

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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DANIEL B. ZWIRN, :

Plaintiff, :

-against- :

CORBIN CAPITAL PARTNERS, L.P., CORBIN  
CAPITAL PARTNERS MANAGEMENT, LLC,  
CORBIN CAPITAL PARTNERS GROUP, LLC, and  
CORBIN CAPITAL PARTNERS ASSET  
MANAGEMENT, LLC, :

Defendants. :

Justice Eileen Bransten  
Part 3

Index No. 08/603382

**REPLY TO DEFENDANTS'  
COUNTERCLAIMS**

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Plaintiff Daniel B. Zwirn ("Zwirn"), by his undersigned attorneys, hereby replies to Defendants' Counterclaims as follows:

**FIRST COUNTERCLAIM**

**Breach of Contract with respect to the L.P. Agreement**

1. Deny the allegations in Paragraph 133 and refer to the Corbin, L.P. Agreement for its content.
2. Deny the incomplete descriptions in Paragraph 134, admit that the quoted language appears in the Corbin, L.P. Agreement, and refer to the Corbin, L.P. Agreement for its complete content.
3. Deny the allegations in Paragraph 135, and aver that Dubin & Swieca Asset Management, LLC (and its predecessor, Highbridge Capital Management) (collectively, "DSAM"), was a partner of D.B. Zwirn & Co., L.P ("DBZCO") up until in or around September 25, 2007, and aver that Zwirn was the managing member of Zwirn Holdings, LLC, which was

the managing member of DBZ GP, LLC, which was the general partner of DBZCO and that up until June 2, 2009 DBZCO was the investment manager of investment funds ("Funds") and separate individual investment accounts ("Managed Accounts").

4. Deny the allegations in Paragraph 136, and aver that during all times relevant to Defendants' counterclaims principals of the Defendants, who were also principals of DSAM, owned the same amount of DBZCO through DSAM as Plaintiff, controlled the largest pool of capital managed by DBZCO, and actively participated in management decisions of DBZCO.

5. Deny the allegations in Paragraph 137.

6. Deny the allegations in Paragraph 138 and refer to the article referenced in Paragraph 138 for its content.

7. Deny the allegations in Paragraph 139 and refer to the article referenced in Paragraph 139 for its content.

8. Deny the allegations in Paragraph 140.

9. Deny the allegations in Paragraph 141.

10. Deny the allegations in Paragraph 142, but admit that in October 2006 Plaintiff, in consultation with the management committee and a principal of Defendants, directed DBZCO to notify the United States Securities and Exchange Commission ("SEC") about potential accounting improprieties at DBZCO, and that the SEC subsequently commenced an investigation into those improprieties; aver that at the time the SEC was notified, a principal of the Defendants knew the facts surrounding the potential accounting improprieties and the results of an internal investigation that had been conducted into the improprieties but did not claim that Plaintiff had committed "an act of fraud or dishonesty in the course of being a Partner or affecting his status as a Partner" or "an act which subjects the Partner or being enjoined, suspended or barred for

violation of a Federal or State Securities or commodities law, rule or regulation, including a statutory disqualification"; and aver that a principal of Defendants affirmed during conversations with Fund investors that Plaintiff had not committed any impropriety or act of fraud or dishonesty.

11. Deny the allegations in Paragraph 143 and refer to the article referenced in Paragraph 143 for its content.

12. Deny the allegations in Paragraph 144, and aver that the Defendants' belated allegation that Plaintiff committed a Forfeiting Event is a recent fabrication reached in bad faith, motivated by Defendants' principals' dissatisfaction with Plaintiff arising from other business agreements between the Defendants' principals and DBZCO.

13. Deny the allegations in Paragraph 145.

14. Deny the allegations in Paragraph 146, and aver that the Defendants' belated allegation that Plaintiff committed a Forfeiting Event is a recent fabrication reached in bad faith, motivated by Defendants' principals' dissatisfaction with Plaintiff arising from other business agreements between the Defendants' principals and DBZCO.

15. Deny the allegations in Paragraph 147, but admit that in the summer of 2005, DBZCO determined that given Zwirn's extensive business travel, it made sense to purchase a private plane, and ultimately determined that the plane would be owned by Z1 Holdings, LLC; aver that a principal of Defendants was involved in advising Plaintiff about the wisdom and logistics of acquiring an airplane.

16. Deny the allegations in Paragraph 148, but admit that Plaintiff was told there were tax advantages to completing the transaction by a certain date.

17. Deny the allegations contained the first sentence in Paragraph 149, but aver on information and belief that Merrill Lynch offered non-recourse financing for 90 percent of the transaction but required a \$1.9 million letter of credit.

18. Deny the allegations in Paragraph 150.

19. Deny the allegations in Paragraph 151.

20. Deny the allegations in Paragraph 152.

21. Deny the allegations in Paragraph 153, but aver on information and belief that DBZCO's Chief Financial Officer at the time, Perry Gruss, was responsible for improperly causing Fund and Managed Account assets to be used to finance the purchase of the airplane, without Plaintiff's knowledge or consent.

22. Deny the allegations in Paragraph 154, but aver on information and belief that Perry Gruss was responsible for improperly causing Fund and Managed Account assets to be used to finance the purchase of the airplane without the knowledge or consent of Plaintiff or the affected funds, and for any decision not to document a loan therefore.

23. Deny the allegations in Paragraph 155, and refer to the document referenced for its contents.

24. Deny the allegations in Paragraph 156, but aver on information and belief that Perry Gruss directed the return of the funds to the Fund and Managed Account in November 2005, and that he did not ensure that those repayments included interest.

25. Deny the allegations in Paragraph 157, and aver that the "second account" appears to be HCM/Z Special Opportunities LLC ("HCM/Z"), which was managed by principals of the Defendants who owned the same amount of DBZCO through DSAM as Plaintiff.

26. Deny the allegations in Paragraph 158, and refer to the documents referenced in Paragraph 158 for their content.

27. Deny the allegations in Paragraph 159, and refer to the article referenced in Paragraph 159 for its content.

28. Deny knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in Paragraph 160, but admit that Plaintiff was the only member of Z1, and that it was ultimately determined that Z1 would own the plane.

29. Deny the allegations in Paragraph 161.

30. Deny the allegations in Paragraph 162, except admit that Defendants purport to seek punitive damages.

### **SECOND COUNTERCLAIM**

#### **Breach of Contract with Respect to the Corbin, LLC Agreement**

31. Repeat and reallege the responses contained in Paragraphs 1 through 30 of this Reply, as if fully set forth herein.

32. Deny the allegations in Paragraph 164 and refer to the Corbin, LLC Agreement for its content.

33. Deny the incomplete descriptions in Paragraph 165, admit that the quoted language appears in the Corbin, LLC Agreement, and refer to the Corbin, LLC Agreement for its complete content.

34. Deny the allegations in paragraph 166, and aver that the Defendants' belated allegation that Plaintiff committed a Forfeiting Event is a recent fabrication reached in bad faith, motivated by Defendants' principals' dissatisfaction with Plaintiff arising from other business agreements between the Defendants' principals and DBZCO.

35. Deny the allegations in Paragraph 167, except admit that Defendants purport to seek punitive damages.

**THIRD COUNTERCLAIM**

**Bad Faith and Unfair Dealing**  
**With Respect to the Corbin L.P. Agreement**

36. Reply and reallege the responses contained in Paragraphs 1 through 35 of this Answer, as if fully set forth herein.

37. Deny the allegations in Paragraph 169 to the extent that they call for a legal conclusion, but admit that the Corbin, L.P. Agreement contains an implied covenant of good faith and fair dealing.

38. Deny the allegations in Paragraph 170.

39. Deny the allegations in Paragraph 171.

40. Deny the allegations in Paragraph 172.

41. Deny the allegations in Paragraph 173.

42. Deny the allegations in Paragraph 174.

43. Deny the allegations in Paragraph 175, except admit that Defendants purport to seek punitive damages.

**FOURTH COUNTERCLAIM**

**Bad Faith and Unfair Dealing**  
**With Respect to the Corbin, LLC Agreement**

44. Repeat and reallege the responses contained in Paragraphs 1 through 43 of this Reply, as if fully set forth herein.

45. Deny the allegations in Paragraph 177 to the extent that they call for a legal conclusion, but admit that the Corbin, LLC Agreement contains an implied covenant of good faith and fair dealing.

46. Deny the allegations in Paragraph 178.

47. Deny the allegations in Paragraph 179.

48. Deny the allegations in Paragraph 180.

49. Deny the allegations in Paragraph 181.

50. Deny the allegations in Paragraph 182.

51. Deny the allegations in Paragraph 183.

52. Deny the allegations in Paragraph 184, except admit that Defendants purport to seek punitive damages.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

53. Defendants have failed to state a claim upon which relief can be granted

**SECOND AFFIRMATIVE DEFENSE**

54. Defendants' claims for relief are barred by the terms of the Corbin, L.P. Agreements and the Corbin, LLC Agreements.

**THIRD AFFIRMATIVE DEFENSE**

55. Defendants' claims for relief are barred because Plaintiff did not commit a Forfeiting Event and Defendants' allegation that Plaintiff committed a Forfeiting Event is a recent fabrication reached in bad faith.

**FOURTH AFFIRMATIVE DEFENSE**

56. Defendants' claims for relief are barred in whole or in part by the doctrines of waiver and estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

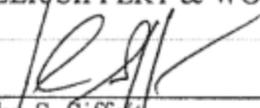
57. Defendants' claims for relief are barred in whole or in part by the doctrine of unclean hands.

WHEREFORE, in addition to the relief Plaintiff seeks in the Amended Complaint, Plaintiff respectfully requests judgment dismissing the Counterclaims with prejudice and granting other relief as this Court may deem just and proper.

Dated: New York, New York  
January 29, 2009

LANGLER, SIFFERT & WOHL LLP

By: \_\_\_\_\_

  
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