

205	<p>1 bears Bates stamp DBZCOPR-00861225 through 861226.  2 Please take a moment to review the document.  3 MR. SIFFERT: Thank you.  4 (Witness perusing document.)  5 A Okay.  6 Q Okay, Mr. Zwirn, why don't we go from the bottom  7 up? And, you're not on every e-mail, so we're going to  8 skip one or two.  9 But, if you'll go to the Bates-stamp that ends in  10 226, which is the second page?  11 A Okay.  12 Q There is an e-mail from a Craig Bergstrom. The  13 date and time stamp is Wednesday, October 25th, 2006,  14 6:37 [REDACTED]. It's to yourself and Chris Suan.  15 Do you see that e-mail?  16 A Um hmm.  17 Q Okay. Mr. Zwirn, do you recall receiving this  18 e-mail?  19 A No, I don't recall.  20 Q Okay. Do you know who Craig Bergstrom is?  21 A He is a investment professional and/or principal  22 at Corbin Capital Partners, the -- a -- a fund of hedge  23 funds.  24 Q And you say he's a -- I apologize. I should have  25 asked at the time, was Mr. Bergstrom in the same capacity</p>	207	<p>1 MR. SIFFERT: You have to say "yes" or "no."  2 A Oh, I'm sorry. That's what it look like. I  3 agree that it looks like that. But I don't recall the  4 e-mail.  5 Q You don't recall receiving this e-mail?  6 A No, I don't.  7 Q Looking at it today, do you know -- and I'm  8 looking at the -- the George Sard e-mail --  9 A Um hmm.  10 Q -- do you have an understanding as to what he was  11 speaking about when he said "I am, unfortunately, not  12 surprised that this is starting to leak"? Do you know what  13 the "this" referred to?  14 A I don't know.  15 Q Okay.  16 A I don't recall.  17 Q If you go to the next e-mail, --  18 A Um hmm.  19 Q -- which is from Chris Suan, the date and time  20 stamp is Thursday, October 26th, 2006, at 1:49 [REDACTED], --  21 A Um hmm.  22 Q -- to David Lee, yourself, Vasan Kesavan,  23 Lawrence Cutler, and David Proshan.  24 Do you see that e-mail?  25 A Um hmm.</p>
206	<p>1 at Corbin Capital?  2 A I don't know if he was a principal or a partner.  3 I don't know what the -- but he was an investment  4 professional.  5 Q Okay. Looking at this e-mail today, do you  6 recall receiving it?  7 A No, I don't.  8 Q And do you know what the rumor that Mr. Bergstrom  9 is referring to was? He says, "I think there is a rumor  10 going around about accounting or valuation issues at your  11 shop."  12 A I don't recall.  13 Q Okay. All right. Let's go to the next page,  14 which is the front page, please? The one that ends in 225.  15 There's an e-mail in the middle of the page.  16 It's from David Lee to yourself, Chris Suan, Vasan Kesavan,  17 Lawrence Cutler, David Proshan. The date and time stamp is  18 Wednesday, October 25th, 20:32 hours. And, it's  19 October 25th, 2006.  20 Do you see that?  21 A Um hmm.  22 Q Okay. It looks like Mr. Lee forwarded you the  23 e-mail below.  24 A Um hmm.  25 Q Is that your understanding?</p>	208	<p>1 Q Okay.  2 MR. SIFFERT: Say "yes."  3 A Oh, [REDACTED] sorry, sorry about that. Are there any  4 "um hmms" that we have to go back?  5 MR. SIFFERT: No, just say "yes."  6 A Okay, yes.  7 Q Mr. Suan -- well first, do you recall receiving  8 this e-mail?  9 A No, I don't.  10 Q Okay.  11 A I don't recall.  12 Q Mr. Suan wrote "I agree this is going to the SEC,  13 whether we like or not. So, I still think we should be  14 seriously considering the self-reporting option."  15 Looking at this now, do you have any  16 understanding as to what the -- the "this" Mr. Suan was  17 referring to, in "this is going to the SEC"?  18 A I don't recall.  19 Q Did the "this" refer to any of the accounting or  20 control issues, like the management fees or the plane that  21 were discovered prior to the date of this e-mail?  22 A I -- I don't recall what it was specifically  23 regarding, because subsequent -- there were issues before  24 we separated from Perry, and then there were subsequent  25 issues that ultimately led to a second round of calls and</p>

52 (Pages 205 to 208)

DIVERSIFIED [REDACTED] SERVICES

( [REDACTED] )

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1 disclosures. So, I don't know what the "this" is referring  
 2 to.  
 3 Q And those "subsequent issues" were?  
 4 A I don't recall. I don't recall the specifics. I  
 5 believe there's a -- a script covering the second round of  
 6 calls, but I just don't recall.  
 7 MR. SIFFERT: May I ask --  
 8 MR. ALTENBACH: Go ahead.  
 9 MR. SIFFERT: Without saying what was said, was  
 10 one of the subject matters that you discussed when you were  
 11 talking with counsel --  
 12 THE WITNESS: Um hmm.  
 13 MR. SIFFERT: -- namely Schulte --  
 14 THE WITNESS: Right.  
 15 MR. SIFFERT: -- was one of the subject matters  
 16 that was discussed --  
 17 THE WITNESS: Um hmm.  
 18 MR. SIFFERT: -- back in early summer --  
 19 THE WITNESS: Um hmm.  
 20 MR. SIFFERT: -- the possibility of  
 21 self-reporting?  
 22 THE WITNESS: To the SEC?  
 23 MR. SIFFERT: Yes.  
 24 MR. ALTENBACH: Yeah, just to be clear.  
 25 THE WITNESS: Not that I recall.

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1 MR. SIFFERT: To the SEC. Was one of the  
 2 subject matters that you just -- that was the -- was the  
 3 subject matter, without saying who said what to whom, --  
 4 THE WITNESS: Um hmm.  
 5 MR. SIFFERT: -- of reporting, --  
 6 THE WITNESS: Um hmm.  
 7 MR. SIFFERT: -- discussed with Schulte after  
 8 their investigation?  
 9 [No response.]  
 10 MR. SIFFERT: Was that a subject matter that was  
 11 discussed? Don't say what was said, and what was --  
 12 THE WITNESS: You mean after their investigation  
 13 and before we terminated Perry?  
 14 MR. SIFFERT: Yes.  
 15 THE WITNESS: Not that I recall.  
 16 MR. SIFFERT: Do you see Chris Suan saying here  
 17 "this is going to the SEC whether or not ... so I still  
 18 think we should be seriously considering the self-reporting  
 19 option"? Do you see that?  
 20 THE WITNESS: Yes.  
 21 MR. SIFFERT: Does that refresh your memory that  
 22 prior to this date of October 26th, there was some  
 23 discussion, at least internally, about self-reporting to  
 24 the SEC?  
 25 THE WITNESS: I would say I believe so. I just

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1 -- I couldn't tell you when, or who was present, or -- or  
 2 the subject, or the, you know, subsets of --  
 3 MR. SIFFERT: Well -- well, let me ask you this.  
 4 THE WITNESS: Yeah.  
 5 MR. SIFFERT: Was the issue of whether to report  
 6 to the SEC --  
 7 THE WITNESS: Um hmm.  
 8 MR. SIFFERT: -- driven by whether or not there  
 9 was going to be press? Or, was that just an issue of  
 10 timing, of when to report it to the SEC?  
 11 THE WITNESS: Was what just an issue of timing?  
 12 MR. SIFFERT: Was the fact that there was going  
 13 to be press -- a press story --  
 14 THE WITNESS: Um hmm.  
 15 MR. SIFFERT: -- a reason -- the reason that was  
 16 -- that this matter was self-reported to the SEC, or was  
 17 the fact that there was press something that merely  
 18 affected the timing of the decision when to go to the SEC?  
 19 THE WITNESS: I don't believe the fact that a  
 20 report was supposedly coming affected whether we went to  
 21 the SEC. I don't know that it even affected the timing.  
 22 BY MR. ALTENBACH:  
 23 Q And with respect to the last part of Mr. Suan's  
 24 e-mail, where it says "I still think we should be seriously  
 25 considering the self-reporting option," --

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1 A Um hmm.  
 2 Q -- can you tell me if, prior to this  
 3 October 26th, 2006, e-mail, there had been a decision  
 4 with [redacted] firm not to self-report?  
 5 A Not that I recall.  
 6 (Pause)  
 7 Q Do you recall when the firm retained Fried Frank?  
 8 A I don't recall. I mean, in the -- in the fall.  
 9 I don't know if it was October, or November, or some -- in  
 10 around that area.  
 11 Q Okay. Was it before or after Mr. Gruss's  
 12 separation from the firm?  
 13 A I honestly don't know.  
 14 MR. SIFFERT: Who made that decision to hire  
 15 them?  
 16 THE WITNESS: It was recommended to me by our  
 17 head of compliance, and I said "Go ahead and do it."  
 18 Because he, you know, --  
 19 BY MR. ALTENBACH:  
 20 Q And that was Mr. Cutler?  
 21 A Correct. I guess, at that point, CAO and CCO.  
 22 Q And do you know when Mr. Cutler made that  
 23 recommendation?  
 24 A I don't recall.  
 25 (Pause)



1 talked about some investment strategic initiatives,  
2 but that was the prime vehicle through which I  
3 understood what was going on with the major  
4 initiatives on the non-investment side of the firm  
5 and that continued to be clear during bucket three,  
6 even during the delegation of the authority period.  
7 BY MR. ALTENBACH:

8 Q. At the management committee meetings --  
9 first, how often did the management committee meet?  
10 A. Typically weekly.

11 Q. Was it done the same day every week?  
12 A. No, because I had probably -- certainly  
13 by the late '06 period, I probably had 40 internal  
14 meetings weekly across, you know, domestic lending,  
15 U.S. real estate, private lending, assets in  
16 structured finance, Europe illiquid, South Asia  
17 illiquid, Australia illiquid, Japan illiquid, Korea  
18 illiquid, credit arbitrage, domestic credit  
19 arbitrage, international, domestic merger arbitrage,  
20 domestic event-driven, domestic REITs, domestic  
21 utilities, domestic corporate private equity,  
22 domestic private real estate, domestic private  
23 investments in public equities, and so on.

24 So typically the people setting those  
25 meetings up would have different times. I might do

1 Central Asia at 5:00 in the morning and 9:00 at  
2 night, so those people who were the heads of those  
3 different meetings would kind of go into typically  
4 Trish Peters and kind of fill the holes up. And so,  
5 depending on all their relative schedules, she would  
6 book it all in.

7 Q. And at these management committee  
8 meetings, did someone give a presentation or provide  
9 information on the finances of the management  
10 company?

11 A. They were not a presentation per se, but  
12 at some of those we could have also seen what we  
13 were -- what I was being shown in terms of management  
14 company meetings that started during bucket two.

15 But as a general matter, it would be  
16 bigger initiatives like we are going to add Asian  
17 asset management and how many people we are going to  
18 add to that and why. Or we are going to upgrade from  
19 one IT system to another and we are updating for this  
20 reason, or this is the status of this valuation  
21 exercise or this financing structure.

22 Q. The types of things like adding people  
23 or doing particular IT projects had costs associated  
24 with them, right?

25 A. Yes.

1 Q. Did anyone provide some type of analysis  
2 that here is what these things are going to cost and  
3 here is the impact of that cost on the management  
4 company's performance?

5 A. In bucket two, similar to what we  
6 already described, I have seen in the management  
7 company, and in bucket three it became far more  
8 detailed because we had substantially -- quite  
9 frankly because we were incurring massive additional  
10 expenses associated with this process.

11 Q. At least during bucket two, was the firm  
12 still expanding as far as number of offices, office  
13 locations throughout the world?

14 A. Sure.

15 Q. There is cost associated with opening  
16 those offices, correct?

17 A. On an incremental basis, relatively  
18 small. A number of their international offices were  
19 started as basically Regus offices.

20 Q. What does that mean?

21 A. Temp space, so it would be very, very  
22 incremental.

23 Q. But people worked in those offices,  
24 correct?

25 A. Yes.

1 Q. Wasn't there incremental head count  
2 cost?

3 A. Yes, but that would be added on in a  
4 very incremental way also in terms of level of  
5 seniority. I believe we previously discussed it was  
6 -- it was the case across the firm, we frequently had  
7 a person of a certain level based on where we were  
8 and what we were doing in a certain area, so they  
9 were sent to that area-front, mid or back office, -- which  
10 proved itself out or it [redacted] to be added on. So  
11 there would be increasing numbers but also increasing  
12 levels of seniority. Similar to what we just  
13 discussed about the management company controller,  
14 how that went from Tim to the other, the next guy, to  
15 Mike Sabatell.

16 Q. The office move from when DBZ & Co.  
17 leaves the Highbridge office space and gets its own  
18 stand-alone office space?

19 A. Yes.

20 Q. When did that occur?

21 A. Very early 2004, I believe.

22 Q. Were there a lot of costs associated  
23 with that moving process?

24 A. There was some decent amount. I don't  
25 know what they were. I do know, the big picture I

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1 wanted as short a lease as possible, so I believe it  
 2 was only about three and a half years. It was a  
 3 sublet to give us maximum flexibility and as little  
 4 expense as possible. And it was also as close to  
 5 Highbridge as possible, it was two buildings over in  
 6 order to keep them ~~close to~~ and as much as possible  
 7 involved in business of our firm. And it was -- we  
 8 got the space I know, since it was very, very  
 9 significant expense relative to other expenses at \$38  
 10 a foot and that space topped out at 130, so it was a  
 11 very opportunistic thing also. It was not my idea to  
 12 move. We ran out of space at Highbridge and it was  
 13 their idea that we move.

14 Q. Did someone prepare a budget that was  
 15 shown to you that scheduled out costs that were  
 16 expected to be incurred with the move to your  
 17 separate office space? By you, I mean DBZ & Co.

18 A. No, not that I recall. At that point we  
 19 still were effectively subsidized by Highbridge. I  
 20 know we were certainly getting ready to be on our  
 21 own, but we still, as I said, we were as close to  
 22 them as possible. We still leveraged off of them in  
 23 terms of several non-front office functions. And,  
 24 again, up to that point, if it had -- they had  
 25 covered kind of all the overhead. So we wouldn't

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1 have moved -- it was their idea. We didn't ask to  
 2 move. We wouldn't have moved if we couldn't have  
 3 afforded it, on a stand-alone basis if we couldn't  
 4 have afforded it. We only would have moved had they  
 5 then subsidized it.

6 Q. So is it your understanding that  
 7 Highbridge covered either all or a substantial  
 8 portion of the costs associated with moving to a  
 9 separate office space?

10 A. I don't know the precise time at which  
 11 we stopped having subsidization from them. I don't  
 12 recall the specific time. Around that time. But,  
 13 again, this was at their behest for their benefit,  
 14 both not only the physical move but the structural  
 15 one.

16 It was my understanding -- I might have  
 17 said this before, tell me if I am repeating -- there  
 18 was a notion, and again I don't know the mechanics of  
 19 this, that Highbridge had two broker-dealers that  
 20 were somehow involved, I believe, in ~~the~~ I recall ~~meit~~  
 21 convertible bond business, I am not sure why or how.  
 22 And that the notion of a spin off was because Ron  
 23 Resnick, the general counsel of Highbridge,  
 24 specifically said we he did not want us to be a  
 25 "supervised" branch of broker-dealer. I am not sure

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1 what the implications of that were or what drove his  
 2 decision making.

3 Q. Were you personally involved with  
 4 approving any of the costs associated with the move?

5 A. Just the lease that I can recall.

6 Q. Things like office furniture or  
 7 carpeting, the fixed asset-type expenditures, new  
 8 servers, new computers, things like that?

9 A. No, not that I recall. I certainly  
 10 could have seen some sheet summarizing it all. I  
 11 just don't know. I am sure the management committee  
 12 as a whole, particularly with regard to that at that  
 13 point likely including Glen~~the~~ CFO, et cetera,  
 14 would have seen the numbers.

15 Q. You say you could have seen a sheet that  
 16 scheduled out things like this.

17 Do you recall seeing such a sheet?

18 A. I don't. It was over six years ago now.

19 Q. When you were here in February, I  
 20 believe you said that you believe by the time Schulte  
 21 Roth was engaged by the management company, which was  
 22 sometime, I think you said, roughly in June of  
 23 2006 --

24 A. Yes.

25 Q. --you were aware of the management fee

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1 issue and the aircraft purchase issue ~~to~~ the early  
 2 withdrawal management fees and the use of the fund  
 3 towards the plane purchase?

4 A. Yes. Again, you can check the  
 5 transcript, I referred to an earlier meeting where  
 6 David Proshan and Lawrence Cutler came to me first,  
 7 and I feel confident that they talked about the  
 8 management fee issue at that time, I think I said  
 9 this, I don't know precisely whether they told me  
 10 about the advance or the airplane equity issue then  
 11 or at the subsequent meeting where they recommended  
 12 retaining Schulte.

13 Q. But by the time Schulte was retained,  
 14 you were aware of both issues, correct?

15 A. Yes.

16 Q. Did you ever speak with Gruss directly  
 17 about these issues? Did you ever ask him why  
 18 management fees were taken early or why the certain  
 19 funds were used towards the ~~plane~~ purchase?

20 A. I don't recall. In the time between  
 21 those two meetings, I might have said -- I am  
 22 speculating --

23 MR. SIFFERT: Do you remember?

24 THE WITNESS: I don't have a specific  
 25 recollection.

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1 A. I maybe said something to the effect  
 2 what is this, because I remember having it in my  
 3 mind. There had been some sort of clerical error in  
 4 the junior part of the department, but I can't tell I  
 5 said to Perry - I just can't remember.  
 6 Then by the time I did know the facts,  
 7 you know, we definitely did not speak about it.  
 8 Q. When you found out about these two  
 9 issues and what they were, were you displeased, were  
 10 you unhappy?  
 11 A. Yes.  
 12 Q. Did you try and find out -- again, this  
 13 is just on your own, you personally making inquiries  
 14 of Gruss or anyone else in the firm -- why these  
 15 events occurred?  
 16 A. Beyond potentially calling Perry in that  
 17 intervening period, no. Lawrence and David Proshan  
 18 came to me, they said we have these couple of issues.  
 19 And <sup>(he)</sup> said if they are issues that came to us, we are  
 20 going to get to the bottom. Then they came to me in  
 21 like May or June and said something to the effect --  
 22 and again, I don't recall the specific words of the  
 23 conversation but the bottom line was that they  
 24 thought they were potential issues and recommended we  
 25 retain Schulte.

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1 At that point, I said absolutely, go  
 2 ahead. And then I did not -- I was not made aware of  
 3 any finding until the Sunday night at Schulte offices  
 4 in September, I believe.  
 5 And to be clear, the only other thing  
 6 for clarity, I was one of the interviewees of  
 7 Schulte.  
 8 Q. I will preface my next question with I  
 9 am not asking you for anything that is privileged in  
 10 your response to the next question but I am going to  
 11 ask you now: Did you become aware at some point as  
 12 to why? Did someone give you a reason why the early  
 13 withdrawal of management fees occurred?  
 14 MR. SIFFERT: Start with "yes" or "no"  
 15 and whether it's a privileged conversation.  
 16 Do you have a memory of anybody telling  
 17 you why?  
 18 A. I have a memory of people speculating as  
 19 to why but not saying, they ~~speculated~~ why and that  
 20 conversation would have been a privileged  
 21 conversation.  
 22 Q. Can you tell me who the conversation was  
 23 with? Again, I am not asking what the  
 24 conversation's contents were, but who gave you the  
 25 speculation?

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1 A. That I can recall, it would have been a  
 2 team of Schulte lawyers led primarily by Harry Davis  
 3 and Mark Elovitz.  
 4 Q. Was anyone else present when you had  
 5 this conversation?  
 6 A. I don't remember whether it could have  
 7 been multiple conversations. I know there were at  
 8 least multiple meetings. I think we talked about  
 9 attendance last time but we might not have. But  
 10 depending on the meeting, it included people,  
 11 including myself, Chris Suan, Vasam Kesavan, Glen  
 12 Dubin, I think Lawrence Cutler, David Proshan, Mark  
 13 Elovitz, Harry Davis, Holly Weiss.  
 14 MR. MURPHY: Who is Holly Weiss?  
 15 THE WITNESS: She is an employment  
 16 partner at Schulte.  
 17 A. Paul Roth, Fred Ragucci.  
 18 Q. Who is Mr. Ragucci?  
 19 A. He was a management committee member,  
 20 but he was my personal primary contact. He was lead  
 21 lending partner, deal person.  
 22 BY MR. MURPHY:  
 23 Q. At Schulte?  
 24 A. Yes.  
 25 Q. And the preceding name was?

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1 A. Paul Roth.  
 2 Steve Fredman, F.R. [REDACTED].  
 3 Q. Another Schulte --  
 4 A. He ran the fund legal, law for funds  
 5 department, fund management department.  
 6 BY MR. ALTENBACH:  
 7 Q. I know in previous testimony where we  
 8 were talking about this roster of attendees at  
 9 meetings. I believe we were talking about the --  
 10 A. This is pretermination, to be clear.  
 11 Q. This is pretermination of Mr. Gruss?  
 12 A. Yes.  
 13 Q. Are these the same meetings where the  
 14 contents of, if you remember the exhibits we looked  
 15 at last time, the scripts or calls related to  
 16 Mr. Gruss's termination and the --  
 17 A. Well, each of the scripts --  
 18 MR. REYNOLDS: Did you finish the  
 19 question?  
 20 THE WITNESS: [REDACTED] sorry.  
 21 Q. And the calls later in October, both of  
 22 2006?  
 23 MR. REYNOLDS: You said was this the  
 24 same meeting as.  
 25 MR. ALTENBACH: [REDACTED] sorry.

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1 Q. You were describing that -- we were  
 2 talking about you learning of the management fee  
 3 issue and we were talking about you mentioned it was  
 4 privileged and that it could have been at a meeting  
 5 with these attendees?  
 6 MR. REYNOLDS: No. When he first  
 7 learned about the issue or the second set of  
 8 questions, maybe I am wrong, with regard to  
 9 speculation as to why.  
 10 Those are two separate issues.  
 11 MR. ALTENBACH: You are exactly right.  
 12 Thank you.  
 13 Q. The speculation as to why the management  
 14 fees were withdrawn early, that took place at  
 15 meetings where you just described attendees, correct?  
 16 MR. SIFFERT: He said he didn't  
 17 remember, but you asked who were the attendees at  
 18 these meetings where it could have happened and these  
 19 were attendees.  
 20 BY MR. ALTENBACH:  
 21 Q. So it could have been -- strike that.  
 22 A. Just to answer your question, I think  
 23 you said, you tell me, is that where you described  
 24 the two scripts and the phone calls, all that was  
 25 post termination.

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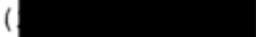
1 Q. Okay.  
 2 Just to be clear here, those three  
 3 things you testified were post termination?  
 4 MR. SIFFERT: Three things..  
 5 A. The actual delivery of the message  
 6 regarding the two scripts as well as the round of  
 7 phone calls, both what we previously referred to as  
 8 round one and round two, those four items were after  
 9 Perry was terminated. The meetings we were  
 10 discussing were before he was terminated but also  
 11 included after he was terminated. But in the ones  
 12 after he was terminated, there were then a growing  
 13 number of additional potential attendees.  
 14 Q. Thank you.  
 15 Also when you were here in February I  
 16 asked if you ever owned home in Connecticut.  
 17 A. Yes.  
 18 Q. You answered no.  
 19 Did you investigate the purchase of a  
 20 home in Connecticut at any point in 2005?  
 21 A. Yes.  
 22 Q. Did you task someone with investigating  
 23 the purchase of a home in Connecticut during 2005,  
 24 someone within DBZ? I don't want to know about  
 25 outside.

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1 A. I discussed it with Harold Kahn.  
 2 Q. And did the purchase take place?  
 3 A. No.  
 4 Q. In early 2006 did you purchase a unit at  
 5 50 Central Park South?  
 6 A. There was an entity of mine that did.  
 7 Q. Did you own the entity that purchased  
 8 it?  
 9 A. I believe I did or a substantial  
 10 majority.  
 11 Q. Did anyone else have an ownership  
 12 interest in an entity that purchased 50 Central Park  
 13 South?  
 14 A. I don't recall.  
 15 Q. Do you know the name of the entity that  
 16 purchased 50 Central Park South?  
 17 A. Lebo something. L.E.B.O.  
 18 BY MR. MURPHY:  
 19 Q. What does that name mean?  
 20 A. It's a shorthand term for Mount Lebanon,  
 21 my home town in the suburbs of Pittsburgh.  
 22 BY MR. ALTENBACH:  
 23 Q. Did you provide the capital for this  
 24 entity, for Lebo?  
 25 A. Yes. Or my or management company did

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1 with knowledge of my ability to -- of it to be  
 2 advanced effectively against my -- the income that  
 3 was coming to me. That was for equity again, not for  
 4 the entire purchase.  
 5 Q. You used the term just recently for the  
 6 capital flowing into Lebo; is that correct?  
 7 A. Correct.  
 8 Q. Was there a deposit required for  
 9 purchase of this unit at 50 Central Park South?  
 10 A. Quite possible. I just don't recall.  
 11 Q. Was it unit 33 specifically?  
 12 A. It was second from the top. I don't  
 13 recall.  
 14 Q. You don't know the number.  
 15 I am trying to think of an easier way to  
 16 refer to it than 50 Central Park South.  
 17 Do you know what the total purchase  
 18 price of the unit at 50 Central Park South was?  
 19 A. I think it was about 17 million. And,  
 20 again, about \$10 million was in a non-recourse first  
 21 mortgage and then 7 million of equity, I think.  
 22 Rough numbers.  
 23 Q. Other than the \$10 million that was  
 24 provided by the non-recourse mortgage or what ~~was~~ you  
 25 think was \$10 million provided by the non-recourse



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1 mortgage, do you know where the other funds towards  
 2 the purchase came from?  
 3 A. I believe from the management company.  
 4 Q. Do you know how much from the management  
 5 company?  
 6 A. 7 million.  
 7 Q. Do you know when the 7 million was taken  
 8 from the management company?  
 9 A. No. It's a process quite similar to the  
 10 one we talked about with the <sup>PICASSO</sup> airport, which was I  
 11 worked with Harold to ascertain that it was possible,  
 12 feasible and adequately, per his recommendation,  
 13 papered in a proper way.  
 14 And a key point, like the other issue,  
 15 was that it was non-recourse financing.  
 16 Q. Do you know if the management company  
 17 secured an additional \$10 million loan in March of  
 18 2006?  
 19 A. Additional? I am not sure what you  
 20 mean.  
 21 Q. Strike the word additional.  
 22 Did the management company obtain, to  
 23 your knowledge, a \$10 million loan in March of 2006?  
 24 A. Is that the Citibank one that we have  
 25 already discussed that you mean?

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1 Q. I am just asking --  
 2 A. That's the only one I can recall.  
 3 Q. I am just asking whether you know if the  
 4 management company obtained a \$10 million loan in  
 5 March of 2006?  
 6 A. I recall the \$10 million Citibank  
 7 management company loan that we previously discussed.  
 8 Whether -- the precise date it came, I don't recall.  
 9 [REDACTED] am not sure if what you are referring to is  
 10 that or not.  
 11 Q. Did Mr. Kahn apprise you of when the  
 12 balance of the payments, the 7 million in equity of  
 13 the payments were made towards the purchase of the  
 14 condo?  
 15 A. I have no recollection of that, of the  
 16 conversation. It would not surprise me if he did.  
 17 It would have been within the context of something he  
 18 would have kept me abreast of.  
 19 Q. When I say apprised you, when I use the  
 20 word conversation, I also mean e-mail?  
 21 A. I took it that way.  
 22 Just to be clear, I didn't do <sup>T.M.</sup> ~~it~~.  
 23 Q. Did you actually occupy 50 Central Park  
 24 South?  
 25 A. No.

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1 Q. Or a unit at 50 Central Park South?  
 2 A. No.  
 3 Q. Can you tell me why that is?  
 4 A. It was demolished.  
 5 Q. Was it demolished in preparation for  
 6 your eventual occupation and residence there?  
 7 A. Yes.  
 8 Q. Did you ever move in to 50 Central Park  
 9 South?  
 10 A. No.  
 11 Q. Why did you not move into 50 Central  
 12 Park South as your residence?  
 13 A. Again, as I mentioned before, we had  
 14 substantial additional costs resulting from these  
 15 activities and --  
 16 MR. SIFFERT: "These activities"  
 17 meaning?  
 18 THE WITNESS: Perry's and associated's  
 19 ~~activities~~ activities  
 20 BY MR. ALTENBACH:  
 21 Q. "We" meaning who?  
 22 A. The management company -- well, what I  
 23 perceive to be the management company. It turned out  
 24 to be me.  
 25 MR. SIFFERT: What do you mean?

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1 THE WITNESS: Well, basically I  
 2 covered --  
 3 MR. SIFFERT: Personally?  
 4 THE WITNESS: I personally covered  
 5 Chris's piece of this, Chris Suan's piece of this,  
 6 Vasan Kesavan's piece of this, obviously Perry's  
 7 piece of this, and more than covered Glen's piece.  
 8 His actual contribution to this was negative, he took  
 9 a distribution when ~~his~~ capital account was negative.  
 10 BY MR. ALTENBACH:  
 11 Q. Just so we are clear, when you say you  
 12 covered it, it is from your interest in the  
 13 management company, not from your personal interest;  
 14 am I understanding that correctly?  
 15 MR. SIFFERT: What's the differences?  
 16 MR. ALTENBACH: Well, you have other  
 17 investments, interest outside the financial company.  
 18 A. It was from income from the management  
 19 company as well as previously -- as well as tens of  
 20 millions of dollars, and we can get the figure for  
 21 you, of previously deferred income that was broken.  
 22 I think we talked about this process of  
 23 breaking the tax deferral structure.  
 24 Q. We talked about deferral of the  
 25 management fees, yes.

17 (Pages 457 to 460)

Diversified [REDACTED] Services  
( [REDACTED] )

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1 A. So those were broken and also  
 2 contributed to this process. So David Lee basically  
 3 told me we need to -- I recall, we need to husband  
 4 the resources because we didn't want to go and ask  
 5 our investors for this. He said you should go and  
 6 sell the apartment and said do so after the one-year  
 7 mark because there was some sort of tax if you bought  
 8 and sold an apartment within one year.  
 9 Q. Was it sold?  
 10 A. Yes.  
 11 Q. When was that, roughly?  
 12 A. I think in April of whatever, maybe  
 13 April 2007. It would have been just after the  
 14 one-year mark of the purchase.  
 15 Q. Can you just help me, I just struggle  
 16 connecting with how a unit that was purchased through  
 17 eventually serve as your personal residence, correct?  
 18 A. Yes.  
 19 Q. That's bought by an entity set up by you  
 20 and the majority is owned by you; is that right?  
 21 A. Yes.  
 22 Q. How that results in additional expense  
 23 to the management company similar to the way legal  
 24 costs in connection with things like the Gibson Dunn  
 25 investigation or the Schulte investigation or work

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1 that [redacted] did or something like that?  
 2 A. It doesn't.  
 3 MR. SIFFERT: That's not what he said.  
 4 What he said was that he needed --  
 5 A. I did not know that I was not going to  
 6 have to in addition to spending over <sup>one</sup> hundred million  
 7 dollars of my personal money in the various forms  
 8 that it came in addition to losing well over half a  
 9 billion dollars in value in the entity. I did not  
 10 know whether I would also be then writing additional  
 11 checks, which, in fact, I effectively did by not --  
 12 by foregoing distributions that otherwise would have  
 13 gone to me.  
 14 Q. I am just trying to make sure I am  
 15 understanding what you are saying.  
 16 A. It's a bit emotional for me.  
 17 Q. When you say "husband the resources,"  
 18 you are talking about your share of the management  
 19 company's resources?  
 20 A. Well, at the time I didn't realize I  
 21 would be subsidizing all the other partners. I took  
 22 the view that I would cover Chris Suan and Vasam  
 23 Kesavan. As I mentioned, when his capital account  
 24 was negative, Glen Dubin required a very substantial  
 25 distribution, which I also covered.

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1 BY MR. MURPHY:  
 2 Q. How could he require it?  
 3 A. Well, he invited myself and David Lee to  
 4 his office. This is during -- I don't know if it  
 5 was before or after the conclusion of Gibson Dunn.  
 6 Bob Caruso attended with him. And he said, I  
 7 believe, that I should have \$30 million and you are  
 8 going to give me \$30 million or I am going to sue  
 9 you.  
 10 And I said for what? He said something  
 11 to the effect that I don't know, but I am going to.  
 12 [redacted] said, I am trying to do the best here I can for  
 13 our investors and for the management company and my  
 14 family. He said I don't care about your investors --  
 15 our investors really, because he was my partner -- or  
 16 you or your family, I want \$30 million.  
 17 So we were trying to protect the best  
 18 interest of the investors. An unfounded gratuitous  
 19 suit from a super well-regarded person would have  
 20 threatened -- you know, would have created, you know,  
 21 a definitely weakened position in the marketplace,  
 22 which ultimately <sup>in these</sup> unfounded stories, et cetera,  
 23 did anyway, risking our investors. And so, we  
 24 created a plan, a structured plan where the  
 25 management company, i.e., me, because I already

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1 previously covered Perry, well he obviously wasn't  
 2 going to contribute to that but committed previously to  
 3 Chris Suan and Vasam Kesavan, so effectively I paid  
 4 him \$13 million bucks and then we signed a note for  
 5 17 more. And we said -- and we reiterated and showed  
 6 him backup for the information that said his capital  
 7 account was negative.  
 8 Q. When you talk about covering Suan and  
 9 Kesavan --  
 10 A. Just making sure they were not  
 11 financially hurt by Perry's action.  
 12 MR. SIFFERT: Can I clarify one thing.  
 13 Mr. Zwirn is not saying that the  
 14 agreement to pay Glen Dubin was a personal obligation  
 15 of his which he undertook as a personal obligation.  
 16 He is saying it was an obligation the management  
 17 company undertook, it was the management company's  
 18 obligation and he funded it. It didn't require  
 19 anybody else who was an owner of the management  
 20 company to pay, wasn't as if Mr. Zwirn took on a  
 21 personal obligation vis-a-vis Mr. Dubin, it was  
 22 management company taking on the obligation to  
 23 Mr. Dubin, which he then underwrote.  
 24 MR. MURPHY: "He" meaning?  
 25 MR. SIFFERT: Mr. Zwirn.

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<p>1 BY MR. MURPHY:</p> <p>2 Q. When you talk about covering for</p> <p>3 Kesavan, are you talking about to the extent that</p> <p>4 they might have had pro rata obligations to pay for</p> <p>5 the management company expenses in connection with</p> <p>6 the investigation?</p> <p>7 A. Correct, yes.</p> <p>8 MR. SIFFERT: There is another piece</p> <p>9 that Mr. Zwirn left out, which is that part of this,</p> <p>10 it was also determined that the some investors in one</p> <p>11 fund benefitted by virtue of another of the other</p> <p>12 funds, the money being taken from it. And while</p> <p>13 Mr. Zwirn reimbursed the people who were in the fund</p> <p>14 whose money was lost, plus interest, he did not</p> <p>15 require the other investors to remit the money that</p> <p>16 they had benefitted from by virtue of the</p> <p>17 transaction, so he had an extra expense.</p> <p>18 THE WITNESS: That was another 8</p> <p>19 million.</p> <p>20 MR. ALTENBACH: John, when you say</p> <p>21 Mr. Zwirn reimbursed, I assume it was the same</p> <p>22 mechanism through the management company?</p> <p>23 MR. SIFFERT: Yes, basically he has</p> <p>24 personally seen to it that investors personally have</p> <p>25 not been hurt and that none of his partners were</p>	<p>1 one that indicates it's from Sunday, January 8, 2006,</p> <p>2 actually the one right below that, sent Saturday,</p> <p>3 January 7, 2006 10:54 [REDACTED]; do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. The front line indicates that it's from</p> <p>6 you?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall sending this e-mail,</p> <p>9 Mr. Zwirn?</p> <p>10 A. No.</p> <p>11 Q. It is to Mr. Kahn. The last sentence</p> <p>12 where it says, "Realize this is a personal thing like</p> <p>13 the plane. This is quite helpful to me."</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall writing that?</p> <p>16 A. No.</p> <p>17 Q. Sitting here today reading this, do you</p> <p>18 know what you meant by writing that to Mr. Kahn?</p> <p>19 A. Well, to the extent that people were</p> <p>20 doing their job by giving me additional bandwidth, we</p> <p>21 talked about the extent of my schedule, which we can</p> <p>22 talk about again, I said I appreciated it and I am</p> <p>23 just trying to -- I am basically saying I realize he</p> <p>24 is busy too but at the end of the day, this was very</p> <p>25 helpful to the firm by virtue of giving me excess</p>
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<p>1 hurt.</p> <p>2 BY MR. ALTENBACH:</p> <p>3 Q. Mr. Zwirn, the Lebo entity used in the</p> <p>4 purchase of the condo, was there a specific reason to</p> <p>5 use that entity as opposed to you personally</p> <p>6 purchasing and owning the condo?</p> <p>7 A. Privacy.</p> <p>8 Q. Can you elaborate?</p> <p>9 A. My personal affairs, where I live, how I</p> <p>10 live, where my family is are not the business of</p> <p>11 other people.</p> <p>12 MR. ALTENBACH: I will ask the reporter</p> <p>13 to mark this as Exhibit 146.</p> <p>14 (January 2006 e-mail string was</p> <p>15 marked as Exhibit 146 for</p> <p>16 identification.)</p> <p>17 Q. Mr. Zwirn, I am going to give you a</p> <p>18 one-page document which has been marked 146 bearing</p> <p>19 the Bates number DBZ COPR-01395871. It purports to</p> <p>20 be a string of e-mails from January 2006.</p> <p>21 Please take a moment to review the</p> <p>22 document.</p> <p>23 (Witness complies.)</p> <p>24 A. Okay.</p> <p>25 Q. Just looking at the e-mail on top, the</p>	<p>1 bandwidth to deal with the mechanics of investing.</p> <p>2 Q. Okay, I will take that back from you,</p> <p>3 please.</p> <p>4 (Witness handing.)</p> <p>5 Q. Mr. Zwirn, the last time you were here</p> <p>6 you mentioned how to your understanding investors are</p> <p>7 concerned with performance, the performance of their</p> <p>8 investment?</p> <p>9 A. Yes.</p> <p>10 Q. You used NAV a few times, they were</p> <p>11 concerned with what NAV is?</p> <p>12 A. Yes.</p> <p>13 Q. Were investors also concerned with</p> <p>14 assets under management as a metric?</p> <p>15 This is only from what you understand</p> <p>16 through your dealing with investors.</p> <p>17 A. I am not sure of the context. I don't</p> <p>18 understand.</p> <p>19 Q. Is the fact that a firm has 6 billion</p> <p>20 under management versus a firm that has 1 billion</p> <p>21 under management, is the fact that one firm has more</p> <p>22 under management, from your industry experience,</p> <p>23 something that is important to investors?</p> <p>24 A. It depends on the business plan and the</p> <p>25 strategies of the firm. So I think what is important</p>

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1 in that context is <sup>whether</sup> the amount of the capital they  
 2 have commensurate with the strategies they are  
 3 pursuing.  
 4 MR. ALTENBACH: Why don't we go off the  
 5 record.  
 6 (Luncheon recess taken.)  
 7 MR. ALTENBACH: We are back on the  
 8 record at 1:45 [REDACTED].  
 9 BY MR. ALTENBACH:  
 10 Q. Mr. Zwirn, during the break, did you  
 11 have any substantive conversations with any member of  
 12 the staff?  
 13 A. No.  
 14 Q. Mr. Zwirn, when you learned of the  
 15 occurrence of the early withdrawal of the management  
 16 fees, at that time, did you think that the fact that  
 17 the early withdrawals had occurred was something that  
 18 should be disclosed to investors?  
 19 A. When I learned of it, I didn't know what  
 20 it was. I don't recall whether I thought of that. I  
 21 was advised by internal counsel and Lawrence Cutler  
 22 they were going to look into it, they themselves  
 23 didn't know what it was, and brought it back to me.  
 24 I think that was the spring time. Again, late May,  
 25 early June they came back and said we think this can

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1 be an issue, we want to bring in Schulte, and I said  
 2 okay.  
 3 Q. When you say you didn't know what it  
 4 was, what do you mean by that?  
 5 A. I said, to be clear I thought they told  
 6 me they didn't know what it was [REDACTED] previously to  
 7 that.  
 8 Q. I thought you said when you first  
 9 learned you didn't know what it was?  
 10 A. Yes, I didn't know it because they  
 11 didn't know it.  
 12 Q. My question is: What didn't you know  
 13 about the early withdrawal management fees when you  
 14 first found out about it?  
 15 A. Anything of the nature of it. How many,  
 16 how big, who did it, why they did it.  
 17 Q. What was the first fact related to the  
 18 early withdrawal of management fees that you found  
 19 out about?  
 20 MR. SIFFERT: Let's be careful because  
 21 I am not sure he learned anything other than from  
 22 Schulte as a result of this investigation and seeking  
 23 and getting legal advice.  
 24 MR. ALTENBACH: I completely appreciate  
 25 that concern.

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1 I thought Mr. Zwirn's earlier testimony  
 2 indicated he was at least aware of both the aircraft  
 3 purchase before Schulte was retained.  
 4 MR. SIFFERT: He said actually the  
 5 opposite. I believe his testimony has been that  
 6 Mr. Proshan and Mr. Cutler came to him and told him  
 7 there may be an issue or issues. He doesn't remember  
 8 whether the airplane was one of them. He does  
 9 believe that the early withdrawal management fees was  
 10 one, that they didn't know the scope of what it was.  
 11 They said they wanted to look into it. He said fine.  
 12 They came back a few months later or a month later.  
 13 They said they thought it was sufficiently important  
 14 to go and seek Schulte's advice on this. He said  
 15 fine. Schulte looked into it and then brought to him  
 16 what they found.  
 17 A. On a Sunday night in September.  
 18 BY MR. ALTENBACH:  
 19 Q. My question didn't relate to any  
 20 communications you made with or to Schulte or  
 21 received from Schulte or Mr. Proshan. It just  
 22 related solely to the extent someone within the firm,  
 23 it sounds like it was Lee and/or Cutler came to you?  
 24 A. No, [REDACTED] sorry, David Proshan. If I said  
 25 David instead of clarifying that it was David

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1 Proshan. My mistake.  
 2 Q. David Lee initially came to you?  
 3 A. No. David Proshan, general counsel, and  
 4 Lawrence Cutler. David Lee was not in anything but a  
 5 front office role until he became acting CFO in  
 6 conjunction with Perry's termination.  
 7 Q. Mr. Zwirn, I am going to hand you what  
 8 has previously been marked as Exhibit 136. And we  
 9 are going to talk about a paragraph that's on the  
 10 second page, which is page 14.  
 11 A. May I read this?  
 12 Q. Absolutely.  
 13 (Witness perusing document.)  
 14 A. Okay.  
 15 Q. If you would please turn to the second  
 16 page, it has Bates stamp DBZ 14, please.  
 17 The full paragraph above there is a like  
 18 a heading at the bottom of the page that says "Firm  
 19 Response".  
 20 Do you see that?  
 21 A. Yes, I do.  
 22 Q. Just above there is a paragraph, I will  
 23 read you a portion of it, it says, "We also become  
 24 aware of certain interfund transfers over a 13-month  
 25 period that should not have occurred. The net effect