

\*\* CONFIDENTIAL \*\* CONFIDENTIAL \*\*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 09 Civ 6441 (DC)

-----x  
PERRY A. GRUSS,

Plaintiff,

-against-

DANIEL B. ZWIRN, D.B. ZWIRN & CO., LP,  
and D.B. ZWIRN PARTNERS, LLC.,

Defendants.  
-----x

June 28, 2010  
9:30 a.m.

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DEPOSITION of PERRY GRUSS,  
the Plaintiff in the above-captioned action,  
taken by Defendants, held at the offices of  
Cooley, LLP, 1114 Avenue of the Americas, New  
York, New York, before Eileen Mulvenna, CSR/RMR,  
Certified Shorthand Reporter, Registered Merit  
Reporter and Notary Public of the State of New  
York.

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1       **\*\* CONFIDENTIAL \*\* CONFIDENTIAL \*\***  
2 APPEARANCES:  
3  
4  
5       LIDDLE & ROBINSON, LLP  
6       Attorneys for Plaintiff  
7       800 Third Avenue  
8       New York, New York 10022  
9       BY: ETHAN A. BRECHER, ESQ.  
10       [REDACTED]  
11       JENNIFER RODRIQUEZ, ESQ.  
12       [REDACTED]  
13  
14       LANKLER SIFFERT & WOHL, LLP  
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18       BY: DANIEL E. REYNOLDS, ESQ.  
19       [REDACTED]  
20       JOHN SIFFERT, ESQ.  
21       [REDACTED]  
22       ANDREW S. LEE, ESQ.  
23       [REDACTED]  
24  
25       COOLEY, LLP  
26       Attorneys for Defendant D.B. Zwirn & CO., LP  
27       and D.B. Zwirn Partners, LLC  
28       1114 Avenue of the Americas  
29       New York, New York 10036  
30       BY: ALAN LEVINE, ESQ.  
31       [REDACTED]  
32       WILLIAM H. O'BRIEN, ESQ.  
33       [REDACTED]  
34       MAXINE SLEEPER, ESQ.  
35       [REDACTED]

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1       **\*\* CONFIDENTIAL \*\* CONFIDENTIAL \*\***  
2       IT IS HEREBY STIPULATED AND AGREED,  
3 by and between the attorneys for the respective  
4 parties herein, that filing and sealing be and  
5 the same are hereby waived.  
6  
7       IT IS FURTHER STIPULATED AND AGREED  
8 that all objections, except as to the form of the  
9 question, shall be reserved to the time  
10 of the trial.  
11  
12       IT IS FURTHER STIPULATED AND AGREED  
13 that the within deposition may be signed and  
14 sworn to before any officer authorized to  
15 administer an oath, with the same force and  
16 effect as if signed and sworn to before the  
17 officer before whom the within deposition was  
18 taken.  
19  
20  
21  
22  
23  
24  
25

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1       Gruss - CONFIDENTIAL  
2 PERRY GRUSS,  
3 having been duly sworn by Eileen Mulvenna,  
4 a Notary Public of the State of New York,  
5 was examined and testified as follows:  
6 EXAMINATION  
7 BY MR. LEVINE:  
8 Q. State your name and address for the  
9 record, please.  
10       Perry A. Gruss, [REDACTED]  
11       [REDACTED]  
12       THE REPORTER: Usual stipulations?  
13       MR. SIFFERT: It will be done by the  
14 Federal Rules of Civil Procedure.  
15       MR. LEVINE: Nothing other than what  
16 the Federal Rules of Civil provides.  
17       THE REPORTER: Okay.  
18       MR. BRECHER: Are there stipulations  
19 or are there not?  
20       MR. SIFFERT: Federal Rules of Civil  
21 Procedure controls.  
22       MR. LEVINE: Don't need speaking  
23 objections. I won't argue with you. If I  
24 sense your objection is a good one, I may  
25 rephrase the question. You'll get an

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1       Gruss - CONFIDENTIAL  
2 opportunity to review the transcript and  
3 sign it and do an errata sheet.  
4 BY MR. LEVINE:  
5 Q. Mr. Gruss, my name is Alan Levine,  
6 and I represent D.B. Zwirn & Co. L.P. and  
7 D.B. Zwirn Partners, LLC, defending them in a  
8 lawsuit which you filed in the Federal Court,  
9 Southern District of New York, July 20, 2009,  
10 Civ. No. 096441.  
11       Is that a lawsuit that you filed?  
12       A. Yes.  
13       Q. Have you ever been deposed before?  
14       A. Yes.  
15       Q. How many times?  
16       A. I believe four.  
17       Q. In what matters?  
18       A. By the SEC in the matter of D.B.  
19 Zwirn & Co. -- I'm not exactly sure of the rest.  
20       Q. Have you given any other sworn  
21 testimony in your career --  
22       A. No.  
23       Q. -- of any kind?  
24       A. No, I don't believe so.  
25       Q. Never been in a lawsuit personally?

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1 Gruss - CONFIDENTIAL

2 A. No.

3 Q. Other than this matter.

4 A. No.

5 Q. Just a couple of ground rules. I

6 ask the questions, you answer them. I'm going to

7 try very hard not to interrupt you in the middle

8 of an answer. Please don't guess what my

9 answer -- my question's going to be because there

10 could be a word at the end that surprises you.

11 So let me get it all out of my mouth. And

12 nodding -- understand all of this; correct?

13 A. Yes.

14 Q. Also, your lawyer has a right to

15 object, as you just heard, so don't jump on my

16 questions because then you deprive him of an

17 opportunity to work. Okay?

18 And if you don't understand any

19 question that I ask, tell me you don't understand

20 it and I'll rephrase it.

21 And subject, of course, to what your

22 lawyer says, I'm entitled to an answer on the

23 record for every question that I ask unless he

24 directs you otherwise.

25 Understand all of this?

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1 Gruss - CONFIDENTIAL

2 A. Yes.

3 Q. Where did you graduate from college?

4 A. Oneonta State University New York.

5 Q. What year?

6 A. 1989.

7 Q. What did you do after you graduated?

8 A. I was employed by American

9 International Group.

10 Q. Doing what?

11 A. I was a -- I would say I was a

12 systems accountant.

13 Q. Did you take accounting in college?

14 A. No.

15 Q. Did you take any accounting courses

16 in college?

17 A. Not one.

18 Q. What did you do at AIG?

19 A. I worked in the systems group.

20 Q. For how long did you work in the

21 systems group?

22 A. From 1989 through -- I don't want to

23 guess -- 1994.

24 Q. What did you do after that?

25 A. Worked at Nomura Securities.

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1 Gruss - CONFIDENTIAL

2 Q. What did you do at Nomura

3 Securities?

4 A. I was a product controller for their

5 real estate group.

6 Q. What did that job entail?

7 A. I was the one who calculated the P&L

8 for the front office.

9 Q. What skill-set did you need to do

10 that?

11 A. Brains.

12 Q. Did you have a math background?

13 A. No.

14 Q. So give me more of an idea what you

15 did every day.

16 A. Reports would -- the front office

17 would trade. Reports would come out. I would

18 calculate the reports, produce a P&L, and then it

19 would be verified against the front office P&L

20 that they produced.

21 Q. What kind of trades?

22 A. CMBS trades.

23 Q. What are CMBS trades?

24 A. Collateralized mortgage-backed

25 securities.

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1 Gruss - CONFIDENTIAL

2 Q. When did you first learn about

3 collateralized mortgage-backed securities?

4 A. Around 1994.

5 Q. Where did you learn about that?

6 A. Nomura.

7 Q. Who taught you about that?

8 A. The controller at the time.

9 Q. Who was that?

10 A. Bob Rottman.

11 Q. What did Nomura Securities do with

12 respect to collateralized mortgage-backed

13 securities?

14 A. They packaged, securitized and sold.

15 Q. Did they also trade in the secondary

16 market?

17 A. Yes.

18 Q. So they were an originator and

19 trader?

20 A. Exactly.

21 Q. Did all of those functions come

22 within the group that you were working in?

23 A. Yes.

24 Q. What were the entities that you were

25 calculating the P&L for?

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1 Gruss - CONFIDENTIAL  
2 A. I don't recall.  
3 Q. I take it P&L stands for profit and  
4 loss?  
5 A. Correct.  
6 Q. Were the transactions that you were  
7 calculating the profit and loss trades in the  
8 secondary market for the collateralized  
9 mortgage-backed securities?  
10 A. Some were. Some weren't.  
11 Q. What were the ones that were not?  
12 A. The ones that were originated.  
13 Q. Were these proprietary trades for  
14 Nomura or were these trades on behalf of funds?  
15 A. Proprietary.  
16 Q. How long did you stay at Nomura?  
17 A. Through 2002.  
18 Q. Some eight years?  
19 A. Yes. In different capacities.  
20 Q. What was the second capacity that  
21 you functioned in at Nomura?  
22 A. I worked for the production side of  
23 the business securitizing and structuring CMBS.  
24 Q. What did that job involve?  
25 A. More -- more detail and analysis.

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1 Gruss - CONFIDENTIAL  
2 Q. What kind of detail and what kind of  
3 analysis?  
4 A. Just packaging of the real estate  
5 loans, the commercial real estate loans, and then  
6 assisting with the rating agencies in  
7 structuring.  
8 Q. Could you explain what you mean by  
9 packaging a loan or just give us as freshman in  
10 high school an explanation of what a CMB [sic]  
11 is?  
12 MR. BRECHER: Objection.  
13 Q. You may answer.  
14 A. For instance, you have ten  
15 commercial mortgages, you pool them together and  
16 then you securitize them and you tranche them  
17 out. There could be triple A securities, double  
18 A, single A.  
19 Q. What is the --  
20 A. Then you sell them through a  
21 broker/dealer.  
22 Q. What do you mean by securitize them  
23 out?  
24 A. Like I said, ten loans, you package  
25 them, get a rating agency to rate them and then

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1 Gruss - CONFIDENTIAL  
2 you sell them.  
3 Q. Package into what?  
4 A. CMBS, commercial mortgage-backed  
5 securities.  
6 Q. Are you saying that you take, in  
7 your example, ten commercial loans and aggregate  
8 them into one security which is then sold as a  
9 security?  
10 A. It wouldn't be one security. It  
11 would be several securities spreading the risk  
12 across individual tranches.  
13 Q. What is a tranche?  
14 A. The single A, triple A, double A.  
15 My example earlier.  
16 Q. And those are rating agency credit  
17 ratings?  
18 A. Correct.  
19 Q. How do the rating agencies decide  
20 what rating to give each of these tranches?  
21 A. I don't know.  
22 Q. Were you involved in that process at  
23 all?  
24 A. No.  
25 Q. Were you involved in selecting the

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1 Gruss - CONFIDENTIAL  
2 commercial loans for the different tranches?  
3 A. No.  
4 Q. What was your job?  
5 A. I was a -- just an analyst.  
6 Q. What were the nature of your duties  
7 as an analyst?  
8 A. I would say once you received all  
9 the loans, the ten loans -- let's go back to  
10 that -- the ten loans, I would be helping the  
11 head of structuring accumulating investment memos  
12 on the real estate loans, et cetera.  
13 Q. Were you participating in the  
14 decision which tranche the different commercial  
15 loans applied?  
16 A. No.  
17 Q. Was this assignment within the same  
18 group as the group that you joined in '94?  
19 A. No.  
20 Q. The P&L work that you were doing  
21 before was for a different group?  
22 A. No, the P&L work was for the same  
23 group.  
24 Q. Right.  
25 A. Yes. I thought you asked if it was

1 Gruss - CONFIDENTIAL  
 2 the same group. It was not the same group.  
 3 Q. You just described two different  
 4 jobs that you had --  
 5 A. Exactly.  
 6 Q. -- at Nomura?  
 7 A. That's correct.  
 8 MR. BRECHER: Let him finish the  
 9 question.  
 10 THE WITNESS: I'm sorry.  
 11 Q. What did you do next at Nomura after  
 12 you worked on the production of these securitized  
 13 loans?  
 14 A. I went back to the back office where  
 15 I had started with the P&Ls and just -- and just  
 16 took on more responsibility.  
 17 Q. What was your title at that time?  
 18 A. Director.  
 19 Q. What was your area of  
 20 responsibility?  
 21 A. The same -- it was the same  
 22 responsibility, but now for the real estate  
 23 group, the fixed income group, and I believe  
 24 emerging markets; but can be -- can't be sure  
 25 about the latter.

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 2 Q. What was that responsibility?  
 3 A. I was now managing those individuals  
 4 that did the P&L, not unlike the P&L I did for  
 5 real estate.  
 6 Q. What were the nature of the  
 7 businesses that you were analyzing the P&L for?  
 8 A. The fixed income division traded  
 9 corporate bonds. They traded residential  
 10 mortgage-backed securities -- not commercial  
 11 mortgage-backed securities -- and treasuries,  
 12 repos, reverse repos.  
 13 Q. And you calculated the P&L for all  
 14 of these different proprietary trading accounts?  
 15 A. At that point, the people who worked  
 16 for me did.  
 17 Q. And how many people at that point  
 18 were working on your team?  
 19 A. I don't recall.  
 20 Q. Approximately.  
 21 A. Ten.  
 22 Q. How large a business was this --  
 23 MR. BRECHER: Objection.  
 24 Q. -- with Nomura.  
 25 Withdrawn.

1 Gruss - CONFIDENTIAL  
 2 You described a proprietary business  
 3 at Nomura; correct?  
 4 A. Correct.  
 5 Q. How large a business was it?  
 6 A. I don't know.  
 7 Q. How many people were employed in the  
 8 proprietary trading business at Nomura at the  
 9 time, late '90s?  
 10 A. Over 50, below a thousand.  
 11 Q. So you went back to the back office,  
 12 were promoted to the title of director --  
 13 A. Uh-huh.  
 14 Q. -- and who did you report to?  
 15 A. Bob Rottman.  
 16 Q. Who was Bob Rottman?  
 17 A. He was the CFO at the time.  
 18 Q. And how many people reported to Bob  
 19 Rottman?  
 20 A. I don't recall.  
 21 Q. How long did you stay as a director  
 22 in the back office?  
 23 A. About 2002.  
 24 Q. So when you left Nomura, you left in  
 25 that position?

1 Gruss - CONFIDENTIAL  
 2 A. Correct.  
 3 Q. Had you been promoted again before  
 4 you left Nomura?  
 5 A. I don't recall.  
 6 Q. Did you -- withdrawn.  
 7 Where did you go next to work?  
 8 A. At D.B. Zwirn & Co.  
 9 Q. How did it come about that you left  
 10 Nomura to go D. B. Zwirn in 2002?  
 11 A. I got a call from a recruiter that  
 12 D.B. Zwirn & Co. -- Highbridge/Zwirn --  
 13 Highbridge at the time was looking for a CFO to  
 14 run the distressed special opportunities group.  
 15 Q. Who did you meet with at D.B. Zwirn  
 16 and Co.?  
 17 A. I met with Dan Zwirn, Glenn Dubin,  
 18 and possibly one or two other people.  
 19 Q. When did those initial meetings take  
 20 place?  
 21 A. Summer of 2002.  
 22 Q. When were you actually hired?  
 23 A. Summer of 2002.  
 24 Q. Am I correct, then, that you left  
 25 Nomura Securities on good terms?

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1 Gruss - CONFIDENTIAL  
2 A. Oh, yes, very good.  
3 Q. Did Mr. Rottman or anybody else at  
4 Nomura make any effort to keep you there?  
5 A. Mr. Rottman moved on to Wachovia  
6 Securities in Charlotte. His replacement  
7 absolutely tried to retain me.  
8 Q. When you joined D.B. Zwirn, who was  
9 your actual employer?  
10 A. I believe Highbridge Capital  
11 Management.  
12 Q. Let me show you what we marked --  
13 we'll mark as Gruss 1.  
14 (Gruss Exhibit 1, Complain and Jury  
15 Demand, marked for identification.)  
16 Q. Are you familiar with that?  
17 A. Yes.  
18 Q. Is this a copy of the complaint that  
19 you filed in this action?  
20 A. Yes, but it's not the original.  
21 Yes.  
22 Q. Did you review it before it was  
23 filed?  
24 A. Yes.  
25 Q. Did you make corrections to it

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1 Gruss - CONFIDENTIAL  
2 before it was filed?  
3 A. I don't recall.  
4 Q. Does this represent your statement  
5 of what happened for the matters that are  
6 asserted in it?  
7 MR. BRECHER: Objection.  
8 You can answer.  
9 A. Oh, I'm sorry. I apologize.  
10 Generally.  
11 Q. Well, is there any statement in this  
12 complaint that you don't believe is accurate?  
13 A. All the statements that were made on  
14 my behalf are accurate.  
15 Q. Is there -- did you make any  
16 corrections to any of the statements that you saw  
17 in it before it was filed?  
18 A. I don't -- I don't recall.  
19 Q. Do I understand you correctly that  
20 to the extent that this complaint quotes what  
21 other people or institutions purport to have  
22 said, you're not attesting to that accuracy?  
23 A. Can you repeat that.  
24 Q. Do I understand you correctly that  
25 to the extent that the complaint repeats or

Page 20

1 Gruss - CONFIDENTIAL  
2 recites what someone other than yourself said,  
3 that you are not verifying the accuracy of that  
4 statement?  
5 A. Do you --  
6 MR. BRECHER: Objection.  
7 A. Can you drum that down for me, what  
8 you're trying to say?  
9 Q. There are a lot of allegations in  
10 here about yourself; correct?  
11 A. Yes.  
12 Q. And allegations that you've made  
13 about what other people did; correct?  
14 A. Correct.  
15 Q. To the best of your knowledge, these  
16 are accurate?  
17 A. Yes.  
18 Q. And are you prepared to take an oath  
19 that they're accurate?  
20 A. Yes.  
21 Q. And do you so swear that they're  
22 accurate?  
23 MR. BRECHER: Objection.  
24 A. Yes.  
25 Q. Do I understand you to be saying

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1 Gruss - CONFIDENTIAL  
2 that you believe that statements that were made  
3 about you were inaccurate?  
4 A. Correct.  
5 Q. And it's those statements that  
6 you're not verifying are accurate?  
7 A. Correct. Thank you.  
8 MR. LEVINE: Let's mark this  
9 Gruss 2.  
10 (Gruss Exhibit 2, Bates Nos. DBZ  
11 0000038 through 39, 6/7/02 Letter to Gruss  
12 from Zwirn, marked for identification.)  
13 Q. Do you recognize the document?  
14 A. Yes.  
15 Q. What is it?  
16 A. It appears to be my offer letter  
17 from Highbridge Capital.  
18 Q. Is that your signature?  
19 A. Yes, it appears to be.  
20 Q. Was there any other employment  
21 agreement in June of 2002 that applied to you?  
22 A. I don't recall.  
23 Q. In 2002, in June, what was the  
24 structure of the different investment vehicles at  
25 Highbridge Capital Management?

6 (Pages 18 - 21)

1 Gruss - CONFIDENTIAL  
 2 A. This -- just to be clear, this says  
 3 I joined in July of 2002. I think you said June.  
 4 Q. Now please answer my question.  
 5 A. I'm sorry, can you repeat it. I'm  
 6 sorry.  
 7 MR. LEVINE: Eileen, you want to  
 8 read it back to him.  
 9 (Record read.)  
 10 A. There were several. I can't recall.  
 11 Q. What was Highbridge Capital  
 12 Management?  
 13 A. The hedge fund. Highbridge Capital  
 14 Management was the management company that  
 15 managed hedge funds, to be clear.  
 16 Q. What was your understanding in  
 17 July 2002 of what a hedge fund was?  
 18 A. A pool of capital that would make  
 19 investments on behalf of investors.  
 20 Q. What did you understand your job was  
 21 supposed to be in July of 2002 at Highbridge  
 22 Capital Management?  
 23 A. I was going to be the CFO of the  
 24 Highbridge/Zwirn Special Opportunities Funds as  
 25 well as the managed account that Dan Zwirn ran on

1 Gruss - CONFIDENTIAL  
 2 behalf of Highbridge Capital Management.  
 3 Q. And what were the different funds  
 4 that made up the Highbridge/Zwirn Special  
 5 Opportunity Funds as of July 2002?  
 6 A. I believe at the time there were  
 7 two. Highbridge/Zwirn Special Opportunities  
 8 Fund, L.P. And Highbridge/Zwirn Special  
 9 Opportunity Funds, Ltd.  
 10 Q. What was the difference between the  
 11 Special Opportunities Fund identified by L.P.  
 12 with the fund identified by Ltd.?  
 13 A. The L.P. was onshore investors.  
 14 Domestic investors could invest in it. And Ltd.  
 15 was offshore. Foreign investors invested through  
 16 it.  
 17 Q. Was July of 2002 the first time that  
 18 you ever confronted an investment structure of  
 19 that kind?  
 20 A. Yes.  
 21 Q. How did you learn what that  
 22 structure was made up of?  
 23 MR. BRECHER: Objection.  
 24 A. By way of reading the material that  
 25 existed.

1 Gruss - CONFIDENTIAL  
 2 Q. Did you read, for instance --  
 3 withdrawn.  
 4 Was there offering memoranda for  
 5 investors for sure each of those two funds?  
 6 A. Yes.  
 7 Q. Did you read the offering materials,  
 8 including the offering memoranda, for each of  
 9 those two funds?  
 10 A. I'm sure I did.  
 11 Q. Were you generally familiar with the  
 12 terms of those offering memoranda as it applied  
 13 to the investors for each of those funds?  
 14 A. Generally.  
 15 Q. Did you have copies of those  
 16 materials in your office to refer to as you were  
 17 doing your job in 2002?  
 18 A. At one time of another, yes.  
 19 Q. And did you always have those  
 20 materials available to you if you had any  
 21 questions about what the terms were for any of  
 22 those funds?  
 23 A. Yes.  
 24 Q. Did you understand, in July 2002,  
 25 that -- withdrawn.

1 Gruss - CONFIDENTIAL  
 2 Who did you understand were the  
 3 investors in L.P. and Ltd.?  
 4 MR. BRECHER: Objection.  
 5 A. I don't recall.  
 6 Q. Were they -- I don't mean by name.  
 7 A. Right.  
 8 Q. I mean by type. Were they  
 9 individuals?  
 10 A. At that time?  
 11 Q. Yes.  
 12 A. I don't recall.  
 13 Q. Do you recall the nature of any of  
 14 the investors at that time?  
 15 A. The nature, can you --  
 16 Q. Were they individuals? Were they  
 17 partnerships? Were they LLCs?  
 18 A. It could have been individuals, but  
 19 I don't -- I don't recall.  
 20 MR. BRECHER: Don't guess. If  
 21 you --  
 22 Q. Do you recall how many investors  
 23 there were in each?  
 24 A. No.  
 25 Q. Did you understand, in July of 2002

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1 Gruss - CONFIDENTIAL  
2 or shortly thereafter, that if an investor were  
3 invested in the limited, the L.P., the onshore  
4 entity, that that investor was called a limited  
5 partner?  
6 A. Yes.  
7 Q. Did you understand that an investor  
8 in Ltd., the offshore fund, was also called a  
9 limited partner?  
10 A. No, I don't believe so.  
11 Q. What did you understand they were  
12 called?  
13 A. I don't know.  
14 Q. Who do you understand was the  
15 manager of each of these funds?  
16 A. I don't recall. At that time, I  
17 don't recall.  
18 Q. You don't recall the specific name  
19 of the management company or you don't recall  
20 generally who was the manager?  
21 A. I don't recall generally.  
22 Q. Who did you report to?  
23 A. I reported to Dan Zwirn.  
24 Q. Did you understand you were working  
25 for the investment adviser to the funds or to the

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1 Gruss - CONFIDENTIAL  
2 administrative manager for the funds?  
3 A. The management company.  
4 Q. And what did you understand the job  
5 was of the management company -- withdrawn.  
6 What did you understand the duties  
7 were of the management company?  
8 A. To manage the assets on behalf of  
9 the investors.  
10 Q. Did you understand that the  
11 investors of the limited partnership were  
12 separate and distinct from the investors of Ltd.?  
13 A. Yes.  
14 Q. Did you understand that L.P.'s funds  
15 were to be segregated and kept separate from  
16 Ltd.'s funds?  
17 A. The investor investments, yes.  
18 Q. Did you understand that expenses  
19 attributable to the offshore fund could not be  
20 paid by the onshore?  
21 A. What type of expenses?  
22 Q. Any kind of expenses. Did you  
23 understand that the expenses of each of the funds  
24 had to be kept separately?  
25 A. If there was an expense incurred by

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1 Gruss - CONFIDENTIAL  
2 the onshore, it would have to be expensed by the  
3 onshore fund. And the same goes for if there was  
4 an expense of the offshore fund, it would be  
5 expensed on the offshore fund.  
6 Q. Did you understand that investors of  
7 the onshore could not pay -- should not pay for  
8 expenses of the offshore fund?  
9 MR. BRECHER: Objection.  
10 A. If the onshore did not incur the  
11 expenses, they should not have incurred the  
12 expenses.  
13 Q. And did you understand that it would  
14 not be proper if investors of the onshore fund  
15 were charged for expenses of the offshore fund?  
16 MR. BRECHER: Objection.  
17 A. I don't know.  
18 Q. Well, did you think that maintaining  
19 separate expenses was convenience or something  
20 required by the agreements?  
21 A. As I said earlier, if there was an  
22 onshore expense, it should have been expensed to  
23 the onshore. If there was an offshore expense,  
24 it could have been expensed to the offshore.  
25 Q. When you say "should have been

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1 Gruss - CONFIDENTIAL  
2 expensed," is that because that's what was  
3 required by the legal agreements?  
4 A. I believe so.  
5 Q. Did you understand that as CFO, you  
6 have a fiduciary duty to investors to maintain  
7 separate records of their investments and the  
8 expenses attributable to the investments?  
9 MR. BRECHER: Objection.  
10 A. Oh, I'm sorry. Yes.  
11 Q. There's no question about that;  
12 correct?  
13 A. No, there would be a question.  
14 Q. What would the question be?  
15 A. I would need to see all of the  
16 expenses attributable to all of the expenses that  
17 ran through the funds on the management company.  
18 Q. Am I correct that as CFO, it was  
19 your job to set up a system so that all of the  
20 expenses got attributed correctly as between the  
21 onshore and the offshore fund?  
22 A. It was my job to manage the  
23 individuals whose responsibility it was.  
24 Q. Was it ultimately, as CFO, your  
25 responsibility to make sure that they did the

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1 Gruss - CONFIDENTIAL

2 correct job?

3 A. It was my responsibility to manage

4 them.

5 Q. Did managing them involve making

6 sure they did a correct job?

7 A. Part of the responsibility, yes.

8 Q. There's no question about that;

9 right?

10 MR. BRECHER: Objection.

11 A. No, there is a question about that.

12 I just went through it.

13 Q. The question is that it's a

14 challenge, but there's no question it was part of

15 your job?

16 A. To manage the individuals, no

17 question.

18 Q. And there's no question that it was

19 part of your job of managing the individuals to

20 make sure that the allocation of expenses was

21 done correctly?

22 A. It was my responsibility to manage

23 these individuals insofar as what exactly they

24 did on a day-to-day basis. I couldn't

25 micromanage exactly what they did.

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1 Gruss - CONFIDENTIAL

2 Q. Did you give all of the people that

3 were responsible for doing this work on a

4 day-to-day basis the rules that we just recited a

5 few minutes ago?

6 MR. BRECHER: Objection.

7 A. They -- they knew the rules. They

8 had access to the offering memorandums, as did I.

9 Q. Did you make sure that they knew the

10 rules?

11 A. I don't recall.

12 Q. Did you take steps to make sure that

13 they complied with the rules?

14 A. I believe I did.

15 Q. Am I correct that Highbridge Capital

16 Management controlled -- withdrawn.

17 (Discussion off the record.)

18 Q. Who -- who did you understand was

19 making investment advisory decisions on behalf of

20 the funds?

21 A. Dan Zwirn.

22 Q. And who did you understand --

23 withdrawn.

24 What did you understand was the

25 entity that employed Dan Zwirn for that purpose?

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1 Gruss - CONFIDENTIAL

2 A. I don't recall. It would be the

3 same entity that employed myself.

4 Q. Did you understand that there were

5 investments that were made that were invested --

6 withdrawn.

7 Did you understand that there were

8 assets that were invested in by both L.P. and

9 Ltd.?

10 A. Yes.

11 Q. Was part of your job making sure

12 that the people that worked for you kept track of

13 that apportionment of investment where there was

14 each -- where it was a situation each of the

15 funds was investing in the same asset?

16 A. Insofar as it was appropriate for an

17 asset to be invested in by both the onshore and

18 the offshore fund, yes.

19 Q. And sometimes a separate entity was

20 created so that the onshore could invest in a

21 particular asset and the offshore fund

22 essentially invests in the same asset, but

23 through a different entity?

24 A. I'm sorry, can you repeat that.

25 (Record read.)

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1 Gruss - CONFIDENTIAL

2 A. I don't recall.

3 Q. Did you understand that part of the

4 fiduciary duty to keep the investments in the

5 fund separately was because you were -- you were

6 keeping track of investments made by individuals

7 or entities that had every right not to have to

8 pay for investments made by people or entities in

9 a different fund?

10 MR. BRECHER: Objection.

11 THE WITNESS: That was a long one.

12 Could you . . .

13 (Record read.)

14 A. I don't know.

15 Q. Well, wasn't that the essence of

16 keeping the funds separate?

17 MR. BRECHER: Objection.

18 A. I would just ask if you can ask the

19 question a little simpler.

20 Q. Well, people in the onshore --

21 withdrawn.

22 Did you understand that there are

23 rules -- actual investment rules as applied to

24 who can invest in an onshore and who can invest

25 in an offshore fund?

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1 Gruss - CONFIDENTIAL  
2 A. Yes.  
3 Q. There are tax rules that apply;  
4 correct?  
5 A. In some instances.  
6 Q. These are rules and laws that are in  
7 force in the United States; correct?  
8 MR. BRECHER: Objection.  
9 A. In some instances.  
10 Q. Keeping them separate -- keeping  
11 investors in these funds separate is part of  
12 complying with Federal tax laws; isn't that  
13 right?  
14 MR. BRECHER: Objection.  
15 A. I don't know. I'm not a tax expert.  
16 Q. Just generally, in July of 2002 --  
17 withdrawn.  
18 In July of 2002, was that the first  
19 time ever that you had learned about what an  
20 onshore fund was and what an offshore fund was?  
21 A. Yes.  
22 Q. Do you understand that there were  
23 federal tax laws that applied to what an onshore  
24 fund was and what an offshore fund was?  
25 A. I don't believe at the time of my

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1 Gruss - CONFIDENTIAL  
2 hiring.  
3 Q. What did you understand was the  
4 reason that they were separate?  
5 A. The -- I don't recall.  
6 Q. What was it based on?  
7 A. Whether or not an investor was an  
8 domestic investor or an offshore investor.  
9 Q. What did you -- how was it  
10 determined -- how was it determined whether an  
11 investor was an onshore investor or an offshore  
12 investor?  
13 A. I don't know.  
14 Q. Did you know there were laws that  
15 applied?  
16 MR. BRECHER: Objection.  
17 A. I don't recall if I knew there were  
18 laws.  
19 Q. What did you think there was?  
20 A. I wasn't the general counsel.  
21 Q. I'm not asking you your  
22 understanding as a lawyer. I'm asking you your  
23 understanding as what became the chief financial  
24 officer of the entities.  
25 A. If there were an onshore investor,

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1 Gruss - CONFIDENTIAL  
2 he or she would invest in the onshore fund. If  
3 there was an offshore investor, he or she would  
4 invest on the offshore fund. Based on what  
5 criteria, I don't know.  
6 Q. Did you understand that it was  
7 simply convenience or did you understand laws  
8 actually applied to it?  
9 A. There is clearly a reason beyond  
10 convenience.  
11 Q. Did you understand that a person  
12 living domestically could not as a matter of law  
13 invest in the offshore fund and vice versa?  
14 A. I didn't know. I don't know.  
15 Q. What would be the reason for keeping  
16 them separate?  
17 MR. BRECHER: Objection.  
18 A. I'm not -- I'm not a tax accountant  
19 or lawyer, but I would assume it's tax based.  
20 MR. BRECHER: Don't assume anything.  
21 Q. Didn't you know that it was tax  
22 based?  
23 A. I don't recall whether or not I  
24 knew.  
25 Q. What did you think was possibly the

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1 Gruss - CONFIDENTIAL  
2 reason for the separation?  
3 MR. BRECHER: Objection.  
4 Q. Was it just to keep addresses  
5 separate or convenient --  
6 MR. BRECHER: Objection.  
7 Q. -- or was it a law that applied to  
8 the people?  
9 MR. BRECHER: Objection.  
10 A. I don't recall at the time what I  
11 thought.  
12 Q. Did you think it mattered to keep  
13 them separate or just a matter of convenience?  
14 A. Clearly at the time, I did not  
15 recall.  
16 Are you asking me today?  
17 Q. No, I'm asking you did you read the  
18 offering memorandum at the time?  
19 A. Yes.  
20 Q. So that did you understand what the  
21 offering memorandum said as to how one qualified  
22 to be an investor in either one of the funds?  
23 A. I don't recall if I read that  
24 specific ...  
25 Q. Did you ever tell anybody when you

1 Gruss - CONFIDENTIAL  
 2 started work there that you didn't understand the  
 3 rules that apply?  
 4 A. No, I never told anyone that.  
 5 Q. Did you have confidence when you  
 6 started there that you understood the rules as  
 7 they applied to the extent you had to do your  
 8 job?  
 9 A. Not when I first started there.  
 10 Q. After a few months?  
 11 A. As time went by, I became more and  
 12 more knowledgeable.  
 13 Q. Did you ever tell anybody in the  
 14 first couple of months that you really didn't  
 15 understand what you were doing?  
 16 A. I don't recall.  
 17 Q. It's something that somebody might  
 18 recall. Did you feel competent to do your job in  
 19 the beginning?  
 20 A. Yep.  
 21 Q. Did you ever tell anybody that you  
 22 were not competent to do your job in the  
 23 beginning?  
 24 A. No.  
 25 Q. Did you at any time during the time

1 Gruss - CONFIDENTIAL  
 2 that you were at Zwirn feel incompetent to do  
 3 your job?  
 4 A. Never.  
 5 MR. LEVINE: Let's mark this  
 6 Gruss 3.  
 7 (Gruss Exhibit 3, Answer and  
 8 Counterclaims of Defendants D.B. Zwirn &  
 9 Co., L.P. and D.B. Zwirn Partners, LLC,  
 10 marked for identification.)  
 11 BY MR. LEVINE:  
 12 Q. Marked before you Gruss Exhibit 3,  
 13 which is the answer and counterclaims of the  
 14 defendants, D.B. Zwirn & Co., L.P. and D.B. Zwirn  
 15 Partners, LLC.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. Have you ever looked at that  
 19 document?  
 20 A. Yes.  
 21 Q. Would you please go -- withdrawn.  
 22 Do you understand that this is the  
 23 formal legal document that is prepared and filed  
 24 by the entities to respond to the complaint that  
 25 was filed on your behalf?

1 Gruss - CONFIDENTIAL  
 2 A. Yes. The entities and the  
 3 individuals.  
 4 Q. Please take a look at page 20,  
 5 paragraph 131.  
 6 (Witness peruses the exhibit.)  
 7 Q. So I just would like to go through  
 8 paragraph 131 with you.  
 9 A. Sure.  
 10 Q. Did your job as CFO of  
 11 Highbridge/Zwirn Capital Management, LLC, include  
 12 determining the logistics of how specific  
 13 investments were to be funded?  
 14 A. Yes. In addition to others.  
 15 Q. Did it include determining how  
 16 investments would be allocated among the managed  
 17 funds?  
 18 A. Yes, in concert with others, Dan  
 19 Zwirn.  
 20 Q. And what were the managed funds at  
 21 the time?  
 22 A. At the time, it was only the  
 23 Highbridge managed account.  
 24 MR. BRECHER: Can we just have a  
 25 clarification. When you say "at the time,"

1 Gruss - CONFIDENTIAL  
 2 is that when he first started or --  
 3 Q. Did your job include those two  
 4 functions when you started to work in July of  
 5 2002?  
 6 A. I don't recall.  
 7 Q. Do you recall when it came about  
 8 that those were included as your  
 9 responsibilities?  
 10 A. No.  
 11 Q. Did it become part of your  
 12 responsibility at some point during your  
 13 employment?  
 14 A. It was neither my sole  
 15 responsibility or was I responsible solely.  
 16 Q. Next sentence reads, "It was also  
 17 Gruss's responsibility to inform Zwirn of funding  
 18 limitations on all of the investments that the  
 19 company had identified as otherwise satisfying  
 20 the company's risk adjusted return criteria in  
 21 which it was necessary to explore the options  
 22 identified in paragraph 122."  
 23 Do you --  
 24 A. Can I just read it?  
 25 Q. Sure.

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1 Gruss - CONFIDENTIAL  
2 A. Thanks.  
3 (Witness peruses the exhibit.)  
4 A. Is the question whether or not I  
5 agree with C?  
6 Q. Not C. The sentence after C.  
7 A. Oh.  
8 Q. It's right there, Mr. Gruss. It's  
9 right -- C has a period.  
10 A. Oh, I see.  
11 Q. Let me -- I'm sorry, you clearly  
12 don't -- we have a miscommunication.  
13 A. Yes.  
14 Q. Did part of your responsibility  
15 include identifying new sources from which to  
16 finance investments, for example, by arranging  
17 nonrecourse funding lines?  
18 A. That's part of my responsibilities,  
19 yes.  
20 Q. And the next sentence reads, "It was  
21 also Gruss' responsibility to inform Zwirn of  
22 funding limitations."  
23 As that sentence is written, do you  
24 agree with that?  
25 A. No.

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1 Gruss - CONFIDENTIAL  
2 Q. Who was -- whose responsibility was  
3 it to inform Dan Zwirn of funding limitations on  
4 all investments?  
5 A. It was collectively Dan, myself and  
6 the other individuals that sat in on what's  
7 called a pipeline meeting.  
8 Q. Did you have separate and  
9 independent responsibilities from Dan Zwirn in  
10 doing the job that's described in paragraph 131?  
11 A. I don't know the question.  
12 Q. Was Dan the CFO also?  
13 A. No.  
14 Q. What was Dan Zwirn?  
15 MR. BRECHER: Objection.  
16 A. The managing partner, the CEO.  
17 Q. Did you understand --  
18 A. The individual responsible for the  
19 fund, the firm, the management company.  
20 Q. Did you understand that as CFO, you  
21 had separate and independent responsibilities  
22 from Dan Zwirn?  
23 A. Yes.  
24 Q. Do you understand that Dan Zwirn --  
25 withdrawn.

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1 Gruss - CONFIDENTIAL  
2 Did Dan Zwirn delegate to you  
3 responsibilities as CFO to, among other things,  
4 determine the logistics of how specific  
5 investments would be funded?  
6 A. At times.  
7 Q. Did you understand that you were  
8 generally responsible as CFO for determining how  
9 the logistics -- determining -- withdrawn.  
10 Did you understand that you were  
11 generally responsible as CFO for determining the  
12 logistics of how specific investments would be  
13 funded?  
14 A. Generally it was part of my  
15 responsibilities. Part. In concert with Dan.  
16 Q. Go to paragraph 260 on page 37.  
17 A. Got it.  
18 Q. Why don't you just take a moment to  
19 read that paragraph to yourself.  
20 (Witness peruses the exhibit.)  
21 Q. You got it?  
22 A. (Witness nods head in the  
23 affirmative.)  
24 Q. You're nodding.  
25 A. Yes.

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1 Gruss - CONFIDENTIAL  
2 Q. I need you to utter the words. Yes.  
3 Did you read it?  
4 A. Yes, I read it.  
5 Q. During -- withdrawn.  
6 You were the CFO from in or about  
7 July 2002 until in or about October of 2006;  
8 correct?  
9 A. Correct.  
10 Q. During that time, did anybody else  
11 assume CFO responsibilities above you?  
12 A. No.  
13 Q. Did you hire a lot of people below  
14 you?  
15 A. Yes, scores.  
16 Q. And all of those people came into  
17 the finance and operations side of the business  
18 reporting to you?  
19 A. Yes. Toward -- caveat. Towards the  
20 end, several of them also reported to Hal Kahn,  
21 who was the COO.  
22 Q. Did your duties and responsibilities  
23 as CFO include managing the company's finance,  
24 accounting and treasury operations?  
25 A. Yes.

1 Gruss - CONFIDENTIAL  
 2 Q. And using the word "company" there,  
 3 I'm referring to D.B. Zwirn & Co. L.P.  
 4 Do you understand that?  
 5 A. Yes.  
 6 Q. And D.B. Zwirn Co. -- withdrawn.  
 7 D.B. Zwirn & Co. L.P. is the  
 8 management company; correct?  
 9 A. Correct.  
 10 Q. Was it also part of your  
 11 responsibilities as CFO to supervise the  
 12 company's back office?  
 13 A. Yes.  
 14 Q. Was it also part of your  
 15 responsibility as CFO to assure that the  
 16 financial relations between the company and the  
 17 managed funds were proper and in accordance with  
 18 the agreements and other documents relating to  
 19 those relations?  
 20 A. I believe so.  
 21 Q. So apart from the general counsel,  
 22 you were -- you understood that you needed to  
 23 know and understand what the legal agreements  
 24 provided for as respect to the financial  
 25 relations between the funds?

1 Gruss - CONFIDENTIAL  
 2 A. I didn't need that to do my job, but  
 3 I generally did understand that.  
 4 Q. If part of your job required you to  
 5 assure that the financial relations between the  
 6 company and the managed funds were proper and in  
 7 accordance with the agreements, didn't you need  
 8 to be familiar with the agreements to do that  
 9 part of your job?  
 10 A. I was responsible for the  
 11 management -- managing of the scores of people.  
 12 Q. And didn't the management of the  
 13 scores of people include assuring that the  
 14 financial relations as between the funds was in  
 15 accordance with what the agreements provided?  
 16 A. At times, yes.  
 17 Q. And am I correct that you  
 18 understood, because of the fiduciary duty that  
 19 you admitted earlier that you owed, that it was  
 20 important to keep the financial relations clear,  
 21 separate and in accordance with the agreements?  
 22 MR. BRECHER: Objection.  
 23 A. I don't know if I admitted that I  
 24 had fiduciary responsibilities earlier. I'd have  
 25 to see the transcript.

1 Gruss - CONFIDENTIAL  
 2 Q. There's no question you had a  
 3 fiduciary duty to the investors in the funds;  
 4 isn't that right?  
 5 MR. BRECHER: Objection.  
 6 A. Yes.  
 7 Q. So am I correct that you understood  
 8 that as part of your fiduciary duty to the  
 9 investors of the funds, that you needed to assure  
 10 that the financial relations between the company  
 11 and the funds was proper and in accordance with  
 12 the agreements?  
 13 A. I assured to the extent that I was  
 14 capable of assuring.  
 15 Q. Was it also part of your  
 16 responsibility to assure that investments made by  
 17 the managed funds were financed in a proper  
 18 manner?  
 19 A. Yes, that was part of my  
 20 responsibilities.  
 21 Q. Was it also part of --  
 22 A. But not my sole responsibility or  
 23 solely responsible for.  
 24 Q. There's no one in the financial side  
 25 of the business more senior than the CFO;

1 Gruss - CONFIDENTIAL  
 2 correct?  
 3 A. The CEO.  
 4 Q. In the financial side of the  
 5 business, you had ultimate responsibility for the  
 6 financial matters of the business as reporting to  
 7 the CEO; correct?  
 8 MR. BRECHER: Objection. Note my  
 9 objection.  
 10 MR. LEVINE: I'll rephrase it.  
 11 Q. Dan Zwirn didn't have the title of  
 12 CFO, did he?  
 13 A. Correct, he did not.  
 14 Q. So am I correct that -- was it fair  
 15 for Dan Zwirn to rely on you to perform the job  
 16 and assume the responsibilities of CFO?  
 17 MR. BRECHER: Objection.  
 18 A. In certain matters.  
 19 Q. Including all of the matters that we  
 20 just testified to that are in paragraph 260;  
 21 correct?  
 22 MR. BRECHER: Objection.  
 23 A. Those that I testified to.  
 24 Q. And was it also part of your  
 25 responsibility as CFO to assure that the

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1 Gruss - CONFIDENTIAL  
2 financial transactions between the company and  
3 the managed funds and between the managed funds  
4 were properly documented?  
5 A. Yes.  
6 Q. Is it also part of your  
7 responsibility to assure that the financial  
8 affairs and rates of return of the managed funds  
9 were accurately and properly reported?  
10 A. It was not my responsibility to  
11 assure that the rates of return were met.  
12 Is that your question.  
13 Q. No.  
14 I asked you whether it was part of  
15 your responsibility to assure that the financial  
16 affairs and rates of return of the managed funds  
17 were accurately and properly reported?  
18 A. Oh, it was my responsibility to make  
19 sure that those individuals responsible did their  
20 job. I did not do the math is my point.  
21 Q. But in relying on somebody else to  
22 do the math, did you then have ultimate  
23 responsibility for assuring that the financial  
24 affairs and rates of return of the managed funds  
25 were accurately and properly reported?

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1 Gruss - CONFIDENTIAL  
2 MR. BRECHER: Objection.  
3 A. In much the same way, the CEO had  
4 the responsibility to make sure that I did the  
5 same.  
6 Q. Mr. Gruss, please listen to the  
7 question and answer the question.  
8 A. Sure.  
9 Q. So apart from relying on somebody  
10 reporting to you to do the math, did you  
11 understand that it was part of your  
12 responsibility to assure that the financial  
13 affairs and rates of return of the managed funds  
14 were accurately and properly reported?  
15 MR. BRECHER: Objection.  
16 A. Apart from relying on those  
17 individuals, yes.  
18 Q. Your testimony is, I take it, that  
19 you relied on the individuals to do the math; but  
20 you assume responsibility for making sure that  
21 the financial affairs and rates of return were  
22 accurately and properly reported.  
23 A. I relied on the individuals to do  
24 their jobs, part of which was calculating the  
25 math correctly.

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1 Gruss - CONFIDENTIAL  
2 Q. And you understood that to the  
3 extent that you knew and understood how they were  
4 calculating the math -- withdrawn.  
5 You understood that to the extent  
6 that you knew how they were calculating the rates  
7 of return, that you agree that it was part of  
8 your responsibility to assure that the rates of  
9 return were accurately and properly reported?  
10 MR. BRECHER: Objection.  
11 A. Yes.  
12 Q. For instance, if you knew that a  
13 mistake was made in doing the calculation, you  
14 had an obligation to correct the mistake;  
15 correct?  
16 A. If I was aware of the mistake?  
17 Q. Yes.  
18 A. Yes.  
19 MR. LEVINE: Mark this Gruss 4.  
20 (Gruss Exhibit 4, Plaintiff's Reply  
21 to Defendants' Counterclaims, marked for  
22 identification.)  
23 BY MR. LEVINE:  
24 Q. Take a look at Gruss 4, which is a  
25 legal document entitled Plaintiff's Reply to

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1 Gruss - CONFIDENTIAL  
2 Defendants' Counterclaims.  
3 Do you see that?  
4 A. Yes.  
5 Q. And you recognize that as a document  
6 that was filed on your behalf by your lawyers?  
7 A. Yes.  
8 Q. Did you review that with your  
9 lawyers before it was -- before it was filed?  
10 A. I don't recall.  
11 Q. Take a look at page 12 of the  
12 document.  
13 (Witness peruses the exhibit.)  
14 Q. You have it in front of you?  
15 A. Yes.  
16 Q. Go down to Paragraph No. 162. Do  
17 you see that?  
18 A. Yes.  
19 Q. And do you see that that states,  
20 "Admits the allegations contained in  
21 paragraph 260"?  
22 A. Yes.  
23 Q. And do you understand that sentence  
24 to refer to paragraph 260 in the answer and  
25 counterclaims of the defendants that we have just

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1 Gruss - CONFIDENTIAL  
2 reviewed?  
3 A. Yes.  
4 Q. So do you see that on your behalf,  
5 your lawyers admitted that all of the items in  
6 paragraph 360 [sic] were part of your  
7 responsibility?  
8 A. Yes.  
9 MR. BRECHER: You mean 260.  
10 THE WITNESS: I see it shows that.  
11 MR. LEVINE: 260, not 360, Eileen.  
12 THE WITNESS: 260.  
13 BY MR. LEVINE:  
14 Q. Now, who were the principal people  
15 that reported to you starting in 2002?  
16 A. Matt Husar and Bob Racusin.  
17 (Discussion off the record.)  
18 Q. What was Matt Husar's area of  
19 responsibility?  
20 A. He was on the finance side, so he  
21 was an accountant.  
22 Q. What did his job involve on the  
23 finance side?  
24 A. He would reconcile the P&L. He  
25 would calculate the month end NAV. And other

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1 Gruss - CONFIDENTIAL  
2 financial accounting responsibilities.  
3 Q. And what entities was he reconciling  
4 the P&L and NAV for?  
5 A. At least Highbridge/Zwirn Special  
6 Opportunity Fund, the same Ltd., the Highbridge  
7 managed account.  
8 Q. What does "NAV" stand for?  
9 A. Net asset value.  
10 Q. What does that mean?  
11 A. It's calculating the investment plus  
12 or minus any returns on the investments. By  
13 "investment," I mean investor investment in the  
14 fund.  
15 Q. What did Mr. Racusin's job involve?  
16 A. He was on the operations side.  
17 Q. What did that job involve?  
18 A. He would clear trades. He would  
19 book trades into the system. He would set up not  
20 only trades, but also private originated assets.  
21 Direct lending.  
22 Q. Did you hire Messrs Husar and  
23 Racusin?  
24 A. No.  
25 Q. Were they there when you got there?

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1 Gruss - CONFIDENTIAL  
2 A. Yes.  
3 Q. Did they understand that they  
4 reported to you?  
5 MR. BRECHER: Objection.  
6 A. I don't know.  
7 Q. Did you make it clear to them that  
8 they reported to you?  
9 A. I don't recall.  
10 Q. Did they report to you?  
11 A. Yes.  
12 Q. No question about that?  
13 A. No question.  
14 Q. Did there come a time when you hired  
15 anybody of similar senior position after you  
16 joined?  
17 A. Yes.  
18 Q. Who did you hire?  
19 A. Scores of people.  
20 Q. Give me the principal people.  
21 A. Oh --  
22 Q. Identify the principal people that  
23 you hired.  
24 A. Sylvia Wu.  
25 Q. When did you hire Miss Wu?

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1 Gruss - CONFIDENTIAL  
2 A. I don't recall specific dates.  
3 Q. Do you know approximately when?  
4 A. No later than mid to end 2003.  
5 Q. What was Miss Wu's area of  
6 responsibility?  
7 A. She replaced Matt Husar.  
8 Q. What was her area of responsibility?  
9 A. Oh --  
10 Q. Exactly what Mr. Husar's was?  
11 A. Yes, exactly.  
12 Q. She was responsible for the finance  
13 side, which included all of the funds?  
14 A. Correct.  
15 Q. And who else did you hire?  
16 A. I hired -- you want me to rattle off  
17 names?  
18 Q. Did you hire a woman by the name of  
19 Li Anne Law?  
20 A. Yes.  
21 Q. L-I, A-N-N-E, L-A-W.  
22 A. Yes.  
23 Q. What was her area of  
24 responsibilities?  
25 A. She was also responsible for the

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1 Gruss - CONFIDENTIAL  
2 accounting and finance of the funds and the  
3 management company.  
4 Q. Did one of the people in your --  
5 withdrawn.  
6 Did you separate the jobs as CFO of  
7 people -- of people who were in charge of the  
8 onshore fund from those responsible for the  
9 offshore fund?  
10 A. No. That would have been -- if that  
11 occurred, that would not have been me. That  
12 would have been either Sylvia Wu or the  
13 controller.  
14 Q. Did that happen?  
15 A. I don't know.  
16 Q. How was Miss Law's job different  
17 from Miss Wu's job?  
18 A. Miss Law came in side by side with  
19 Sylvia. So she was employed by Sylvia.  
20 Q. So you didn't pay her salary?  
21 A. No. Of course, not.  
22 Q. You don't mean --  
23 A. Oh, no, I don't mean personally  
24 employed by.  
25 Q. Did Miss Wu hire Miss Law or did you

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1 Gruss - CONFIDENTIAL  
2 hire Miss Law?  
3 A. I don't recall.  
4 Q. Go back to my original question.  
5 How was Miss Law's job different from Miss Wu's  
6 job?  
7 A. It wasn't that large of a  
8 distinction, to my knowledge.  
9 Q. Was one of them responsible for  
10 financial controls of one area of the business  
11 and the other responsible for the other -- for  
12 another?  
13 A. No, I don't think so.  
14 Q. Who else was -- were they both CEO  
15 right below you?  
16 A. At times. You have to lay out time  
17 frame.  
18 Q. When Miss Wu came on, at least in  
19 '03, was she reporting directly to you?  
20 A. Yes.  
21 Q. Was there anyone between her and you  
22 in terms of hierarchy of the department?  
23 A. No.  
24 Q. And was there anybody -- withdrawn.  
25 When Miss Law came to work for the

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1 Gruss - CONFIDENTIAL  
2 management company, did she report to you?  
3 A. She reported to Sylvia Wu.  
4 Q. Who were the other people that  
5 reported directly to you in '03 and '04?  
6 A. Bob Racusin. I don't recall if  
7 there were any.  
8 Q. During the period from '02 to '06,  
9 when you were employed as CFO, who were all of  
10 the people reporting to you?  
11 A. Directly to me at -- Sylvia was at  
12 one time. Bob Racusin at one time. Jim Wilk at  
13 one time. Jason Pecora at one time. And then  
14 Li Anne Law at one time once she took on the  
15 responsibility of controller.  
16 Q. What was Mr. Wilk's  
17 responsibilities?  
18 A. He was the head of operations.  
19 Q. What was Mr. Pecora's  
20 responsibility?  
21 A. He was the treasurer.  
22 Q. What was the job of treasurer?  
23 A. He was responsible for financing of  
24 the firm's assets. His direct responsibility was  
25 financing of the firm's assets.

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1 Gruss - CONFIDENTIAL  
2 Q. He reported to you as treasurer?  
3 A. Yes.  
4 Q. What was -- what did Li Anne Law's  
5 responsibilities become?  
6 A. She was the controller. Responsible  
7 for the same responsibilities as Sylvia Wu and  
8 Matt Husar before her.  
9 Q. So Li Anne Law was the third  
10 controller at the management company during the  
11 time that you were there?  
12 A. Essentially, yes. Not -- to be  
13 clear, not just the management company.  
14 Q. What else?  
15 A. The funds and the managed accounts.  
16 MR. LEVINE: Mark this as Gruss 5.  
17 (Gruss Exhibit 5, Bates Nos. DBZ  
18 0000173 through 206, Limited Partnership  
19 Agreement, marked for identification.)  
20 Q. Before I go to Gruss 5, was there  
21 also a person reporting to you by the name of  
22 O'Hara?  
23 A. Directly to me, no.  
24 Q. Who was O'Hara?  
25 A. Michelle O'Hara, she was someone

1 Gruss - CONFIDENTIAL  
 2 brought in upon Sylvia's advice -- Sylvia Wu'  
 3 advice to be in charge of accounts payable. Her  
 4 job later morphed into or grew into she was  
 5 responsible for the management company, solely  
 6 the management company, not the hedge funds or  
 7 the managed accounts.  
 8 Q. Just explain that distinction.  
 9 A. The management company wasn't the  
 10 hedge fund. So the hedge fund dealt with the  
 11 investments and the -- to be as simple as  
 12 possible, the hedge funds managed the  
 13 investments. The management company managed the  
 14 management company.  
 15 Q. So it was Michelle O'Hara's job to  
 16 maintain the books reporting to the CFO of the  
 17 management company?  
 18 A. It was -- it was her responsibility  
 19 to maintain the books reporting to the controller  
 20 who reported to myself.  
 21 Q. And if you were --  
 22 A. Michelle O'Hara did not have a  
 23 direct line into myself.  
 24 Q. Do I take it that it was very clear  
 25 distinction that her job only involved the

1 Gruss - CONFIDENTIAL  
 2 management company and not the hedge funds that  
 3 you identified?  
 4 A. Correct, yes.  
 5 Q. So that if -- withdrawn.  
 6 Did you understand when you were  
 7 dealing with Michelle O'Hara that you were  
 8 dealing with the management company and not the  
 9 hedge funds?  
 10 A. Yes.  
 11 Q. Who had the Michelle O'Hara job for  
 12 the hedge funds?  
 13 A. Either Sylvia -- at different times,  
 14 Sylvia Wu, Li Anne Law. But to be clear, they  
 15 also had responsibility for the management  
 16 company.  
 17 Q. But as part of that responsibility,  
 18 they were supervising Michelle O'Hara?  
 19 A. Exactly.  
 20 Q. Whose sole and exclusive  
 21 responsibility was the management company?  
 22 A. Exactly.  
 23 Q. Please take a look at Gruss 5.  
 24 (Witness peruses the exhibit.)  
 25 Q. Can you identify it?

1 Gruss - CONFIDENTIAL  
 2 A. Yes.  
 3 Q. What is it?  
 4 A. The limited partnership agreement of  
 5 D.B. Zwirn & Co., L.P.  
 6 Q. When was the first time --  
 7 withdrawn.  
 8 Have you seen that document before?  
 9 A. I believe so, yes.  
 10 Q. When was the first time you ever saw  
 11 that document?  
 12 A. I don't know.  
 13 Q. Was this the limited partnership  
 14 agreement for the management company?  
 15 A. Yes.  
 16 Q. Did you become a partner of the  
 17 management company?  
 18 A. Yes.  
 19 Q. When did you become a partner of the  
 20 management company?  
 21 A. Sometime in 2006 effective  
 22 January 1, 2006.  
 23 Q. How did you learn that you would  
 24 become a partner of the management company?  
 25 A. Dan Zwirn and Chris Suan told me.

1 Gruss - CONFIDENTIAL  
 2 Q. Who is Chris Suan?  
 3 A. Chris Suan is one of the -- one of  
 4 the original partners of the management company.  
 5 Q. What was Chris Suan's job when you  
 6 were there?  
 7 A. He was a partner and he was also  
 8 what I would consider a deal guy.  
 9 Q. Were you -- withdrawn.  
 10 Do you recall when you learned that  
 11 you were becoming a partner of the management  
 12 company?  
 13 A. No, I don't recall exactly.  
 14 Q. Was that a matter of celebration,  
 15 when you became a partner of the management  
 16 company?  
 17 A. Yes. It wasn't a bad thing.  
 18 Q. Did you expect to be made a partner  
 19 of the management company before you learned you  
 20 were becoming a partner?  
 21 A. I felt that I'd earned it.  
 22 Q. Did you tell Dan Zwirn that you had  
 23 earned it before a decision was announced to you?  
 24 A. I don't recall.  
 25 Q. Did you lobby Dan Zwirn to become a

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1 Gruss - CONFIDENTIAL  
2 partner of the management company --  
3 A. Not really.  
4 Q. -- at all?  
5 A. Not really.  
6 Q. Did you ever say to Dan Zwirn, I'm  
7 entitled to be a member or a partner of the  
8 management company?  
9 A. Not like that.  
10 Q. How did you say it in your words?  
11 A. No, I'm saying I don't -- I don't  
12 recall whether or not I did.  
13 Q. Did you ever tell Chris Suan that  
14 you deserved to be a partner of the management  
15 company?  
16 A. When Chris Suan brought it up to me,  
17 yes.  
18 Q. When he brought it up to you, had a  
19 decision been made that you were becoming a  
20 partner or was it before you learned that a  
21 decision had been made?  
22 A. No, it was before a final decision  
23 had been made.  
24 Q. What was the conversation with Chris  
25 Suan about that?

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1 Gruss - CONFIDENTIAL  
2 A. Oh, I don't recall.  
3 Q. Generally what, do you recall being  
4 said?  
5 A. Him telling me that Dan and himself  
6 and Glenn Dubin were contemplating making me a  
7 partner.  
8 Q. What did you say?  
9 A. "Great."  
10 Q. Did you understand at that point in  
11 time, that Dan Zwirn, Chris Suan and Glenn Dubin  
12 had confidence in your ability?  
13 A. Yes.  
14 Q. Did you understand at that time that  
15 all three of them trusted and had faith in you?  
16 A. I would hope so.  
17 Q. Did you believe that to be the fact?  
18 A. Yes.  
19 Q. Did you understand at that time that  
20 there was any reason in the world why any of the  
21 three of them would think or know that you  
22 weren't doing your job correctly?  
23 MR. BRECHER: Objection.  
24 Q. Answer.  
25 A. Oh, no, there's no reason for me to

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1 Gruss - CONFIDENTIAL  
2 believe that. You don't make someone a partner  
3 if you believe that they're not competent.  
4 Q. It would be -- withdrawn.  
5 Competency isn't the standard for  
6 making partner, isn't that right?  
7 MR. BRECHER: Objection.  
8 A. I don't know what the standard would  
9 be.  
10 Q. You understand what the word  
11 "competent" means, don't you?  
12 A. Sure.  
13 Q. So am I correct that you understood  
14 that you had to be more than just competent to be  
15 made a partner of the management company?  
16 A. Oh, yes, yes.  
17 Q. Yes, you understood that?  
18 A. Yes.  
19 Q. Yes, you understood that you had to  
20 be doing -- performing your job at the highest  
21 level in order to be made a partner?  
22 A. No, not necessarily.  
23 Q. What did you understand -- were  
24 there any other criteria for the CFO to be made a  
25 partner of the management company other than they

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1 Gruss - CONFIDENTIAL  
2 were doing a superb job as CFO?  
3 A. Adding value.  
4 Q. CFO was adding value by virtue of  
5 doing the job well; isn't that right?  
6 A. Yes, I would think so.  
7 Q. And did you have any reason to  
8 believe that Dan or Glenn Dubin or Chris Suan  
9 knew that you were -- that you were not doing the  
10 job well?  
11 A. I was doing the job well.  
12 MR. LEVINE: Let's mark this  
13 Gruss 6.  
14 (Gruss Exhibit 6, Bates Nos. PG00388  
15 through 401, Supplementary Agreement,  
16 marked for identification.)  
17 Q. Mr. Gruss, apart from doing the job  
18 well up until the day you made partner, was there  
19 ever a circumstance or event where Mr. Zwirn or  
20 Mr. Dubin or Mr. Suan gave you criticisms for  
21 doing the job poorly?  
22 A. I don't believe so.  
23 Q. Looking at what I've marked as  
24 Gruss 6, can you identify it?  
25 (Witness peruses the exhibit.)

1 Gruss - CONFIDENTIAL  
 2 A. Yes.  
 3 Q. What is it?  
 4 A. This is my partnership agreement.  
 5 Q. And did you understand --  
 6 A. My partnership agreement in the  
 7 management company, not an L.P. in the fund.  
 8 Q. Did you understand that this  
 9 agreement was to be taken together with the  
 10 limited partnership agreement, Gruss 5?  
 11 A. I believe it is referenced.  
 12 MR. LEVINE: Mark this Gruss 7.  
 13 (Gruss Exhibit 7, Bates Nos. PG0402  
 14 through 420, Confidentiality, Noncompete  
 15 and Nonsolicit Agreement, marked for  
 16 identification.)  
 17 BY MR. LEVINE:  
 18 Q. Can you identify Gruss 7?  
 19 (Witness peruses the exhibit.)  
 20 A. Yes.  
 21 Q. What is Gruss 7?  
 22 A. This is the partnership confi- -- a  
 23 noncompete, nonsolicit.  
 24 Q. Did you understand that this  
 25 agreement, Gruss 7, also was part of the

1 Gruss - CONFIDENTIAL  
 2 agreements that applied to your partnership in  
 3 the management company?  
 4 A. Yes, I believe I did.  
 5 Q. Did you understand that the limited  
 6 partnership agreement, Gruss 5, together with the  
 7 supplementary agreement, Gruss 6, together with  
 8 the partner confidentiality noncompete and  
 9 nonsolicit agreement, Gruss 7, are all together  
 10 the agreements that applied to you when you  
 11 became a partner?  
 12 A. I believe that was it.  
 13 Q. Did you have -- did you review these  
 14 agreements when you became a partner?  
 15 A. Yes, generally I did.  
 16 Q. Did you hire any lawyer to look at  
 17 them for you?  
 18 A. I did not.  
 19 Q. Is there any part of the agreements  
 20 that you did not understand when you became a  
 21 partner?  
 22 A. I don't -- I don't recall.  
 23 Q. You understood that these applied to  
 24 you?  
 25 A. Yes.

1 Gruss - CONFIDENTIAL  
 2 Q. Take a look for Gruss 7, at  
 3 paragraph -- page 16.  
 4 (Witness peruses the exhibit.)  
 5 Q. Do you see that Schedule 1?  
 6 A. Yes.  
 7 Q. Did you understand that schedule  
 8 applied to Gruss 7?  
 9 A. I don't -- I don't recall.  
 10 Q. Did you understand that the schedule  
 11 attached to Gruss 7 was incorporated into  
 12 Gruss 7?  
 13 A. I don't recall.  
 14 Q. Is there any -- do you see that  
 15 Schedule 1 includes definition of terms that are  
 16 used in the agreements?  
 17 A. I see that now, yes.  
 18 Q. Do you see, under the bottom of  
 19 page 16, the words "forfeiting event"?  
 20 A. Yes.  
 21 Q. Did you understand what forfeiting  
 22 event meant?  
 23 A. I don't recall if I read it.  
 24 Q. Do you recall what forfeiting event  
 25 meant?

1 Gruss - CONFIDENTIAL  
 2 MR. BRECHER: At what time?  
 3 Objection.  
 4 Q. While you became a partner.  
 5 A. I don't recall.  
 6 Q. Did you understand -- if you go back  
 7 to Gruss 5, page 21 --  
 8 A. Yes.  
 9 Q. -- I'm sorry, page 20.  
 10 A. Yes.  
 11 Q. Do you understand Section 6.01 of  
 12 the partnership agreement provided for the  
 13 withdrawal or termination of a partner?  
 14 A. Yes.  
 15 Q. Did you understand under  
 16 Section 6.01(c), that there were such things  
 17 called forfeiting events?  
 18 A. I don't know.  
 19 Q. Well, did you understand when you  
 20 became a partner that actually you could be  
 21 terminated from being a partner?  
 22 A. Yes.  
 23 Q. Did you understand in effect that  
 24 you could be fired?  
 25 A. Yes.

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1 Gruss - CONFIDENTIAL

2 Q. And did you understand that you

3 could be fired if you willfully failed to do your

4 job?

5 A. I don't recall the legal definition

6 of--

7 Q. But you understood that if you -- if

8 you consciously didn't do your job well, you

9 could be fired?

10 MR. BRECHER: Objection.

11 A. I do not recall whether or not I

12 knew that.

13 Q. Did you understand that you could be

14 fired if you didn't do your job well?

15 A. Yes.

16 Q. What did you understand it would

17 take?

18 A. I didn't -- I didn't think about it.

19 I was doing my job well.

20 Q. Did you understand that the

21 agreement provided the terms or the circumstances

22 under which you could be terminated?

23 A. Yes. That's standard language in

24 employment or partnership agreement.

25 Q. Did you understand that this

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1 Gruss - CONFIDENTIAL

2 partnership agreement included language that

3 would apply to the circumstances under which you

4 could be terminated?

5 A. Yes.

6 Q. Did you understand that -- whether

7 you read them or didn't read them -- that the

8 provisions of 6.01 applied to you when you became

9 a partner?

10 A. They applied to everyone that was a

11 partner. So yes.

12 Q. Did they apply to you?

13 A. Yes.

14 Q. And did you understand that a

15 forfeiting event as described in this agreement

16 applied to you?

17 A. I don't know.

18 Q. But there's no question in your mind

19 that it did apply to you; correct?

20 A. Correct.

21 Q. As you sit here, you just do not

22 recall at what level of understanding or

23 knowledge you had in 2006 about that document?

24 A. Correct.

25 Q. Had you ever read or seen any other

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1 Gruss - CONFIDENTIAL

2 partnership agreements before you became a

3 partner?

4 A. I don't know.

5 Q. You testified a few minutes ago that

6 this language was customary.

7 A. Yes.

8 Q. How did you know it was customary?

9 A. I believe I said employment

10 contracts.

11 Q. Did you understand that a standard

12 employment contract was different than a

13 partnership agreement?

14 A. Yes.

15 Q. And did you understand that

16 partnership agreements' provisions could be

17 different as to termination and withdrawal than a

18 standard employment agreement?

19 A. Yes.

20 Can I maybe clarify something?

21 Q. Sure.

22 A. At the time I was made partner,

23 there was another partner being made, Vasam

24 Kesavan. He negotiated this contract. Not mine,

25 the blanket partnership contract. Vasam is an

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1 Gruss - CONFIDENTIAL

2 M.B.A. and a lawyer. Rightly or wrongly, I

3 relied on his expertise.

4 Q. You do affirm under oath that the

5 partnership agreement applied to you from the day

6 that you became a partner?

7 A. Yes.

8 Q. What day was that?

9 A. I don't recall the date that it was

10 made official, but it was as of January 2006.

11 January 1st, 2006. Right? Yes.

12 Q. And do you understand, going to

13 Gruss 7, the confidentiality agreement --

14 A. Got it.

15 Q. -- page 16, that the definition of

16 forfeiting event was modified for purposes of the

17 partnership agreement as it applied to you?

18 A. No.

19 Q. Did you ever review the document to

20 know or understand that?

21 A. I don't recall.

22 Q. Am I correct that you don't dispute

23 that Gruss 7 applies to you?

24 A. I don't dispute that, yes. I don't

25 dispute that.

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1 Gruss - CONFIDENTIAL  
2 Q. Whatever the legal provisions are of  
3 Gruss 7, including the schedule, it applies to  
4 you?  
5 A. Yes.  
6 Q. Take a look at Gruss 6, the  
7 supplementary agreement.  
8 A. Got it.  
9 Q. Take a look at page 4. Do you  
10 understand that the supplementary agreement,  
11 Gruss 6, also has language modifying Section 6 of  
12 the withdrawal and termination provisions?  
13 (Witness peruses the exhibit.)  
14 A. Just by way of it saying that on  
15 here.  
16 Q. It's your testimony that you don't  
17 recall reading it at the time, but do you not  
18 dispute that it applies to you?  
19 A. Correct.  
20 Q. And did you understand -- turn back  
21 to page -- go back to Gruss 5, which is the  
22 limited partnership agreement, and turn to page 3  
23 and 4 and 5. Does this set forth --  
24 A. Hold on. Okay.  
25 Q. Does this set out in Section 2.02

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1 Gruss - CONFIDENTIAL  
2 the authority of the general partner?  
3 (Witness peruses the exhibit.)  
4 A. Yes, as defined here.  
5 Q. Who else did you understand -- as of  
6 January 2006, who the -- withdrawn.  
7 Who did you understand, as of  
8 January 2006, was the general partner of the  
9 partnership represented by Gruss 5?  
10 (Witness peruses the exhibit.)  
11 A. I believe at the time, I would have  
12 thought it was Dan.  
13 Q. And was there any confusion or doubt  
14 in your mind about that?  
15 A. Yes, clearly. Only because I said  
16 "I believe it was Dan."  
17 Q. Who else would it have been?  
18 A. The distinction would be an entity  
19 as opposed to personally, some entity.  
20 Q. The entity would have been an entity  
21 owned or controlled by Dan?  
22 A. I would have thought so, but I don't  
23 want to guess.  
24 Q. Did you understand basically that  
25 the general partner for purposes of the person to

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1 Gruss - CONFIDENTIAL  
2 whom you reported to was Dan?  
3 A. I'm sorry, say that again.  
4 Q. Did you understand basically that  
5 the general partner for purposes of the person to  
6 whom you reported to was Dan?  
7 A. Yes.  
8 Q. Did you understand that basically,  
9 the person or the entity through a person who was  
10 the general partner with the authority under  
11 Section 2.02 of the partnership agreement was Dan  
12 Zwirn?  
13 A. Yes.  
14 Q. Referring to page 5, little -- (p),  
15 did you understand that Dan had the authority to  
16 determine when a Forfeiting Event -- capped F,  
17 capped E -- as described in Section 6.01(c)) has  
18 occurred with respect to a partner?  
19 A. No.  
20 Q. Who did you understand, in  
21 January -- or as of January 2006 had the  
22 authority to determine when a forfeiting event  
23 took place?  
24 A. I don't believe I ever thought about  
25 it.

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1 Gruss - CONFIDENTIAL  
2 Q. Is there any doubt in your mind as  
3 you sit here today that Section 2.02 (p)  
4 authority applied to you as a partner in  
5 D.B Zwirn & Co. L.P.?  
6 A. If this document is the executed  
7 version, I don't dispute that at all.  
8 Q. What do you mean "executed version"?  
9 A. I just mean if this is the official  
10 version of the L.P. agreement, I don't dispute it  
11 one bit.  
12 Q. Did you ever sign the agreement?  
13 A. I don't recall if it was ever  
14 signed. It was dispute about if it was signed --  
15 I don't recall.  
16 Q. Is there any doubt in your mind that  
17 you operated under it?  
18 A. No doubt.  
19 Q. Is there any doubt in your mind that  
20 it applied to you?  
21 A. No doubt.  
22 Q. Is there any doubt in your mind that  
23 it applied to the general partner in dealing with  
24 you?  
25 A. I don't believe there's any doubt.

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1 Gruss - CONFIDENTIAL

2 Q. Dan Zwirn was obligated to follow

3 this agreement as much as you were; isn't that

4 right?

5 A. Exactly.

6 Q. He had whatever authority and

7 limitations were provided in the agreement just

8 like you did; right?

9 A. Exactly.

10 Q. So if this agreement says that the

11 general partner had the authority to determine

12 when a forfeiting event as described in Section

13 6.01(c) has occurred with respect to a partner,

14 then you don't dispute that?

15 A. Correct.

16 MR. LEVINE: Let's take a break.

17 (Recess from the record.)

18 BY MR. LEVINE:

19 Q. Mr. Gruss, please go to Exhibit 1.

20 A. Got it.

21 Q. Take a look at page 8 and 9, and

22 just please review for yourself paragraphs 30 to

23 33.

24 (Witness peruses the exhibit.)

25 A. Okay.

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1 Gruss - CONFIDENTIAL

2 Q. You've read paragraphs 30 to 33?

3 A. Correct.

4 Q. Now, you allege in paragraph 32 the

5 following sentence: "Once Zwirn decided that

6 Gruss would be blamed for the two issues, Gruss

7 was forced to leave the company."

8 Do you see that?

9 A. Yes.

10 Q. What were the circumstances by which

11 you were, quote, forced to leave this company --

12 Withdrawn.

13 How did you learn that you were

14 "forced to leave the company," close quote?

15 A. Ultimately Lawrence Cutler, the

16 chief compliance officer, told me.

17 Q. Where did that conversation take

18 place?

19 A. The final conversation?

20 Q. The first conversation.

21 A. Oh, the first. I don't recall. It

22 was sometime after the Shulte Roth investigation

23 started.

24 Q. When did you learn the Shulte Roth

25 investigation started?

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1 Gruss - CONFIDENTIAL

2 A. Sometime in 2006.

3 Q. Can you give me a month?

4 A. I would be guessing.

5 Q. Is it September of 2006 or earlier?

6 A. No, earlier. Earlier.

7 Q. Is it sometime over the summer in

8 2006?

9 A. I'd be guessing, but I think it was

10 more the spring, the late spring.

11 MR. BRECHER: Don't guess.

12 THE WITNESS: Yes.

13 Q. How did you learn that Shulte

14 Roth -- withdrawn.

15 Who is Shulte Roth?

16 A. The law firm brought in to look at

17 two issues.

18 Q. Was Shulte Roth the law firm for the

19 management company and the entities?

20 A. Yes.

21 Q. So Shulte Roth was outside counsel

22 to the management company and the funds?

23 A. Correct.

24 Q. And am I correct that you knew that

25 sometime before this so-called investigation

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1 Gruss - CONFIDENTIAL

2 started?

3 A. Yes.

4 Q. Had you dealt with lawyers at Shulte

5 Roth before the spring of 2006 in your job?

6 A. Yes.

7 Q. What partners at Shulte Roth, prior

8 to the spring of 2006, had you dealt with?

9 A. Dan Oshinsky, Phillippe Benedict and

10 others I can't recall.

11 Q. Were they capable lawyers as far as

12 you understood?

13 MR. BRECHER: Objection.

14 A. I thought so.

15 Q. In fact, isn't Shulte Roth known as

16 one of the go-to firms for hedge funds at that

17 time?

18 MR. BRECHER: Objection.

19 A. I'm sure as well as others, so

20 I don't --

21 Q. Did you know that?

22 A. Yes, yes.

23 Q. You knew that they were?

24 A. Yeah, they're very good.

25 Q. You knew that Dan Zwirn and the

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1 Gruss - CONFIDENTIAL  
2 other partners had hired one of the best law  
3 firms in town to represent them for these  
4 entities; correct?  
5 MR. BRECHER: Objection.  
6 A. For the fund and management company  
7 work, yes.  
8 Q. And how -- in your dealings with the  
9 partners that you just identified, had you found  
10 them to be capable --  
11 A. Yes.  
12 Q. -- and straight shooters and honest?  
13 MR. BRECHER: Objection.  
14 A. Yes.  
15 Q. And what did you learn in mid-2006  
16 about what Shulte Roth was investigating?  
17 A. The early collection of management  
18 fees and the use of investor funds to purchase  
19 Dan's airplane and other expenses associated with  
20 Dan's airplane.  
21 Q. How did you learn that Shulte Roth  
22 had been asked to do those two things?  
23 A. I don't recall who told me  
24 specifically.  
25 Q. What did you understand Shulte Roth

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1 Gruss - CONFIDENTIAL  
2 was doing in investigating those two things?  
3 A. I believe just looking into the  
4 circumstances.  
5 Q. What did you understand would be the  
6 consequences of what Shulte Roth learned in doing  
7 the investigation of those two circumstances?  
8 A. I had no idea. I was kept out of  
9 the -- the decisions to do anything.  
10 Q. It's your testimony that you were  
11 not part of management that asked Shulte Roth to  
12 investigate these two circumstances; is that  
13 correct?  
14 A. That's correct.  
15 Q. What I'm asking you is what did you  
16 learn about what they were asked to do?  
17 A. I thought I just answered this.  
18 They -- they were asked to look into those two  
19 issues that I previously mentioned.  
20 Q. Did you learn that from Lawrence  
21 Cutler?  
22 A. Yes.  
23 Q. Is Lawrence Cutler the one who told  
24 you about this in the first instance?  
25 A. No, that's what I was saying. I

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1 Gruss - CONFIDENTIAL  
2 don't know if he was the first person that told  
3 me. He was definitely one of the first people  
4 that told me.  
5 Q. Is there anybody else that you can  
6 recall as you sit here today who you discussed  
7 the Shulte Roth investigation with in mid-2006?  
8 A. Originally?  
9 Q. Yes.  
10 A. Possibly David Proshan.  
11 Q. Who is David Proshan in mid-2006?  
12 A. The general counsel of the firm.  
13 Q. Do you recall your conversation with  
14 Lawrence Cutler or David Proshan about the Shulte  
15 Roth investigation when you first learned about  
16 it?  
17 MR. BRECHER: Objection.  
18 A. I don't recall the specific  
19 conversations or any conversations with David  
20 Proshan.  
21 Q. Did Lawrence Cutler -- withdrawn.  
22 How many conversations with Lawrence  
23 Cutler did you have about this subject before the  
24 circumstances in paragraph 32 came about?  
25 A. Several.

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1 Gruss - CONFIDENTIAL  
2 Q. How many is "several"?  
3 A. More than three to five, less than  
4 20.  
5 Q. Where did those conversations take  
6 place?  
7 A. My office, possibly the hallways,  
8 definitely the gym.  
9 Q. Was anyone else present for any of  
10 those conversations?  
11 A. I don't -- I don't recall.  
12 Q. What's the gist of what you remember  
13 from your conversation with Lawrence Cutler at  
14 that time?  
15 A. He kept saying that there was --  
16 there was nothing to worry about, and if there  
17 was ever a time, then he would tell me.  
18 Q. What was the "worry about" applying  
19 to?  
20 A. The early collection of the  
21 management fee -- the two issues that I had  
22 mentioned earlier.  
23 Q. What do you mean "worry about"?  
24 A. That -- that they would ultimately  
25 blame it on me.

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1 Gruss - CONFIDENTIAL  
2 Q. That's what you were worried about?  
3 A. No, that's what he said: If that  
4 occurred, then I should worry and he would tell  
5 me.  
6 Q. Were you worried -- when you learned  
7 of the circumstances of the two matters under  
8 investigation, did you have concern for the fact  
9 of whether you had done your job well?  
10 A. No.  
11 Q. Did you know anything -- when you  
12 heard the two things under investigation by  
13 Shulte Roth, what was your reaction?  
14 A. I didn't really pay it much mind.  
15 Q. Did you remember that you had  
16 knowledge of both of these circumstances?  
17 MR. BRECHER: Objection.  
18 A. No, I don't remember what my  
19 knowledge was.  
20 Q. Did you ask Lawrence Cutler if you  
21 should be worrying, during those conversations?  
22 A. I don't -- I don't recall.  
23 Q. Had you at that time already become  
24 a partner in the firm?  
25 A. Yes.

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1 Gruss - CONFIDENTIAL  
2 Q. Were there partnership meetings in  
3 early 2006?  
4 A. Yes.  
5 Q. Did you learn in one of those early  
6 partnership meetings that Shulte Roth was  
7 investigating these two circumstances?  
8 A. I don't believe so.  
9 Q. Did there come a time when you had a  
10 conversation with Lawrence Cutler -- withdrawn.  
11 Did you tell Lawrence Cutler that  
12 you were happy or you were willing to be  
13 interviewed about those two circumstances?  
14 A. Yes, I'm sure I did.  
15 Q. Do you have a recollection of doing  
16 so?  
17 A. No.  
18 Q. Did you understand that the two  
19 matters under investigation related to work done  
20 under the CFO's area of responsibility?  
21 A. Yes.  
22 Q. Did you pick up the phone and call  
23 any of the partners at Shulte Roth to offer to be  
24 interviewed about either of the circumstances?  
25 A. I don't believe so.

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1 Gruss - CONFIDENTIAL  
2 Q. Did there come a time in mid-2006  
3 when Lawrence Cutler told you, in words or  
4 substance, that you should worry?  
5 A. Yes.  
6 Q. When did that take place?  
7 A. Sometime in September.  
8 Q. Where did that conversation take  
9 place?  
10 A. I believe the final conversations  
11 took place in the gym.  
12 Q. How many final-type conversations  
13 were there?  
14 A. Not many.  
15 Q. More than one?  
16 A. I don't recall.  
17 Q. So is it your testimony that  
18 sometime in September 2006, you understood that  
19 for purposes of that Shulte Roth investigation,  
20 you had something to worry about?  
21 A. No. He told me that I have  
22 something to worry about, and that was that I was  
23 going to be let go.  
24 Q. Did he say anything else about that?  
25 A. He just said -- he went on about how

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1 Gruss - CONFIDENTIAL  
2 ridiculous it was, the whole airplane and -- and  
3 I was so against the airplane and . . .  
4 Q. What do you recall Lawrence Cutler  
5 said to you and you said to him in the  
6 conversation at the gym in September 2006?  
7 A. I don't -- I don't recall exactly.  
8 Q. What's the best that you recall?  
9 A. That I was going to be -- that --  
10 I'm sorry. That it was too late.  
11 Q. What was "too late"?  
12 A. For me to -- for me to go in to him  
13 and to Dan and just say, you know, what the --  
14 pardon -- what the heck is going on.  
15 Q. In one of the conversations  
16 immediately before that, had you asked for the  
17 opportunity to do that?  
18 A. No.  
19 Q. Why then would he be saying it's too  
20 late for you?  
21 MR. BRECHER: Objection.  
22 A. I don't know.  
23 Q. Did you understand before that  
24 conversation in the gym that a decision had been  
25 made that you were responsible for the

1 Gruss - CONFIDENTIAL  
 2 circumstances that led to these two events?  
 3 A. No, I don't believe so.  
 4 Q. Did you learn at any time before  
 5 from Mr. Cutler himself that Shulte Roth was  
 6 taking the position that you were responsible for  
 7 those problems?  
 8 A. I don't -- I don't remember.  
 9 Q. Did you understand that either one  
 10 of or both of those circumstances would or could  
 11 be -- withdrawn.  
 12 Did you understand, when you first  
 13 learned of what Shulte Roth was investigating,  
 14 that the early collection of management fees  
 15 would be a violation of the agreement between the  
 16 funds and the management company?  
 17 A. Yes.  
 18 Q. Did you understand -- when you first  
 19 learned of what Shulte Roth was investigating,  
 20 that the use of investor funds to purchase an  
 21 airplane for Dan, would also be a violation of  
 22 the agreement between the funds and the  
 23 management company?  
 24 A. Yes.  
 25 Q. So did there come a time when you

1 Gruss - CONFIDENTIAL  
 2 learned from Mr. Cutler that Shulte Roth was  
 3 holding you responsible for each of those two  
 4 circumstances?  
 5 A. Yes.  
 6 Q. And was that the last couple of  
 7 conversations before the conversation in the gym?  
 8 A. Yes.  
 9 Q. When you learned that Shulte Roth  
 10 was -- when you learned from Mr. Cutler that  
 11 Shulte Roth was holding you responsible, did you  
 12 suggest or ask Mr. Cutler for an opportunity to  
 13 talk to Shulte Roth?  
 14 A. No, I don't believe I did.  
 15 Q. Did you ask Dan Zwirn -- after you  
 16 learned from Mr. Cutler, did you ask Dan Zwirn  
 17 for an opportunity to talk to Shulte Roth?  
 18 A. I don't believe I did. I did talk  
 19 to Shulte Roth.  
 20 Q. Did you talk to Shulte Roth before  
 21 the conversation with Lawrence Cutler?  
 22 A. Yes, yes.  
 23 Q. When did you talk to Shulte Roth?  
 24 A. Sometime throughout the time that  
 25 they were on the premises.

1 Gruss - CONFIDENTIAL  
 2 Q. Who did you talk to at Shulte Roth?  
 3 A. Gentleman named Harry Davis. And I  
 4 don't recall who else was in the room.  
 5 Q. Just lawyers?  
 6 A. I believe so.  
 7 Q. Did you understand that they were  
 8 conducting the investigation on behalf of the  
 9 entity?  
 10 A. Yes.  
 11 Q. And did you understand that you had  
 12 an obligation to tell the truth?  
 13 A. Yes.  
 14 Q. Did they show you documents during  
 15 that interview?  
 16 A. I don't believe so.  
 17 Q. After you were -- withdrawn.  
 18 How many times were you interviewed  
 19 by Shulte Roth regarding the conversation with  
 20 Lawrence Cutler?  
 21 A. I want to say a couple.  
 22 Q. Then there comes a point in time  
 23 when you talk to Mr. Cutler about what Shulte  
 24 Roth was doing?  
 25 A. Yep.

1 Gruss - CONFIDENTIAL  
 2 Q. And Mr. Cutler tells you, according  
 3 to your testimony, that Shulte Roth has decided  
 4 that you're responsible for these two  
 5 circumstances?  
 6 A. I don't recall if that's how he put  
 7 it.  
 8 Q. How did he put it?  
 9 A. He just -- like I said, he just said  
 10 "it's too late."  
 11 Q. But what would have been too late if  
 12 you had already talked to Shulte Roth? That's  
 13 what I don't get.  
 14 MR. BRECHER: Objection.  
 15 A. You'd have to ask them.  
 16 Q. Well, Mr. Cutler is telling you,  
 17 according to your testimony, that it's too late  
 18 for you to go in and talk to Shulte Roth; is that  
 19 your testimony?  
 20 A. No.  
 21 Q. What did he tell you was too late?  
 22 A. It's too late. I'm already going to  
 23 be let go.  
 24 Q. Did you say -- was Mr. Cutler a  
 25 partner?

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1 Gruss - CONFIDENTIAL  
2 A. No.  
3 Q. Did you say there are certain rules  
4 that apply to me as a partner?  
5 A. No.  
6 Q. Did you have any discussion with  
7 Mr. Cutler about what he understood by "let go"?  
8 A. No.  
9 Q. Did you ask him when it was going to  
10 happen?  
11 A. No.  
12 Q. Did you ask him how it was going to  
13 happen?  
14 A. No.  
15 Q. Is there anything else about the  
16 conversations with Mr. Cutler before the gym or  
17 in the gym about what Shulte Roth learned and  
18 about what was going to happen that you haven't  
19 testified to?  
20 A. I don't recall.  
21 Q. Did Mr. Cutler give you any advice  
22 as to what you should do?  
23 A. I don't recall.  
24 Q. Did you take advice from Mr. Cutler  
25 as to what you should do?

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1 Gruss - CONFIDENTIAL  
2 A. I don't know.  
3 Q. Did Mr. Cutler tell you that --  
4 before you were let go, that you should quit?  
5 A. I don't recall.  
6 Q. Did Mr. Cutler tell you that before  
7 any steps were taken to fire you, that you should  
8 do anything about it?  
9 A. I don't recall the specifics.  
10 Q. As you sit here today, do you recall  
11 anything that Mr. Cutler told you by way of  
12 advice to you about what you should do before you  
13 were fired?  
14 A. I don't recall.  
15 Q. Is there anything that you're  
16 relying on in this case that Mr. Cutler said to  
17 you before you took actions based on what he told  
18 you?  
19 MR. BRECHER: Objection.  
20 Q. Do you understand my question?  
21 A. I don't actually.  
22 Q. You testified in the last  
23 conversation -- the last couple of conversations  
24 with Mr. Cutler, that Mr. Cutler told you that  
25 you were going to be let go --

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1 Gruss - CONFIDENTIAL  
2 A. Uh-huh.  
3 Q. -- is that correct?  
4 A. Yes.  
5 Q. Did Mr. Cutler give you any advice  
6 as to what you should do when he was telling you  
7 that?  
8 A. I don't recall if he did.  
9 Q. Is there anything that he possibly  
10 told you to do that you are relying on in this  
11 case?  
12 A. I don't remember.  
13 Q. Well, read your complaint --  
14 A. Yes.  
15 Q. -- paragraphs 30 to 33. Is there  
16 anything in there that you're relying on that  
17 Mr. Cutler recommended to you that you do in  
18 connection with what he was telling you?  
19 A. Let me read it.  
20 (Witness peruses the exhibit.)  
21 A. What was the last question?  
22 Q. Is there anything, in the complaint,  
23 paragraphs 30 to 33, that you're relying on that  
24 Mr. Cutler recommended to you that you do in  
25 connection with what he was telling you?

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2 A. I don't recall.  
3 MR. LEVINE: Let's mark this  
4 Gruss 8.  
5 (Gruss Exhibit 8, Bates Nos. 790  
6 through 791, E-mail Chain, marked for  
7 identification.)  
8 (Witness peruses the exhibit.)  
9 BY MR. LEVINE:  
10 Q. I'm showing you a copy -- I'm  
11 showing you Gruss 8, which is e-mail exchange on  
12 or about March 3, 2007.  
13 A. Uh-huh.  
14 Q. You see that?  
15 A. Uh-huh.  
16 Q. Who is David Brooks?  
17 A. He's the general counsel at Fortress  
18 Investments.  
19 Q. And at the time, were you talking to  
20 Fortress Investments about working there?  
21 A. At this time, yes.  
22 Q. In March of '07?  
23 A. Correct.  
24 Q. Do you see an e-mail from you to  
25 David Brooks on or about Saturday, March 3rd,

1 Gruss - CONFIDENTIAL  
 2 which says, in part, "I resigned. I walked in to  
 3 him and said 'it's best for all if I resign'."  
 4 Do you see that?  
 5 A. Yep.  
 6 Q. Is that what happened between you  
 7 and Dan Zwirn?  
 8 A. I walked in to Dan Zwirn and the  
 9 words were "separated," if I recall.  
 10 Q. What did you say to Dan Zwirn?  
 11 A. I don't recall exactly what I said  
 12 to Dan Zwirn.  
 13 Q. Did you say, among other words, as  
 14 you said here, "it's best for all if I resign"?  
 15 A. No. How would it be best for all?  
 16 Q. These are your words in this e-mail;  
 17 correct? You said in this e-mail, "I walked in  
 18 to him and said 'it's best for all if I  
 19 resign'."; correct?  
 20 A. Okay.  
 21 Q. And is that what you told Mr. Brooks  
 22 in March of '07?  
 23 A. That's what the e-mail says.  
 24 Q. And is it your testimony that that's  
 25 not what you said to Mr. Zwirn?

1 Gruss - CONFIDENTIAL  
 2 A. Correct.  
 3 Q. Did you ask Mr. Zwirn if you should  
 4 resign?  
 5 A. No.  
 6 Q. Or did you tell Mr. Zwirn you would  
 7 resign?  
 8 A. I did neither.  
 9 Q. Did you get any advice from  
 10 Mr. Cutler about what you should tell or say to  
 11 Mr. Zwirn?  
 12 A. I don't believe so.  
 13 Q. Is it your testimony that whatever  
 14 you said and did with Zwirn after the  
 15 conversation with Mr. Cutler was what you  
 16 decided, not based on anything that Mr. Cutler  
 17 told you to do?  
 18 A. No, I said I don't recall.  
 19 Q. Well, I mean, this is a center piece  
 20 of your case; right?  
 21 A. Yes.  
 22 Q. So I take it you thought a fair  
 23 amount about what those circumstances were at the  
 24 end of September, beginning of October 2006,  
 25 before that; right?

1 Gruss - CONFIDENTIAL  
 2 A. Yes.  
 3 Q. Thought about it a fair amount;  
 4 right?  
 5 A. Yes.  
 6 Q. Without disclosing any of the  
 7 conversations with your lawyer, you've also spent  
 8 some time talking to your lawyer about that;  
 9 correct?  
 10 A. Yes.  
 11 Q. And the complaint says what it says  
 12 about being, quote, forced to leave the company  
 13 close quote; right?  
 14 A. (Witness nods head in the  
 15 affirmative.)  
 16 Q. Am I correct that there's nothing  
 17 that Mr. Cutler said -- withdrawn.  
 18 Am I correct that Mr. Cutler never  
 19 recommended to you that you resign?  
 20 A. I don't recall what Mr. Cutler said.  
 21 Q. Is there anything that Mr. Cutler  
 22 told you you should do that led you to do what  
 23 you did with Mr. Zwirn?  
 24 A. I don't know.  
 25 Q. As you sit here today, can you think

1 Gruss - CONFIDENTIAL  
 2 of anything?  
 3 A. I don't recall what went on.  
 4 Q. You do recall that Mr. Cutler told  
 5 you that Shulte Roth was holding you responsible  
 6 for these two circumstances; correct?  
 7 A. No, I don't recall if he said that  
 8 in the gym.  
 9 Q. Well, you testified that Mr. Cutler  
 10 told you that you would be let go as a result of  
 11 the Shulte Roth investigation; right?  
 12 A. Yes.  
 13 Q. So did you understand that to mean  
 14 that Shulte Roth had concluded you were  
 15 responsible for these two circumstances?  
 16 A. Yes.  
 17 Q. Now --  
 18 A. No disrespect. That wasn't your  
 19 question before that.  
 20 Q. I try not to ask the identical  
 21 question.  
 22 A. All right.  
 23 Q. I'm trying to get at the facts,  
 24 Mr. Gruss.  
 25 A. I understand. I understand.

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1 Gruss - CONFIDENTIAL  
2 Q. If you don't disrespect me, you'll  
3 be the first person in a deposition -- that is  
4 not for the record.  
5 Now, tell me everything that you  
6 remember of your conversation with Mr. Zwirn  
7 following the conversation with Mr. Cutler.  
8 A. When I went in, he said, "This is  
9 the hardest thing that I ever have to do."  
10 Q. The first words out of his mouth?  
11 A. I don't know what the first words  
12 out of his mouth were.  
13 Q. Well, did you go in and say to him I  
14 just had a conversation with Cutler and I  
15 understand that Shulte Roth is blaming me for  
16 this?  
17 A. I don't recall if I said that.  
18 Q. Did you say anything that let  
19 Mr. Zwirn know that you had had a conversation  
20 with Mr. Cutler in which you learned what you had  
21 learned?  
22 A. I do not recall what the setup of  
23 the conversation was. I just recall what the --  
24 in my opinion, the important aspects of it were.  
25 Q. So you're testifying here that there

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1 Gruss - CONFIDENTIAL  
2 are parts of that conversation that you don't  
3 remember as you sit here today?  
4 A. That's correct.  
5 Q. And so you are not testifying to the  
6 entire conversation because you don't remember  
7 it?  
8 A. Correct.  
9 Q. And when you filed the complaint --  
10 withdrawn.  
11 And when the complaint was filed on  
12 your behalf by your lawyers, you had no better  
13 memory of this conversation than you're  
14 testifying here today; is that right?  
15 MR. BRECHER: Objection.  
16 A. That's probably accurate.  
17 Q. So by definition, Mr. Zwirn is going  
18 to have a different memory of that conversation  
19 than you do; isn't that right?  
20 MR. BRECHER: Objection.  
21 A. I don't know what Mr. Zwirn's memory  
22 is.  
23 Q. But yours is incomplete?  
24 A. Yes.  
25 Q. Tell us everything you remember

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1 Gruss - CONFIDENTIAL  
2 about the conversation.  
3 A. Once I was in there, Dan said this  
4 is extremely difficult, because, you know, not  
5 only was I a partner, but I grew to be a friend  
6 and -- and it was difficult. And he said I'm --  
7 Shulte Roth has put me in a box about the  
8 decision that needs to be made, that I have to go  
9 through with this, and it's the only way to  
10 remain bullet proof and pearly white and . . .  
11 Q. What else did he say? Anything  
12 else?  
13 A. Yes, he said that he believes that  
14 he owes me, I believe the number was  
15 \$2.6 million. I said I believe it's higher than  
16 that. And he said something to the effect of  
17 Lawrence Cutler will go through all the numbers  
18 and get you, you know, whatever you're really  
19 owed, or something like that. Something to the  
20 effect of Lawrence is on your side or something.  
21 Q. So you understand --  
22 A. There's no dispute he let me go.  
23 Q. There's -- do I under- -- what did  
24 you say in your response?  
25 A. Not a hell of a lot. I kind of said

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2 I understand and that you have a lot to -- I'm  
3 paraphrasing -- to protect here. I don't re- --  
4 I don't recall exactly what I said.  
5 Q. Going back to this e-mail from  
6 March 2007, did you say to him is it best if I  
7 resign?  
8 A. No.  
9 Q. Did you say to him it is best for  
10 all if I resign?  
11 A. No, I don't believe I would have.  
12 Q. Why did you write -- what is the  
13 gist, then, of what Dan said to you about, in  
14 your words, no dispute he let me go?  
15 A. Say again. I'm sorry.  
16 Q. What is it that Dan Zwirn said to  
17 you from which you understood, as you testified a  
18 few minutes ago, quote, "there's no dispute he  
19 let me go"?  
20 A. He said that having me leave the  
21 firm is one of the most difficult things he's  
22 ever been through.  
23 Q. Did you --  
24 A. There was no resignation. There was  
25 no letter of resignation.

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2 Q. Were you telling Fortress something

3 that didn't happen when you said to him -- when

4 you said to Mr. Brooks, "I walked in to him and

5 said 'it's best for all if I resign'."?

6 A. I don't recall what I was telling

7 Brooks.

8 Q. There's no question you told that to

9 Brooks; right?

10 A. In an e-mail, yes.

11 Q. There's no question that --

12 withdrawn.

13 You were talking to Fortress about

14 going to work for Fortress; right?

15 A. Correct.

16 Q. Fortress was --

17 A. Correct.

18 Q. -- asking you through Mr. Brooks how

19 did it come about that you left Zwirn?

20 A. Correct.

21 Q. Fortress was looking for information

22 or corroboration whether you were fired or

23 whether you simply resigned?

24 A. Correct.

25 Q. You told Fortress no, it's best for

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2 all if I resigned?

3 A. That's correct.

4 Q. You told Fortress that you told

5 Zwirn that you were resigning, not being fired?

6 A. I did not say that I was not being

7 fired.

8 Q. Well, you can't be fired and resign

9 at the same time; right? It's one or the other,

10 isn't it?

11 A. I don't know.

12 Q. Well, what did you say in words or

13 substance to Dan Zwirn before you fire me, I am

14 going to resign?

15 A. I don't recall what -- no.

16 Q. Did you intend to do that?

17 A. No.

18 Q. So am I correct, then, that Dan

19 Zwirn told you that letting you go was the most

20 difficult thing that he had ever done?

21 A. Yes.

22 Q. So isn't it a fact that Dan Zwirn

23 basically terminated you?

24 A. I believe that's the case, yes.

25 Q. So it's not the fact, in

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2 paragraph 32, that you were, quote, forced --

3 withdrawn.

4 When you wrote -- allege in

5 paragraph 32 that you were, quote, "forced to

6 leave the company," am I correct that you did not

7 mean to imply that you resigned before being

8 fired?

9 A. That's correct.

10 Q. Did you understand that if in fact

11 Mr. Zwirn was terminating you, that the

12 partnership agreement, the supplementary

13 agreement and the confidentiality agreement

14 applied?

15 A. Say that again, please.

16 Q. Did you understand that if in fact

17 Mr. Zwirn was terminating you, that the

18 partnership agreement, Gruss Exhibit 5; the

19 supplementary agreement, Gruss Exhibit 6; and the

20 confidentiality agreement, Gruss Exhibit 7, would

21 apply?

22 A. Yes.

23 Q. Did you understand that your rights

24 to any -- withdrawn.

25 Did you understand that whatever

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2 your rights are as a partner in the company, in

3 the partnership, upon termination, are set forth

4 in those agreements?

5 A. If it was a forfeiting event, yes.

6 Q. And do you understand that if Shulte

7 Roth concluded that you were responsible for the

8 two circumstances that you testified about, that

9 the general partner could conclude that you had

10 willfully failed to perform your duties?

11 MR. BRECHER: Objection.

12 A. I don't know what that means.

13 Q. Well, you understood that Shulte

14 Roth was investigating the early collection of

15 management fees and the use of investor funds to

16 purchase Dan's airplane; correct?

17 A. Correct.

18 Q. And you testified earlier that you

19 understood that if either of those circumstances

20 took place, that that would be a violation of the

21 agreements between the funds and the management

22 company; correct?

23 A. Correct.

24 Q. And you also testified that you

25 understood that the responsibility for the early

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1 Gruss - CONFIDENTIAL  
2 collection of management fees and the use of  
3 investor funds to purchase the airplane came  
4 within the responsibility of the CFO; correct?  
5 A. No, I don't believe I did.  
6 Q. You did.  
7 Isn't it a fact that the early  
8 collection of management fees -- withdrawn.  
9 Isn't it a fact that if there were  
10 an early collection of management fees that  
11 violated the agreements between the funds and the  
12 management company, that that was something  
13 within the responsibility of the CFO?  
14 MR. BRECHER: Objection.  
15 A. It would have been in violation of  
16 the documents.  
17 Q. And wasn't adhering to the documents  
18 as between -- wasn't it assuring compliance and  
19 financial relations between the funds and the  
20 management committee part of your responsibility  
21 as CFO?  
22 A. To the best of my abilities.  
23 Q. And so if the law firm concluded  
24 that there was a violation of the agreements --  
25 withdrawn.

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1 Gruss - CONFIDENTIAL  
2 If the -- if the law firm concluded  
3 that there was a violation of the agreements  
4 between the funds and the management company in  
5 the early collection of management fees, it could  
6 conclude that you have failed in your job as CFO;  
7 isn't that correct?  
8 MR. BRECHER: Objection.  
9 A. No.  
10 Q. Well, assuring compliance with the  
11 agreements and the financial relations between  
12 the management company and the funds was part of  
13 your responsibility -- ultimate responsibility as  
14 CFO; isn't that right?  
15 A. No, I think you just said  
16 compliance.  
17 Q. It's your testimony that -- take a  
18 look at Gruss 2. Referring to Gruss 3, Gruss 3,  
19 which is the answer and counterclaims --  
20 A. Hold, hold, hold.  
21 (Witness peruses the exhibit.)  
22 A. Yes.  
23 Q. Go to paragraph 260.  
24 A. Got it.  
25 Q. 260 reads, "As chief financial

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1 Gruss - CONFIDENTIAL  
2 observe, chief administrative officer, partner in  
3 the company, and/or member of DBZ, LLC, Gruss is  
4 assigned and had the duty and responsibility to  
5 supervise and control, among other things, the  
6 financial affairs of the company and the managed  
7 funds which the company managed. These duties  
8 and responsibilities included, among other  
9 things," and then go down a couple of lines,  
10 "assuring that the financial relations between  
11 the company and the managed funds were proper and  
12 in accordance with the agreements and other  
13 documents regulating those relations, assuring  
14 that the financial relations between or among the  
15 funds and managed accounts were proper and in  
16 accordance with the agreements and other  
17 documents relating to those relations," and then  
18 there are other words.  
19 Do you see that?  
20 A. Yes.  
21 Q. And that's an allegation of the  
22 defendants in response to your complaint;  
23 correct?  
24 A. Yes.  
25 Q. And you testified that those

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1 Gruss - CONFIDENTIAL  
2 responsibilities were accurately described;  
3 correct?  
4 A. Yes.  
5 Q. And you filed a pleading, Gruss 4,  
6 on page 12?  
7 A. Of the same --  
8 Q. Of the next document.  
9 A. Which is 4?  
10 Q. 5.  
11 A. 5.  
12 Q. It's entitled Plaintiff's Reply to  
13 Defendants' Counterclaim. It's before there.  
14 A. 4. I thought you said 5.  
15 Q. Maybe I misspoke.  
16 Please refer to the plaintiff's  
17 reply to the defendants' counterclaim, Paragraph  
18 No. 162 on page 12, in which your lawyers filed  
19 for you a legal statement, quote, "Admits the  
20 allegations contained in paragraph 260"; correct?  
21 A. Correct.  
22 Q. Do you agree that matters relating  
23 to the collection of management fees as between  
24 the funds and the management company come within  
25 the areas of responsibility in paragraph 260 that

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1 Gruss - CONFIDENTIAL  
2 I've just read?  
3 A. Yes.  
4 Q. And do you agree that the use of  
5 investor funds to purchase an airplane for Dan  
6 Zwirn would come within the areas of  
7 responsibility in paragraph 260?  
8 A. Yes.  
9 Q. So isn't it a fact that if lawyers  
10 for the funds and the management company  
11 recommended to the general partner that the CFO  
12 must be held responsible for failing to do his  
13 duties as described in paragraph 260, that the  
14 lawyer would be giving advice that you could not  
15 disagree with?  
16 MR. BRECHER: Objection.  
17 THE WITNESS: Can you read that back  
18 to me.  
19 (Record read.)  
20 A. I have no idea.  
21 Q. Do you agree that the general  
22 partner had the legal authority to conclude that  
23 failing -- that one's failure to do one's job  
24 under paragraph 260 was a forfeiting event under  
25 the terms of the partnership agreement?

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1 Gruss - CONFIDENTIAL  
2 MR. BRECHER: Objection.  
3 A. I don't -- I don't know.  
4 Q. I take it you don't like the fact  
5 that you were forced to leave the company?  
6 A. That's probably accurate.  
7 Q. And you were disappointed that that  
8 happened?  
9 A. Yes.  
10 Q. You felt you were unfairly being  
11 held responsible?  
12 A. Enormously.  
13 Q. But is there anything I ask you  
14 under oath, is there anything about the  
15 circumstances from which you contend that the  
16 general partner wasn't legally entitled to do  
17 what he did?  
18 MR. BRECHER: Objection.  
19 A. That's -- that's up for you all to  
20 decide.  
21 Q. Have you thought of anything that  
22 would be an excuse for the general partner not to  
23 conclude once the law firm for the general  
24 partner recommended it?  
25 MR. BRECHER: Objection.

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1 Gruss - CONFIDENTIAL  
2 THE WITNESS: Say that again.  
3 Q. Is there anything -- is there  
4 anything that you would view as a legal excuse  
5 not to hold you legally responsible?  
6 MR. BRECHER: Objection.  
7 A. You just said the general partner  
8 could in his own discretion do what they want.  
9 Q. I didn't say that.  
10 A. Oh.  
11 MR. BRECHER: Don't -- just answer  
12 his questions.  
13 A. I don't know.  
14 MR. BRECHER: Just answer his  
15 questions. Don't get into a discussion.  
16 Q. Take a look at Gruss 5. Take a look  
17 at page 5.  
18 A. Got it.  
19 Q. And take a look -- starts with  
20 Section 2.02, beginning on page 3. It says,  
21 "Except as otherwise expressly provided for in  
22 this agreement, the general partner shall have  
23 the authority on behalf of the partnership to  
24 take any action or make any decisions on behalf  
25 of the partnership hereunder to carry out any and

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1 Gruss - CONFIDENTIAL  
2 all purposes of the partnership set forth in  
3 Section 1.03 and to perform all acts and enter  
4 into and perform all contracts and undertakings  
5 which it may deem necessary or advisable or  
6 incidental hereto, including, without limitation,  
7 the power to" -- and then refer to (p) on  
8 page 95 -- "to determine when a forfeiting event  
9 as described in Section 6.01(c) has occurred with  
10 respect to a partner"; correct?  
11 A. Yes.  
12 Q. And you testified before that that  
13 set out what Mr. Zwirn individually or Mr. Zwirn  
14 through an entity's responsibilities were as  
15 general partner; correct?  
16 A. Yes, yes.  
17 Q. Mr. Zwirn had the legal authority to  
18 decide in conformity with this agreement when a  
19 forfeiting event has occurred with respect to a  
20 partner?  
21 MR. BRECHER: Objection.  
22 A. No.  
23 Q. Isn't that what it says?  
24 A. It's not up for him to decide  
25 whether or not a forfeiting event has occurred.

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1 Gruss - CONFIDENTIAL  
2 Q. Who is it up to?  
3 A. It's going to be up to counsel.  
4 Q. Isn't it up to the general partner  
5 to decide when a forfeiting event has taken  
6 place?  
7 A. That's what (p) says.  
8 Q. So you understood that the general  
9 partner could get legal advice about that if he  
10 wanted to; correct?  
11 A. I didn't think about it.  
12 Q. Well, did you understand --  
13 A. Are you asking me --  
14 MR. BRECHER: Don't --  
15 THE WITNESS: I'm sorry.  
16 Q. Did you understand, in late  
17 September, early October 2006, that Dan Zwirn had  
18 the legal authority under the partnership  
19 agreement to decide when a forfeiting event has  
20 occurred with respect to a partner?  
21 MR. BRECHER: Objection.  
22 A. No, I did not.  
23 Q. Is there anything about anything  
24 that you've learned since then that has led you  
25 to believe that anybody else other than the

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1 Gruss - CONFIDENTIAL  
2 general partner had the authority to decide when  
3 a forfeiting event took place?  
4 MR. BRECHER: Objection.  
5 A. As I'm staring at it now, no.  
6 Q. Is there anything that anyone has  
7 said to you before October 4, 2006, that has led  
8 you to believe that somebody other than the  
9 general partner had the authority to decide when  
10 a forfeiting event took place?  
11 A. I don't recall.  
12 Q. Isn't it a fact that what upset you  
13 was that Dan Zwirn was making the decision, not  
14 that Dan Zwirn didn't have the legal authority to  
15 make the decision?  
16 A. No, what upset me was that the  
17 decision was made.  
18 Q. But the general partner had the  
19 authority to make the decision; right?  
20 MR. BRECHER: Objection.  
21 A. I didn't connect the two.  
22 Q. You weren't the general counsel;  
23 right?  
24 A. Correct.  
25 Q. You understood that your rights

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1 Gruss - CONFIDENTIAL  
2 under the partnership agreement were different  
3 than the general partner's rights; correct?  
4 A. Yes.  
5 Q. You understood, in layman's terms,  
6 that the general partner was in charge of the  
7 partnership?  
8 A. Yes.  
9 Q. So you understood that the general  
10 partner could terminate a partner so long as it  
11 was done legally in conformity with the  
12 partnership agreement; correct?  
13 MR. BRECHER: Objection.  
14 A. Generally.  
15 Q. What you're complaining about is  
16 that Mr. Zwirn actually went ahead and exercised  
17 that right as to you?  
18 A. Wrong. It's not what I'm  
19 complaining about.  
20 Q. And being asked -- and being forced  
21 to leave the partnership, that's what you're  
22 complaining about?  
23 A. I'm complaining about the decision  
24 that was made to force me to leave the  
25 partnership.

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1 Gruss - CONFIDENTIAL  
2 Q. Because in your mind --  
3 A. I'm not connecting the dots between  
4 Dan Zwirn doing it or some other entity doing it.  
5 Q. In your mind, somebody else should  
6 have been fired for doing it -- withdrawn.  
7 In your mind, somebody else should  
8 have been held [sic] for the two circumstances  
9 that Shulte Roth investigated, not you; is that  
10 right?  
11 A. That's not necessarily right.  
12 Q. In your mind, is it your testimony  
13 that nobody should have been held responsible for  
14 the violation of the agreements?  
15 A. That's not what I'm saying.  
16 Q. What are you saying?  
17 MR. BRECHER: Objection.  
18 Do you have a question? There's no  
19 question.  
20 MR. LEVINE: I want to know what his  
21 explanation is.  
22 MR. BRECHER: Explanation for what?  
23 MR. LEVINE: For -- if it's not --  
24 I'll ask another question.  
25 THE WITNESS: Please.

1 Gruss - CONFIDENTIAL  
 2 BY MR. LEVINE:  
 3 Q. Did you have in mind somebody else  
 4 that should have been held responsible for  
 5 violating the agreements in these two respects?  
 6 MR. BRECHER: Objection.  
 7 A. Never crossed my mind.  
 8 Q. You understand, do you not, that  
 9 taking money of investors' funds in ways not  
 10 permit [sic] by the legal agreements, it's a  
 11 serious matter?  
 12 A. Yes.  
 13 Q. Would you agree that causing  
 14 investor funds to be used for management expenses  
 15 in violation of the agreements constitutes a  
 16 breach of the fiduciary duty to the investors and  
 17 their funds?  
 18 MR. BRECHER: Objection.  
 19 A. I don't know.  
 20 Q. I've asked you now several times  
 21 earlier today, and you testified affirmatively,  
 22 that your job included a fiduciary duty to the  
 23 investors to use their funds in accordance with  
 24 the agreements; correct?  
 25 A. Yes.

1 Gruss - CONFIDENTIAL  
 2 Q. And so if investor funds were used  
 3 inappropriately, not in accordance with the  
 4 agreements, that could be considered a violation  
 5 of the fiduciary duty to the funds; correct?  
 6 A. Yes.  
 7 Q. And isn't it a fact that it was and  
 8 is appropriate for the general partner to hold  
 9 persons responsible who violated the agreement in  
 10 that respect?  
 11 MR. BRECHER: Objection.  
 12 A. Not necessarily.  
 13 Q. Was it at least within the  
 14 discretion of the general partner to do that --  
 15 MR. BRECHER: Objection.  
 16 Q. -- even if not necessarily to do it?  
 17 MR. BRECHER: Objection.  
 18 A. If we're pointing again to (p), yes.  
 19 Q. So what you actually would have  
 20 preferred if Mr. Zwirn recognized the violation  
 21 of the agreements, but decided not to terminate  
 22 anyone in respect of it?  
 23 MR. BRECHER: Objection.  
 24 A. I haven't even thought about that.  
 25 Q. You would have preferred if the

1 Gruss - CONFIDENTIAL  
 2 general partner saw the violation of the  
 3 agreements in these two respects, corrected the  
 4 problem in terms of paying the funds back, and  
 5 did not hold anybody personally responsible with  
 6 their job for doing that or letting that happen;  
 7 correct?  
 8 MR. BRECHER: Objection.  
 9 A. I -- I never thought about it.  
 10 Q. Well, you just testified that you  
 11 take issue with the decision that was made.  
 12 You're nodding yes?  
 13 A. Correct.  
 14 Q. The decision that was made was to  
 15 hold someone responsible with their job for the  
 16 violation of the agreements; correct?  
 17 MR. BRECHER: Objection.  
 18 A. Not someone.  
 19 Q. You.  
 20 A. Correct.  
 21 Q. Your disagreement is the decision by  
 22 the general partner to hold you responsible?  
 23 A. Say again.  
 24 (Record read.)  
 25 MR. BRECHER: Objection.

1 Gruss - CONFIDENTIAL  
 2 Q. I'll rephrase it.  
 3 Your disagreement is the decision by  
 4 the general partner to hold you responsible for  
 5 the failure to abide by the agreements in these  
 6 two respects?  
 7 MR. BRECHER: Objection.  
 8 A. Yes.  
 9 Q. But you agree, do you not, that the  
 10 general partner had the authority to do that?  
 11 A. Yes.  
 12 Q. And when Dan Zwirn said to you  
 13 letting you go was the only way for -- for him to  
 14 remain bullet proof and pearly white, did you  
 15 understand Dan's word to be saying that in his  
 16 job as general partner of the management company,  
 17 his conduct needed to be bullet proof and pearly  
 18 white?  
 19 A. I took that to mean he needed to, in  
 20 the eyes of the investors, the investor community  
 21 and anyone who he did business with, to be pearly  
 22 white and bullet proof.  
 23 Q. So he was actually -- withdrawn.  
 24 Am I correct that he was telling you  
 25 that because he felt the obligation to conduct

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1 Gruss - CONFIDENTIAL  
2 himself in a way as general partner that was  
3 bullet proof and pearly white, he needed to  
4 terminate you?  
5 A. That is not the way I took it.  
6 Q. But am I correct that you wouldn't  
7 disagree that someone could have taken it that  
8 way?  
9 MR. BRECHER: Objection.  
10 A. That's not the way I took it.  
11 Q. But you --  
12 A. He was acting as an individual, Dan  
13 Zwirn being pearly white and bullet proof. I  
14 took it as he was not acting on behalf of the GP.  
15 Q. But he was only there in the room as  
16 the general partner; right?  
17 MR. BRECHER: Objection.  
18 A. No.  
19 Q. Only the general partner had the  
20 authority to have that conversation with you;  
21 isn't that right?  
22 A. No, that's not right.  
23 Q. If Lawrence Cutler had that  
24 conversation with you, would you have been --  
25 would that have been an event that was a

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1 Gruss - CONFIDENTIAL  
2 terminating event?  
3 A. I don't believe so.  
4 Q. The only person that could have that  
5 conversation with you was somebody acting on  
6 behalf of the general partner?  
7 A. My distinction is Dan is an  
8 individual, he's the CEO, he's the managing  
9 partner and he's the general partner.  
10 Q. And when he spoke to you on that  
11 day, he was all of those things; correct?  
12 A. Yes, one could take it that way.  
13 That's correct.  
14 Q. And so when Dan spoke to you on that  
15 day, he was speaking to you wearing all of those  
16 hats?  
17 MR. BRECHER: Objection.  
18 A. I don't know. I wasn't -- he's the  
19 one who was speaking, not me.  
20 Q. Did you understand him to be acting  
21 in any way other than wearing those four hats  
22 that you just described?  
23 A. In his self-interest is the way I  
24 interpreted him acting.  
25 Q. But his self-interest was as the

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1 Gruss - CONFIDENTIAL  
2 general partner; isn't that right?  
3 A. That's not the way I took it.  
4 Q. Isn't it a fact that what he was  
5 telling you was that the investors and all the  
6 other people that you identified in his mind had  
7 to look at him personally as conducting himself  
8 in a bullet proof, pearly white way on behalf of  
9 the partnership?  
10 MR. BRECHER: Objection.  
11 A. That's probably accurate.  
12 Q. And when he told you there was a lot  
13 to protect here, quote-unquote, wasn't he  
14 referring to the fact that there were substantial  
15 funds with lots of investors with serious  
16 obligations that he needed to live up to on  
17 behalf of the general partner?  
18 A. No, I took it to mean he personally  
19 needed to make sure that people looked at him  
20 personally as pearly white and bullet proof.  
21 Q. And the lot to protect was --  
22 withdrawn.  
23 As of the beginning of October 2006,  
24 what were the size of the funds -- the dollar  
25 amount of the funds under management in the L.P.?

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1 Gruss - CONFIDENTIAL  
2 A. I don't recall.  
3 Q. Are we talking hundreds of millions  
4 of dollars?  
5 A. I believe it was over a billion.  
6 Q. And in fact --  
7 A. I'd say over a billion, less than  
8 5 billion.  
9 Q. In fact, the aggregate funds under  
10 investment in the onshore fund and the offshore  
11 fund and the managed accounts as of October 2006  
12 was over \$1 billion; isn't that right?  
13 A. Say that again.  
14 Q. In fact, the aggregate funds under  
15 investment in the onshore fund, the offshore fund  
16 and the managed accounts as of October 2006 was  
17 well over \$1 billion --  
18 A. Correct.  
19 Q. -- isn't that right?  
20 A. Correct.  
21 Q. And Dan Zwirn individually and  
22 through entities was general partner responsible  
23 for those funds; correct?  
24 A. That's correct.  
25 Q. And when he said to you --

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1 Gruss - CONFIDENTIAL  
2 A. And all the activities of those  
3 funds.  
4 Q. When he said to you there was,  
5 quote, a lot to protect here, that's what he was  
6 referring to; isn't that right?  
7 MR. BRECHER: Objection.  
8 A. No. As I stated earlier, that's not  
9 the way I took it.  
10 Q. How did the conversation end with  
11 Dan Zwirn on that day?  
12 A. It ended where he was -- I don't  
13 know exactly how it ended. I don't want to  
14 speculate --  
15 Q. Do you remember --  
16 A. -- or guess.  
17 Pardon me.  
18 Q. -- anything else that he said?  
19 A. Other than that -- other than the  
20 discussion about the money, not really.  
21 Q. But you understood that the  
22 discussion about the money was contingent on what  
23 the legal agreement said; right?  
24 A. No.  
25 Q. You --

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1 Gruss - CONFIDENTIAL  
2 A. I'm sorry, which legal agreement?  
3 Maybe I'm confused.  
4 Q. The partnership agreement, the  
5 supplementary agreement, the confidentiality  
6 agreement all applied to what your rights were as  
7 a partner; isn't that right?  
8 A. No. He discussed money with me,  
9 2.63, which obviously would lead anyone to  
10 believe that he's already assumed that everything  
11 in that agreement has been followed. And I took  
12 it to mean he waived his rights as GP.  
13 Q. Did he say that, I waive my rights  
14 as GP?  
15 A. No, but he said this is how much  
16 money you're owed and Lawrence will get you as  
17 much money as possible.  
18 Q. You've been around Wall Street --  
19 you had been around Wall Street from 1989  
20 until --  
21 A. If you consider AIG Wall Street,  
22 yes. I get your point.  
23 Q. And in all of those years, you  
24 understood that legal agreements apply to what  
25 people owed; isn't that right?

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1 Gruss - CONFIDENTIAL  
2 A. Yes.  
3 Q. And didn't you understand that if  
4 there were going to be any waiver of that  
5 partnership agreement, that it would have to be  
6 in writing and agreed to by the parties?  
7 A. Say again.  
8 Q. Didn't you understand that if there  
9 was going to be any waiver of the provisions of  
10 the partnership agreement as to money, that it  
11 would have to be in writing and agreed to by the  
12 parties?  
13 A. Yes.  
14 Q. And you are not contending, am I  
15 correct, that by telling -- by saying the  
16 conversation -- withdrawn.  
17 And you are not contending, am I  
18 correct, by reciting the conversation that  
19 Mr. Zwirn had with you, that that had the legal  
20 effect of waiving the agreements?  
21 A. I'm not going to be the one to do  
22 this, but this exhibit (indicating).  
23 Q. Gruss 6?  
24 A. Yes. This is the separation  
25 agreement. This shows -- is it --

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1 Gruss - CONFIDENTIAL  
2 (Witness peruses the exhibit.)  
3 A. No, I'm sorry. The separation  
4 agreement which we negotiated, which we began  
5 negotiating from the day I left, obviously set  
6 forth some sort of waiver. Now, I'm not counsel.  
7 But there was numbers in there that clearly  
8 showed that after the conversation, they had  
9 waived that right.  
10 As you're saying you need a  
11 document, that's the document. I don't have the  
12 document. But somewhere the document exists. We  
13 can get you that document.  
14 Q. Was that document signed?  
15 A. No, it wasn't signed.  
16 Q. Why wasn't it signed?  
17 A. You'd have to ask the company.  
18 Q. Do you understand that the company  
19 ultimately was unwilling to sign the document?  
20 A. Yes.  
21 Q. So am I correct that you understand  
22 the company, the partnership, by the general  
23 partner ultimately concluded not to waive the  
24 provisions of the partnership agreement as it  
25 applied to you?

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1 Gruss - CONFIDENTIAL  
2 A. I don't know that.  
3 Q. You understand --  
4 A. You are referring --  
5 Q. You understand, do you not, that if  
6 the general partner concluded that you were to be  
7 terminated as a forfeiting event, that you had  
8 certain rights to funds as provided for in the  
9 partnership agreement?  
10 A. I'm sorry, one more time. I  
11 apologize.  
12 Q. Now, after -- after you had the  
13 discussion with Dan Zwirn, you left the offices?  
14 A. I believe so.  
15 Q. Did you ever return to the offices?  
16 A. I don't recall.  
17 Q. Did you ever -- withdrawn.  
18 After the conversation with Dan  
19 Zwirn, did you ever perform any of the duties as  
20 CFO again?  
21 A. I don't know.  
22 Q. Is there anything that stands out in  
23 your mind?  
24 A. I don't know.  
25 Q. Isn't it a fact that the

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1 Gruss - CONFIDENTIAL  
2 conversation with Dan Zwirn took place on or  
3 about October 4th?  
4 A. Yes, I do.  
5 Q. You remember that date because it's  
6 been the subject of testimony at the SEC and  
7 other places?  
8 A. Yes. But actually, there was  
9 confusion in my mind as to what the date was, but  
10 yes.  
11 Q. Am I correct that that confusion has  
12 now been cleared up by virtue of your testimony  
13 at the SEC?  
14 A. I believe it has been.  
15 Q. And you now recall that the  
16 conversation with Lawrence Cutler and then the  
17 conversation with Dan Zwirn that you testified  
18 about this morning took place on or about  
19 October 4th?  
20 A. I believe it did.  
21 Q. And who is Joseph Barr?  
22 A. He is a recruiter, an executive  
23 recruiter.  
24 Q. Did you turn to him shortly after  
25 the conversation with Dan Zwirn to help you find

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1 Gruss - CONFIDENTIAL  
2 a job?  
3 A. I don't remember.  
4 MR. LEVINE: Let's mark this  
5 Gruss 9.  
6 (Gruss Exhibit 9, Bates No. JSB0158,  
7 E-mail Chain, marked for identification.)  
8 (Discussion off the record.)  
9 BY MR. LEVINE:  
10 Q. Showing you what's been marked  
11 Gruss 9, is this an e-mail from you to Mr. Barr  
12 on or about October 10th, 2006?  
13 A. Uh-huh.  
14 Q. And did you say to --  
15 MR. BRECHER: You have to answer  
16 with a yes or no.  
17 THE WITNESS: Oh, yes.  
18 Q. Did you say to Mr. Barr, quote -- on  
19 the subject news, quote, "Yo, I'm sure by now  
20 you've heard the news that I've resigned"?  
21 A. Yes.  
22 Q. "You'll probably start receiving  
23 calls from the entire back office. They're  
24 completely free. A big TKT just hit the market."  
25 A. Yes.

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1 Gruss - CONFIDENTIAL  
2 Q. Did you tell Mr. Barr that you  
3 resigned?  
4 A. It looks like I did.  
5 Q. That wasn't true?  
6 A. No.  
7 Q. You had decided that you were going  
8 to tell Mr. Barr and all of the people that were  
9 potential employers that you resigned and not  
10 that you were forced out?  
11 A. No.  
12 Q. But did you tell him here I  
13 resigned?  
14 A. Yes, but you said him and any  
15 potential employers that I resigned.  
16 Q. Well, you told Fortress --  
17 A. I told him.  
18 Q. And you told Fortress --  
19 A. Yep.  
20 Q. -- that you walked in and resigned?  
21 A. Uh-huh.  
22 Q. Is that true?  
23 A. That's what the e-mail said.  
24 Q. So that's at least your headhunter  
25 and one of the potential employers; correct?

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1 Gruss - CONFIDENTIAL  
2 A. In an e-mail, yes.  
3 Q. Well, why do you add "in an e-mail"?  
4 A. Because --  
5 Q. People are allowed to lie in e-mails  
6 or say things that aren't true in e-mails that  
7 they wouldn't say face to face?  
8 MR. BRECHER: Objection.  
9 A. Possibly.  
10 Q. Did you have a habit of not  
11 necessarily telling the truth when you wrote  
12 e-mails?  
13 A. No.  
14 Q. But this wasn't the truth according  
15 to your testimony today?  
16 A. That's not the truth.  
17 Q. And it's inconsistent with what  
18 you've alleged in your complaint; correct?  
19 A. Correct.  
20 Q. It's consistent with what you told  
21 Fortress?  
22 A. Up front, yes.  
23 Q. So you were --  
24 A. I had several conversations with  
25 Fortress.

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1 Gruss - CONFIDENTIAL  
2 Q. You were prepared -- you were  
3 prepared to have your headhunter tell potential  
4 employers that you were available on the market  
5 having resigned from your CFO position at Zwirn;  
6 correct?  
7 A. Incorrect.  
8 Q. But that's the effect of telling him  
9 that you resigned; isn't that right?  
10 A. Dan and I had an agreement that what  
11 we would be discussing, he would be telling  
12 investors, that we separated, we decided to part  
13 ways. Me telling a headhunter I resigned, this  
14 is -- this is pride.  
15 Q. I'm talking truth. You told the  
16 headhunter something that was not true; correct?  
17 A. In this e-mail. I'm sure I had  
18 subsequent discussions with Joe.  
19 Q. Did Dan Zwirn ever tell you that he  
20 would agree forever not to tell an investor that  
21 you had violated the agreements between the funds  
22 and the management company?  
23 A. I don't know. Forever's a long  
24 time.  
25 Q. Did Dan Zwirn ever tell you in that

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1 Gruss - CONFIDENTIAL  
2 conversation that he agreed legally never to tell  
3 investors that you had violated -- you were being  
4 held responsible for violating the agreements  
5 between the funds and the management company?  
6 MR. BRECHER: Objection.  
7 A. He does not say all those things.  
8 Q. In fact, he said none of those  
9 things; isn't that right?  
10 A. Repeat exactly what you said.  
11 Q. Did Dan Zwirn -- did Dan Zwirn ever  
12 tell you in that conversation, in the last  
13 conversation, that he agreed legally never to  
14 tell investors that you were being held  
15 responsible for violating the agreements between  
16 the funds and the management company?  
17 A. I don't believe he said that.  
18 Q. So Mr. Barr then helped you find a  
19 job?  
20 A. No, Mr. Barr couldn't find me a job.  
21 Q. My question was so Mr. Barr then  
22 helped you find a job?  
23 MR. BRECHER: Objection.  
24 A. Incorrect.  
25 Q. Mr. Barr helped you try to find a

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1 Gruss - CONFIDENTIAL  
2 job?  
3 A. I hope he tried to help me find a  
4 job, though unsuccessful.  
5 Q. You are working now at Babcock &  
6 Brown?  
7 A. Correct.  
8 Q. What is Babcock & Brown?  
9 A. It's an Australian firm -- it's an  
10 Australian infrastructure firm.  
11 Q. What's its business?  
12 A. It invests in infrastructure. It  
13 invests in other areas -- it's all over the  
14 board. It's actually in receivership and  
15 bankrupt currently.  
16 Q. Are you still employed?  
17 A. Yes.  
18 Q. When did it file for bankruptcy  
19 protection?  
20 A. I don't recall exactly. It's a  
21 public company, so you can look it up.  
22 Q. What year?  
23 A. 2008, I believe. I'm guessing.  
24 Q. When did you go to work for them?  
25 A. I -- the middle of 2007.

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1 Gruss - CONFIDENTIAL  
2 Q. So about six, eight months after you  
3 left Zwirn?  
4 A. Correct.  
5 Q. And did Mr. Barr have anything to do  
6 with your getting that job?  
7 A. Zero. Nor did any other executive  
8 recruiter.  
9 Q. You got that job on your own?  
10 A. No, I got that job through a  
11 friend --  
12 Q. On your own?  
13 A. -- in Australia.  
14 Q. On your own?  
15 A. Without the help of executive  
16 recruiters, is that your point? Yes, yes.  
17 Q. And you talked to Fortress about a  
18 job?  
19 A. Uh-huh.  
20 MR. BRECHER: You have to answer  
21 with a --  
22 A. I'm sorry. Yes.  
23 Q. And you talked to Fortress about a  
24 job in the spring of '07?  
25 A. Yes.

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1 Gruss - CONFIDENTIAL  
2 Q. Was Mr. Barr responsible for getting  
3 you into Fortress?  
4 A. No.  
5 Q. Did you do that on your own?  
6 A. Yes.  
7 Q. Did you talk to a company called  
8 Strategic Value Partners?  
9 A. I don't believe so.  
10 Q. Have you heard of Strategic Value  
11 Partners?  
12 A. I don't -- I don't know. It's such  
13 a generic name.  
14 Q. Do you remember that Mr. Barr  
15 offered you an introduction to Strategic Value  
16 Partners sometime in February 2007?  
17 A. I don't.  
18 MR. LEVINE: Let's take a break for  
19 lunch. It's 20 of one. We'll take one  
20 half hour off and start at ten after one  
21 and go to the breaking time.  
22 (Luncheon recess from the record.)  
23  
24  
25

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1 Gruss - CONFIDENTIAL  
2 AFTERNOON SESSION  
3 (1:13 p.m.)  
4 (Gruss Exhibit 10, Bates Nos. PG  
5 00595 through 600, 11/26/07 Letter to Gruss  
6 from Cambra, marked for identification.)  
7 PERRY GRUSS,  
8 having been previously sworn, resumed the  
9 stand and testified further as follows:  
10 EXAMINATION (Cont'd.)  
11 BY MR. LEVINE:  
12 Q. Back on the record after lunch.  
13 Mr. Gruss, I'm handing what was  
14 marked as Gruss Exhibit 10, which is a letter  
15 dated November 26, 2007, between you and Babcock  
16 & Brown; is that correct?  
17 A. Yes.  
18 Q. And is that your signature on the  
19 last page? Was this the employment agreement --  
20 A. Yes.  
21 Q. -- that you entered into with  
22 Babcock & Brown?  
23 A. Yes.  
24 Q. Have you been acting within the  
25 scope of this agreement since November of '07?

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1 Gruss - CONFIDENTIAL  
2 A. Yes.  
3 Q. When did you start -- did you start  
4 on November 26, '07, as this letter sets forth?  
5 A. Permanently I started. I actually  
6 was consulting for about five months before this.  
7 So I believe July '07 or so.  
8 Q. And does this accurately state what  
9 your salaries and benefits were?  
10 A. Yes, except for the -- on page 2,  
11 the 975, it wasn't 975. It was less than that --  
12 Q. Okay.  
13 A. -- because the company went into  
14 bankruptcy.  
15 Q. Showing you what we we'll mark as  
16 Gruss 11.  
17 (Gruss Exhibit 11, Bates No. PG  
18 00585 through 604, 2007 Form 1040, marked  
19 for identification.)  
20 MR. LEVINE: And we can put a  
21 confidentiality stip on the next three  
22 exhibits if you desire.  
23 BY MR. LEVINE:  
24 Q. Is Gruss 11 pages from your Form  
25 1040 for 2007?

1 Gruss - CONFIDENTIAL  
 2 A. Yes.  
 3 Q. Does the \$50,000 gross receipts on  
 4 Schedule C represent consulting fees for the part  
 5 of 2007 before November 26, 2007?  
 6 A. I believe it must.  
 7 Q. So is the income from Babcock &  
 8 Brown for 2007, that portion of the year,  
 9 approximately \$75,000?  
 10 A. Yes.  
 11 Q. And was that an appropriate -- was  
 12 that consistent with the November 26, 2007,  
 13 arrangement?  
 14 A. Yes.  
 15 Q. And showing you Gruss 12.  
 16 (Gruss Exhibit 12, Bates Nos.  
 17 PG00605 through 612, 2008 Form 1040, marked  
 18 for identification.)  
 19 (Witness peruses the exhibit.)  
 20 BY MR. LEVINE:  
 21 Q. Is this your and your wife's Form  
 22 1040s for 2008?  
 23 A. Yes.  
 24 Q. Is the wages and salaries line of  
 25 \$287,000 the base salary component of the Babcock

1 Gruss - CONFIDENTIAL  
 2 & Brown employment arrangement?  
 3 A. Yes.  
 4 Q. Was there any bonus consistent with  
 5 the November 2007 agreement paid to you in 2008?  
 6 A. I don't believe so.  
 7 Q. Just take a look at Gruss 13.  
 8 (Gruss Exhibit 13, Bates Nos. PG0613  
 9 through 621, 2009 Form 1040, marked for  
 10 identification.)  
 11 Q. Marking Gruss 13, which is the Form  
 12 1040 for you and your wife for 2009, can you  
 13 identify that?  
 14 A. Yes.  
 15 Q. So now, taking a look at Gruss 12  
 16 and 13 for 2008-2009, could you please explain,  
 17 is the 2009 income of some \$900,000 include a  
 18 portion of the 2008 bonus --  
 19 A. Exactly.  
 20 Q. -- that was guaranteed in November  
 21 of 2007?  
 22 A. Exactly.  
 23 Q. So it's your testimony that bonus  
 24 was paid, but because of the bankruptcy of the  
 25 entity, it was some amount less than the

1 Gruss - CONFIDENTIAL  
 2 guarantee of \$975,000 that was in the employment  
 3 agreement?  
 4 A. Correct.  
 5 MR. LEVINE: And let's mark this  
 6 Gruss 14.  
 7 (Gruss Exhibit 14, Bates No. OG0622,  
 8 Earnings Statement, marked for  
 9 identification.)  
 10 Q. Is Gruss 14 a pay stub for you from  
 11 Babcock & Brown through the first quarter of  
 12 2010?  
 13 A. Correct.  
 14 Q. You made approximately \$100,000 in  
 15 the first quarter of 2010?  
 16 A. Yes.  
 17 Q. Which amount includes a portion of  
 18 the bonus that you would have earned for calendar  
 19 year 2009 that was made in the first quarter of  
 20 2010?  
 21 A. Yes.  
 22 Q. Do you have any employment agreement  
 23 currently in place with Babcock & Brown that's  
 24 different from the 2007 original agreement?  
 25 A. Yes.

1 Gruss - CONFIDENTIAL  
 2 Q. And what does it provide?  
 3 A. I don't -- I don't --  
 4 Q. What does it provide in terms of  
 5 salary and bonus?  
 6 A. The salary I believe is 375. And I  
 7 want to say there's -- I thought you had this  
 8 actually. And I want to say that there's a  
 9 250,000 bonus payable in April of next year if  
 10 I'm there.  
 11 Q. So notwithstanding --  
 12 A. If the entity survives.  
 13 Q. -- notwithstanding that pendency of  
 14 the Chapter 11, you are still employed as the CFO  
 15 at a base salary of 375?  
 16 A. I'm not the CFO.  
 17 Q. What is your position?  
 18 A. Marketer. It's an Australian term.  
 19 I'm not the CFO.  
 20 MR. LEVINE: Let's mark this  
 21 Gruss 15.  
 22 (Gruss Exhibit 15, Bates No. 729,  
 23 Wage and Income Transcript, marked for  
 24 identification.)  
 25

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1 Gruss - CONFIDENTIAL

2 Q. Is this your W-2 statement for 2006?

3 A. Yes.

4 Q. And what's your recollection of how

5 much of the 2006 income of approximately

6 1.6 million was base and how much was bonus?

7 A. I want to say -- hold on.

8 (Witness peruses the exhibit.)

9 A. 2006 -- in 2006, there would have

10 been some portion of my partnership payment,

11 225,000 maybe, which was a front against my

12 eventual money that I never received, and the

13 delta would be for a bonus payable in 2006,

14 earned in 2005.

15 Q. So the 1.6 somewhat million dollars

16 of the compensation on your W-2 statement for

17 2006 has basically three components. It has your

18 base compensation for 2006. It has partners, in

19 the nature of a partner distribution for 2006.

20 And it has bonus for 2004 before you were a

21 partner --

22 A. '5.

23 Q. '5.

24 A. Yes, but I think you just said base

25 salary and distributions --

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1 Gruss - CONFIDENTIAL

2 Q. And that's one and the same?

3 A. Yes, exactly. I believe so.

4 Q. I stand corrected.

5 A. There was no concept of base because

6 I was a partner.

7 Q. Right. Okay.

8 So the bulk then of -- withdrawn.

9 So the 1.6 semimillion includes your

10 compensation as a partner for the first nine

11 months of the year and your 2005 bonus before you

12 became a partner?

13 A. Exactly.

14 Q. What was your compensation, if you

15 recall, in 2005?

16 A. I want to say it was either

17 1.2 million or 1.8 million. I think it was

18 1.8 million.

19 Q. What did you expect to make as a

20 partner in 2006?

21 A. That was the dispute. I expected it

22 to be around 3 million or, as Dan said, it was

23 more like two-six. The computation was nine --

24 the computation was the entire year up until the

25 that I left.

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1 Gruss - CONFIDENTIAL

2 Q. What was your expectation?

3 A. There are spreadsheets that we went

4 over and reviewed at least monthly showing on an

5 accrual and actual basis there were terms on the

6 fund, but plus NAV on the fund with the AUM of

7 the fund which calculated the management fee and

8 the incentive fee payable.

9 Q. Do you have any recollection of what

10 your 2004 income was?

11 A. It was four -- it was either -- it

12 was either 8 or 1.2.

13 MR. LEVINE: Let's mark this as

14 Gruss 16 --

15 Q. By "8," you mean 800,000, one

16 point --

17 A. -- 2 million, yes.

18 MR. LEVINE: Marking Gruss 16.

19 (Gruss Exhibit 16, Bates Nos.

20 JSB0126 through 128, E-mail Chain, marked

21 for identification.)

22 Q. Is Gruss Exhibit 16 a series of

23 e-mails between you and Joseph Barr from October

24 of 2006?

25 (Witness peruses the exhibit.)

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1 Gruss - CONFIDENTIAL

2 A. Got it.

3 Q. I'm going to the second page, the

4 top e-mail from you to Mr. Barr from October 24,

5 2006.

6 Do you see that?

7 A. Yes.

8 Q. You say, quote -- he's giving you an

9 idea of a particular entity that he wants to talk

10 to on your behalf --

11 A. Uh-huh.

12 Q. -- correct?

13 A. Yes.

14 Q. And you say, quote, "Assume I'm the

15 candidate? What's the range? I'm not being a

16 prick, but I'm going to be real selective. Small

17 world, I go for a cup of coffee, words going to

18 get out."

19 Correct?

20 A. Yes.

21 Q. What instructions did you give

22 Mr. Barr off line away from e-mails --

23 A. Right.

24 Q. -- as to the kind of position you

25 were looking for?

1 Gruss - CONFIDENTIAL  
 2 A. It would have been either -- it  
 3 probably would have been a COO position. Maybe  
 4 CFO of a hedge fund. Of a hedge fund.  
 5 Q. Did you give him any particular  
 6 minimal size for the hedge fund?  
 7 A. No.  
 8 Q. Were you willing to relocate?  
 9 A. Yes, yes.  
 10 Q. Did you tell him that?  
 11 A. I don't recall.  
 12 Q. Isn't it a fact you told him you  
 13 were unwilling to relocate?  
 14 A. No, that's not a fact.  
 15 Q. Did you give him salary range?  
 16 A. I don't recall.  
 17 Q. Did you have, as you recall as you  
 18 sit here today, any reference to salary range?  
 19 (Witness peruses the exhibit.)  
 20 A. I don't recall.  
 21 Q. What did you mean when you said you  
 22 were going to be selective?  
 23 A. I don't -- I don't remember. I  
 24 don't want to guess.  
 25 Q. I take it it was important that job

1 Gruss - CONFIDENTIAL  
 2 title and responsibility was something you were  
 3 going to be selective about; correct?  
 4 A. Yes.  
 5 Q. And were you also going to be  
 6 selective about income level?  
 7 A. Yes.  
 8 Q. And what did you understand or what  
 9 did you tell Barr was your requirement on income  
 10 level?  
 11 A. Comparable to what I was making at  
 12 Zwirn.  
 13 Q. And did comparable to what you were  
 14 making at Zwirn what you were just starting to  
 15 make as a partner or what you had made in the  
 16 year before as CFO/nonpartner?  
 17 A. I -- I don't -- I don't recall. I  
 18 mean a million eight under the right  
 19 circumstances, I think would have been fine  
 20 knowing who I am.  
 21 Q. And did you tell him that it needed  
 22 to be above a million?  
 23 A. Un-un.  
 24 Q. Did he understand that it had to be?  
 25 MR. SIFFERT: I don't think we have

1 Gruss - CONFIDENTIAL  
 2 an answer on that one.  
 3 MR. BRECHER: You have to answer yes  
 4 or no.  
 5 THE WITNESS: Oh, no.  
 6 Q. Did you tell him that it had to be  
 7 at least a million eight?  
 8 A. No, I don't believe so.  
 9 Q. Look at page 1. Do you see at the  
 10 bottom that Mr. Barr in response, "Got you 1M  
 11 plus plus is no problem"?  
 12 A. Uh-huh.  
 13 Q. "As you know, a large degree will  
 14 depend on how they perform, but I think we can  
 15 get a \$1 million guarantee"?  
 16 A. Uh-huh.  
 17 Q. Is that in effect what you told him,  
 18 1 million?  
 19 A. No, I don't know.  
 20 Q. That's basically what the deal was  
 21 with Babcock & Brown; isn't that right?  
 22 A. Yes.  
 23 Q. Between bonus and compensation, you  
 24 were a little over a million?  
 25 A. Yes.

1 Gruss - CONFIDENTIAL  
 2 Q. It's your testimony you were a  
 3 little over a million in 2005 at Zwirn before you  
 4 became a partner?  
 5 A. Yes.  
 6 MR. LEVINE: Let's mark this 17.  
 7 (Gruss Exhibit 17, Bates Nos.  
 8 JSB0101 through 103, E-mail Chain, marked  
 9 for identification.)  
 10 (Witness peruses the exhibit.)  
 11 BY MR. LEVINE:  
 12 Q. This is e-mails from  
 13 February 2007 --  
 14 A. Uh-huh.  
 15 Q. -- between you and Mr. Barr?  
 16 A. Yes.  
 17 Q. Now, take a look at page 2 and  
 18 page 3.  
 19 (Witness peruses the exhibit.)  
 20 A. Yes.  
 21 Q. Do you see at the bottom of page 3,  
 22 he's proposing another idea to you?  
 23 A. The bottom --  
 24 Q. He's talked to you about Strategic  
 25 partners; do you see that?

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1 Gruss - CONFIDENTIAL  
2 A. Oh, the top of page 3.  
3 Q. Yes.  
4 A. Hold on.  
5 (Witness peruses the exhibit.)  
6 A. Yes.  
7 Q. Does that refresh your recollection  
8 that he offered you an interview with Strategic  
9 Value Partners in Greenwich?  
10 A. It doesn't.  
11 MR. LEVINE: Let's mark this as the  
12 next exhibit.  
13 THE WITNESS: Doesn't mean it didn't  
14 happen, but I'll --  
15 MR. LEVINE: Exhibit 18.  
16 (Gruss Exhibit 18, Bates No.  
17 JSB0112, E-mail Chain, marked for  
18 identification.)  
19 BY MR. LEVINE:  
20 Q. Showing you what we marked Gruss 18,  
21 it's an e-mail from February 19th, 2007.  
22 Does this refresh your recollection  
23 that he proposed you to an entity Strategic Value  
24 Partners in Greenwich for CFO role?  
25 A. It doesn't.

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1 Gruss - CONFIDENTIAL  
2 Q. Do you see at the bottom of page 2  
3 on Gruss 17 where you say, "London is a long way  
4 from New York"?  
5 A. Yes.  
6 Q. You were referring to London,  
7 England?  
8 A. Yes.  
9 Q. You were unwilling to go to England?  
10 A. Absolutely not.  
11 Q. You were in fact --  
12 A. I was absolutely -- I would  
13 absolutely have gone to London. In fact, when I  
14 was hired by Babcock & Brown, I almost went to  
15 London.  
16 Q. I'll show you what's been --  
17 A. Also, London is a long way from  
18 Great Neck. That's not me he's talking about.  
19 That's Bob Racusin he's talking about, not me.  
20 Q. Take a look at this next exhibit.  
21 (Gruss Exhibit 18, Bates No.  
22 JSB0112, E-mail Chain, marked for  
23 identification.)  
24 Q. The last two e-mails now refresh  
25 your recollection there was an entity called

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1 Gruss - CONFIDENTIAL  
2 Strategic Value Partners in Greenwich that you  
3 passed on?  
4 A. I'm sorry, where?  
5 Q. The last two exhibits, Gruss 17 and  
6 18, refresh your recollection now that there was  
7 an entity called Strategic Value Partners in  
8 Greenwich that you passed on?  
9 A. It doesn't.  
10 (Gruss Exhibit 19, E-mail Chain,  
11 marked for identification.)  
12 Q. Take a look at Gruss 19, which is a  
13 group of e-mails from August of '07. You see  
14 them?  
15 (Witness peruses the exhibit.)  
16 A. Yes.  
17 Q. By August of '07, you're working at  
18 Babcock on a consulting basis and haven't been  
19 hired yet?  
20 A. Exactly.  
21 Q. And so you're still working and  
22 hoping Mr. Barr might help you find something?  
23 A. Yes.  
24 Q. And am I correct that you and  
25 Mr. Barr acknowledged that the general economy,

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1 Gruss - CONFIDENTIAL  
2 particularly that in the financial industry, in  
3 the hedge fund world, had substantially slowed  
4 down?  
5 (Witness peruses the exhibit.)  
6 A. I would say that's right.  
7 Q. And do you agree that your ability  
8 to have gotten a job in the summer of 2007 would  
9 have been much different if the economy generally  
10 and the economy in the financial institution  
11 world had been more like it was in 2006 and 2005?  
12 A. I think that's accurate.  
13 Q. And is it a fact that there's really  
14 no way of knowing what your job prospects would  
15 have been in the robust economic world of the  
16 hedge fund that took place in the mid-2000  
17 period?  
18 A. You're saying is it a fact. I have  
19 no idea.  
20 MR. BRECHER: I object.  
21 Q. That there's clearly a difference in  
22 the world that you went out to look for a job in  
23 the summer of '07 or during '07 than the world  
24 that you would have been in in '05 or '06?  
25 MR. BRECHER: Objection.

1 Gruss - CONFIDENTIAL  
2 A. I'll say the market conditions  
3 certainly made it tough for people in the finance  
4 industry to get jobs easily as they did in the  
5 bull market, yes.

6 Q. Now -- and so you expressed some  
7 frustration earlier before lunch with Joseph  
8 Barr's assistance. Is it fair to say that he was  
9 some -- he was hampered somewhat for you and  
10 every other client that he would have had at the  
11 time trying to place people in the hedge fund  
12 industry --

13 MR. BRECHER: Objection.

14 Q. -- at that time?

15 MR. BRECHER: Objection.

16 A. Far more for me than anybody else in  
17 the industry.

18 Q. For everybody in the industry he had  
19 difficulty moving around; isn't that right?

20 MR. BRECHER: Objection.

21 A. I don't know.

22 Q. Well, hedge funds were literally  
23 shutting down in '07; right?

24 A. Uh-huh.

25 Q. You're nodding yes?

1 Gruss - CONFIDENTIAL

2 A. Yes.

3 Q. Hedge fund administrative jobs,  
4 including CFO jobs and COO jobs, were literally  
5 drying up because hedge funds were literally  
6 going out of business and redeeming for their  
7 investors?

8 MR. BRECHER: Objection.

9 Q. You're nodding yes.

10 A. I'm agreeing, yes.

11 Q. And so you're competing with all of  
12 those senior management people on the street  
13 without regard to why they were on the street in  
14 2007?

15 A. Yes, but I was confident that if  
16 there was one COO job, I would have gotten it.

17 Q. And you did at Babcock & Brown?

18 A. No, not a COO or CFO job.

19 Q. So the fact is there wasn't one then  
20 in the market in 2007?

21 A. No, that's not what I said.

22 Q. You just said you were confident  
23 that if there was one in the market in 2007, you  
24 would have gotten it?

25 A. Had -- had the Zwirn memo that he

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2 came out with not existed.

3 Q. You're referring to the March '07  
4 memo to investors?

5 A. Yes.

6 Q. You understood that the memo to  
7 investors in March of '07 was the product of an  
8 investigation by Gibson Dunn and Deloitte and  
9 Touche; right?

10 A. Yes.

11 Q. You understood that once Gibson Dunn  
12 and Deloitte & Touche conducted an investigation,  
13 that the general partner had an obligation to  
14 provide the results of that investigation to the  
15 investors?

16 A. I don't know that.

17 Q. Do you believe that as you sit here  
18 today?

19 A. I don't know.

20 Q. Has anyone ever told you that the  
21 management company could have kept from the  
22 investors of the onshore and offshore funds the  
23 results of the Gibson Dunn investigation?

24 A. No, no one ever told me that.

25 Q. And isn't it a fact that you don't

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2 believe -- withdrawn.

3 Isn't it a fact that as you sit here  
4 today, you understand that disclosing the results  
5 of the Gibson Dunn investigation to the investors  
6 of the L.P. fund and the Ltd. fund was something  
7 that the general partner was obligated to do?

8 A. As I said, I don't know that.

9 Q. Well, was it any part of your case  
10 that the general partner acted without authority  
11 in making the results of that investigation  
12 public to the investors of the two funds?

13 MR. BRECHER: Objection.

14 A. I don't -- I don't understand the  
15 question.

16 Q. You're not -- are you quibbling --  
17 are you taking issue with the fact that the  
18 general partner issued the March 2007 report to  
19 the investors or are you taking issue with what  
20 that report said?

21 A. The latter, yes.

22 Q. So you recognize, do you not -- I  
23 mean, you became a partner of the management  
24 company; right?

25 A. Right.

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2 Q. You testified earlier you had some  
3 understanding of what the fiduciary duties were  
4 that officers of the management company had to  
5 investors; correct?  
6 A. Correct.  
7 Q. Telling investors material events of  
8 the management company responsible for managing  
9 their funds is part of the fiduciary duty that  
10 the general partner had; isn't that right?  
11 MR. BRECHER: Objection.  
12 A. Yes.  
13 Q. And you don't dispute that at all,  
14 do you?  
15 A. I am in no way disputing that they  
16 shouldn't have issued an investment memorandum  
17 saying that Gibson Dunn and Deloitte & Touche had  
18 done an internal review, not at all.  
19 Q. Or what the material results were of  
20 that investigation?  
21 A. That's not for me to opine.  
22 Q. Whether or not somebody else wants  
23 Perry Gruss' opinion, or Perry Gruss' point of  
24 view, is there any dispute in your mind that you  
25 do not take issue with the legal responsibility

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2 of the management committee, particularly the  
3 general partner, to report to the investors of  
4 the funds of the results of the Gibson Dunn  
5 investigation?  
6 MR. BRECHER: Objection.  
7 A. I don't think -- I don't know if  
8 they have a legal obligation to report it to  
9 investors. I don't have an issue whatsoever that  
10 they did report it to investors.  
11 Q. Well, you don't believe that they --  
12 that the report to the investors was gratuitous  
13 on their part, do you?  
14 MR. BRECHER: Objection.  
15 A. Can you explain that?  
16 Q. Well, do you contend that the report  
17 to the investors was -- had a bad motive as to  
18 Perry Gruss?  
19 A. Yes.  
20 Q. So is it your view that reporting it  
21 to the investors was to screw Perry Gruss or what  
22 the report said screwed Perry Gruss?  
23 A. I think what they said screwed Perry  
24 Gruss. Not that they issued the report.  
25 Q. So you are not taking the position

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2 that there was any ill motive of the general  
3 partner in reporting the results of the Gibson  
4 Dunn investigation to the investors?  
5 MR. BRECHER: Objection.  
6 A. I don't know.  
7 Q. Well, the report caused the  
8 management company itself enormous damage, didn't  
9 it?  
10 MR. BRECHER: Objection.  
11 A. Yes.  
12 Q. And in fact, in some respects, it  
13 virtually wiped them out; isn't that right?  
14 MR. BRECHER: Objection.  
15 A. I don't know.  
16 Q. Well, they got an enormous  
17 percentage of redemption requests; correct?  
18 MR. BRECHER: Objection.  
19 A. I don't know.  
20 Q. They ultimately were sold -- the  
21 assets were transferred to Fortress; correct?  
22 MR. BRECHER: Objection.  
23 A. Correct.  
24 Q. The results of the Gibson and Dunn  
25 report caused enormous damage to the management

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2 company; isn't that right?  
3 MR. BRECHER: Objection.  
4 A. I don't know if that's what caused  
5 it.  
6 Q. You can't testify as you sit here  
7 today that the publication of the March 2007  
8 investor report caused the management company  
9 substantial injury?  
10 MR. BRECHER: Objection.  
11 A. No, I can't.  
12 Q. But you agree that issuing that  
13 report wasn't the product of some bad motive  
14 vis-a-vis Perry Gruss?  
15 A. I think that's correct. Correct  
16 meaning it was not.  
17 Q. So take a look at page 2 of 19, of  
18 Gruss 19. You say in the middle, quote, "Things  
19 are okay. Frustrating. Very close to coming out  
20 and clearing my name with the truth. I'm toxic  
21 until people hear that Zwirn was the one who  
22 ordered the code red. It blows."  
23 What did you mean by that?  
24 A. There are -- I'm sure we'll get into  
25 this -- there are several exceptions I take to

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1 Gruss - CONFIDENTIAL  
2 the March 26th or -7th investor memo. What  
3 I'm saying here is I would have liked someone to  
4 come out and just state the facts.  
5 Q. And what's code red mean?  
6 (Witness peruses the exhibit.)  
7 A. I don't know what I'm referring --  
8 it's -- code red is clearly the Jack Nicholson  
9 movie reference. I don't know what I meant by  
10 that, but that's clearly what code red is.  
11 Q. What happens in the Jack  
12 Nicholson --  
13 A. I forget the name of the movie. Few  
14 Good Men. Thank you.  
15 Q. And is it Zwirn -- what did you mean  
16 by Zwirn ordering code red?  
17 A. I don't know.  
18 Q. Did you mean ordering your firing?  
19 A. I don't know. I don't think so.  
20 Q. Did it mean Zwirn ordering some of  
21 the events described in the March memo?  
22 A. Possibly. I don't know.  
23 Q. Why were you close to coming out --  
24 withdrawn.  
25 How -- how were you close to coming

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2 out and clearing your name with the truth as of  
3 August of 2007?  
4 A. I -- I don't know. I don't want to  
5 guess.  
6 Q. What do you think it was?  
7 A. It's very possible by that time, I'd  
8 been contemplating filing a suit not unlike this  
9 one.  
10 Q. Is it your intention by this lawsuit  
11 to clear your name?  
12 A. No. Hopefully that will be a  
13 derivative of, but no.  
14 Q. What's the intention on your part in  
15 filing this lawsuit?  
16 A. To get what I'm owed.  
17 Q. And what do you see that to be?  
18 A. The numbers we discussed and the  
19 numbers that are in the complaint.  
20 Q. What are the numbers --  
21 A. I don't -- I don't intend on trying  
22 to get my reputation back.  
23 Q. What are the numbers that we  
24 discussed?  
25 A. The 3 million that I think, and

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1 Gruss - CONFIDENTIAL  
2 whatever -- I don't recall what's in there about  
3 the defamation.  
4 Q. What are the damages from the  
5 defamation that you're seeking?  
6 A. That's what I mean. I don't recall.  
7 Q. What are you seeking?  
8 A. What do you mean?  
9 Q. You just testified that you're not  
10 seeking to get back any money for your  
11 reputation?  
12 MR. BRECHER: Objection.  
13 A. That's not what I said.  
14 Q. What did you --  
15 A. That's not what I said.  
16 Q. What did you say?  
17 A. I said I don't expect that to clear  
18 my reputation. I did not link it financially at  
19 all.  
20 Q. Do you expect to get damages for the  
21 damage to your reputation?  
22 A. I would like to.  
23 Q. Take a look at the complaint,  
24 Exhibit I.  
25 A. Got it.

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1 Gruss - CONFIDENTIAL  
2 Q. Take a look at paragraph 34 on  
3 page 9.  
4 (Witness peruses the exhibit.)  
5 Q. Up until October 2006, what did you  
6 understand was your public reputation?  
7 A. Up until 2006?  
8 Q. October.  
9 A. Stellar.  
10 Q. With whom?  
11 A. I would say anybody that knew me.  
12 Q. Let's talk about the financial  
13 industry.  
14 A. Uh-huh.  
15 Q. In what areas of the financial  
16 industry did you believe you had a stellar  
17 reputation?  
18 A. That's incredibly broad. I believe  
19 it was the opinion of bankers I've dealt with, of  
20 service providers I've dealt with, of advisers  
21 I've dealt with, of colleagues I've dealt with,  
22 of people I reported to, people who reported to  
23 me.  
24 Q. So it's your testimony, then, that  
25 until late October 2006, you had a stellar

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2 reputation?  
3 A. That would be my opinion, yes.  
4 Q. And is there anything that you have  
5 learned that the management company would have  
6 done anything to damage that reputation before  
7 the period of late October 2006 as referenced in  
8 paragraph 34 of your complaint?  
9 (Witness peruses the exhibit.)  
10 MR. BRECHER: Objection.  
11 A. As specifically referencing 34?  
12 Q. Yes.  
13 (Witness peruses the exhibit.)  
14 A. I don't understand the specific  
15 question.  
16 Q. Well, what I'd like to try to just  
17 understand is a starting point for when you  
18 believe damage to your reputation began.  
19 A. I don't -- I don't know. You can't  
20 put a date on it.  
21 Q. We can put a time period on it,  
22 can't we?  
23 A. I'll certainly say after I left D.B.  
24 Zwirn.  
25 Q. And what is it that you understand

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1 Gruss - CONFIDENTIAL  
2 in October when you left D.B. Zwirn that damaged  
3 your reputation?  
4 A. Things that were said by Dan Zwirn  
5 and others at the firm to a host of people.  
6 Q. Now, I'm separating out -- I'm not  
7 asking you about anything relating to the  
8 March 2007 investor report. You understand?  
9 A. I do now, yes.  
10 Q. So focusing on the period of  
11 October 2006 and November 2006, what do you  
12 contend as you sit here today were acts of  
13 defamation by Dan Zwirn or others associated with  
14 the management company?  
15 A. I'm not sure I use the words in  
16 relation to 34, but I believe there was an -- I  
17 believe there was a reference to Dan making a  
18 series of calls to investors alleging certain  
19 things that had gone on. That's the basis.  
20 Q. And when did you understand that  
21 series of calls took place?  
22 A. After I left. I don't know the  
23 date. I wasn't --  
24 Q. And for what period of time after  
25 you left do you understand these conversations

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2 took place?  
3 A. I believe they were ongoing from  
4 when I left straight through to at least --  
5 because your time frame period is October to  
6 March, the entire period.  
7 Q. What's --  
8 MR. SIFFERT: You were asking till  
9 November.  
10 Q. I was asking you first for the  
11 October/November time period.  
12 A. Right.  
13 Q. What is it that Mr. Zwirn did that  
14 you know firsthand or secondhand to damage -- to  
15 defame you during October and November 2006?  
16 A. I believe he had phone calls with a  
17 bunch of his investors.  
18 Q. Did you --  
19 A. And employees.  
20 Q. Do you understand that anybody other  
21 than Mr. Zwirn made those phone calls?  
22 A. Yes.  
23 Q. Who?  
24 A. David Lee made those phone calls. I  
25 believe Harold Kahn made those phone calls. I

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2 believe Elise Hugshire [sic] or Hugs- -- made  
3 those phone calls. She was the -- she was in IR.  
4 And there may have been -- maybe Lawrence Cutler,  
5 but --  
6 Q. And how do you know those phone  
7 calls were made?  
8 A. I was told at the time just through  
9 the grapevine that they were made. And then I  
10 believe it was in a -- in an article in one of  
11 the publications. And I've subsequently, through  
12 discovery -- I don't know if I'm allowed to --  
13 there's clearly documentation that these calls  
14 were made.  
15 Q. But what I'm asking is you as of  
16 July 2009, when you filed the complaint --  
17 A. Yes.  
18 Q. -- what did you know about who the  
19 calls were made to?  
20 A. It was all -- it was all of those  
21 circumstances that I just explained to you,  
22 except for the discovery. Because I didn't have  
23 that information.  
24 Q. What employees of the company told  
25 you that those calls were being made?

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 2 A. Jim Wilk, Bob Racusin, and there may  
 3 have been others.  
 4 Q. So your testimony --  
 5 A. In addition to third-party, but you  
 6 said employees.  
 7 Q. Right.  
 8 Your testimony is that after  
 9 October 4, 2006, after you had left, and after  
 10 the so-called telephone calls from management  
 11 were being made to investors, that you had  
 12 conversations with Jim Wilk and Bob Racusin, who  
 13 are still at the management company, who told you  
 14 of the fact of those calls?  
 15 A. I believe so. I don't know when I  
 16 spoke to Wilk. I don't know if it was between  
 17 October and November. So I take that back. I'm  
 18 not sure. Not sure.  
 19 Q. Is it the fact that sometime before  
 20 October and the March 2007 letter that Wilk and  
 21 Racusin told you to whom calls were being made?  
 22 A. No, not specifically to whom calls  
 23 were being made.  
 24 Q. Just the fact that calls were being  
 25 made to investors?

1 Gruss - CONFIDENTIAL  
 2 A. Yes. But more so I found out  
 3 through the community. The hedge fund world  
 4 is -- you know, it's a small world.  
 5 Q. And are you referring to the hedge  
 6 fund community of investors or management company  
 7 people?  
 8 A. Both.  
 9 Q. What were you told and by whom?  
 10 A. That they were -- that they were  
 11 having a series of calls with investors.  
 12 Q. Did you talk to any investors?  
 13 A. I spoke to -- I definitely spoke  
 14 to -- but I don't know when, the time. I spoke  
 15 to Eric Felton at Grosvenor Capital. I believe I  
 16 spoke to possibly two others as well on Dan's  
 17 behalf. Dan wanted me to speak to an investor.  
 18 I believe so.  
 19 Q. After October 4th?  
 20 A. I believe so, yes.  
 21 Q. Who was that?  
 22 A. I don't recall. I also ran in to  
 23 someone on the street, literally, Sterling  
 24 Stamos. Ashok, A-S-H-O-K, I think his last name  
 25 is C-H-A-C-R-A. Sterling Stamos.

1 Gruss - CONFIDENTIAL  
 2 Q. Eric Felton is somebody you  
 3 identify who you spoke to at the request of Dan?  
 4 A. No, I don't think Felton was the  
 5 request of Dan. I don't recall who.  
 6 Q. You earlier testified before lunch,  
 7 but just so I'm clear, you recognize and agree  
 8 that the general partner has an obligation to  
 9 tell investors of its funds about material events  
 10 in the conduct of the funds?  
 11 A. I don't know if that's the case.  
 12 Q. You don't agree that that's a fact?  
 13 A. No, I don't know if that's a fact --  
 14 Q. I'm asking you --  
 15 A. -- that they have the legal  
 16 obligation.  
 17 Q. I'm asking you whether you  
 18 understand and believe that the general partner  
 19 of a management company running onshore and  
 20 offshore funds has a legal obligation to  
 21 investors to notify investors of material events  
 22 in the business of the management company that  
 23 would affect the investors' funds?  
 24 A. I don't know if they have a legal  
 25 obligation.

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 2 Q. Would you understand if the law  
 3 imposed such an obligation?  
 4 MR. BRECHER: Objection.  
 5 A. I don't know.  
 6 Q. Is that something that sounds  
 7 ridiculous to you or something that sounds like  
 8 it makes sense?  
 9 MR. BRECHER: Objection.  
 10 A. It doesn't sound ridiculous.  
 11 Q. You just testified earlier that you  
 12 considered it within the legal obligation of the  
 13 general partner of a management company to notify  
 14 the investors of the onshore and offshore fund of  
 15 the results of the investigation by Gibson Dunn  
 16 and Deloitte; correct?  
 17 MR. BRECHER: Objection.  
 18 A. I don't -- I don't believe I said  
 19 that they have a legal obligation. I think you  
 20 asked the question do I take exception to it. I  
 21 thought that's what you said.  
 22 Q. Okay.  
 23 A. I absolutely don't take exception to  
 24 that. If they have a legal obligation, they  
 25 absolutely should disclose it.

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1 Gruss - CONFIDENTIAL  
2 Q. Do you think that it was good  
3 business judgment for the general partner of a  
4 management entity to notify the investors of the  
5 fund of material events affecting the funds that  
6 take place at the management company responsible  
7 for running the funds?  
8 MR. BRECHER: Objection.  
9 A. Yes.  
10 Q. And you were in fact the CFO;  
11 correct?  
12 A. Of -- yes, correct.  
13 Q. The management company.  
14 A. Correct.  
15 Q. And like it or not, you were being  
16 forced to leave the company because of the misuse  
17 of funds, allocation of expenses as between the  
18 management company and the funds; isn't that  
19 right?  
20 MR. BRECHER: Objection.  
21 A. I don't know if that's right.  
22 Q. Well, you testified earlier that you  
23 understood that Shulte Roth investigated two  
24 circumstances, both of which related to expenses  
25 attributable to the management company in

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2 relation to the onshore fund and the offshore  
3 fund; correct?  
4 A. Yes.  
5 Q. And the results of that Shulte Roth  
6 investigation led you to leave -- being forced to  
7 leave the company; correct?  
8 A. Yes.  
9 Q. There isn't any other reason that  
10 you left the company?  
11 A. That's correct.  
12 Q. It's a fact, is it not, that Shulte  
13 Roth concluded that there were violations of the  
14 relevant agreements dealing with the financial  
15 relations between the funds and the management  
16 company? That's what the Shulte Roth  
17 investigation had concluded, isn't that right, as  
18 a first step?  
19 A. I don't know.  
20 Q. But --  
21 A. I don't know. I've never seen any  
22 conclusion. I've never seen any documents.  
23 Q. But didn't you learn that the reason  
24 why Dan Zwirn had the conversation with you that  
25 he had on October 4th was because he learned

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1 Gruss - CONFIDENTIAL  
2 that there were violations of the relevant  
3 agreements in respect of the financial relations  
4 between the management company and the funds?  
5 A. Shulte Roth never told me that.  
6 Q. But you learned that; not from  
7 Shulte Roth, but you learned that?  
8 A. That it was Dan's --  
9 Q. Decision.  
10 A. That it was -- yes.  
11 Q. His decision based on what he had  
12 learned from Shulte Roth?  
13 A. That's what he told me, yes.  
14 Q. So you knew that the general partner  
15 was taking a position based on what he learned  
16 from his lawyers that there was a violation of  
17 the provisions of the agreements between the  
18 management company and the funds that related to  
19 the financial relations between those two  
20 entities; right?  
21 A. That is what Dan told me.  
22 Q. And assuming that that were true,  
23 would you take exception to Dan Zwirn believing  
24 that he had an obligation to tell investors of  
25 that fact --

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2 MR. BRECHER: Objection.  
3 Q. -- given the seniority of your  
4 position and the nature of the conduct?  
5 MR. BRECHER: Objection.  
6 Q. You can answer.  
7 A. Oh, no.  
8 Q. It wouldn't have been appropriate  
9 for Dan to have kept that secret, in other words;  
10 isn't that right?  
11 A. It wouldn't have been appropriate.  
12 Q. For him to keep it secret?  
13 A. Yes, that's right.  
14 Q. So there was nothing in your mind  
15 wrong, if you will, with Dan Zwirn, David Lee and  
16 others picking up the phone and telling investors  
17 of those basic facts after October 4, 2006?  
18 A. That's not what they said.  
19 Q. Just, first of all, was there  
20 anything wrong in your mind with Dan Zwirn, David  
21 Lee, and others picking up the phone and telling  
22 investors of those basic facts after October 4,  
23 2006?  
24 A. There was not.  
25 Q. If the facts ended up to be that Dan

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 2 Zwirn, David Lee and others' conversations with  
 3 investors after October 4, 2006, followed a  
 4 script written for them by their law firms which  
 5 very particularly said only what I have just  
 6 said, would you have a problem with that?

7 MR. BRECHER: Objection.

8 A. If they -- if they said that there  
 9 were two issues that occurred by and between the  
 10 management company and the funds related to fund  
 11 expenses -- management company expenses being  
 12 used with fund money to pay, no.

13 Q. But if it was -- if they said, in  
 14 addition, that you as CFO were being held  
 15 responsible for that because of what you did and  
 16 didn't do, I take it that wouldn't change your  
 17 answer in any respect?

18 MR. BRECHER: Objection.

19 A. That's not what they said.

20 Q. Did you sit in on any of those  
 21 calls?

22 A. No, I didn't.

23 Q. Do you have a tape recording --

24 A. No.

25 Q. -- of any of those calls?

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2 A. No.

3 Q. Whatever you know about those calls  
 4 you know third hand; correct?

5 A. Correct.

6 Q. Or secondhand?

7 A. Correct.

8 Q. We'll go through who you learned  
 9 that from, but I'm asking you a hypothetical. If  
 10 the record reflected that what the investors were  
 11 told were simply the facts of the investigation,  
 12 that you were responsible, that it was what you  
 13 did and didn't do, do you have any quibble with  
 14 that act by the general partner?

15 MR. BRECHER: Objection.

16 Q. Or people acting on his behalf?

17 MR. BRECHER: Objection.

18 A. If they viewed in their opinion that  
 19 the responsibilities fell underneath the CFO, no,  
 20 I do not have an objection.

21 Q. But you testified earlier that this  
 22 conduct did fall within the CFO's responsibility,  
 23 didn't you?

24 A. I don't know.

25 Q. The record will speak for itself.

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2 A. I don't know. If I did, I did.

3 Q. What did you understand Mr. Zwirn,  
 4 David Lee or others said to investors other than  
 5 the fact of the conduct Perry Gruss' involvement?

6 A. I was lead to believe they said that  
 7 I directed, authorized all of these activities.

8 Q. Anything else?

9 A. Probably, but I don't know.

10 Q. Is there anything else that provides  
 11 the basis for this lawsuit in which you claim you  
 12 were defamed by those conversations?

13 A. Are we still within October and  
 14 November?

15 Q. Yes.

16 A. I don't know.

17 Q. I want you to take the entire period  
 18 from October 4, 2006, up to and before the  
 19 publication of the March 2007 report.

20 A. Uh-huh.

21 Q. I want you to tell me all of the  
 22 kinds of things that you understand Dan Zwirn,  
 23 people agenting at his direction said to  
 24 investors that defamed you.

25 A. From October till today?

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2 Q. No, from October until before the  
 3 March '07 report was issued.

4 A. I was told that he said that I had  
 5 committed fraud; I was going to be criminally  
 6 prosecuted; I was dishonest. And there are  
 7 several other things that may or may not rise to  
 8 that level.

9 Q. All of those things said between  
 10 October of '06 and before March of '07?

11 A. I believe so.

12 Q. And who do you know that from?

13 A. In -- industry -- industry people  
 14 reaching out and contacting me. And there's --

15 Q. Fraud --

16 A. One clear e-mail.

17 Q. Hold on.

18 A. Sure.

19 Q. Fraud, criminally prosecuted,  
 20 dishonest. What did you learn -- withdrawn.

21 Going back to the period of  
 22 October 4th until November 7, it's your  
 23 testimony that you learned from people in the  
 24 industry that during those five months, you were  
 25 told that Dan Zwirn or others acting on behalf of

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1 Gruss - CONFIDENTIAL  
2 the partnership told people that you engaged in  
3 fraud, that you would be criminally prosecuted,  
4 and that you were dishonest?  
5 A. You're pinning me down to dates --  
6 Q. Yes, I am. That's what the  
7 discovery is about.  
8 A. I understand.  
9 -- that occurred six years ago or  
10 five years ago or four years ago. I can't be  
11 absolutely certain what period it is.  
12 Q. You mean it's possible that these  
13 comments were made after March of '07?  
14 A. Yes, certainly possible.  
15 Q. It's not possible they were made  
16 before October of '06?  
17 A. Correct.  
18 Q. Because you had a stellar reputation  
19 up until then?  
20 A. Correct.  
21 MR. LEVINE: Let's mark Exhibit 20.  
22 (Gruss Exhibit 20, Plaintiff's  
23 Initial Disclosures, marked for  
24 identification.)  
25

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1 Gruss - CONFIDENTIAL  
2 BY MR. LEVINE:  
3 Q. Have you ever seen this document  
4 before?  
5 A. I don't believe so.  
6 Q. Plaintiff's Gruss 20 is what's  
7 called plaintiff's initial disclosures. It's  
8 dated and signed December 9, 2009, by your  
9 lawyer. It's a document required to be filed  
10 under the federal rules. Okay, Mr. Gruss?  
11 A. Yes.  
12 Q. If you see the second sentence, it  
13 says, "The following are the names, addresses,  
14 phone numbers of individuals likely to have  
15 discoverable information along with the subjects  
16 of that information that plaintiff may use to  
17 support his claims and defenses."  
18 So this is a document, Mr. Gruss, by  
19 which we're given notice of all of the people  
20 that you can identify to answer -- in answer to  
21 the question that I just asked you.  
22 A. Right.  
23 Q. Okay.  
24 So what I'd like to do is go through  
25 some of the names here with you to find out what

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1 Gruss - CONFIDENTIAL  
2 if anything you learned from them and then to  
3 see, at the end of this, whether there are any  
4 people that maybe are not on this list that  
5 forever whatever reason you now realize ought to  
6 be on this list.  
7 A. Okay.  
8 Q. I'm not going to ask about all of  
9 them because some of them I understand the  
10 situation.  
11 Go to number 6, David Proshan.  
12 After you left in October of 2006, did you have  
13 any conversation with David Proshan in which he  
14 told you anything that Dan Zwirn was telling  
15 investors or anybody on behalf of the management  
16 company was telling the investors?  
17 A. I have never spoken David Proshan  
18 since the day I left.  
19 Q. Number 7, Patricia Peters, do you  
20 know Patricia Peters?  
21 A. Sure. She used to be Dan's  
22 assistant.  
23 Q. After you left, did you talk to  
24 Patricia Peters?  
25 A. I believe there may have been a

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1 Gruss - CONFIDENTIAL  
2 completely random hi, how's things e-mail flying  
3 around; but no, I have not spoken to Trish  
4 Peters.  
5 Q. Did Patricia Peters ever give you  
6 about information of the alleged defamatory  
7 statements made by Mr. Zwirn?  
8 A. No, no.  
9 Q. Do you have of information of what  
10 she knows Mr. Zwirn said or did or anybody acting  
11 on his behalf said or did after October 4, 2006?  
12 A. Via Trish? No.  
13 Q. Number 11, Tim Wong, did you talk to  
14 Timothy would know after October 4, 2006?  
15 A. I don't -- I don't believe I did. I  
16 think I may have run into him at it a restaurant  
17 once, but having nothing to do -- we did not -- I  
18 think I see your point. We did not discuss  
19 anything to do with any of this defamation,  
20 et cetera, nothing.  
21 Q. Did you learn from Mr. Wong anything  
22 that Dan Zwirn said about you after October 4,  
23 2006, or that anyone on behalf of the partnership  
24 said about you?  
25 A. No.

1 Gruss - CONFIDENTIAL  
 2 Q. Chris Suan, S-U-A-N, have you talked  
 3 to Chris Suan since October 4, 2006?  
 4 A. I don't believe I've spoken to him  
 5 since the day I left.  
 6 Q. Vasam Kesavan, have you spoken to  
 7 him since October 4, 2006?  
 8 A. I have not.  
 9 Q. Susan Chen, an employee of Zwirn,  
 10 did you talk to her since October 4th?  
 11 A. Yes, I have.  
 12 Q. How many times?  
 13 A. A handful.  
 14 Q. Is she somebody that you maintained  
 15 a relationship with?  
 16 A. She's someone who, if she called,  
 17 I'd pick up the phone. Put that it way. She's  
 18 just such a nice woman.  
 19 Q. Did she share with you any  
 20 information about what Dan Zwirn or people acting  
 21 on behalf of the partnership were saying to  
 22 investors after October 4, 2006?  
 23 A. After October 4, 2006, yes. I don't  
 24 know what the cap on that date is. I don't know.  
 25 Q. What did she say to you?

1 Gruss - CONFIDENTIAL  
 2 A. She said also that that he said I  
 3 was going to be criminally prosecuted.  
 4 Q. She said that?  
 5 A. Yes.  
 6 Q. What else did she say?  
 7 A. Sort of the same -- it centers  
 8 around the same issues.  
 9 Q. What are the kinds of things she  
 10 said?  
 11 A. She said that -- she may have just  
 12 said criminally prosecuted. I don't know. I was  
 13 responsible for everything and, you know, he had  
 14 no idea what was going on, et cetera. And I'm  
 15 not saying she heard it only from Dan or only  
 16 from David. I don't know.  
 17 Q. Well, do you have any idea who she  
 18 heard it from?  
 19 A. I don't recall if she told me  
 20 specifically.  
 21 Q. Do you understand that the decision  
 22 about criminal prosecution is not one that Dan  
 23 Zwirn controls?  
 24 A. Say again.  
 25 MR. LEVINE: Read it back.

1 Gruss - CONFIDENTIAL  
 2 (Record read.)  
 3 A. Oh, of course. Of course, yes.  
 4 Q. So if Dan Zwirn were telling  
 5 somebody that you would be personally  
 6 prosecuted -- criminally prosecuted, you  
 7 appreciate that he would be expressing his own  
 8 opinion?  
 9 MR. BRECHER: Objection.  
 10 A. Unless he's implying that he was  
 11 told that by someone else.  
 12 Q. Well, is it your understanding that  
 13 a prosecutor's office could or would actually  
 14 tell somebody like Dan Zwirn what a grand jury  
 15 was going to do before it did it?  
 16 MR. BRECHER: Objection.  
 17 A. I have no idea. I have no idea.  
 18 Q. Have you ever heard that?  
 19 A. That he --  
 20 Q. Do you actually believe that Dan  
 21 Zwirn -- that in what you're relying on what Dan  
 22 Zwirn said, that he was doing anything other than  
 23 expressing an opinion if in fact it happened?  
 24 A. Oh, no, I'm not. Yeah, yeah, yeah,  
 25 I'm not saying he had the inside track. No, not

1 Gruss - CONFIDENTIAL  
 2 at all.  
 3 Q. You agree --  
 4 A. Not at all.  
 5 Q. -- you agree that to the extent you  
 6 are complaining about those comments, that Dan  
 7 Zwirn would have only been expressing his  
 8 opinion?  
 9 A. And the opinion of the company.  
 10 Q. Which is --  
 11 A. And the GP.  
 12 Q. -- what?  
 13 A. And acting in his capacity as GP.  
 14 Q. Right.  
 15 A. I don't know if you're making a  
 16 distinction. I'm just --  
 17 Q. I'm not --  
 18 (Discussion off the record.)  
 19 Q. But am I correct that wearing all  
 20 four hats --  
 21 A. Yes.  
 22 Q. -- that you alluded to earlier, that  
 23 if Dan Zwirn did use the exact words that you're  
 24 talking about, that you would agree that he was  
 25 only expressing an opinion?

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1 Gruss - CONFIDENTIAL  
2 MR. BRECHER: Objection.  
3 A. I don't -- I don't know what else he  
4 would be expressing because, like you're  
5 saying --  
6 Q. I was going to ask --  
7 A. Yeah, I --  
8 Q. -- frankly, did you identify  
9 anything else that he would be expressing if he  
10 said that other than his opinion?  
11 A. He's not -- he is not a district  
12 attorney.  
13 Q. And if in fact Mr. Zwirn actually  
14 said to somebody that you committed fraud,  
15 wouldn't that be the same kind of opinion as  
16 being the one that would say that you would be  
17 criminally prosecuted?  
18 MR. BRECHER: Objection.  
19 A. It would -- my opinion, it would  
20 certainly be in the same family, yes.  
21 Q. And would a third party in that  
22 family be the words if he said that you were  
23 dishonest?  
24 A. No, I think that's different.  
25 Q. How is that different?

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1 Gruss - CONFIDENTIAL  
2 A. Well, I don't think you need -- I  
3 don't think you need a district attorney to say  
4 someone's dishonest or not. But it may or may  
5 not have been his opinion, if that's where you're  
6 going.  
7 Q. If -- what I'm trying to identify  
8 for purposes of this case is for you to separate  
9 the kinds of statements that you consider  
10 defamatory.  
11 A. Okay.  
12 Q. And there are certain statements I  
13 take it that you consider defamatory that related  
14 to what the investigation determined; correct?  
15 A. Yes.  
16 MR. BRECHER: Objection.  
17 Q. And --  
18 MR. BRECHER: Please note my  
19 objection.  
20 Q. And -- yes? Do I have an answer?  
21 A. Can you repeat the question?  
22 Q. There are certain statements that  
23 you consider defamatory that related to what the  
24 investigation determined; correct?  
25 A. Not necessarily what the

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1 Gruss - CONFIDENTIAL  
2 investigation determined. I may be splitting  
3 hairs. Can you --  
4 Q. Well, I'll ask the large question  
5 and then you'll have the large question.  
6 Do I understand correctly that there  
7 are basically two different kinds of defamatory  
8 statements that you complain about in this case.  
9 One are statements about your conduct that are  
10 the product of the investigations, and two are  
11 statements of opinion by Dan Zwirn, in  
12 particular, and maybe others, that you were going  
13 to be criminally prosecuted and you had engaged  
14 in fraud?  
15 MR. BRECHER: Objection.  
16 A. I don't think that's inaccurate.  
17 Q. In other words, that is what you're  
18 relying on here?  
19 MR. BRECHER: Objection.  
20 A. I believe so.  
21 Q. Is there any other kind of statement  
22 that you are relying on in your claim of  
23 defamation?  
24 A. Is there any -- I'm going --  
25 Q. Let's break it down.

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1 Gruss - CONFIDENTIAL  
2 A. I'm actually confused about the  
3 whole last time --  
4 Q. Mr. Gruss, Let's break this down.  
5 The claim for defamation relies on -- withdrawn.  
6 The claim for defamation is based on  
7 statements made by Dan Zwirn and others about you  
8 after October 4, 2006; correct?  
9 A. Yes.  
10 Q. And you contend it was defamatory  
11 for Mr. Zwirn and others to report what you did  
12 with respect to the matters that Gibson and Dunn  
13 investigated and Shulte investigated and --  
14 A. Incorrect.  
15 Q. You don't consider that to be  
16 defamatory?  
17 A. That's not what you asked.  
18 Q. Do you contend that to the extent  
19 Mr. Zwirn and others acting on behalf of the  
20 management committee reported the results of  
21 either Shulte Roth's investigation or Gibson and  
22 Dunn's investigation to the investors and the  
23 investing community, that to the extent their  
24 report was confined to what was found in the  
25 investigation, that that report will not be

1 Gruss - CONFIDENTIAL  
 2 defamatory as to you?  
 3 MR. BRECHER: Objection.  
 4 A. If it was handled prudently, the  
 5 investigation, I would not have an issue with it.  
 6 Q. Are you the judge of whether it's  
 7 handled prudently?  
 8 MR. BRECHER: Objection.  
 9 A. I don't know.  
 10 Q. Are you -- is it -- you agree, do  
 11 you not, that Dan Zwirn and others acting on  
 12 behalf of the management company properly  
 13 reported the results of the investigation to the  
 14 investors and the investing public?  
 15 A. If the results of the investigation  
 16 were what was reported in that investor letter,  
 17 no, I don't disagree.  
 18 Q. You don't disagree?  
 19 A. No, I don't.  
 20 Q. So they're entitled to do that?  
 21 A. If the results were exactly what  
 22 they -- and they thought those results were  
 23 accurate, they do not have an obligation to do  
 24 it, like I said earlier, but if they did it . . .  
 25 Q. What does the shrug mean? Shrug

1 Gruss - CONFIDENTIAL  
 2 means it's acceptable and you understand --  
 3 A. Yes.  
 4 Q. -- they had an obligation to do it?  
 5 A. No. Earlier I said I can't opine  
 6 whether or not they had a legal obligation to do  
 7 it. Right? I said that they -- they didn't have  
 8 a legal obligation to do it.  
 9 Q. You also said, then, that you didn't  
 10 consider it inappropriate for them to do it?  
 11 A. Correct, correct.  
 12 Q. And if they did it, you didn't  
 13 believe it was being made with an intent to harm  
 14 you?  
 15 A. The statements in the investor  
 16 letter?  
 17 Q. Right.  
 18 A. Correct.  
 19 Q. If they did it and it was based on  
 20 what the report actually found, then the  
 21 statements themselves wouldn't have even been  
 22 false, isn't that right, because it would have  
 23 been the product of their investigation?  
 24 MR. BRECHER: Objection.  
 25 A. I -- I don't know. I don't know.

1 Gruss - CONFIDENTIAL  
 2 Q. Well, are you claiming here injury  
 3 by virtue of what was in the report about what  
 4 the report found --  
 5 A. There are aspects of that.  
 6 Q. -- and the aspects of the report  
 7 that are defamatory of you because you don't  
 8 agree with the conclusions of the report?  
 9 A. Exactly.  
 10 Q. Is there any other position other  
 11 than you disagree with the conclusions of the  
 12 report for which you claim is defamatory in the  
 13 March letter?  
 14 A. If the conclusions of the report I  
 15 disagree with, then the way the investor letter  
 16 was delivered I certainly disagree with.  
 17 Q. What you disagree with is ultimately  
 18 that they held you responsible and not somebody  
 19 else?  
 20 A. No, I did not say that.  
 21 Q. What you disagree with is the fact  
 22 that they held you responsible; isn't that right?  
 23 A. Yes.  
 24 Q. What you're complaining about in the  
 25 investor report was that the law firm and the

1 Gruss - CONFIDENTIAL  
 2 accounting firm ultimately concluded that you  
 3 were responsible for some of the conduct  
 4 described there and not somebody else?  
 5 A. I hadn't thought about it that  
 6 deeply.  
 7 Q. Even if you thought about it  
 8 casually, what you're complaining about is that  
 9 they blamed this on you and not somebody else?  
 10 A. Who's "they"?  
 11 Q. The people that issued the report.  
 12 A. Well, the people that issued the  
 13 investor letter, which is the company.  
 14 Q. I guess what I'm getting -- I want  
 15 to understand, Mr. Gruss, what your defamatory  
 16 case is based on.  
 17 A. Right.  
 18 Q. Just going to where I started here,  
 19 apart from the investor report, apart from the  
 20 facts that are reported in the investor report  
 21 and the positions that are taken in the investor  
 22 report, are you also complaining that statements  
 23 were made about you to the effect that you were  
 24 going to be criminally prosecuted and you were  
 25 dishonest?

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1 Gruss - CONFIDENTIAL  
2 A. Uh-huh.  
3 Q. Yes?  
4 A. Yes.  
5 Q. And those are statements which you  
6 understand and recognize are statements of  
7 opinion of the people that made them; correct?  
8 MR. BRECHER: Objection.  
9 A. No.  
10 Q. What else are they?  
11 A. I don't know.  
12 Q. Well, how would you describe them if  
13 you wouldn't agree that they're opinions?  
14 A. I believe earlier I had said that  
15 one of the -- one of the ways is of course  
16 opinion. I also said that he is not a district  
17 attorney and neither is anybody else, to my  
18 knowledge, at the firm. That doesn't mean there  
19 aren't any other ways to go about it and ways to  
20 look at it in between those two. I don't know.  
21 Q. Well, as you sit here today, can you  
22 think of any other way that you would describe  
23 it?  
24 A. No, no.  
25 Q. Is there any other kind of statement

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1 Gruss - CONFIDENTIAL  
2 that you're complaining of besides those two  
3 kinds of statements? By "kinds of statement," I  
4 mean the whole world of statements based on the  
5 investigation report and the two comments that  
6 you were going to be criminally prosecuted and  
7 dishonest -- criminally prosecuted and engaged in  
8 fraud.  
9 A. There would -- I don't believe  
10 there's anything else, if that helps.  
11 MR. LEVINE: Let's take a break.  
12 (Recess from the record.)  
13 BY MR. LEVINE:  
14 Q. So after October 4, 2006, how many  
15 conversations did you have with Susan Chen?  
16 A. I had a few conversations with her  
17 about how she's doing. She was at Zwirn for a  
18 long time after I left. And then I received a  
19 call out of the blue from an attorney in Houston  
20 who is representing her and another individual in  
21 a lawsuit against the company.  
22 Q. Who was the other individual?  
23 A. Todd Dittmann.  
24 Q. And what was that lawsuit about?  
25 A. It was about wages. Somehow they

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1 Gruss - CONFIDENTIAL  
2 thought that they were owed more money than they  
3 were under their contract.  
4 Q. During any of the conversations that  
5 you had with Susan Chen after you left, did she  
6 tell you anything about what Dan Zwirn or others  
7 said to investors about why you left?  
8 A. Not to investors. She didn't have  
9 knowledge of --  
10 Q. What did she tell you about what Dan  
11 Zwirn or others said about you and why you left,  
12 anybody other than investors?  
13 A. It was the same -- it was the same  
14 sort of issues that we discussed earlier.  
15 Q. Fraud --  
16 A. Fraud, criminally prosecuted, yes.  
17 Q. Dishonest?  
18 A. Dishonest, yes.  
19 Q. And to whom did she tell you that  
20 they had said that?  
21 A. I don't remember if she specifically  
22 said anybody, whether it was Dan or -- it was the  
23 always the same --  
24 Q. Well, tell me the gist of the  
25 conversation with Susan Chen. What did she say

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1 Gruss - CONFIDENTIAL  
2 to you; what did you say to her?  
3 A. That kind of was the gist of what I  
4 just said. It was -- she just brought it up --  
5 she just brought up, you know, the fact that she  
6 was being shorted and blah, blah, blah. And I  
7 said that's okay.  
8 You have to understand something,  
9 pride got in the way of me going around to  
10 everyone and saying Hey, did you say X, Y and Z.  
11 They came to me. I'm sorry.  
12 She said to me that --  
13 Q. Pride is the reason you brought this  
14 lawsuit?  
15 A. No, financial -- financial -- and he  
16 they owe me money. That's the reason I brought  
17 the lawsuit.  
18 So what she said to me was that she  
19 was suing them. So she went through why she was  
20 suing them, and would I be willing to testify for  
21 her in her lawsuit.  
22 Q. And what did you say about that?  
23 A. I said I don't believe so, Cauley  
24 [ph].  
25 Q. Was it in that conversation or

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1 Gruss - CONFIDENTIAL  
2 conversations that you asked her what he had been  
3 saying about you?  
4 A. No. She -- she brought it up.  
5 Q. In that --  
6 A. That these are the kind of things  
7 that she heard around the office and that she  
8 would be willing to testify to those things if I  
9 call her.  
10 Q. So this was a conversation she  
11 initiated --  
12 A. Yes.  
13 Q. -- in which you had told her you  
14 were thinking of suing him, of Dan and the  
15 company?  
16 A. I don't recall -- I don't recall if  
17 I told her.  
18 Q. Well, one of your earlier  
19 conversations --  
20 A. It depends on the time.  
21 Q. In one of your earlier  
22 conversations, had you told Susan Chen that you  
23 were contemplating a lawsuit against Zwirn?  
24 A. Prior to the -- when she called me  
25 about her lawsuit?

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1 Gruss - CONFIDENTIAL  
2 Q. Yes.  
3 A. No, I don't believe so.  
4 Q. So it's then in connection with her  
5 lawsuit conversation that you asked her what he  
6 was saying about you or she offered it?  
7 A. I said I didn't ask her, I don't  
8 think. It would be she offered.  
9 Q. So it's not a conversation that took  
10 place before she started to talk to you about the  
11 lawsuit that she wanted to bring?  
12 A. That's correct.  
13 Q. And she told you that if you helped  
14 her, she would help you?  
15 A. Pretty much.  
16 I won't be calling Susan Chen.  
17 Q. Todd Dittmann --  
18 MR. SIFFERT: Let's just pin that  
19 down.  
20 Q. You won't be calling Susan Chen as a  
21 witness; is that what you're saying?  
22 A. Yes.  
23 Q. Because you consider her inherently  
24 unreliable?  
25 A. No, that's your words. I'm just

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1 Gruss - CONFIDENTIAL  
2 stating a fact.  
3 Q. Stating a fact that you won't call  
4 her because of the circumstance that I just asked  
5 you?  
6 A. That's not -- that's not inaccurate,  
7 yes.  
8 Q. You love -- lawyers love double  
9 negatives. I've never had a witness that loved  
10 them.  
11 Todd Dittmann, same kind of  
12 conversation as Susan Chen?  
13 A. I don't recall if I ever had a  
14 conversation with Todd Dittmann, yeah.  
15 Q. Ray Chan?  
16 A. Yes.  
17 Q. Who is Ray Chan?  
18 A. Ray Chan was in -- Ray was a deal  
19 guy working in the special assets group. Smart  
20 guy. Good guy. Very good guy.  
21 Q. Did you talk to him after you left?  
22 A. Yes, I've spoken to him casually.  
23 I've had lunch with him. I've had a drink with  
24 him, definitely.  
25 Q. Has he been introduced to your

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1 Gruss - CONFIDENTIAL  
2 lawyers?  
3 A. No.  
4 Q. Have you given your lawyers his  
5 name?  
6 A. Yes. He phoned me. I believe the  
7 company's lawyers contacted him. He phoned me  
8 thinking that I contacted him and I said it  
9 wasn't me; it must have been their lawyers. This  
10 was recently.  
11 Q. But this was filed in December 2009.  
12 A. Yes.  
13 Q. What has Mr. Chan said to you about  
14 statements that Mr. Zwirn made pertaining to you?  
15 A. Same issues --  
16 Q. And --  
17 A. -- Dan said that I'm going to be  
18 criminally prosecuted.  
19 Q. Anything else?  
20 A. I don't know.  
21 Q. At the time the statements were  
22 made, was Mr. Chan an employee of Zwirn?  
23 A. In the beginning, yes.  
24 Q. At the time that the statements were  
25 made that he heard, was Mr. Chan employed at the

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1 Gruss - CONFIDENTIAL  
2 management company?  
3 A. The first time he told me, yes.  
4 Q. And every time that he told you?  
5 A. No, no.  
6 Q. Did he tell you that he had  
7 conversations with Dan Zwirn after he left the  
8 management company?  
9 A. No, no.  
10 Q. That's what I'm asking.  
11 A. Oh.  
12 Q. Was Mr. Chan telling you of  
13 conversations that he had with Dan Zwirn while he  
14 was employed at the management company?  
15 A. Yes.  
16 Q. But your testimony is that after Ray  
17 Chan left the employ, he met with you and  
18 repeated telling you what had been said at an  
19 earlier time?  
20 A. Yes. He told me these things more  
21 than once.  
22 Q. What he told you was basically the  
23 same thing?  
24 A. Yes.  
25 Q. And did he tell you that -- what did

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1 Gruss - CONFIDENTIAL  
2 he tell you Mr. Zwirn said at the management  
3 company about you?  
4 A. That I was going to be criminally  
5 prosecuted, that I had committed fraud, I was  
6 dishonest. And I don't know what . . .  
7 Q. What about Rob Flowers?  
8 A. He was Ray's partner.  
9 Q. Was he also employed at the  
10 management company?  
11 A. Yes.  
12 Q. Did you have separate conversations  
13 with him?  
14 A. Yes. Also a very good guy.  
15 Q. What did Mr. Flowers tell you about  
16 what Dan Zwirn said pertaining to you?  
17 A. Really echoing the same -- it's the  
18 same theme.  
19 Q. Do you recall if all of these  
20 conversations that you learned about were  
21 conversations and statements made by Dan Zwirn  
22 before March of '07 or after March of '07?  
23 A. I have no idea. I don't know.  
24 Q. Glenn Dubin, have you ever had a  
25 conversation with Glenn Dubin since October 4,

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1 Gruss - CONFIDENTIAL  
2 2006?  
3 A. Yes.  
4 Q. And have you met with Glenn Dubin?  
5 A. Yes.  
6 Q. Where did you meet with Glenn Dubin?  
7 A. At the restaurant 8 1/2 at Nine West  
8 57th.  
9 Q. Did you have lunch with Glenn Dubin?  
10 A. No. It turned into dinner.  
11 Q. Who was present?  
12 A. Myself and Glenn.  
13 Q. When did it take place?  
14 A. Through -- two months ago, three  
15 months ago.  
16 Q. After December 9, 2009?  
17 A. What's the distinction? I believe  
18 so.  
19 Q. When this was filed.  
20 A. Yes, definitely after.  
21 Q. What did you and Mr. Dubin talk  
22 about?  
23 A. He called me out of the blue -- he  
24 just consulted me out of the blue asking how I  
25 was and if I'd like to get together for a drink.

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1 Gruss - CONFIDENTIAL  
2 Q. Before that --  
3 A. And I said to him you obviously want  
4 something from me, sure, when did you want to  
5 meet.  
6 Q. Before that, had Glenn Dubin ever  
7 had a conversation with you?  
8 A. After my departure?  
9 Q. Yes.  
10 A. I don't believe so. I don't believe  
11 I ever met with him or spoken to him.  
12 Q. What was the nature of your contact  
13 with him in 2006? Did you have any contact with  
14 him?  
15 A. Prior to my leaving? Yes, oh.  
16 Sure.  
17 Q. What --  
18 A. Wait --  
19 Q. What was the nature --  
20 A. What's the date --  
21 Q. Before October 4, 2006.  
22 A. Yes.  
23 Q. Was Mr. Budin someone that you had  
24 regular contact with?  
25 A. Yes.

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 2 Q. And what was the nature of that  
 3 contact?  
 4 A. From the time I was employed  
 5 originally till the time I left, I had a lot of  
 6 contact with Glenn.  
 7 Q. And did you understand during that  
 8 time that Mr. Budin and Mr. Zwirn had a good  
 9 relationship?  
 10 A. At one point they had a good  
 11 relationship.  
 12 Q. And when did that relationship  
 13 change?  
 14 A. It changed -- it changed around the  
 15 time where Dan started to forget everything that  
 16 Glenn had done for him over the years. So 2004.  
 17 Q. And is what you just said what  
 18 Mr. Budin has said to you --  
 19 A. No.  
 20 Q. -- as to why he stopped --  
 21 A. No, that's what I'm saying to you.  
 22 Q. Is that something that Mr. Zwirn has  
 23 said to you?  
 24 A. No, but it's something that Dan and  
 25 I have discussed.

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 2 Q. And in what way did the relationship  
 3 change?  
 4 A. Dan -- Dan began to begrudge, I  
 5 think is the word, Glenn for still owning a piece  
 6 of the management company even though Glenn had  
 7 been the one responsible for raising essentially  
 8 the first \$3 billion for the guy.  
 9 Q. And who told you that?  
 10 A. What?  
 11 Q. That he begrudged --  
 12 A. I'm telling you, yeah. And Dan and  
 13 I discussed it.  
 14 Q. So go to --  
 15 A. I often told Dan I don't understand  
 16 why you don't show this guy a little bit more  
 17 deference, he raised you all this money.  
 18 Q. You actually said that to Dan Zwirn  
 19 before October 4, 2006?  
 20 A. Absolutely.  
 21 Q. And what did Dan say?  
 22 A. He always used to say I'm making him  
 23 so much money.  
 24 Q. Now, after October 4, 2006, is the  
 25 only conversation that you had with Glenn Dubin

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 2 at dinner a few months ago?  
 3 A. I believe it was.  
 4 Q. And did you tell Mr. Budin that you  
 5 had filed this complaint?  
 6 A. He knew.  
 7 Q. Did you talk to him about the  
 8 complaint?  
 9 A. In -- in -- sort of in passing.  
 10 Q. Did you give him a copy of it?  
 11 A. No.  
 12 Q. Did you --  
 13 A. No.  
 14 Q. Did you tell him who your lawyers  
 15 were?  
 16 A. I don't think so.  
 17 Q. Did you tell him why you were suing  
 18 Dan?  
 19 A. He knew why I was suing Dan.  
 20 Q. Did you tell him why you were suing  
 21 Dan?  
 22 A. I don't -- I don't think I did.  
 23 Q. Did you tell him what you were suing  
 24 Dan about?  
 25 A. I think he knew, but we didn't

1 Gruss - CONFIDENTIAL  
 2 have -- we did not have discussions about the  
 3 lawsuit, et cetera.  
 4 Q. What did you talk about?  
 5 A. We talked about his family, my  
 6 family. Glenn and I were kind of close.  
 7 Q. You testified that when he called  
 8 you, he told you that he wanted to get together  
 9 with you?  
 10 A. Yes.  
 11 Q. And you asked him if -- you asked  
 12 him if he wanted something from you?  
 13 A. Yes.  
 14 Q. And he said yes?  
 15 A. Yes.  
 16 Q. So what did you learn at the  
 17 beginning Mr. Budin wanted from you?  
 18 A. He wanted to know if in addition to  
 19 everything in the investor letter, if there was  
 20 anything else at Zwirn, anything else out there  
 21 untoward. And I said, first of all, I wasn't,  
 22 but I have no idea what you mean.  
 23 He wanted me to have a conversation  
 24 with one of Dan's investors who was suing Dan.  
 25 He just wanted me to have a conversation with him

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2 telling him that there's nothing else there, just  
3 drop it. I don't know.  
4 Q. Which investor?  
5 A. Jeffrey Epstein.  
6 Q. Did Mr. Budin express support for  
7 Mr. Epstein's case?  
8 A. I don't -- I don't think he -- he  
9 didn't know -- I don't think he knew the  
10 specifics of his case because he mentioned to  
11 me -- he mentioned to me how Mr. Epstein  
12 redeemed -- was told that he couldn't redeem, and  
13 Glenn said he thinks that's not true. And I  
14 said, Well, you know, I have no idea, but -- I  
15 don't know.  
16 So he said to me, Would you mind  
17 telling -- would you mind speaking to Jeffery and  
18 just telling Jeffery just to get on with life,  
19 there's nothing to sue Zwirn about.  
20 Q. Why would he be asking you to do  
21 that?  
22 A. He's extremely close to Jeffrey  
23 Epstein.  
24 Q. Why would Mr. -- why did Mr. Budin  
25 tell you that he wanted you to have that

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2 conversation?  
3 MR. BRECHER: Objection.  
4 A. I don't --  
5 Q. What did he say to you was the  
6 reason that he wanted you to have that  
7 conversation?  
8 A. He didn't really say -- I think  
9 the -- I don't know.  
10 Q. What else did he want from you?  
11 A. I was a partner with Glenn. Maybe  
12 he thought that I was objective. I don't know.  
13 Q. What else did Mr. Budin want from  
14 you, was the question?  
15 A. He said to me that -- he said to me,  
16 I can't believe it, Dan F'd me as bad as he F'd  
17 you. And I said, Somehow I doubt that's the  
18 case, Glenn.  
19 Q. In what way did you understand that  
20 Dan -- that Dan made it difficult for Mr. Budin  
21 or F'd you?  
22 A. For Mr. Budin, I don't know. I  
23 didn't get into -- I didn't get into why he  
24 thought that.  
25 Q. Did you learn from Mr. Budin that

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2 Mr. Budin was in litigation with Dan?  
3 A. No.  
4 Q. Did you learn otherwise that  
5 Mr. Budin was in litigation with Dan?  
6 A. I had heard that he was in  
7 litigation, but I didn't think him personally. I  
8 thought something to do with Corbitt.  
9 Q. What do you understand Corbitt was?  
10 A. It was -- it was, I believe, a  
11 fund-to-funds underneath the Dubin and Zwirn  
12 umbrella. It was around for a long time.  
13 Q. Did you understand -- did you know  
14 before October 4, 2006, that Dan Zwirn was an  
15 investor in that fund-to-funds?  
16 A. Yes.  
17 Q. Did you know before the dinner with  
18 Dubin that in fact Dubin through that  
19 fund-to-funds had refused to pay Dan Zwirn money  
20 that was owed?  
21 A. No, I had no idea.  
22 Q. Did you know that because of that  
23 refusal to pay, there was a lawsuit about it?  
24 A. Yeah, yeah.  
25 Q. So then you knew that he had refused

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2 to pay?  
3 A. No, you asked did I know before  
4 then.  
5 Q. Did you --  
6 A. I thought that's what you said.  
7 Q. Did you know that there was a  
8 lawsuit between Dubin and Zwirn over the Corbitt  
9 investment?  
10 A. Yes, yes.  
11 Q. Did Dubin tell you about that?  
12 A. No, he did not tell me.  
13 Q. Did you talk about that at all at  
14 lunch -- dinner?  
15 A. No.  
16 Q. Was the Epstein lawsuit filed by  
17 that time?  
18 A. I have no idea. I don't know if  
19 there even was an Epstein lawsuit.  
20 Q. Did you talk to Mr. Epstein --  
21 A. Un-un.  
22 Q. -- at his request?  
23 A. Un-un.  
24 MR. BRECHER: You have to answer  
25 audibly.

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2 A. I'm sorry. No.  
3 Q. Had you ever met Mr. Epstein?  
4 A. No.  
5 Q. Did you know who Mr. Epstein was?  
6 A. Insofar as he was an early investor,  
7 he was close with Glenn and that he was wrapped  
8 up with his own issues down in Florida, that's  
9 all I know.  
10 Q. Did you ever ask Mr. Budin if he  
11 could put you together with Mr. Epstein to find  
12 out what Mr. Epstein would have been told in one  
13 of those investor calls?  
14 A. Never.  
15 Q. Did you ask Mr. Budin what happened  
16 in one of the investor calls?  
17 A. Never.  
18 Q. Did you discuss about that at  
19 dinner?  
20 A. No.  
21 Q. So did you have any conversation at  
22 dinner with Glenn Dubin about what was allegedly  
23 defamatory --  
24 A. No.  
25 Q. -- that Mr. Zwirn said?

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2 A. No.  
3 Q. Is there anything else Mr. Dubin  
4 wanted from you at dinner?  
5 A. No. He just wanted me to talk to --  
6 to Jeffery.  
7 Q. And you --  
8 A. I referred it to Ethan. Ethan told  
9 me it's not a good idea --  
10 MR. BRECHER: Well, don't say what  
11 we discussed.  
12 THE WITNESS: Sorry.  
13 MR. BRECHER: I'd ask that be  
14 stricken from the record.  
15 THE WITNESS: Strike that.  
16 MR. LEVINE: Strike that.  
17 A. No, he did not ask me anything else.  
18 Q. What about Henry Swieca?  
19 A. Swieca.  
20 Q. Did you talk to Henry Swieca --  
21 A. No.  
22 Q. -- about any statements made by Dan  
23 Zwirn?  
24 A. No.  
25 Q. Rafael Astruc, A-S-T-R-U-C, did you

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2 have any conversations with him?  
3 A. No, I don't believe so.  
4 Q. Mike Fuller?  
5 A. No.  
6 Q. So these are investors; correct?  
7 A. Those are investors.  
8 Q. You don't know what these investors  
9 will say as to what Dan Zwirn said to them?  
10 A. Exactly.  
11 Q. You've never talked to them?  
12 A. I've never talked to them.  
13 Q. And you've never talked to anybody  
14 that's talked to them?  
15 A. I shouldn't say that. Earlier I  
16 said that Dan definitely put me in touch with one  
17 or two of his investors right after I left. I  
18 don't recall -- I had earlier said I don't recall  
19 who it is. I don't know if it was one of those.  
20 I did not have any conversations  
21 about this lawsuit with Mike Fuller, Dave Small,  
22 Dave Matter.  
23 Q. The question is, did you have any  
24 conversation with any of the investors, Item 24,  
25 25, 26, 27, 28, 29 or 30, did you talk to any of

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2 those investors about what Dan Zwirn said to any  
3 of them, if anything, immediately after your  
4 departure in October 2006?  
5 A. No.  
6 Q. Do you have any idea as you sit here  
7 today what any of those eight investors were told  
8 by Dan Zwirn or anybody speaking on behalf of Dan  
9 Zwirn?  
10 A. Individually, no.  
11 Q. Go to the next page. Jeffery  
12 Epstein, Brian O'Neal, Hymie Wagner, Matt Stone,  
13 those are four other investors. Is there any of  
14 those investors that you have discussed what Dan  
15 Zwirn said to them after you left in October of  
16 2006?  
17 A. No.  
18 Q. Do you have any idea as you sit here  
19 today what any of these 12 investors would say  
20 about what was said to them by Dan Zwirn or  
21 anyone acting on behalf of Dan Zwirn as to the  
22 circumstances surrounding your departure?  
23 A. I'm sure they would say exactly what  
24 Dan said to them.  
25 Q. Apart from what you're assuming, did

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2 you have any reason to believe that any of those

3 investors were told anything other than what

4 Shulte Roth or Gibson Dunn told Dan to say?

5 A. I don't know.

6 Q. Are there any other investors whose

7 names you know?

8 A. Yes.

9 Q. Did you talk to any of them?

10 A. No, except for what I said earlier,

11 Eric Felton, Ashok Chakra and this other party

12 that I --

13 Q. Did Eric Felton -- or let's take

14 them separately.

15 Did you talk to Eric Felton about

16 what Dan Zwirn said to him after you left in

17 October 2006?

18 A. No.

19 Q. Did you talk to Ashok Chakra about

20 what Dan Zwirn said to him after you left in

21 October of 2006?

22 A. No.

23 Q. Is there any investor as you sit

24 here today that you spoke to after you left in

25 October 2006 in which you learned what Mr. Zwirn

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2 or someone acting on his behalf said about the

3 circumstances of your departure?

4 A. I can't recall.

5 Q. It's pretty important. Have you

6 wracked your brain?

7 A. Answer the question again.

8 Q. I'm asking; you're answering.

9 A. Right.

10 Q. Is there any investor in all of the

11 time since you left that you actually picked up

12 the phone, asked them what Dan Zwirn said to you

13 and learned with your own ears what was said

14 about you?

15 A. I don't believe so.

16 Q. Did anyone suggest that before you

17 filed a federal action for defamation claiming

18 that Dan Zwirn and others acting on his behalf

19 acted improperly in talking to investors, that

20 maybe you ought to find out whether that

21 happened?

22 A. The SEC showed me an e-mail from

23 Offitt Hall, Ned Offitt, where it is recounting a

24 direct conversation with Dan.

25 Q. Anything other than Ned Offitt?

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2 A. No.

3 Q. Did Ned Offitt and Offitt Hall

4 invest?

5 A. I believe they were an adviser to

6 investors.

7 Q. That would have been after the SEC

8 started the investigation?

9 A. Correct.

10 Q. That would have been during your

11 testimony?

12 A. Correct.

13 Q. Is there any other event other than

14 that circumstance in which you learned from an

15 investor what actually Dan Zwirn or someone

16 acting on behalf of Dan Zwirn said about you?

17 A. Up to this point, no.

18 Q. Did you ask any lawyer to do that

19 for you?

20 MR. BRECHER: Objection.

21 I instruct you not to answer any

22 discussion with any counsel.

23 Q. Do you know whether any investor has

24 been contacted on your behalf to learn what I

25 just asked you?

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2 A. I don't know.

3 Q. Is there any banker, any person

4 working for a bank that was engaged in financial

5 transactions with the management company that you

6 spoke to who has recited to you what Dan Zwirn

7 allegedly said to them about the circumstances

8 under which you left?

9 A. Yes.

10 Q. Who?

11 A. Michael Hopson.

12 Q. Where does he work?

13 A. He worked at Natixis.

14 Q. What's Natixis?

15 A. It's a French government-controlled

16 private bank here in the US. They're based in

17 the US.

18 Q. What was their relationship?

19 A. They were the investment banker for

20 all of our -- not all of, our but our largest or

21 his largest CLO.

22 Q. What's a CLO?

23 A. Collateralized loan obligation.

24 Q. What are collateralized loan

25 obligations?

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 2 A. They are similar to CMBS where you  
 3 package a bunch of originated assets, or it could  
 4 be secondary assets, you pool them together and  
 5 then you sell tranches. Although in this  
 6 respect, they weren't publicly traded. So  
 7 there's no secondary market for these assets.  
 8 Q. What was the relationship of CDOs to  
 9 D.B. Zwirn?  
 10 A. We didn't have CDOs. It was a CLO.  
 11 Q. I misspoke.  
 12 A. Oh.  
 13 Q. What was the relationship of CLOs to  
 14 D.B. Zwirn & Co.?  
 15 A. It was a funding vehicle for some of  
 16 the private assets, the private corporate  
 17 originated assets.  
 18 Q. Tell me what you mean by that.  
 19 A. We set up a vehicle and I believe --  
 20 I believe we had two-to-one leverage. So every  
 21 dollar of equity I put in, the CLO would give you  
 22 a dollar of debt. So you were able to go out and  
 23 buy a \$10 million loan by only putting up  
 24 \$5 million in equity.  
 25 Once you pooled those together, you

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 2 then sold those -- all of the debt off and you  
 3 retain the equity on your imbalance sheet. And  
 4 Natixis was the banker responsible for placing  
 5 the debt.  
 6 Q. And was that CLO vehicle used by the  
 7 onshore fund and the offshore fund as part of  
 8 their investment strategy?  
 9 A. Yes, both.  
 10 Q. And was that vehicle used to  
 11 increase the liquidity of the onshore fund and  
 12 the offshore fund?  
 13 A. Most definitely.  
 14 Q. Whose idea was it to develop that  
 15 source of liquidity?  
 16 A. I don't recall how it originally --  
 17 but it must have been Dan.  
 18 Q. Was the -- did the CLO then become  
 19 an asset investment of the particular fund?  
 20 A. The equity, correct. The equity  
 21 was.  
 22 Q. The equity was unique and separate  
 23 to the particular fund?  
 24 A. Yes, exactly. Well, the equity in  
 25 the CLO was an asset of the fund.

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 2 Q. So the onshore fund had CLOs on its  
 3 books?  
 4 A. Well, it was a -- careful, because  
 5 you're not buying CLOs. You're issuing CLOs.  
 6 And both the onshore fund had one and the  
 7 offshore fund had one.  
 8 Q. So both the onshore fund and the  
 9 offshore fund had equity derived from the CLO as  
 10 it related to its own fund?  
 11 A. Exactly.  
 12 Q. And the equity of each of the CLOs  
 13 had to be kept separate as between the funds?  
 14 A. Yes.  
 15 Q. And what did Mr. Hopson tell you  
 16 that Mr. Zwirn said?  
 17 A. Again, consistent theme. Consistent  
 18 theme.  
 19 Q. When did the conversation take  
 20 place?  
 21 A. I've spoken to Mike scores and  
 22 scores and scores of times. That did not come up  
 23 scores and scores and scores of times, but I've  
 24 spoken to him so often since I left.  
 25 Q. What kind of relationship do you

1 Gruss - CONFIDENTIAL  
 2 have with him? Is he a good friend?  
 3 A. I wouldn't say he's a good friend.  
 4 He's a very good guy. He's a very good guy who  
 5 remains in touch with me.  
 6 Q. Scores and scores is very difficult.  
 7 What do you mean by that?  
 8 A. Once a month.  
 9 Q. And when you say "consistent theme,"  
 10 what do you mean by that?  
 11 A. Just that Dan said -- you know,  
 12 originally had said or after the fact said that I  
 13 was, you know, responsible for all this stuff and  
 14 I would be -- was dishonest and committed fraud.  
 15 It's the same theme. Apparently he echoed the  
 16 same thing to a lot of people.  
 17 Q. Did he say -- did Mr. Hopson say  
 18 that Dan had said that in Dan's opinion, you  
 19 would be criminally prosecuted?  
 20 A. I don't know if that's -- if those  
 21 were his exact words. I don't know.  
 22 Q. So I'm trying to understand exactly  
 23 what parts of the theme Mr. Hopson has told you  
 24 Dan said. If you don't have a memory that he  
 25 told you about Dan expressing the view that you

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2 would be criminally prosecuted, I'd like to know  
3 what you do remember Mr. Hopson told you.  
4 A. I don't -- I don't remember  
5 specifically. I don't remember specifically.  
6 Q. So as you sit here today, it is  
7 possible that Dan Zwirn only told Mr. Hopson  
8 about the reports that were issued and not of  
9 these other comments that were Dan's opinion?  
10 A. No, I believe it was -- I believe  
11 there was commentary behind those reports, behind  
12 the investment memos.  
13 Q. And have you made an effort to do  
14 business with Mr. Natixis --  
15 A. Yes, yes.  
16 Q. -- with Mr. Hopson at Natixis?  
17 A. Yes.  
18 Q. And have you?  
19 A. No.  
20 Q. What kind of business did you try to  
21 do with Mr. Hopson?  
22 A. We just -- we just discussed  
23 opportunities and leverage opportunities,  
24 et cetera.  
25 Q. Did Mr. Hopson have an opportunity

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2 to employ you?  
3 A. I don't know. Never came up.  
4 Q. Has Mr. Hopson tried to help you  
5 find a job?  
6 A. I've never asked.  
7 Q. Did Mr. Hopson -- did you try to  
8 have Babcock do business with Natixis?  
9 A. It didn't get -- I've had -- Mike  
10 was over our offices and we discussed certain  
11 investment opportunities, et cetera, but nothing  
12 ever came of it.  
13 Q. Have you remained friendly with  
14 Mr. Hopson?  
15 A. Yes, yes.  
16 Q. And you like him and he likes you?  
17 A. Very good guy.  
18 Q. Has he told you that he didn't pay  
19 much mind to what Mr. Zwirn told him about you?  
20 A. We really didn't -- we really didn't  
21 get into it.  
22 Q. Well, has Mr. Hopson told you that  
23 he considers you less worthy of a person because  
24 of what Dan Zwirn told him?  
25 A. We would never get into that.

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1 Gruss - CONFIDENTIAL  
2 Q. Well, did he express the view to you  
3 that he thought less of you because of what Dan  
4 said?  
5 A. We never -- we never discussed --  
6 Q. Do you think if he felt less of you  
7 based on what Dan Zwirn said, that he would  
8 continue to see you and be with you?  
9 A. Possibly.  
10 Q. Has he said that?  
11 A. No, I said --  
12 Q. Has he said to you notwithstanding  
13 all these terrible things Dan Zwirn said, you're  
14 still my best buddy?  
15 A. No, because he's not.  
16 Q. But can you tell me in any way,  
17 shape or form that Mr. Hopson been unable to help  
18 you in business in any way because of what Dan  
19 Zwirn said to him?  
20 A. I have no idea.  
21 Q. Okay.  
22 A. I have no idea.  
23 Q. Have you actually seen this  
24 March 2007 letter?  
25 A. Yes.

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2 MR. LEVINE: And what are we up to,  
3 21.  
4 (Gruss Exhibit 21, Bates Nos.  
5 DBZCO\_PG 004268 through 275, 3/26/07 Memo  
6 to Investors from D.B. Zwirn & Co., marked  
7 for identification.)  
8 Q. Have you seen this?  
9 A. Yes.  
10 Q. When did you first see it?  
11 A. Shortly after it came out.  
12 Q. Who gave it to you?  
13 A. More than five people, less than  
14 ten.  
15 Q. What five people?  
16 A. Industry people.  
17 Q. What industry people?  
18 A. I don't recall exactly who.  
19 Q. Did you get it from any investor?  
20 A. No, no investor gave it to me.  
21 Q. Did you get it from Mr. Natixis?  
22 A. No. Hopson. But, no, I did not.  
23 Q. Who gave it to you?  
24 A. Other -- I'm trying to recall who  
25 gave it to me. I may have received a copy from ^

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 2 Ivan Zinn. I forget who.  
 3 Q. Who's Ivan Zinn?  
 4 A. He's just a person in the industry.  
 5 Q. Where does he work?  
 6 A. He works at Atalaya Capital.  
 7 Q. What's their business relationship  
 8 with D.B. Zwirn & Co. L.P.?  
 9 A. I believe they have crossover  
 10 investors. As I said, it's a very small  
 11 community.  
 12 Q. You don't need to persuade me,  
 13 Mr. Gruss. I'm trying to learn the facts.  
 14 A. Okay.  
 15 Q. So did Mr. Zinn send it to you by  
 16 hand, walk it over to you, meet you for a drink?  
 17 How did you get it?  
 18 A. I don't -- I don't remember how I  
 19 got it. I believe -- I believe e-mail.  
 20 Q. And then you would have printed it  
 21 out?  
 22 A. My counsel may have given this to  
 23 me. If I were to have received it by e-mail, I  
 24 would have printed it out.  
 25 Q. I'm asking you whether and who

1 Gruss - CONFIDENTIAL  
 2 actually physically gave this to you at or about  
 3 March 26, 2007.  
 4 A. I don't recall who else gave it to  
 5 me. I'm -- I'm --  
 6 Q. Who else -- I haven't even heard of  
 7 one person yet.  
 8 A. I said Ivan Zinn.  
 9 Q. You just testified, then, you're not  
 10 sure whether Ivan Zinn --  
 11 A. No, no.  
 12 Q. -- or your lawyer gave it to you?  
 13 A. No, Ivan Zinn gave it to me. Ivan  
 14 Zinn gave it to me.  
 15 Q. Where --  
 16 A. I was implying maybe also my lawyer.  
 17 Q. Where were you when Ivan Zinn gave  
 18 it to you?  
 19 A. I was probably home.  
 20 Q. Did Ivan Zinn give you any  
 21 information about what Mr. Zwirn said about you?  
 22 A. No, no.  
 23 Q. So Ivan Zinn's comments, knowledge  
 24 of this case are solely confined to the March '07  
 25 investor letter?

1 Gruss - CONFIDENTIAL  
 2 A. Yes.  
 3 MR. BRECHER: Objection.  
 4 Q. And you don't know as you sit here  
 5 anything other than what's in the March 2007  
 6 investor letter that Mr. Zinn learned Dan Zwirn  
 7 said or might have said to any investor?  
 8 A. I don't know that.  
 9 Q. Is there anyone else that you got  
 10 this investor letter from?  
 11 A. I may have, but I don't recall.  
 12 Q. You said at least five, but less  
 13 than -- I forget what number you used. Is Ivan  
 14 Zinn actually the only person that you can  
 15 remember gave this to you?  
 16 A. That's the only person I can recall  
 17 giving it to me, besides, like I said, my  
 18 counsel.  
 19 Q. When did you get a copy of this?  
 20 A. Like I said, shortly after it came  
 21 out.  
 22 Q. Who did you discuss this document  
 23 with when you received it other than your lawyer?  
 24 A. I discussed it with Eric Felton from  
 25 Grosvenor. I discussed it -- but the contents at

1 Gruss - CONFIDENTIAL  
 2 some point or another with some of the employees  
 3 as well of Zwirn.  
 4 Q. And I think I asked you this, but if  
 5 I didn't, did Eric Felton tell you about anything  
 6 that Dan Zwirn or anyone else said beyond what's  
 7 in this report?  
 8 A. No, no.  
 9 Q. Now, you met with lawyers at Gibson  
 10 Dunn; correct?  
 11 A. Correct.  
 12 Q. In fact, you were interviewed on  
 13 five occasions by lawyers at Gibson Dunn; isn't  
 14 that right?  
 15 A. I don't know the number.  
 16 Q. You were interviewed by them  
 17 November 14th, December 11th, December 19th,  
 18 December 12th, March 6th, and March 19th.  
 19 Does that refresh your recollection?  
 20 A. If -- I met with them several times.  
 21 Q. And on each occasion that you met  
 22 with them, you had a lawyer present; correct?  
 23 A. Correct.  
 24 Q. And that lawyer was there to  
 25 represent you; correct?

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1 Gruss - CONFIDENTIAL  
2 A. Correct.  
3 Q. And you understood that Gibson Dunn  
4 was conducting an independent investigation on  
5 behalf of the management company; correct?  
6 A. Correct.  
7 Q. And you understood, because you'd  
8 been working for the company for a long time,  
9 that actually Gibson Dunn hadn't represented  
10 Zwirn, the management company or the funds before  
11 this investigation started; correct?  
12 A. To the best of my knowledge, that's  
13 correct.  
14 Q. And do you recall being interviewed  
15 by Fried Frank in October 2007?  
16 A. I was -- I don't recall the date,  
17 but I was absolutely interviewed by Fried Frank.  
18 Q. And that's Mr. Witzel?  
19 A. More than once.  
20 Q. And that's by Mr. Witzel?  
21 A. I believe Mr. Witzel was there.  
22 Q. And at that time, were you shown a  
23 copy of this investor letter from March 2007?  
24 A. I believe so.  
25 Q. And weren't you asked by Mr. Witzel

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1 Gruss - CONFIDENTIAL  
2 at that time if there were any facts or  
3 allegations in this letter that you wanted to  
4 identify as inaccurate?  
5 A. I don't know.  
6 Q. Weren't you asked in that meeting or  
7 interview to identify for Fried Frank any events  
8 or circumstances in the letter that were  
9 inaccurate?  
10 A. I don't recall if I did.  
11 Q. Isn't it a fact that you were asked  
12 that question and you didn't identify any event  
13 or circumstance described in this report as  
14 inaccurate?  
15 A. I don't believe that's the case.  
16 Q. Do you realize, as you sit here  
17 today, that this is the Gibson Dunn report and  
18 that's not a summary of the report?  
19 A. No.  
20 Q. Do you realize that this document  
21 doesn't summarize the report, it is the report?  
22 A. No.  
23 Q. Other than this report, the calls to  
24 the investors that you've described in  
25 paragraph 34, 35 -- withdrawn.

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1 Gruss - CONFIDENTIAL  
2 Take a look at the complaint  
3 again --  
4 A. Exhibit?  
5 Q. It's Exhibit 1.  
6 A. Yep.  
7 Q. Paragraphs 34, 35, 36.  
8 A. Yes.  
9 Q. Other than the October report and  
10 the March report, are there any other statements  
11 that you believe Mr. Zwirn made that were false  
12 statements about you?  
13 A. Other than to the investors,  
14 employees and service providers?  
15 Q. Right.  
16 A. I don't know.  
17 Q. And other than --  
18 A. I don't know.  
19 Q. Other than -- you've identified  
20 actually no investor that has told you or that  
21 you have learned was told anything of the nature  
22 of what you're suing for here; isn't that right?  
23 A. No, that's not right. I had said  
24 earlier Offitt, Ned Offitt.  
25 Q. That's not an investor, is it?

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1 Gruss - CONFIDENTIAL  
2 A. I believe they represent investors.  
3 Q. So with the -- I just want to  
4 understand who all of the people are that you've  
5 heard this from. The employees that you  
6 identified --  
7 A. Yes.  
8 Q. -- Ned Offitt, Mr. Hopson. Anybody  
9 else?  
10 A. There's more employees that I didn't  
11 identify that I just thought of.  
12 Q. I'll get those in a second.  
13 A. Okay.  
14 Q. Any other people outside D.B. Zwirn  
15 & Co. L.P., besides Mr. Offitt, Mr. Hopson?  
16 A. Up to this point, no. No.  
17 Q. What other employees are there?  
18 A. Susan Cauley.  
19 Q. What did she tell you?  
20 A. She specifically had a conversation  
21 about when she was leaving the management company  
22 for whatever reason, David Lee took her  
23 downstairs to have lunch at 8 1/2 and she said, I  
24 don't want to deal with this crap any more. And  
25 he said to her, I assure you that Dan Zwirn had

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1 Gruss - CONFIDENTIAL  
2 nothing to do with it and that Perry is going to  
3 be criminally prosecuted for this.  
4 That was David Lee's conversation  
5 with her over a lunch, so said she.  
6 Q. And when did she tell you that?  
7 A. I don't recall when. I don't recall  
8 when. After she left, but I don't recall.  
9 MR. LEVINE: Let's mark this.  
10 (Gruss Exhibit 22, Bates Nos.  
11 DBZSECP-0000551859 through 912,  
12 Confidential Memorandum dated May 2003,  
13 marked for identification.)  
14 (Witness peruses the exhibit.)  
15 BY MR. LEVINE:  
16 Q. I'm showing you what's been marked  
17 Gruss 22. Can you identify it?  
18 A. It's the offering memoranda for the  
19 onshore fund, the confidential memorandum for the  
20 onshore fund.  
21 Q. And this is one of the documents  
22 that you would have had access to in your job?  
23 A. Correct.  
24 Q. This is one of the documents that  
25 set forth what the financial relationships were

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1 Gruss - CONFIDENTIAL  
2 between the management company and the fund and  
3 its investors?  
4 A. Correct.  
5 Q. So this was one of the roadmaps that  
6 you and the people working for you would need to  
7 run the financial operation side of the business;  
8 correct?  
9 A. Correct.  
10 Q. And take a look at page 3. What is  
11 a management fee?  
12 A. It's the fee that is charged as a  
13 percentage of assets under management.  
14 Q. Paid by the fund to the management  
15 company; is that correct?  
16 A. Exactly.  
17 Q. And does this memorandum --  
18 confidential memorandum of the onshore fund  
19 provide that the fund pays a management fee to  
20 the trading manager accrued monthly and payable  
21 quarterly?  
22 A. Yes.  
23 Q. Equal to one-twelfth of one and a  
24 half percent of each limited partner's month end  
25 capital account balance?

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1 Gruss - CONFIDENTIAL  
2 A. Yes.  
3 Q. So was it clear and unambiguous that  
4 the management fees were paid quarterly?  
5 A. Yes.  
6 Q. And was it clear and unambiguous  
7 that the management fees were paid after they  
8 were earned, thus, after the close of a quarter?  
9 A. Yes.  
10 Q. Did you understand that because of  
11 liquidity issues in the onshore fund, that the  
12 management company took management fees before  
13 they were due under this confidential memorandum?  
14 A. As of what date?  
15 Q. How about --  
16 A. Or in general?  
17 Q. In general.  
18 A. Yes.  
19 Q. In fact --  
20 MR. LEVINE: Mark this.  
21 (Gruss Exhibit 23, Bates Nos. DBZ  
22 0000247 through 261, E-mail dated 5/26/04  
23 from Wu to Myers with attachments, marked  
24 for identification.)  
25 Q. I'm showing you composite exhibit

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1 Gruss - CONFIDENTIAL  
2 identified as Gruss 23, which is a series of  
3 e-mails from Sylvia Wu to Greg Meyers with copies  
4 to you directing the payment of management fees  
5 for the end of the quarter?  
6 A. Yes.  
7 Q. And there's some 20-plus examples  
8 there, aren't there?  
9 A. I didn't count them, but yes.  
10 Q. Starting sometime in May of '04 and  
11 continuing up through March of '06?  
12 A. Yes.  
13 Q. And in fact, you knew, because you  
14 were copied, that management fees were paid early  
15 without authority?  
16 A. Yes.  
17 Q. And you approved that?  
18 A. Yes.  
19 Q. And that's one of the items that  
20 Shulte Roth looked at in the spring of '06?  
21 A. Yes, I believe that's true.  
22 Q. And you actually admitted to the SEC  
23 that that was a practice that you knew of and  
24 approved?  
25 A. Yes.

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1 Gruss - CONFIDENTIAL  
2 Q. And it was wrong?  
3 A. Yes.  
4 Q. And you actually admitted to Gibson  
5 Dunn in one of the interviews in November '07  
6 that you knew of the practice and that it was  
7 wrong?  
8 A. Yes.  
9 Q. And one of the problems, if not the  
10 problem, with the practice was that the fund was  
11 then not earning income on the expenses that were  
12 paid earlier than they were obligated to be paid;  
13 correct?  
14 A. I was not aware of that.  
15 Q. Well, if they're paid early, what  
16 did you understand was wrong about it if it  
17 wasn't taking funds away from the investors  
18 before they were obligated to pay them?  
19 A. You just said it was the interest.  
20 I'm saying that based on the offering memorandum,  
21 they should not have been collected early, but  
22 they were.  
23 Q. And that the investors, thus, were  
24 deprived of hundreds of thousands of dollars  
25 before they were obligated to pay them?

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1 Gruss - CONFIDENTIAL  
2 A. Yes.  
3 Q. So it's like the management company  
4 prepaid its expenses -- withdrawn.  
5 The management company caused the  
6 investors to prepay their expenses without giving  
7 them any benefit for doing it?  
8 A. No. They prepaid the expenses. You  
9 said "without giving them interest."  
10 Q. Did -- was interest paid for the  
11 prepayment?  
12 A. I don't know.  
13 Q. Not under your watch; isn't that  
14 right?  
15 A. No, I don't know. I'm told --  
16 Q. Isn't it a fact --  
17 A. I'm told now that there wasn't.  
18 Q. Did you ever inquire at the time you  
19 approved any of these payments what the interest  
20 rate was that the funds were receiving from the  
21 management company?  
22 A. No. But I did inquire whether or  
23 not we should be papering a loan for these.  
24 Q. And who did you inquire of that?  
25 A. Sylvia Wu.

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1 Gruss - CONFIDENTIAL  
2 Q. Who worked for you?  
3 A. Yes. She was the controller.  
4 Q. Did you ask a lawyer whether it was  
5 required to document the loan?  
6 A. I don't recall.  
7 Q. Did you ask anybody senior to you  
8 whether if this practice was going to proceed,  
9 interest should be paid to the fund?  
10 A. No, I don't think I did.  
11 Q. Would you agree with me that if the  
12 fund was paying hundreds of thousands of dollars  
13 for expenses to the management company before the  
14 fund was obligated to pay that money, that it  
15 should have been paid interest on the use of its  
16 money?  
17 A. Yes, it should have been paid  
18 interest.  
19 Q. And you took no steps while you were  
20 CFO to be sure that that happened; isn't that  
21 right?  
22 A. No, that's not right. I asked the  
23 question of the controller whose responsibility  
24 it is to collect the management fees. I asked  
25 her whether or not she needed to paper a loan,

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1 Gruss - CONFIDENTIAL  
2 and she said no.  
3 Q. Paper a loan is different than  
4 paying interest?  
5 A. If you're going to paper a loan, it  
6 means you have to charge interest. It's not an  
7 interest fee loan.  
8 Q. You never asked that, did you?  
9 A. Whether or not we had to paper a  
10 loan?  
11 Q. You never asked whether the funds  
12 were entitled to receive interest for the money  
13 that it was prepaying; isn't that right?  
14 A. I don't recall whether or not I  
15 asked that.  
16 Q. In fact, in all of the documents --  
17 withdrawn.  
18 In any of the documents that we have  
19 produced to your lawyer, have you found or seen  
20 an e-mail from you in which you expressed the  
21 view that the fund should receive interest on the  
22 use of its money?  
23 A. I didn't find any e-mails like that.  
24 Q. In fact, you never asked that  
25 question; isn't that right?

1 Gruss - CONFIDENTIAL  
 2 A. No, that's not right.  
 3 Q. Are you referring --  
 4 MR. LEVINE: Let's mark this 24.  
 5 (Gruss Exhibit 24, Bates Nos. DBZ  
 6 0009065 through 67, E-mail Chain, marked  
 7 for identification.)  
 8 (Witness peruses the exhibit.)  
 9 BY MR. LEVINE:  
 10 Q. Do you see this e-mail --  
 11 A. Yes.  
 12 Q. -- in or about June of 2004, which  
 13 we've marked as Exhibit 24?  
 14 A. Yes.  
 15 Q. And this is an e-mail exchange in  
 16 response to a standard request for authority to  
 17 wire the management fees early?  
 18 A. Yes. I believe the first time it  
 19 was ever done.  
 20 Q. And in fact, this was used as a form  
 21 of liquidity for the onshore fund; isn't that  
 22 right?  
 23 A. No, that's not right. It was used  
 24 as a form of liquidity for the management  
 25 company.

1 Gruss - CONFIDENTIAL  
 2 Q. I'm sorry. Yes?  
 3 A. Yes, for the management company.  
 4 Q. And your response was, We need to  
 5 paper a loan to the management company, don't we?  
 6 A. Yes.  
 7 Q. And she said, No, just prepay  
 8 management fee ahead of schedule?  
 9 A. Yes.  
 10 Q. You don't say in this, do we need to  
 11 pay the -- do we need to pay interest to the  
 12 limited -- to the onshore fund, do you?  
 13 A. No, not in this e-mail.  
 14 Q. And in fact, you approved the  
 15 transaction; isn't that right?  
 16 A. Correct.  
 17 Q. Isn't that okay, body of the memo  
 18 from you to Sylvia Wu?  
 19 A. Correct.  
 20 Q. And there isn't anything in this  
 21 document -- this exchange in which you asked or  
 22 directed Sylvia Wu to determine whether interest  
 23 was due the funds for the early payment of the  
 24 fees?  
 25 A. Say again.

1 Gruss - CONFIDENTIAL  
 2 Q. There isn't anything in this e-mail  
 3 or any of the other e-mails seeking your  
 4 approval, any reference by you to making sure  
 5 that the fund was paid interest on the use of its  
 6 money?  
 7 A. I have not seen that in an e-mail.  
 8 Q. And would you agree with me that it  
 9 is one thing to keep record of the early payment  
 10 of fees by creating a loan for it and another  
 11 thing all together to actually cause interest to  
 12 be paid?  
 13 A. No.  
 14 Q. Well, you could have still, without  
 15 any record of a fact of early payment, caused at  
 16 the end of the year a payment to be made for the  
 17 early payment of fees; isn't that right?  
 18 A. Absolutely.  
 19 Q. You didn't need a loan to cause that  
 20 interest payment to be made; isn't that right?  
 21 A. Correct.  
 22 Q. And you didn't tell Sylvia Wu that  
 23 she needed to be sure that she caused interest to  
 24 be paid whether she papered it as a loan or not,  
 25 did she -- did you?

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 2 A. I don't know if I did or I didn't.  
 3 Q. The fact it is didn't even occur to  
 4 you to do that, did it?  
 5 A. No, that's not the fact.  
 6 Q. So you actually knew that you were  
 7 using their money early, depriving them of  
 8 interest and not making sure that they got paid  
 9 for the use of their money?  
 10 A. No, I said I don't recall whether or  
 11 not I asked her to do so.  
 12 Q. As you sit here today, you can't  
 13 testify to any event or circumstance that you  
 14 recall with Sylvia Wu in which you directed her  
 15 to cause interest to be paid to the fund for the  
 16 early withdrawal of the management fees?  
 17 A. I don't recall whether I did or  
 18 whether I didn't.  
 19 Q. And in five interviews with Gibson  
 20 Dunn --  
 21 A. Yes.  
 22 Q. -- and three, maybe four depositions  
 23 with the SEC, you didn't tell any of them that  
 24 either, did you?  
 25 A. I didn't tell them whether I did or

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1 Gruss - CONFIDENTIAL  
2 didn't. I don't recall, that's correct.  
3 Q. The fact of the matter is, whether  
4 you said something to her or not, under your  
5 watch interest was never paid; isn't that right?  
6 A. I was not aware of that until Gibson  
7 and Dunn or Deloitte & Touche came up with that.  
8 Q. Came up with that or learned that?  
9 A. Learned that.  
10 Q. Did you ever have a conversation  
11 with Dan Zwirn in which you understood that it  
12 was the management company's -- withdrawn?  
13 MR. LEVINE: Let's take a break for  
14 five minutes.  
15 (Recess from the record.)  
16 MR. LEVINE: We are up to 25.  
17 (Gruss Exhibit 25, Bates Nos. DBZ  
18 0009009 through 9013, E-mail Chain, marked  
19 for identification.)  
20 BY MR. LEVINE:  
21 Q. I'm showing you what's been marked  
22 Gruss 25.  
23 A. Okay.  
24 (Witness peruses the exhibit.)  
25 Q. Is this a series of e-mails between

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1 Gruss - CONFIDENTIAL  
2 you and Li Anne Law --  
3 A. Yes.  
4 Q. -- from March of '06?  
5 A. Yes.  
6 Q. Please go to the last two pages.  
7 A. Okay.  
8 Q. Did the management company issue  
9 reports to the investors on the respective rates  
10 of return?  
11 A. Yes.  
12 Q. How regularly?  
13 A. I don't know if it was the  
14 management company on behalf of the funds or it  
15 was actually the funds; but the funds' returns  
16 were produced in e-mail every month to the  
17 investors.  
18 Q. And the communication sent on behalf  
19 of the fund, it nonetheless was prepared by the  
20 management company?  
21 A. Yes.  
22 Q. And it was prepared by employees who  
23 worked and reported directly or indirectly to  
24 you?  
25 A. Yes.

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1 Gruss - CONFIDENTIAL  
2 Q. The calculation -- withdrawn.  
3 Am I correct that the calculation of  
4 the rate of return was done by Li Anne Law or by  
5 Sylvia Wu?  
6 A. Or -- or others that they may have  
7 delegated it to, but yes.  
8 Q. Do you recall if it was a monthly  
9 report or a less frequent report?  
10 A. It was monthly.  
11 Q. And did investors in the onshore  
12 fund get a report of the monthly return for  
13 investors in the offshore fund?  
14 A. No, I don't believe so.  
15 Q. And did investors of any of the  
16 managed accounts get the report of the return for  
17 the investors in the onshore or the offshore  
18 fund?  
19 A. No, I don't believe so.  
20 Q. So the only people or entity that  
21 understood how the returns compared as between  
22 funds was the management company?  
23 A. No.  
24 MR. BRECHER: Objection.  
25 A. No, that's incorrect.

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1 Gruss - CONFIDENTIAL  
2 Q. Who knew?  
3 A. If you were an investor in both the  
4 onshore and the offshore, you would know  
5 individually. So you could be a fund-to-funds  
6 and have an offshore vehicle and an onshore  
7 vehicle, you were invested in both, and if you  
8 were the CIO of that fund, you would know the  
9 difference.  
10 Q. And am I correct that because of tax  
11 laws and other rules relating to -- what's it  
12 called -- ECI --  
13 A. (Witness nods head in the  
14 affirmative.)  
15 Q. E capital, C capital, I  
16 -- that the onshore fund and the  
17 offshore fund didn't always invest in the same  
18 assets or in the same amounts?  
19 A. That's accurate.  
20 Q. Am I also correct that by virtue of  
21 those kinds of tax laws and related laws that  
22 apply to the treatment of income and expenses,  
23 that there was -- it would have been simply  
24 coincidence if the onshore fund and the offshore  
25 fund actually earned the equivalent amount for

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2 any particular time period?  
3 MR. BRECHER: Objection.  
4 A. I think because of the differences  
5 in the amount of capital available, the ECI  
6 issues, that it would be -- coincidence is not  
7 the right word, but it would be very seldom that  
8 they would be exactly the same.  
9 Q. And there wasn't any business reason  
10 to make them identical; isn't that right?  
11 A. No business reason or -- well --  
12 Q. There was no business reason to make  
13 them equivalent, was there?  
14 A. Yes. Dan would constantly tell  
15 investors that the two funds would have similar  
16 returns.  
17 Q. Did Dan tell -- did you ever hear  
18 those conversations?  
19 A. Yes.  
20 Q. Did Dan tell the investors that  
21 the --  
22 A. He frequently --  
23 MR. BRECHER: Wait.  
24 THE WITNESS: Sorry.  
25 Q. Did Dan tell the investors why --

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1 Gruss - CONFIDENTIAL  
2 withdrawn.  
3 You said Dan would constantly tell  
4 investors that the two funds would have similar  
5 returns; is that your testimony?  
6 A. Yes.  
7 Q. Did you understand by his statement  
8 to that effect that the management company had an  
9 obligation to make them similar?  
10 A. Yes. He used -- he used to say  
11 that -- and I'm paraphrasing -- something to the  
12 effect he has a fiduciary responsibility to make  
13 sure, on a risk-adjusted basis -- the returns of  
14 both funds would be similar on a risk-adjusted  
15 basis. He used the wrong term.  
16 Q. Did you understand that to mean that  
17 the investors should be told that their returns  
18 were different than they actually were so that it  
19 looked like Dan lived up to that obligation?  
20 A. Repeat that, please.  
21 Q. Did you understand that to mean, as  
22 an instruction to you, that, therefore, the  
23 investors should be told that the returns were  
24 different than they actually were --  
25 A. No.

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1 Gruss - CONFIDENTIAL  
2 Q. -- so that you didn't make a liar  
3 out of Dan?  
4 A. No, no.  
5 Q. Okay. So it's a fact, is it not,  
6 that to the extent that Dan felt that there was a  
7 fiduciary obligation not to be -- withdrawn.  
8 Isn't it a fact that what Dan was  
9 saying to the investors is he had a fiduciary  
10 duty not to treat one group of investors better  
11 to the disadvantage of the other group of  
12 investors?  
13 A. That's -- that's probably accurate.  
14 Q. Dan understood that he had a  
15 fiduciary duty to treat all of the investors in  
16 the same way; correct?  
17 MR. BRECHER: Objection.  
18 A. That should have been his thought  
19 process.  
20 Q. And consistent with that fiduciary  
21 duty, the management company tried to maximize  
22 the return of each fund to the extent that it  
23 could?  
24 A. Yes. Dan spent a vast majority of  
25 time trying to make sure that delta between the

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1 Gruss - CONFIDENTIAL  
2 onshore fund and the offshore fund was as small  
3 as possible. And we used to have arguments to  
4 that effect all the time.  
5 Q. Did Dan ever tell you --  
6 A. Not all the time. That's an  
7 exaggeration.  
8 Q. Did Dan ever tell you to change  
9 information relating to one of the fund's  
10 investments in order to falsely portray their  
11 rate of return of that fund?  
12 A. Said slightly differently, Dan would  
13 absolutely tell me to overweight certain  
14 investments to the offshore fund.  
15 Q. By overweight the investments, what  
16 did you mean that to be?  
17 A. If there was -- for instance, there  
18 was a 50/50 split between the two funds and there  
19 was one investment that should have been split  
20 50/50, he would absolutely tell me to overstuff  
21 the offshore fund.  
22 Q. What are you overstuffing with?  
23 A. An investment, an asset.  
24 Q. So he would tell you to allocate the  
25 investment more to the offshore fund than to the

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1 Gruss - CONFIDENTIAL  
2 onshore fund?  
3 A. Exactly.  
4 Q. And would the actual investment  
5 reflect what the adjustment was?  
6 A. I'm sorry, say again.  
7 Q. Did the actual adjustment follow the  
8 actual dollars?  
9 A. The -- yes. If it should have been  
10 50/50, and there was \$100 of P&L, he would say  
11 put in 80 to the offshore fund, 20. So the P&L  
12 would be associated with the 80 to 20. I don't  
13 know if --  
14 Q. Is there a document that reflects  
15 that?  
16 A. That he would --  
17 Q. Are you saying that he told to you  
18 falsely allocate expenses as between the onshore  
19 fund and the offshore fund?  
20 A. No, not -- he didn't -- I didn't say  
21 expenses. I said assets. And falsely, I didn't  
22 say falsely.  
23 I said he would have us overallocate  
24 certain investments to the offshore fund.  
25 Q. And when you did that, did the

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1 Gruss - CONFIDENTIAL  
2 dollars follow the allocation?  
3 A. Yes, yes.  
4 Q. Did he ever tell you to allocate  
5 expenses different between the onshore fund and  
6 the offshore fund?  
7 A. I don't -- I don't recall.  
8 Q. Isn't it a fact that that's not  
9 something that you would have asked him for  
10 permission to do or gotten a direction from him  
11 to do?  
12 A. I don't know. I don't know.  
13 Q. So Exhibit 25, page 4 --  
14 A. Yes.  
15 Q. -- were you responding to the  
16 difference between the rate of return in the  
17 onshore fund and the offshore fund when you wrote  
18 "Why is the spread growing, BT, L.P., Ltd?"  
19 A. That's what it looks like.  
20 Q. And did she respond to you that it  
21 was, quote, "The effect of increase in New Comm  
22 mark, although, has larger absolute impact on  
23 Ltd; has smaller impact on Ltd's return?"  
24 A. Yes.  
25 Q. And then is Li Anne Law telling you

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2 "FYI, the returns include the effects of Ymm  
3 promote. Manually put in for Summerville 600K  
4 L.P., 400K Ltd.?  
5 A. Yes.  
6 Q. What does a IMM promote relate to?  
7 A. A \$1 million promote.  
8 Q. What's a promote?  
9 A. In a general sense, it is when you  
10 have a JV -- a joint venture partner -- you're  
11 funding the joint venture. The joint venture  
12 partner is the one that's actually making the  
13 investment. For that, he gets a, quote-unquote,  
14 promote.  
15 So whether it he gets 10 percent  
16 allocation over a 20 percent return back to us,  
17 he gets compensated for that.  
18 I have no idea what the promote  
19 structure was here, et cetera.  
20 Q. But promotes are in the nature of  
21 expenses or reductions of the profit or return  
22 for a fund for the particular time?  
23 A. Unless you're receiving the promote,  
24 yes.  
25 Q. And did you review with Dan on a

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2 regular basis the monthly returns of the  
3 different funds?  
4 A. Yes.  
5 Q. And would you go in and talk to him  
6 and show him information like what is on the last  
7 page of Exhibit 25, which was the list of the  
8 particular funds and the rate of returns for the  
9 time period?  
10 A. Yes. He would probably have  
11 received this. This is March 15th. I'm to  
12 take this to say that the returns have not been  
13 released yet, which is kind of long; but -- he  
14 would have received this similar return analysis  
15 several times up until this date.  
16 Q. And --  
17 A. Almost daily.  
18 Q. And you responded to her, "Ahhh --  
19 A-H-H-H -- "please back it out. I'm going  
20 through all right now with Dr. Death."  
21 A. Right.  
22 Q. First of all, is Dr. Death Dan?  
23 A. Oh. Yeah.  
24 Q. And by "please back it out," are you  
25 instructing her to take the promote out of the

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2 calculation for both returns?  
3 A. I don't know what -- it appears that  
4 way.  
5 Q. And does that have the effect of  
6 increasing the returns in the respective funds?  
7 A. Hold on.  
8 (Witness peruses the exhibit.)  
9 A. It depends on -- again, it depends  
10 on which way the promote was going.  
11 Q. Well --  
12 A. I don't know.  
13 Q. Well, if you look at page 5 --  
14 A. Right.  
15 Q. -- the return for L.P. is  
16 1.28 percent.  
17 A. Right.  
18 Q. And then it goes to 1.32 percent and  
19 then after she backs it out, according to your  
20 instruction, it goes to 1.37 percent --  
21 A. Right.  
22 Q. -- correct?  
23 Right?  
24 A. Yes.  
25 Q. And she told you that once she did

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2 that, the next comment was "but the spread  
3 widens"?  
4 A. Correct.  
5 Q. So is it fair to say that you are  
6 talking with her and engaging with her in a  
7 discussion to literally finesse the returns that  
8 are going to be reported?  
9 A. This is -- this process goes on just  
10 about everyday several times a day from the date  
11 that the P&L is closed -- I'm sorry -- the date  
12 the month is closed and the date that the P&L is  
13 actually released.  
14 Q. And the process of finessing the  
15 returns is something that went on monthly; isn't  
16 that right?  
17 A. Finesse --  
18 MR. BRECHER: Objection.  
19 A. Finesse -- not finesse. Updating,  
20 allocating, et cetera, yes.  
21 Q. And there's allocating that can be  
22 done properly and there's allocating that might  
23 have been done improperly; isn't that right?  
24 MR. BRECHER: Objection.  
25 A. I don't -- I don't disagree that

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2 there could have been -- someone could have made  
3 an error.  
4 Q. Didn't the report in March of 2007  
5 refer to such a finessing that was done  
6 improperly, on page 2, referring to February --  
7 March of 2006 and an attribution of expenses of  
8 some three and a half million dollars?  
9 A. Where are you? Hold on.  
10 (Witness peruses the exhibit.)  
11 MR. SIFFERT: It's Exhibit 1 on the  
12 record.  
13 MR. O'BRIEN: Exhibit 21.  
14 A. Okay.  
15 Q. Isn't that what the report found?  
16 A. Yes, that's what it's saying.  
17 Q. Didn't you have knowledge and  
18 approve of the particular instance finessing the  
19 returns as between the onshore fund and offshore  
20 fund in February and March of 2006 as it's  
21 reflected in the memo?  
22 A. I don't know if I did.  
23 MR. LEVINE: We'll adjourn for  
24 today. Next time we will return to this  
25 subject.

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1 Gruss - CONFIDENTIAL  
2 MR. SIFFERT: The record should  
3 reflect that we're supposed to have two  
4 seven-hour deposition dates. So we'll have  
5 to take this up again.  
6 (The examination adjourned. The  
7 time is 4:22 p.m.)  
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1  
 2 STATE OF NEW YORK )  
 3 ss:  
 4 COUNTY OF WESTCHESTER )  
 5  
 6  
 7 I, PERRY GRUSS, the witness herein,  
 8 having read the foregoing testimony of the pages  
 9 of this deposition, do hereby certify it to be a  
 10 true and correct transcript, subject to the  
 11 correction, if any, shown on the attached page.  
 12  
 13 oOo  
 14  
 15  
 16  
 17 \_\_\_\_\_  
 18 PERRY GRUSS  
 19  
 20  
 21 Subscribed and sworn before me  
 22 this \_\_\_\_ day of \_\_\_\_\_, 2010.  
 23 \_\_\_\_\_  
 24  
 25

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 2 June 28, 2010  
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 5  
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 7 MR. LEVINE 4  
 8  
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 14 from Zwirn  
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 17 L.P. and D.B. Zwirn Partners,  
 18 LLC  
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 20 Defendants' Counterclaims  
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 7 and Nonsolicit Agreement  
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 17 through 275, 3/26/07 Memo to  
 18 Investors from D.B. Zwirn &  
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 20 Exhibit 22 Bates Nos. DBZSECPR-0000551859 254  
 21 through 912, Confidential  
 22 Memorandum dated May 2003  
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 25 Wu to Myers with attachments

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 5 Exhibit 24 Bates Nos. DBZ 0009065 through 262  
 6 67, E-mail Chain  
 7 Exhibit 25 Bates Nos. DBZ 0009009 through 266  
 8 9013, E-mail Chain  
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(NOTARY PUBLIC) MY COMMISSION EXPIRES:  
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 1  
 2 STATE OF NEW YORK )  
 3 ss:  
 4 COUNTY OF NEW YORK )  
 5  
 6 I, Eileen Mulvenna, Notary Public  
 7 within and for the State of New York, do hereby  
 8 certify:  
 9  
 10 That I reported the proceedings in  
 11 the within entitled matter, and that the within  
 12 transcript is a true record of said proceedings.  
 13  
 14 I further certify that I am not  
 15 related to any of the parties to the action by  
 16 blood or marriage, and that I am in no way  
 17 interested in the outcome of this matter.  
 18  
 19 IN WITNESS WHEREOF, I have hereunto  
 20 set my hand this 30th day of June, 2010.  
 21  
 22  
 23 Eileen Mulvenna, CSR/RMR  
 24  
 25

1  
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 9 NAME OF CASE: GRUSS V. ZWIRN  
 10 DATE OF DEPOSITION: JUNE 28, 21010  
 11 NAME OF DEONENT: PERRY GRUSS  
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 13  
 14  
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 20  
 21 PERRY GRUSS  
 22 Subscribed and sworn to before me  
 23 this \_\_\_\_ day of \_\_\_\_\_, 2010.  
 24  
 25

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