

19 Q. Okay. This interpretation or model
20 that I just gave you -- 12:09:13

21 A. Yes.

22 Q. -- where somebody on the earliest date
23 that was available for redemption of a tranche,
24 the fund's old view, tranche by tranche, that that
25 person could withdraw all of their money, their 12:09:25

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2 entire capital account, on that date, you
3 understand how that might work? You understand
4 what I'm talking about?

5 MR. ARFFA: Objection to form. You may 12:09:34
6 answer.

7 MR. SIFFERT: Objection to form.

8 A. I understand what you're implying, yes.

9 Q. As you understood it at the time, that
10 was not the way Jeffrey Epstein thought his 12:09:42
11 redemption rights worked; correct?

12 A. Correct. But it's also not what I
13 think we were modeling.

14 Q. Right.

15 I assume if I actually showed you the 12:10:00
16 Excel spreadsheet that has the formulas in it you
17 could tell what you did model; correct?

18 A. I think I would need the initial
19 investment date of each of the tranches to
20 determine that. 12:10:14

21 Q. You mean for JEEPERS, for example?

22 A. That would help, yes.

23 Q. If you want -- you've got that. Go
24 look, for example, at Exhibit 42, if you want, any
25 one of those. Look at Exhibit 47. Fair enough. 12:10:41

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2 It's got the initial investment dates on it,
3 doesn't it?

4 MR. SIFFERT: Could someone tell me
5 what the question is that's pending, because I 12:11:10
6 can't see it?

7 MR. SUSMAN: I don't need to, John.
8 You know what, I'm going to go on to the next
9 exhibit.

10 (Exhibit 50, e-mails, marked for
11 identification.)

12 Q. Can I just show you Exhibit 50. Now,
13 this is the same e-mail, but it just has less
14 redacting to it. That's why I'm really showing it
15 to you. 12:11:57

16 A. Okay.

17 Q. In your e-mail you had written -- and I
18 want to focus -- it says, Looking backwards is a
19 bit more difficult.

20 MR. SCHWARTZ: Where is that? 12:12:05

21 MR. SUSMAN: Middle of the page.

22 Q. CH has a list of investors who have
23 redeemed under two-year rolling. We have excluded
24 those that have fully redeemed.

25 Now, that means -- who is CH? 12:12:16

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2 A. Cara Howe.

3 Q. And can you explain what you were
4 trying to do here?

5 (Pause.) 12:13:07

6 A. Okay. I've looked at it.

7 Q. Can you explain to me what was the
8 purpose of your words when you wrote, Looking
9 backwards is a little bit more difficult, all that
10 language that continues and then the numbers 12:16:48
11 that -- the schedules that follow?

12 A. I don't recall exactly, but I believe
13 what I meant to say is that for -- that the
14 investor analysis below was based on current
15 requests for redemptions and going backwards in 12:17:09
16 the past would have been difficult to do. That's
17 what I read it to say.

18 Q. In other words, the model above or the
19 numbers above the paragraph "looking backwards is
20 a little bit more difficult," that's modeling what 12:17:25
21 would happen for current investors if you adopted
22 the new interpretation versus the old?

23 A. Remaining investors, yes.

24 Q. Then what follows below is if we
25 adopted the new interpretation we might have to go 12:17:37

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2 back and offer so some investors the right to
3 redeem more than they had actually redeemed at the
4 time, because they were operating under the old
5 interpretation; is that right? 12:17:53

6 MR. ARFFA: Objection to form.

7 A. Yeah, I think it was simply an analysis
8 of under the new scheme using a new model what
9 additional redemptions might be available.

10 Q. You mean might be available to 12:18:11
11 investors who had redeemed in the past?

12 MR. ARFFA: Objection to form.

13 A. I'm not certain about this.

14 Q. It says, CH has a list of investors who
15 have redeemed under two-year rolling. We excluded 12:18:23
16 those that have already fully redeemed. There are
17 not that many of them, but in a few instances the
18 investor redeemed less than was available under
19 the two-year redemption option.

20 A. Okay. 12:18:38

21 Q. Do we go back and reoffer to redeem the
22 entire capital account. Below are the redeemers
23 who could clearly redeem more should the
24 interpretation of the two-year rolling change to
25 the entire capital account. 12:18:51

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2 Does that refresh your memory that what
3 you were doing was, look, some people who redeemed
4 in the past who under the new interpretation could
5 have redeemed their whole capital account but only 12:19:02
6 redeemed part of it? Is that what you were going
7 to look at?

8 MR. ARFFA: Objection to form.

9 You may answer.

10 A. Yes, it appears that we were looking at 12:19:12
11 the redeemers for two-year subscriptions and
12 looking at what they could have redeemed under a
13 different scenario.

14 Q. You mean the people who had actually
15 redeemed in the past under the two-year scenario 12:19:33
16 who had redeemed less than their full capital
17 account?

18 MR. ARFFA: Object to the form.

19 You may answer.

20 Q. That's what you went to go looking for; 12:19:41
21 correct?

22 MR. SIFFERT: Are you narrowing it to
23 that only?

24 Q. It says, CH has a list of investors who
25 have redeemed under two-year rolling. We excluded 12:19:53

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2 those who have already fully redeemed.

3 So in other words you went and got a
4 list of people who redeemed under the two-year
5 rolling but redeemed less than their full capital 12:20:06
6 account?

7 MR. ARFFA: Objection to form.

8 MR. SIFFERT: I don't understand the
9 question.

10 A. I'm just not sure why I wrote "looking 12:20:42
11 backward is more difficult" if these were historic
12 redemptions. So that's confusing me but...

13 MR. SIFFERT: Harry, are you asking if
14 that's what she did for the whole document or
15 just this portion of the document? 12:21:04

16 MR. SUSMAN: No, what follows below.
17 In other words, the portion above is obviously
18 the people redeeming who remain in the fund.
19 What you then did was say, all right, that's
20 how the new -- the current investors would be 12:21:14
21 treated.

22 But what do we do about the old
23 investors who already redeemed under the old
24 interpretation. And so if we adopted this new
25 interpretation, do we need to go back and 12:21:24

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2 offer them an opportunity to redeem more.

3 MR. ARFFA: Objection to form.

4 You may answer.

5 Q. Does that refresh your memory of what 12:21:33
6 you were trying to figure out, and how many such
7 investors there would be? Let me try it this
8 way --

9 A. Let me just read for a minute.

10 Q. Sure. All right. 12:21:50

11 (Pause.)

12 A. Okay. I think what the analysis was is
13 any two-year -- any investor who had the two-year
14 rolling option and had put in a redemption form,
15 we excluded any that fully redeemed, because they 12:22:35
16 had already fully redeemed. We also excluded any
17 that partially redeemed a tranche because they
18 made a proactive decision not to redeem the whole
19 tranche. Then we did an analysis on the remaining
20 redeemers as to what the new scheme would apply. 12:22:59

21 Q. In other words, you were trying to
22 focus on those people who redeemed only a tranche
23 in the past and under the new scheme might have
24 been able to have withdrawn more? You wanted to
25 try to isolate those people; is that right? 12:23:16

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2 A. Yes.

3 Q. Their names aren't here, but where you
4 have below are the redeemers who could clearly
5 redeem more should the interpretation of two-year 12:23:28
6 rolling change to the entire capital account, and
7 it's redacted but it's basically one, two -- it's
8 three investors; right?

9 A. I can't tell exactly, but it's -- it's
10 certainly less than five, based on what I'm 12:23:47
11 looking at here.

12 Q. Well, the people below, the next group,
13 could have --

14 A. Oh, I see.

15 Q. -- fully redeemed but chose not to. 12:23:54

16 A. Right.

17 Q. Those are the people who chose to
18 withdraw only part of a tranche. So presumably
19 they weren't interested in withdrawing their
20 entire capital account either; right? 12:24:04

21 A. That's correct.

22 MR. ARFFA: I don't know why you say
23 three.

24 A. I think it might be four. I don't
25 know. 12:24:17

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2 Q. Here's where -- I can't tell, but the
3 reason I get there -- obviously there's one,
4 9/30/07, will redeem. That's a person who hasn't
5 yet redeemed; right?

12:24:28

6 A. Yes.

7 Q. The second is somebody who made two
8 partial redemptions, and they have a remaining
9 value in their account.

10 A. Yes.

12:24:37

11 Q. And then the next group is a partial
12 redemption. Okay. And then -- of 3.5 million,
13 and then it says, appears to be only one year plus
14 liquidity remaining. And then you've -- well, it
15 may be -- you're right, it may be three. And that
16 could be a third person.

12:24:55

17 So in other words, historically as of
18 March --

19 MR. ARFFA: So it might be four.

20 A. Four.

12:25:03

21 Q. I'm sorry, the four if you include
22 somebody who hasn't even yet redeemed; right?

23 A. Oh.

24 Q. As a historic matter, there had only
25 been -- well, all these people -- so maybe it had

12:25:15

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2 been four investors. Let's just assume it's four
3 people who had withdrawn, at some point in time,
4 less than their full capital account and might
5 have wanted to withdraw more had they been given 12:25:37
6 the, quote, new interpretation quantity.

7 A. Right. It's a very small number,
8 basically.

9 Q. You say below --

10 A. And I don't know whether they wanted to 12:25:51
11 or not, but they -- it was more just an analysis
12 of what would be available under the new scheme.

13 Q. Right. Okay.

14 And you say, Below are the redeemers
15 who could clearly redeem more should the 12:26:03
16 interpretation of two-year rolling change to the
17 entire capital account.

18 Why did you think that -- or write that
19 someone was considering that you might change the
20 interpretation to apply to the entire capital 12:26:25
21 account?

22 MR. ARFFA: Objection to form. I don't
23 understand the question.

24 Q. You just meant that hypothetically if
25 somebody would change it to two years this is what 12:26:39

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2 would happen, not that anyone was considering
3 changing it?

4 MR. ARFFA: Objection to form.

5 You may answer. 12:26:45

6 A. I think it was simply a response to a
7 question to model using a new interpretation, no
8 more or no less.

9 Q. Did you ever ask Mr. Lee or anyone what
10 ever came of the modeling this new interpretation? 12:26:58

11 A. No.

12 Q. Did you participate in any discussions
13 about potentially adopting the new interpretation?

14 A. No.

15 Q. If I'm correct, the effect of the, 12:27:17
16 quote, new interpretation, applying it, would be
17 to allow more money to be withdrawn earlier as of
18 March 2007 --

19 A. Yes.

20 Q. -- than the old interpretation; right? 12:27:33

21 A. Yes.

22 Q. And was there any discussion of that's
23 the reason we don't want to adopt the new
24 interpretation, because it would result in --

25 A. No. 12:27:45

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2 Q. -- more money being able to come out
3 sooner?

4 A. No, not that I recall.

5 Q. Who was George Sard? 12:28:09

6 A. I think he was a media consultant, but
7 I'm not certain. I'm -- I don't know.

8 Q. What involvement did you have in
9 drafting the investor communication -- strike
10 that.

11 Do you recall in March of 2007 an
12 investor communication was sent out describing the
13 results of the Gibson, Dunn investigation?

14 A. Yes, yes.

15 Q. And what involvement did you have in 12:28:45
16 drafting that communication?

17 A. I helped edit.

18 (Exhibit 51, document, marked for
19 identification.)

20 Q. Let me just show you Exhibit 51. 12:29:03

21 I really want to ask you who some
22 people are.

23 A. Isn't this privileged?

24 MR. ARFFA: Yeah, I was just going to
25 say, I'm looking at this. It seems 12:29:36

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2 privileged. Mark Elovitz from Schulte seems
3 to be talking to -- who I believe was then the
4 lawyer for the fund and the manager, and he
5 seems to be talking to people who I believe 12:29:55
6 are all within the privilege.

7 I think Harry Davis is a lawyer at
8 Schulte, and there's like Audry Strauss at
9 Fried, Frank, who I think was also working for
10 the fund at that time. 12:30:11

11 MR. SCHWARTZ: Can we go off the record
12 and just consult for a minute?

13 MR. SUSMAN: Let's just -- you know
14 what, why don't we do it over lunch. I'll
15 skip it for now. 12:30:19

16 MR. SIFFERT: Thank you.

17 (Pause.)

18 (Exhibit 52, e-mail, marked for
19 identification.)

20 Q. Let me show you this. This is Exhibit 12:31:07
21 52.

22 MR. SUSMAN: I believe the -- I assume
23 the redactions for confidential, Allan, are
24 simply people's names.

25 MS. SHOLL: We didn't redact it. It's 12:31:28

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2 not our document.

3 MR. ARFFA: It's not our document, I'm
4 told by Hannah.

5 MR. SIFFERT: FTC? 12:31:37

6 MR. SCHWARTZ: That's what they
7 probably are, but I don't know the answer to
8 the question.

9 MR. SUSMAN: I didn't know you all were
10 redacted for confidential. 12:31:49

11 MR. ARFFA: They were supposed to be.

12 MR. SUSMAN: What's that?

13 MR. ARFFA: They were supposed to be.

14 MR. SUSMAN: Okay.

15 Q. If you could, this is -- do you 12:32:07
16 recognize this e-mail from Ms. White, Nicole
17 White, to you?

18 (Discussion off the record.)

19 A. Could you ask the question again?

20 Q. Do you recognize the e-mail, Exhibit 12:32:31
21 52 -- is it 52 or 53?

22 A. Fifty-two.

23 Q. This from Nicole White to yourself and
24 various other people on March 22nd. I realize it
25 was forwarded by Mr. Sumberac. 12:32:48

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2 A. I don't recall it, but I see it here.

3 Q. Would Ms. White's and you kind of a
4 summary of transfers and redemptions periodically?

5 A. She might, yes. 12:33:06

6 Q. And if you could just turn to the
7 second page. There's 12/31/06 redemptions. For
8 example, the second entry, it says 12/30 -- LP
9 withdrawal, 12/31/06, redeeming 9/1/03 tranche and
10 7/1/05 transfer of DBZ LP. 12:33:30

11 A. Yes.

12 Q. How could somebody redeem withdrawal --
13 whether it was a two-year or three-year liquidity
14 option, okay, you would withdraw it the quarter
15 ending after the two-year anniversary; is that 12:33:52
16 right?

17 A. Or three, yeah. I -- yeah.

18 Q. So if somebody made a 9/1/03
19 investment, the quarter ending would be 9/30/03;
20 right? Or 9/30 -- of any anniversary would be 12:34:07
21 9/30; correct?

22 A. It could have been one year -- one year
23 plus.

24 Q. Did the one year plus exist in 2003?

25 A. I could be wrong, but I think you were 12:34:26

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1

2 able to --

3 Q. Opt into it?

4 A. -- opt into it.

5 Q. Okay. Then here, try -- turn to 8636. 12:34:32

6 A. Well, wait a minute. A 9/1 -- okay.
7 Which one did you want me to look at?

8 Q. Go to FTC 8636.

9 A. Okay.

10 MR. ARFFA: Sorry, 36? 12:34:57

11 MR. SUSMAN: Yeah, 8636.

12 MR. ARFFA: Okay.

13 Q. This is showing the March 31, '07,
14 redemptions.

15 A. Okay. 12:35:13

16 Q. There's an LP redeeming a 5/03 tranche.
17 It doesn't have the person's name, originally
18 \$500,000, two-year. How could that -- how could
19 an investment made in May of '03 be redeemed March
20 31, '07, under the two-year interpretation? 12:35:32

21 (Pause.)

22 A. I don't know.

23 Q. We had discussed earlier the --
24 Mr. Epstein's request on March -- on February
25 14th, 2007, for all of his money back. Do you 12:36:46

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2 remember that?

3 A. Sorry, say that again?

4 Q. Do you remember you had seen

5 Mr. Epstein's request on February 14th, 2007, to 12:36:55

6 get all of his money back?

7 A. Yes.

8 Q. November 13th he asked for 80

9 million -- November 13th, 2006, he asked for 80

10 million. Then on February 14th he asked for all 12:37:12

11 of the money back?

12 A. Yes.

13 Q. Of 2007.

14 MR. ARFFA: (Handing) Exhibit 45.

15 Q. After you saw Exhibit 45, the request 12:37:26

16 for all of -- the whole capital account, do you

17 recall any discussions about how the fund was

18 going to respond with -- respond to that request?

19 A. The response was going to come through

20 David Lee and Dan. 12:37:42

21 Q. Did you participate in any discussions

22 about what the response should be?

23 A. No.

24 Q. Did you participate in any discussions

25 about whether the fund should honor this request 12:37:55

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2 or not?

3 A. I recall discussions around what to do,
4 how -- how to think about this, what they were
5 asking, but I don't recall -- would you ask your 12:38:10
6 question again?

7 Q. What do you recall about the
8 discussions about how to deal with Mr. Epstein's
9 request?

10 A. I recall some discussions around it, 12:38:22
11 and I believe that there was a conclusion that
12 there was going to be a discussion with counsel.

13 Q. Other than someone saying they were
14 going to talk to counsel about Mr. Epstein's
15 request, did you participate in any -- do you 12:38:44
16 remember the substance of any discussions about
17 how to deal with Exhibit 45?

18 A. No.

19 Q. I want to make sure I've got your
20 recollection of events, make sure I'm not missing 12:39:05
21 anything.

22 Essentially on November 13th, 2006, you
23 saw the written request for \$80 million?

24 A. Right.

25 Q. And you recall some discussion about 12:39:19

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2 it, about how to deal with it, but you were
3 basically told within days don't -- it's been
4 taken care of, you don't need to worry about it,
5 in effect?

12:39:37

6 MR. ARFFA: Objection, asked and
7 answered.

8 You can answer it again.

9 A. Yes.

10 Q. And then you weren't involved in any 12:39:43
11 other discussions about Mr. Epstein redeeming or
12 withdrawing his account until you saw Exhibit 45
13 on February 14th, 2007; right?

14 A. Not that I recall.

15 Q. And the only discussions you recall 12:39:58
16 about Exhibit 45 was simply that they were going
17 to take it up -- someone was going to take it up
18 with the lawyers?

19 A. Yes.

20 Q. Prior -- I'm excluding your tenure at 12:40:14
21 Fortress.

22 A. Okay.

23 Q. After someone told you they were going
24 to take up Exhibit 45 with the lawyers, do you
25 recall any other discussions about Mr. Epstein's 12:40:25

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2 withdrawal request?

3 MR. ARFFA: Can you be a little clear,
4 in other words, about this request in Exhibit
5 45, or the first request, or any request? 12:40:40

6 MR. SUSMAN: Any request.

7 MR. ARFFA: Okay. So in other words do
8 you recall -- I guess after the discussion you
9 recall about going to a lawyer -- any
10 discussions about any request by Mr. Epstein 12:40:50
11 to redeem money.

12 A. I don't recall.

13 Q. Have you ever had any -- you've told me
14 you've had some discussions with other investors
15 about the existence of a dispute with Mr. Epstein. 12:41:17

16 A. Yes.

17 Q. Have you had any discussions with them
18 about what the nature of the dispute is, I mean,
19 what exactly Mr. Epstein is claiming?

20 A. We have written in our documents what 12:41:33
21 we think the arbitration is about, that there's a
22 dispute and that it could impact their -- their
23 value of their investment. But that's pretty much
24 what we discussed.

25 Q. Have you discussed with any investors 12:41:57

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2 or explained to them what you understand to be
3 Mr. Epstein's view of his redemption rights?

4 A. No.

5 (Exhibit 53, document, marked for
6 identification.)

7 Q. I show you Exhibit 53.

8 Before I talk about Exhibit 53, at some
9 point in time did you become aware that Highbridge
10 Capital wanted to withdraw its managed account? 12:42:33

11 A. I was aware that they had been winding
12 it down over a period of time and it would go to
13 zero after a period of time.

14 Q. Were you made aware of that
15 shortly after you started working for the Zwirn 12:42:55
16 fund? In other words, when you came to work, did
17 you understand they were winding down the
18 Highbridge account?

19 A. That was my understanding.

20 Q. Subsequently did you learn that 12:43:04
21 Highbridge wanted to immediately terminate the
22 account and have its money returned as opposed to
23 just having a wind-down?

24 MR. ARFFA: I just have to put on the
25 record, again, I understand you're asking the 12:43:21

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2 questions about Highbridge and their documents

3 here, but Highbridge is an investor whose

4 identity we think should be kept confidential.

5 So I'm just going to note that for the record. 12:43:32

6 (Pause.)

7 A. I'm sorry.

8 Q. Do you recall at some point after you
9 started working for the Zwirn fund that Highbridge
10 said that it wanted to have its managed account 12:44:19
11 liquidated immediately, to terminate the
12 relationship with Zwirn immediately?

13 A. I'm not sure.

14 Q. Do you recall at some point learning
15 there was a dispute between the fund or Mr. Zwirn 12:44:36
16 and his management company and Highbridge about
17 the fate of the Highbridge managed account?

18 A. I was aware there was a conversation
19 with the G -- with Mr. Dubin, who is head of
20 Highbridge. 12:45:02

21 Q. What was the conversation -- what was
22 the substance of the conversation that you were
23 aware of?

24 A. I was aware that he wanted to get out
25 of his relationship as far as being part of the 12:45:15

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2 GP.

3 Q. And when did you learn that Mr. Dubin
4 wanted to get out of the -- by that you mean the
5 Zwirn management company? 12:45:30

6 A. Yes, Zwirn management company.

7 Q. He wanted to get out of the Zwirn
8 management company?

9 A. Yeah. I don't remember the timing.

10 Q. Did anyone tell you why he wanted out? 12:45:39

11 A. I don't recall.

12 Q. Did you understand there was some
13 dispute between him and Mr. -- that is, Mr. Dubin
14 and Mr. Zwirn?

15 A. I wasn't privy to that. 12:46:03

16 Q. I was asking you about something a
17 little different, which is Highbridge itself, were
18 you aware that they had a managed account --

19 A. Yes.

20 Q. -- that had a very large amount of 12:46:15
21 money that was managed by the management company.

22 A. Yes.

23 Q. And that at some point in time they
24 asked for all of their money back, effective
25 immediately? 12:46:25

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2 A. Right.

3 Q. As opposed to some long liquidation.

4 Do you recall that happening?

5 A. I recall them winding it down. I just 12:46:31
6 don't recall whether it was an immediate wind-
7 down.

8 Q. Do you recall whether there was any
9 kind of dispute between the Highbridge people and
10 Zwirn people about the managed account itself, the 12:46:44
11 Highbridge managed account?

12 A. I wasn't as involved in the managed
13 accounts.

14 Q. You can go ahead and take the sticker
15 off of Exhibit 53, because I'm not going to mark 12:47:03
16 it.

17 MR. ARFFA: I want to be clear because
18 at one point the record says and at some point
19 in time they asked for all their money back
20 effective immediately. You said one of those 12:47:11
21 rights, but it may have been you were saying
22 "right," that's what he's saying, because the
23 other answers I think you've been giving were
24 that you weren't aware --

25 THE WITNESS: I may have been confused. 12:47:23

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2 MR. ARFFA: I just want to be clear.

3 So what is it? Do you recall it was being
4 wound down or do you recall some immediate
5 withdrawal? 12:47:30

6 THE WITNESS: No, I only recall that it
7 was being wound down.

8 Q. And as I understand I, if there were a
9 dispute between Highbridge itself and the Zwirn
10 folks about how the winding down would take place 12:47:42
11 and under what schedule, you weren't privy to that
12 dispute?

13 A. Right. It generally went away from my
14 group.

15 MR. SIFFERT: So he wanted you to take 12:48:00
16 back 53?

17 MR. SUSMAN: Because I'm not going to
18 talk about it. All right. Fine. Just keep
19 it in the record. Fine.

20 I'll mark Exhibit 54. 12:48:09

21 (Exhibit 54, document, marked for
22 identification.)

23 MR. ARFFA: Are you all right? Do you
24 want to take a break?

25 MR. SUSMAN: Let's take lunch. 12:48:15

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THE WITNESS: That would be good.

THE VIDEOGRAPHER: The time is 12:49
p.m. This ends Tape 3 in the videotaped
deposition of Elise Hubsher. We're off the 12:48:22
record.

(Time noted: 12:49 p.m.)

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A F T E R N O O N S E S S I O N

(Time noted: 1:26 p.m.)

THE VIDEOGRAPHER: The time is 1:26
p.m. This begins Tape 4 in the taped 01:24:41
deposition of Elise Hubsher. We are on the
record.

MR. SCHWARTZ: Harry, before you start,
referring to Exhibit 51, which was the e-mail
with a lot of names and George Sard. We 01:24:55
understand from Fried Frank, whom we called
during the break, that it is their view that
George Sard was working for them and was
within the privilege.

And so that this would have been an 01:25:10
inadvertent production of a privileged
document, and we'd ask that you return all
copies of it.

MR. SUSMAN: All right.

Q. Now, Ms. Hubsher, you earlier in the 01:25:26
day had mentioned that in your experience with
lockups prior to working at the Zwirn fund --

A. Yes.

Q. -- did they typically run off of --
calculated off of each separate investment an 01:25:44

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2 investor makes or off of their capital account
3 generally?

4 MR. ARFFA: Objection to form.

5 But you may answer. 01:25:52

6 A. They typically went off of the specific
7 investment date for that particular investment.

8 Q. And when you say that they typically
9 went off the specific investment date, this issue
10 would only arise where there were multiple 01:26:09
11 investments made by an investor; right?

12 A. Correct.

13 Q. Was there language used in the limited
14 partnership agreements that you've seen over the
15 years that specifically tell an investor that the 01:26:25
16 withdrawal date will be calculated off of -- based
17 on each investment tranche?

18 MR. ARFFA: Objection to form.

19 A. Well, I'm confident that each
20 investment LPA and PPM would discuss that, just 01:26:41
21 like the Zwirn document discussed it.

22 Q. Obviously if you make a single
23 investment it's pretty simple that the withdrawal
24 date has been to be calculated based on that one
25 investment because there's only one investment; 01:27:01

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2 right?

3 A. Yes.

4 Q. Would you see, in your experience in
5 the governing documents for these funds, some 01:27:05
6 particular language that dealt with additional
7 subsequent investments?

8 A. I couldn't say. I think each document
9 was different, and I don't have a specific
10 recollection of each one. 01:27:22

11 THE VIDEOGRAPHER: Excuse me,
12 counselor, can we go off the record for
13 technical reasons?

14 MR. SUSMAN: Sure.

15 THE VIDEOGRAPHER: The time is 1:28 01:27:29
16 p.m. We are going off the record.

17 (Pause.)

18 (Mr. Ard joins proceedings.)

19 THE VIDEOGRAPHER: The time is 1:30
20 p.m. We are on the record. 01:29:36

21 Q. Ms. Hubsher, did you ever encounter an
22 investment where the investment -- the withdrawal
23 rights were actually calculated based on one's
24 ability to withdraw their entire -- strike that.

25 Did you ever encounter a hedge fund 01:30:00

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2 where one had the right to withdraw their entire
3 capital account, irrespective of how many
4 investments they might have made at a particular
5 point in time?

01:30:11

6 MR. ARFFA: Objection to form.

7 A. My experience is on the lockups. It's
8 based on the subscription. And I don't recall
9 where there was a lockup the subscription -- the
10 method being that it's for the entire account.

01:30:23

11 Q. When you were investing or working for
12 Northwater -- did I get the name right? It is
13 Northwater?

14 A. Yes.

15 Q. When you were working for Northwater,
16 were you involved in situations where you made
17 multiple investments into a hedge fund over a
18 period of time?

01:30:44

19 A. Yes.

20 Q. What are the names of some of those
21 hedge funds?

01:30:52

22 A. I don't think I'm able to give them out
23 but...

24 Q. How about do you know whether
25 Northwater's investment into the Zwirn fund was a

01:31:09

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2 single investment or multiple investments?

3 A. I don't recall.

4 Q. I think you said -- you told me that

5 the reason why you understood -- strike that. 01:31:30

6 I think earlier you gave me some
7 reasons why you understood withdrawal dates run
8 off of each separate investment.

9 A. Yes.

10 Q. And what were those reasons? 01:31:42

11 A. Primarily --

12 MR. ARFFA: Do you want what she
13 testified to previous or what she believes are
14 the reasons?

15 MR. SUSMAN: Yeah. 01:31:50

16 A. Because the investment manager needs to
17 know that they have the capital to invest for a
18 certain period of time to match the liquidity of
19 the underlying investments and so the investor --
20 the investment manager knows that they have the 01:32:07
21 money to invest and they feel confident that they
22 don't have to hold capital back for that period of
23 time.

24 Q. Is there any other reason why, other
25 than this -- why you would run it off of each 01:32:27

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2 investment tranche other than the manager's need
3 to know how much capital they have to invest?

4 A. Well, I think I said because you want
5 to match the assets and liabilities. So if 01:32:39
6 you're -- if you have long-dated assets, you'd
7 want to make sure that the capital was available
8 to continue to invest in them.

9 Q. That explanation you just gave me is
10 really the part of the first one; right? 01:32:55

11 MR. ARFFA: Objection to form.

12 A. That is the first -- that is the first
13 one.

14 Q. I'm just trying to figure out if
15 there's any other reason you're aware of why hedge 01:33:02
16 funds typically calculate lockups by each
17 investment.

18 A. Those are the two that come to mind.

19 Q. Can you explain to me why if the
20 withdrawal date is -- runs off of the capital 01:33:19
21 account as a whole the manager would know how much
22 capital he had to deploy?

23 A. I'm sorry, I don't understand the
24 question.

25 Q. Well, I understood you to say that the 01:33:30

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2 reason the withdrawal dates are run off of each
3 investment tranche is so that the manager could
4 know how much money he has to deploy.

5 A. So maybe I should restate it. So that 01:33:45
6 there wasn't a risk that the withdrawal would
7 interfere with the tenure of the investment. So
8 if you -- if you -- let's say today you give an
9 investment manager \$10 million, they would know,
10 potentially -- and they tended to be -- and they 01:34:02
11 happened to be an illiquid investor -- they would
12 know that they could make investments with the
13 tenure of two years or thereabouts.

14 So when you got the next investment,
15 they would know that they had that capital for two 01:34:15
16 years, they could make new investments that would
17 last the next two years. And if the second
18 investment was subject to the first investment's
19 withdrawal date, they would not have a full two
20 years, potentially, for the tenure of the 01:34:32
21 investment.

22 Q. Your point is that if you -- the
23 withdrawal date ran off of the, say, first
24 investment --

25 A. Yes. 01:34:45

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2 Q. -- it might result in a shorter lockup
3 period for some investments?

4 A. It would -- it might change the
5 investment strategy because there was uncertainty. 01:34:53

6 Q. Given the explanation you just gave me,
7 have you encountered funds that -- or heard of
8 funds that do in fact run the withdrawal date from
9 the first investment?

10 A. I'm not aware of any. 01:35:11

11 Q. Are you aware of discussions about
12 whether that's practical or not?

13 A. I wouldn't be involved in such
14 discussions.

15 Q. Were you aware there was a side letter 01:35:26
16 that FTC entered into with the Zwirn fund in
17 January of 2005 regarding its redemption rights?

18 A. I am aware.

19 Q. When did you first become aware of that
20 letter? 01:35:41

21 A. I don't recall the date. It was in the
22 course of putting the schedules together.

23 Q. At some point in time, you became aware
24 of it?

25 A. Yes. 01:35:53

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2 Q. During the time that you were at the
3 Zwirn fund, did any other investor say that they
4 wanted to withdraw their entire capital account as
5 opposed to just a particular tranche? 01:36:07

6 A. Yes, there were full redeemers.

7 Q. How many of those were there?

8 A. I don't know.

9 Q. Did the fund allow those people to pull
10 out their entire capital account? 01:36:23

11 MR. ARFFA: Objection to form.

12 You may answer.

13 A. If a full redemption was submitted,
14 then according to the redemption schedule they
15 were able to redeem. 01:36:33

16 Q. So that we're --

17 (Unintelligible discussion interrupted
18 by the reporter.)

19 Q. Understand my question. Was there
20 anybody who asked to pull out their entire capital 01:36:45
21 account based on the fact that it was the
22 anniversary of one of their investments, their
23 initial investment, say?

24 A. No.

25 Q. Did the fund have any disputes with 01:37:03

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2 investors, other than Mr. Epstein, about the form
3 of their redemption request or the timeliness of
4 it?

5 A. No, not that I recall. 01:37:22

6 Q. Not that you recall. Okay.
7 Did you ever hear anyone say that Dan
8 Zwirn had promised Jeffrey Epstein that he could
9 withdraw his \$80 million?

10 A. No. 01:37:39

11 Q. Did you ever hear anyone talk about, in
12 any conversations that Mr. Zwirn may have had with
13 Jeffrey Epstein personally, about withdrawing his
14 money?

15 A. Could you repeat that? 01:37:48

16 Q. Yeah. Did anyone ever recount to you
17 or tell you that Dan and Jeffrey Epstein had
18 personally talked about Mr. Epstein's redemption
19 requests?

20 A. I don't recall. 01:38:04

21 Q. Did anybody ever tell you that
22 Mr. Dubin had made any promises to Mr. Epstein
23 about how much he could withdraw or when he could
24 withdraw it?

25 A. No. 01:38:21

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2 Q. Just to return very briefly to the
3 calls that you listened into that Mr. Zwirn had
4 with Mr. Epstein --

5 A. Yes. 01:38:33

6 Q. -- is it your recollection that
7 Mr. Zwirn stuck to the scripts?

8 A. Yes. He was trying to give the same
9 information to every investor, and in endeavoring
10 to do so, he did keep to the script. 01:38:47

11 Q. And your job was sort of to have the
12 scripts there and make sure that Dan was staying
13 to the script?

14 A. Yes.

15 Q. And as I understand it, Mr. Epstein was 01:38:59
16 trying to get -- was unsatisfied, in essence, with
17 what the information in the script was and wanted
18 more information?

19 A. Yes.

20 Q. And Mr. Zwirn refused to give him any 01:39:08
21 more information?

22 A. He stated that he was going to give him
23 the same information as all the other investors.

24 Q. And Mr. Zwirn was on the call, and you
25 were on the call? 01:39:27

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2 A. I was listening.

3 Q. Was anyone else listening, that you're
4 aware of?

5 MR. ARFFA: Asked and answered. 01:39:31

6 But you can answer again.

7 A. Not that I recall.

8 Q. Were you in the same room with
9 Mr. Zwirn --

10 A. Yes. 01:39:36

11 Q. -- when he was making a call? So it
12 was a conference call?

13 A. Yes.

14 MR. SIFFERT: Conference call?

15 A. Polycom. 01:39:44

16 Q. I mean a speakerphone. I'm sorry,
17 yeah. It was on a speakerphone, and he was
18 talking on the speakerphone; and you were there
19 listening while he was talking?

20 A. Right. 01:39:53

21 Q. By the way, did you hear anything in
22 the call that indicated that Mr. Zwirn had already
23 talked to Mr. Epstein about some of this?

24 A. No, not that I recall.

25 Q. Do you recall Mr. Epstein mentioning 01:40:10

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2 Mr. Dubin's name at all during these calls?

3 A. I don't recall.

4 Q. When you got done with the calls -- I

5 think you said Mr. Epstein was animated on the 01:40:29

6 calls?

7 A. I did.

8 Q. Once y'all hung up the call, did

9 Mr. Zwirn say anything to you or express any

10 frustration with Mr. Epstein, anything like that? 01:40:41

11 A. I don't recall the conversation

12 afterwards.

13 Q. I asked you previously whether you

14 remember Mr. Epstein asking for his money back

15 during these calls, or some portion of his money 01:41:00

16 back. I just want to make sure I got that clear.

17 Did Mr. Epstein say anything like, I

18 want out of the fund, anything to that effect?

19 MR. ARFFA: Objection to form. It was

20 asked before. 01:41:13

21 But go ahead.

22 A. No, I don't remember that.

23 (Exhibit 55, e-mail, marked for

24 identification.)

25 Q. I show you Exhibit 55. This is an 01:41:38

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2 e-mail -- I want to focus on the e-mail from you
3 to Cara Howe on February 22nd, 2007, and you told
4 her to please log under JEEPERS and also under
5 their complaint file.

01:42:00

6 A. Yes.

7 Q. What was the complaint file?

8 A. If we received a complaint from any
9 investor, we were required to put it into a
10 complaint file.

01:42:10

11 Q. Did you think this is what you received
12 here was a complaint from Mr. Epstein as opposed
13 to just another one of these redemption schedules
14 that you had -- you see the bottom e-mail says,
15 file JEEPERS 12/31/06?

01:42:29

16 A. I do.

17 Q. Did you put in this complaint file just
18 complaints from the investor or all kinds of
19 information related to the investor, if there was
20 a complaint?

01:42:39

21 MR. SCHWARTZ: Objection.

22 MR. ARFFA: Objection to form.

23 You may answer.

24 A. Generally complaints and anything
25 related to it.

01:42:47

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2 Q. Okay. Would you fill out any kind of
3 form or paperwork to create the complaint file?

4 A. No.

5 Q. What was the complaint file? Just a -- 01:42:54

6 A. A folder.

7 Q. Just a folder? It's a complaint,
8 JEEPERS, on it?

9 A. Something like that.

10 Q. Do you know when you first started 01:43:06
11 keeping a complaint file for Mr. Epstein?

12 A. No. I don't recall.

13 (Exhibit 56, document, marked for
14 identification.)

15 Q. I show you Exhibit 56. A short one, 01:43:21
16 again.

17 (Discussion off the record.)

18 Q. This is a redemption schedule that was
19 prepared -- you know -- yeah. If you look down,
20 it appears that who was requesting this at the 01:44:01
21 bottom of page 1 there is from Lyn DeSantis, PwC.
22 And these asked Mr. Lee if you could also get me
23 the liquidity redemption analysis before the end,
24 and that would be great.

25 A. Uh-huh. 01:44:19

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2 Q. Do you have any understanding why PwC
3 in the fall -- summer of 2007 was asking for this
4 liquidity analysis?

5 A. They were doing the 2006 audit, and it 01:44:28
6 was in the course of the audit that that question
7 came up.

8 Q. What was the question exactly?

9 A. I don't know. I'm reading it.

10 Q. You don't -- 01:44:43

11 A. I --

12 Q. Other than they wanted the information,
13 you don't know why --

14 A. No.

15 Q. -- in connection with the audit they 01:44:48
16 wanted it?

17 A. No. And very often they would call
18 people within my team and ask them for
19 information.

20 (Exhibit 57, document, marked for
21 identification.)

22 Q. I show you Exhibit 57. Do you recall
23 that you received from Mr. Indyke on February
24 13th, 2008, another request to redeem
25 Mr. Epstein's investments? 01:45:45

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2 MR. ARFFA: It's attached.

3 A. Yes.

4 Q. Again, it came on this memo form?

5 A. Yes. 01:45:54

6 Q. And then Ms. White immediately
7 responds -- not immediately but pretty later with
8 an e-mail that says, Thank you for the attached
9 notification to withdraw JEEPERS investments. In
10 order to process these redemptions, we'll need you 01:46:15
11 to complete the attached request for withdrawal of
12 interest form.

13 So apparently he had sent in this
14 request in this memo form, and she sent him back
15 and said, You really need to use these particular 01:46:34
16 forms?

17 A. Yes.

18 Q. Is there some reason why when you got
19 the \$80 million request back in November of 2006
20 you didn't just simply say right then, just like 01:46:49
21 this to Mr. Epstein: You need to use these
22 particular forms?

23 A. Yes, because the -- we were told that
24 the request was going away because of the
25 agreement to take care of the tax issue. 01:47:05

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2 (Exhibit 58, document, marked for
3 identification.)

4 Q. Let me mark as Exhibit 58. Do you
5 recall a dispute that the fund had with something 01:47:46
6 called the Fine family limited partnership?

7 A. Yes.

8 MR. ARFFA: Again, we ask that be
9 treated as confidential.

10 You can go on. 01:47:56

11 A. Yes.

12 Q. What do you recall about that dispute?

13 A. I recall that they had invested on
14 December 1st of 2006 and they had not been
15 included in the -- in the calls directly about 01:48:14
16 the -- about the first and second set of phone
17 calls that Dan had made. Their consultant had
18 been included, but they hadn't directly been
19 included. So they wished to withdraw, partially
20 withdraw, their investment. 01:48:34

21 Q. Okay. If you could, turn to page DBZ
22 38330.

23 By the way, Ms. Hubsher, do you
24 recognize those documents as having come from your
25 files? 01:48:59

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2 A. I'm not sure.

3 (Exhibit 59, letter, marked for
4 identification.)

5 Q. Let me show you Exhibit 59 real fast. 01:49:22

6 This is a letter that the firm's counsel has sent
7 to the SEC, and it says -- there's a sentence --
8 the second sentence says, The documents
9 Bates-numbered DBZ 38326 through DBZ 38348 are
10 from the files of Elise Hubsher, DBZ's senior vice 01:49:59
11 president of marketing and investor relations.
12 Exhibit 58 has "Elise Hubsher material" written on
13 the first page of it.

14 Does that refresh your memory this
15 stuff came from your files? 01:50:18

16 A. Well --

17 Q. That is Exhibit 58?

18 A. Yes.

19 Q. If you could, I just want -- DBZ 38330
20 says that there was -- in paragraph, I don't know, 01:50:38
21 12, says, On or about November 17th, 2006,
22 pursuant to plaintiff's repeated request to
23 withdraw its \$5 million investment, defendants
24 agreed to return plaintiff's investment as set
25 forth in a letter written by Daniel B Zwirn upon 01:50:56

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2 terms described hereinafter.

3 So does that refresh your memory that
4 the Fine family had actually --

5 A. So it was October 1st -- I think it may 01:51:08
6 have been an October 1st investment. Yeah, that's
7 right.

8 Q. So it was an October 1st investment.
9 They didn't get included in the calls. And then
10 they found out about it in November and 01:51:19
11 complained, said they wanted their money back, and
12 Mr. Zwirn agreed to give it back to them?

13 A. Yeah. I believe he agreed to find a
14 buyer.

15 Q. Right. 01:51:34

16 Did you understand why he had reached
17 that agreement?

18 MR. ARFFA: Objection to form.

19 A. I believe it had to do with the fact
20 that they were unaware of what was going on at the 01:51:54
21 firm. They didn't receive the calls that other
22 people got.

23 Q. So I think earlier I testified whether
24 the fund had any other disputes with investors
25 about the -- 01:52:17

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2 MR. ARFFA: You testified?

3 Q. I asked you about, I'm sorry, whether
4 the fund had had any disputes with other investors
5 about the timeliness or form of their withdraw 01:52:24
6 requests. Other than this dispute with Mr. -- the
7 Fine family, are you aware of any other disputes
8 the fund has had with investors about withdrawing
9 their money?

10 MR. ARFFA: Objection to form. 01:52:41

11 Q. For any reason?

12 MR. ARFFA: Objection to form.

13 You may answer.

14 A. Can we just back up, because the way
15 you asked the last question, I didn't -- 01:52:47

16 Q. All right --

17 A. No, wait. The way that you asked the
18 question that you're telling me that you asked,
19 the Fine family didn't fall under the category.

20 Q. I got you. I'm just trying to -- as I 01:52:56
21 understand -- so we're all on the same page -- I
22 had asked you earlier whether there was any
23 dispute with investors about the timeliness or
24 form of their -- withdrawn.

25 I want to broaden it out. Other than 01:53:11

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2 the Fine family and Jeffrey Epstein, are you aware
3 of any other disputes the fund has had with
4 investors about withdrawing their money?

5 A. Not that I recall. 01:53:20

6 Q. You market hedge fund investments for
7 Fortress today? You're involved in that?

8 A. Yes.

9 Q. What are the names of the hedge funds
10 that you market? 01:54:00

11 MR. ARFFA: One second.

12 (Pause.)

13 MR. ARFFA: You can answer.

14 A. Drawbridge special opportunities fund,
15 Fortress credit opportunities fund, Fortress real 01:54:24
16 estate opportunities fund, Fortress power assets
17 fund. There are probably some others, a few
18 others.

19 Q. Typically what is the length of the
20 lockups in those funds? 01:54:36

21 A. Several of them are private equity
22 funds, so they are ten-year lockups, and the
23 Drawbridge special opportunities fund has a lockup
24 where you can give 90-day notice. And at the end
25 of any calendar year your portfolio essentially is 01:54:51

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2 frozen, and it rolls off as it rolls off.

3 Q. So far Drawbridge special
4 opportunities, it's essentially an annual
5 liquidity, the way it works?

01:55:09

6 A. It's annual as a roll-off, so you don't
7 get cash back at the end of the year.

8 Q. Is there some option to get cash back,
9 or there is none?

10 A. It's -- the manager can opt to provide 01:55:19
11 that, but that's not the default option.

12 Q. That's essentially the same thing as
13 the one-year liquidity plus that Zwirn mad?

14 A. Yes.

15 Q. Exempt it's 120 days' notice for Zwirn 01:55:30
16 and 90 for this fund?

17 A. Correct.

18 Q. And all of the other funds are ten-year
19 lockups?

20 A. Yes. 01:55:39

21 Q. Because they're all private equity?

22 A. Yes.

23 MR. SUSMAN: I pass the witness.

24 MR. ARFFA: Harry, could you give me
25 five minutes? I think I might want to clarify 01:55:52

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2 a couple things, but --

3 MR. SUSMAN: Fine.

4 MR. ARFFA: -- it wouldn't be very
5 long.

01:55:59

6 MR. SCHWARTZ: Before we go off the
7 record, I'll note for the record Mr. Susman
8 has returned Exhibit 51, the privileged
9 document.

10 Harry, if you would just destroy your
11 other copies and represent that you've done
12 that, that would be fine with us.

01:56:06

13 THE VIDEOGRAPHER: The time is 1:57
14 p.m. This ends Tape 4 -- I'm sorry, we're
15 going off the record.

01:56:19

16 (Recess taken from 1:57 to 2:04.)

17 THE VIDEOGRAPHER: The time is 2:04
18 p.m. We are on the record.

19 EXAMINATION BY

20 MR. ARFFA:

02:03:08

21 Q. Ms. Hubsher, I just want to clarify two
22 things. First, there was questioning about while
23 you were at Northwater your understanding of how
24 the lockups worked on the hedge funds where

25 Northwater had invested in those hedge funds and

02:03:21

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2 they were subject to lockups.

3 And your testimony, I believe, was
4 essentially your understanding was that the
5 lockups were triggered -- were by investment and 02:03:29
6 were each triggered by the time each investment
7 was made in the hedge fund and then ran for
8 whatever period. But it was triggered by
9 investment as opposed to for all of the
10 investments made in the hedge fund. 02:03:45

11 Do I have that right?

12 A. Yes, each one was by subscription.

13 Q. Okay. I just want to make -- clarify
14 and make sure. I take it you had that same
15 understanding at that time as to whatever 02:03:56
16 investments were made in the Zwirn fund.

17 A. Yes.

18 Q. Second, there was some testimony about
19 a Highbridge managed account, and I just wasn't
20 sure it came out clearly on the transcript. So 02:04:08
21 why don't you just state your understanding of
22 what was happening with respect to these declines
23 in the Highbridge managed account.

24 A. My understanding was the decline in
25 the -- in the account was in concert with a 02:04:24

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decline in the Highbridge interest in the Zwiern
GP.

MR. ARFFA: That's it.

MR. SCHWARTZ: No questions. 02:04:39

MR. ARFFA: Did you have anything?
John?

MR. SIFFERT: I have something, but I'm
not going to do it. We'll do it at trial.

MR. ARFFA: Okay. 02:04:48

THE VIDEOGRAPHER: The time is 2:06

█. This concludes the videotaped deposition
of Elise Hubsher. We are off the record.

(Time noted: 2:06 p.m.)

ELISE HUBSHER

Subscribed and sworn to before me
this ____ day of _____, 2011.

Notary Public

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, LAURIE A. COLLINS, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That ELISE HUBSHER, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of May, 2011.

LAURIE A. COLLINS, RPR

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- - - - - I N D E X - - - - -

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