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June 7, 2011

BY EMAIL AND BY HAND

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

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

Dear Judge Carpinello:

This letter is respectfully submitted on behalf of Third-Party Respondents Daniel Zwirn and [REDACTED], Zwirn Partners, LLC, [REDACTED], Zwirn & Co., [REDACTED], DBZ GP, LLC, and Zwirn Holdings, LLC ("the Zwirn Entities") in opposition to the application of Financial Trust Company, Inc. and Jeepers (together, "FTC") to take the hearing testimony of Chris Suan in advance of the July 22 hearing date.

We join in the letter of Paul Weiss on behalf of Fortress opposing FTC's application. In addition, the Zwirn Entities urge Your Honor to deny the application for two additional reasons.

First, advancing Chris Suan's deposition out of order to occur prior to the hearing will create an undue burden on the Third-Party Respondents. It is unfair to require Mr. Zwirn and the Zwirn Entities to prepare for Mr. Suan's hearing testimony out of context. Before examining Mr. Suan at any hearing, Mr. Zwirn and the Zwirn Entities are entitled to have notice of FTC's case, which presumably will be set forth in pre-hearing briefs that are to be submitted two weeks prior to the hearing. At present we do not know the nature of FTC's fraud claim as concerns Mr. Zwirn and the Zwirn Entities. Counsel for FTC has been less than clear about whether they will claim at the hearing that Mr. Zwirn was involved in and/or was aware of the accounting improprieties at the time they occurred. Counsel for FTC has variously suggested that they may or may not call Perry Gruss as a witness at the hearing. Counsel for FTC has refused to commit whether they will or will not ask Mr. Suan about Mr. Zwirn's involvement in and knowledge of the accounting improprieties. Counsel for FTC has told us that they have not yet decided exactly who their witnesses will be or what exhibits they will offer at the hearing. Counsel for Mr. Zwirn and the Zwirn Entities will be prejudiced if they are required to examine Mr. Suan without

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knowledge of the witnesses and exhibits that FTC intends to offer at the hearing. Without knowing what FTC's case will be, it is impossible to know what documents to show Mr. Suan or what questions to ask.

Second, counsel for FTC candidly has stated that the reason that they want to call Mr. Suan out of order is that they do not know what he will say, and they do not want to take up the time of the hearing to question him. Counsel is ignoring that they will be conducting the examination at a hearing, and they will be taking up Your Honor's time and counsel's time just as much as they would if the testimony were during the hearing in July. In truth, FTC wants to have the benefit of taking the testimony as if it is only a discovery deposition. It is not. It is hearing testimony and should be treated as such.¹ FTC has not shown any reason, much less good cause, for giving Mr. Suan's testimony the special treatment that they seek.

Respectfully submitted,



John S. Siffert

JSS:ac

cc: All Counsel (by email)

¹ The parties have deposed only four witnesses thus far (Messrs. Epstein and Beller from FTC, Mr. Lee from the Zwirn Entities, and Ms. Hubsher from Fortress). Mr. Zwirn's testimony is now scheduled for June 14. The remaining deposition witnesses (Messrs. Dubin and Gruss) have been converted to hearing witnesses by virtue of Your Honor's decision that they are third-party witnesses, and their testimony has been adjourned on agreement of the parties until the July hearing. Mr. Suan is a third-party witness newly added by FTC to its "discovery" list only after Mr. Gruss's testimony was put over until the July hearing.