JAMS ARBITRATION

IN THE MATTER OF	§	
	§	
FORTRESS VRF I LLC and FORTRESS VALUE RECOVERY FUND I LLC, Claimants	§	
	§	
v.	§	
	§	
JEEPERS, INC., Respondent	§	Case No. _____
	§	
and	§	
	§	
FINANCIAL TRUST COMPANY, INC. and JEEPERS, INC., Counter-Claimants and Third-Party Claimants	§	
	§	
v.	§	
	§	Arbitrator: _____
D.B. ZWIRN SPECIAL OPPORTUNITIES FUND, L.P. k/n/a FORTRESS VALUE RECOVERY FUND I LLC, Counter-Respondent	§	
	§	
and	§	
	§	
D.B. ZWIRN PARTNERS, LLC, D.B. ZWIRN & CO., L.P., DBZ GP, LLC, ZWIRN HOLDINGS, LLC, DANIEL ZWIRN, and Third-Party Respondents	§	

JEEPERS, INC.'S RESPONSE AND FINANCIAL TRUST COMPANY, INC.'S AND JEEPER INC.'S STATEMENT OF COUNTERCLAIM AND THIRD-PARTY CLAIM

RESPONSE

1. Respondent, Jeepers, Inc. generally denies all of the allegations in the Claim submitted by Fortress VRF I LLC and Fortress Value Recovery Fund I LLC.

COUNTER- AND THIRD-PARTY CLAIM

2. Counter- and Third-Party Claimants Jeepers, Inc. and Financial Trust Company, Inc. submit the following statement of claims against D.B. Zwirn Special Opportunities Fund, L.P. k/n/a Fortress Value Recovery Fund I LLC, D.B. Zwirn Partners, LLC, D.B. Zwirn & Co., L.P., DBZ GP, LLC, Zwirn Holdings, LLC, and Daniel Zwirn.

Introduction

3. Over a three-year period beginning in 2002, Jeffrey Epstein ("Epstein"), through a firm he owned and managed named Financial Trust Company, Inc. ("FTC"), made an $80 million investment in D.B. Zwirn Special Opportunities Fund (k/n/a Fortress Value Recovery Fund I LLC, and referred to in this Statement as the "Fund"). FTC subsequently transferred the investment to its wholly-owned subsidiary, Jeepers, Inc. ("Jeepers"). Counter-Claimants will refer to this investment throughout as belonging to FTC even though ownership was transferred to Jeepers during the events in question.

4. In October 2006, Daniel Zwirn, on behalf of the Fund, contacted Epstein to report on certain irregularities at the Fund. Initially, Zwirn reported that the Fund's Chief Financial Officer had been fired over "non-material" accounting issues. Subsequently, Zwirn reported that the Fund was launching an internal investigation. Zwirn insisted (it is believed falsely) that he had no involvement in any improprieties.

5. In response to these initial revelations, Epstein repeatedly demanded the complete withdrawal of FTC's capital account in the Fund. FTC's investment was worth approximately $140 Million at the relevant time. FTC had signed an agreement with the Fund that permitted FTC to withdraw its capital account on March 31, 2007 by giving 120-days notice—*i.e.*, by

December 1, 2006. Epstein made these initial demands orally to Zwirn, who controlled the Fund.

6. FTC was a very large investor in the Fund and one of the Fund's first investors. Zwirn apparently believed that Epstein's withdrawal would prompt other investors to follow suit. Zwirn could ill-afford to have other investors follow FTC's lead, particularly at a time when Zwirn was determining how to deal with the eventual public disclosure of the Fund's financial and accounting irregularities. Over the next few months, Zwirn, the Fund and its management employed a combination of misrepresentations and contrived legal arguments to thwart FTC's withdrawal.

7. To help convince Epstein to change his mind, Zwirn sought the help of his partner and former employer, Glenn Dubin, whose firm launched the Fund with Zwirn and owned substantial interests in the Fund's general partner and in D.B. Zwirn & Co., L.P., the investment manager of the Fund, and the other funds and managed accounts that comprised Zwirn's hedge fund business. Dubin had a long-standing personal and business relationship with Epstein. Dubin and his firm, originally known as Highbridge Capital Management, LLC, served as investment advisors to FTC, which invested in the Fund as well as other Highbridge-sponsored investment funds on the advice and recommendation of Dubin.

8. On November 13, 2006, Zwirn and Dubin held a telephone conference with Epstein. During that call, Epstein again demanded the complete withdrawal of FTC's capital account. Zwirn urged Epstein not to completely withdraw from the Fund, as that would cause other investors to follow suit and precipitate a "run on the bank." Zwirn told Epstein that if FTC would withdraw a lesser amount, the Fund would honor it. Epstein, then, agreed that he would reduce his demand to withdraw FTC's entire capital account to a demand to withdraw the lesser

amount of $80 million, which was the amount FTC originally invested. Zwirn agreed to honor this demand. Based on Zwirn's clear and unambiguous agreement that the Fund would honor the $80 Million withdrawal demand, FTC submitted a written demand to withdraw $80 million on November 13, 2006.

9. However, Zwirn and the Fund reneged on the agreement. In fact, it appears that Zwirn and the Fund never had any intention of honoring the agreement and were lying to FTC in order to induce FTC to give a notice that the Fund could later reject on technical grounds. Moreover, Zwirn and the Fund delayed a formal response to FTC's withdrawal demands for months, so that FTC would be unable to correct any later asserted technical deficiencies until after the expiration of the 120-day notice period for a March 31, 2007 withdrawal expired. Over the next few months, Epstein sought Dubin's assistance in effectuating the $80 Million withdrawal without success. In February 2007, Epstein once again demanded FTC's complete withdrawal from the Fund; this time by submitting a written notice for a complete withdrawal.

10. Zwirn delayed a formal response to Epstein's withdrawal demands for another month and a half. On March 26, 2007, the Fund released a carefully worded investor report regarding the results of an internal "investigation" at the Fund. The report described numerous management overcharges and financial, accounting and documentation improprieties with respect to the Fund and other funds and accounts managed by Zwirn's firm.

11. Zwirn then turned his sights on Epstein. On March 27, 2007, the Fund finally responded in writing to FTC's withdrawal demands. The Fund argued that FTC's $80 Million demand on November 13, 2006 was deficient because, although given timely (that is, within 120 days prior to March 31, 2007), it was for a partial withdrawal. The Fund claimed that the agreement that permitted FTC's withdrawal on March 31, 2007 only applied to complete

withdrawals, as opposed to partial withdrawals. Because FTC's November 13, 2006 demand for $80 million was a demand for a partial withdrawal, the Fund claimed that it was ineffective. In making this claim, the Fund completely ignored Zwirn's express agreement to honor FTC's $80 million withdrawal demand. With regard to FTC's complete withdrawal demand made in February 2007, the Fund claimed it was also deficient because it was given too late, as it was not given within 120 days prior to March 31, 2007. Here too, the Fund completely disregarded the fact that Epstein had timely made repeated demands for FTC's complete withdrawal, but, at Zwirn's request, FTC was induced to reduce its timely written demand to one for $80 million based, on among other things, Zwirn's agreement to honor the reduced demand. In addition, the Fund took the position that at that point, FTC could not withdraw any portion of its capital account until 2008 at the earliest. In response and without prejudice to its earlier demands, FTC subsequently made yet another demand to withdraw on the dates specified in the Fund's March 27, 2007 response, even though the dates fell in 2008 and 2009.

12. By late 2007, the Fund was unable to produce audited financial statements for the year ending December 31, 2006. Apparently, in response to this failure, numerous investors made withdrawal requests. As a result, in early 2008, the Fund suspended all withdrawals and announced a wind-down. FTC was never permitted to withdraw its capital account. The Fund is currently valued at a mere fraction of its 2007 valuation.

13. In addition to misleading FTC regarding FTC's withdrawal from the Fund, Zwirn misled FTC about the nature and scope of the problems at the Fund and Zwirn's involvement in the later-revealed improprieties. Had Zwirn and the Fund provided timely and truthful disclosures to Epstein in 2006 about the problems with the Fund and Zwirn's involvement in those problems, Epstein never would have reduced his withdrawal demand in the first place, and

FTC would have received its entire capital account of approximately $140 Million back in 2007.

Arbitration Provision

14. The parties have agreed repeatedly to arbitrate any dispute among them. The arbitration agreement has remained substantially identical in every agreement. During the events in question, the Second Amended and Restated Agreement of Limited Partnership for the Fund was in effect and provided, "[t]he Partners agree that in the event of any dispute arising between the parties, such dispute shall be settled by arbitration to be conducted in the county and state of the principal office of the General Partner at the time of such dispute in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS") applying the laws of the State of Delaware." The principal office of the General Partner is located in New York, New York.

The Parties

Counter- and Third-Party Claimants

15. Counter- and Third-Party Claimant FTC is a financial consulting firm and, through the work of Jeffrey Epstein, also invests its own funds.

16. Counter- and Third-Party Claimant Jeepers, Inc. is a wholly-owned subsidiary of FTC. On January 1, 2007, FTC assigned its entire interest in the Fund to Jeepers, Inc. with the consent of the Fund. The assignment was made retroactively effective January 1, 2006.

Counterclaim and Third-Party Respondents

17. Counterclaim Respondent D.B. Zwirn Special Opportunities Fund, L.P. k/n/a Fortress Value Recovery Fund I LLC was a limited partnership formed under the laws of the State of Delaware. In July 2009, management of the Fund was turned over to Fortress Investment Group, a publicly-traded investment management firm, and the Fund was converted from a limited partnership to a limited liability company and renamed "Fortress Value Recovery

Fund I LLC."

18. Third-Party Respondent D.B. Zwirn Partners, LLC, was the general partner of the Fund.

19. Third-Party Respondent D.B. Zwirn & Co., L.P. was the investment manager for the Fund.

20. Third-Party Respondent DBZ GP, LLC was the general partner of D.B. Zwirn & Co., L.P. – the Fund's investment manager.

21. Third-Party Respondent Zwirn Holdings was the managing member of the Fund's general partner (D.B. Zwirn Partners, LLC) and of DBZ GP, LLC, which in turn acted as the general partner of the Fund's investment manager (D.B. Zwirn & Co., L.P.).

22. Third-Party Respondent Daniel Zwirn controlled the Fund by virtue of his ownership of Zwirn Holdings, LLC, which gave him control over the Fund's general partner and over the general partner of the Fund's investment manager, D.B. Zwirn & Co., L.P. Zwirn had the power to bind the Fund and his statements are attributable to the Fund. For simplicity, Claimants will hereafter use the name "Zwirn" to refer to Daniel Zwirn and the various entities owned and controlled by Zwirn.

Relevant Non-Party

23. As outlined below, non-party Glenn Dubin, through his own firm (originally called Highbridge Capital Management, LLC and later renamed Dubin & Swieca Asset Management, LLC), owned substantial direct and indirect interests in the Fund's general partner, the Fund's investment manager, and the general partner of the Fund's investment manager. As well, Highbridge Capital entrusted approximately $500 million to Zwirn to invest side-by-side

with the Fund in a managed account.

Statement of the Claim

24. In 2002, Epstein was introduced to Daniel Zwirn by Glenn Dubin. Dubin and his partner Henry Swieca started Highbridge Capital, a very successful investment management firm. Epstein had a long-standing personal and business relationship with Dubin and Higbridge, who served as investment advisors to Epstein. Epstein and FTC invested substantially in, among other things, Highbridge-sponsored investment funds, including the Fund, on the advice and recommendation of Dubin.

25. After working for Highbridge, in 2002, Zwirn started a hedge fund with Highbridge's sponsorship and assistance. Initially, the Fund was called the Highbridge/Zwirn Special Opportunities Fund, L.P. Highbridge not only invested with the Fund but also took substantial direct and indirect ownership interests in the Fund's general partner and its investment manager, and Dubin and Highbridge actively participated in the operations of the Fund. The Fund was formed in April 2002 and commenced operations in May 2002.

26. Zwirn relied on Dubin, as a principal of the Fund, to introduce him to Epstein (and other substantial investors) when Zwirn and Highbridge first launched the Fund. After making these introductions, Dubin prevailed upon Epstein to invest substantially in the Fund, touting Zwirn's reliability, and business and investment acumen. Epstein invested on the basis of his trusted advisor's recommendations. Epstein believed that Zwirn and the Fund would be closely monitored by Highbridge and Dubin, and that, as sponsors and principals of the Fund, Epstein could look to them to resolve any issues that may arise in connection with FTC's investment.

27. During 2002 and 2003, FTC invested $60 million in the Fund. On April 4, 2002, FTC invested $10 million in the Fund. On September 1, 2002, FTC invested another $10 million. On December 1, 2002, FTC invested an additional $30 million. FTC made another investment of $10 million on June 1, 2003.

28. From 2002 to 2004, the Fund reported strong performance. In late 2004, the Fund announced that investments made on January 1, 2005 forward would be subject to a three-year lock-up.

29. In late December 2004, FTC sought to invest an additional $20 million in the Fund. Since the Fund accepted investments on the first day of the month, the investment would be made effective January 1, 2005. FTC, however, wanted a single, unified withdrawal date to apply to its entire investment.

30. FTC and the Fund therefore agreed to a letter agreement on January 5, 2005 ("2005 Letter Agreement"). The 2005 Letter Agreement provided:

> In accordance with Section 9.1 of the Amended and Restated Limited Partnership Agreement, dated as of May 1, 2003 (as amended to the date hereof, the "Agreement") of the Fund, the General Partner hereby agrees that Financial Trust Company, Inc. (the "Company") shall be permitted to withdraw its Capital Account as of the last Business Day of the calendar quarter ending at least two years after the Company initially purchases this Interest . . . upon not less than 120 days' prior written Notice to the General Partner.
>
> Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Agreement.

31. The Limited Partnership Agreement provided that each limited partner had a single "Capital Account." Specifically, the Agreement defined a "Capital Account" by providing that "[a] 'Capital Account' shall be maintained for each Partner," and that such account shall constitute the Partner's "Initial Capital Contribution" plus adjustments for performance of the Fund and increased by any "Additional Capital Contribution." Thus, the 2005 Letter Agreement

clearly applied to all of FTC's investments in the Fund, which were held in FTC's single "Capital Account," as opposed to merely the January 1, 2005 investment.

32. Under the 2005 Letter Agreement, FTC could withdraw its Capital Account on March 31, 2007 (the quarter ending after the two-year anniversary of the January 1, 2005 investment). FTC would have to give 120-days notice—*i.e.,* notice by December 1, 2006.

33. In October 2006, Zwirn contacted Epstein. The two had not spoken about anything of substance since 2002. Zwirn informed Epstein that the Fund's Chief Financial Officer, Perry Gruss, had been terminated over an accounting transaction that was "nonmaterial." Zwirn specifically mentioned that more than $3 million in investor money had been used to pay for a private Gulfstream 400 jet for Zwirn. Zwirn explained that the money was repaid to investors quickly and that the CFO had approved the transaction without Zwirn's knowledge. Nevertheless, Zwirn acknowledged this transaction should not have occurred and that the CFO had been terminated as a result. Sensing that something was not right, Epstein responded by demanding the complete withdrawal of FTC's capital account from the Fund. Zwirn urged Epstein to refrain from withdrawing.

34. Epstein telephoned Dubin to advise Dubin of Epstein's concerns and of Epstein's demand to Zwirn to withdraw all of FTC's capital account. Epstein asked Dubin to get to the bottom of the matter.

35. In late October 2006, Zwirn called Epstein again. This time Zwirn informed Epstein that the Fund was going to conduct an internal investigation in the wake of the CFO's firing. Zwirn again maintained that he had no prior knowledge of the CFO's accounting irregularities. Zwirn also pointed to the continued positive performance reported by the Fund as evidence of the Fund's solid financial condition. Epstein demanded to know why Zwirn

previously had characterized the issues as "nonmaterial" when now an independent review was required. Zwirn insisted that he had used the "nonmaterial" language on the advice of counsel, Shulte Roth & Zabel (the Fund's outside counsel). Epstein demanded that Zwirn get the lawyers from Shulte on the phone so that Epstein could confirm Zwirn's story. At the end of the call, Epstein remained concerned about the issues with the Fund.

36. Epstein, then, contacted Dubin and recounted to Dubin what had occurred. Epstein also repeated his demand to withdraw FTC's entire capital account.

37. On or about November 13, 2006, Dubin, Epstein, and Zwirn participated in a three-way call. During the call, Epstein once again demanded to withdraw FTC's entire capital account in the Fund, which at that point Epstein believed to be valued between $135 Million to $140 Million. At no time during that conversation did Zwirn ever dispute the fact that Epstein was entitled to FTC's complete withdrawal. To the contrary, Zwirn begged Epstein to refrain from a complete withdrawal because such a withdrawal could cause other investors to do the same and precipiate a "run-on-the-bank." When Epstein indicated that he still wanted his money back, Zwirn proposed as a compromise that Epstein make only a partial withdrawal demand on FTC's behalf. Zwirn agreed that if Epstein made such a demand, the Fund would honor it quickly. Based on Zwirn's agreement that the Fund would promptly comply with such a reduced withdrawal demand and Zwirn's previous description of the issues with the Fund, which allegedly did not implicate Zwirn, as well assurances Epstein received regarding the continued financial well-being of the Fund and security of the balance of FTC's capital account, Epstein responded that he would reduce his demand to slightly more than half FTC's total capital account or $80 Million. (This amount represented the amount of original capital that FTC invested.) Zwirn agreed to honor the $80 Million withdrawal demand. Zwirn's agreement was

clear and unambiguous. Dubin participated in the conversation and has confirmed the terms of Zwirn's agreement in an affidavit, a copy of which is attached as **Exhibit 1**.

38. The Fund received valuable consideration in return for FTC's agreement to refrain from pursuing a complete withdrawal. The Fall of 2006 was a precarious time for the Fund, as it was conducting an internal investigation and the Securities & Exchange Commission was investigating the Fund too. The Fund could ill-afford a fight with one of its largest investors at that time.

39. Consequently, on the evening of November 13, 2006, FTC sent by fax a written notice to Zwirn demanding withdrawal of "$80 million of Financial Trust Company's interest in D.B. Zwirn Special Opportunities Fund, L.P." The notice also was mailed by certified mail to Zwirn at 745 Fifth Avenue, 18th Floor, New York, New York 10151, to comply with the notice provision of the Limited Partnership Agreement.

40. Upon information and belief, in October and November 2006, Zwirn and the Fund did not intend to honor their agreement to allow FTC to withdraw from the Fund either in part or in whole. As a consequence, Zwirn and the Fund made false representations to FTC about the Fund's willingness to honor FTC's withdrawal requests and about the Fund's position regarding FTC's withdrawal rights. In October and November 2006, had the Fund or Zwirn explained the position it subsequently took regarding FTC's withdrawal rights, FTC would never have agreed to reduce its withdrawal request. To the contrary, FTC would have demanded that the Fund honor FTC's rights to withdraw in full, just as FTC did orally in October and November 2006 and in writing in February 2007.

41. Between November 13, 2006 and December 1, 2006 (the last day when FTC could have given notice under the 2005 Letter Agreement for a March 31, 2007 withdrawal),

neither Zwirn nor the Fund purported to reject the November 13, 2006 notice, nor did they assert that this notice somehow failed to comply with the 2005 Letter Agreement or was otherwise deficient.

42. In February 2007, the Fund indicated that it was not going to honor FTC's November 13, 2006 request. The Fund ignored the application of the provisions of the 2005 Letter Agreement. Moreover, the Fund claimed that each of FTC's investment tranches was subject to a different two-year lock-up and that the January 1, 2005 investment tranche was subject to a three-year lock-up.

43. As a result of the Fund's apparent unwillingness to abide by its and Zwirn's agreements, on February 14, 2007, Epstein wrote the Fund a letter again demanding the complete withdrawal of FTC's entire capital account. Without limiting the right to the complete withdrawal of FTC's capital account, Epstein's letter noted that, at a minimum, the Fund was required to honor the $80 million demand made on November 13, 2006.

44. On March 26, 2007, the Fund reported the results of the internal investigation that was launched in October 2006. As outlined in more detail below, the results showed that the Fund's internal controls were in disarray.

45. The day after this report was issued to investors, on March 27, 2007, the Fund finally responded in writing to FTC's withdrawal demands. After taking months to put forth any legitimate basis for the Fund's refusal to honor FTC's withdrawal demands, the Fund's outside counsel provided a tortured explanation for the Fund's position. With regard to the November 13, 2006 demand to withdraw $80 million, the Fund acknowledged the demand was made within the 120-day notice period. However, the Fund deemed this notice invalid because it was for a "partial" withdrawal. According to the Fund, the 2005 Letter Agreement did not provide Mr.

Epstein with any such right as of March 31, 2007, because partial withdrawals are governed by Section 9.2 of the Limited Partnership Agreement, which was not covered by the 2005 Letter Agreement. To explain, Section 9.1 of the Limited Partnership Agreement generally addresses "complete withdrawals" and Section 9.2 addresses "partial withdrawals." (There is no substantive difference between the provisions.) The 2005 Letter Agreement begins with the introductory clause, "In accordance with Section 9.1 of the Amended and Restated Limited Partnership Agreement . . . ." The Fund claimed that as a result of this reference to Section 9.1, the 2005 Letter Agreement only authorized "complete withdrawals."

46. The Fund's position was inexplicable. The only reason that FTC demanded a partial withdrawal—as opposed to a complete withdrawal—in November 2006 was because the Fund requested it. To induce FTC to reduce its complete withdrawal demand, Zwirn had agreed expressly and unambiguously to honor a *partial* withdrawal demand.

47. Worse, the Fund waited to express its view that the 2005 Letter Agreement authorized only complete withdrawals until after the deadline expired for FTC to change the November 13, 2006 demand back from a partial withdrawal demand to the complete withdrawal demand that Epstein had previously made repeatedly to Zwirn.

48. The Fund's reading of the 2005 Letter Agreement also was baseless. To begin with, the introductory phrase "In accordance with Section 9.1" simply acknowledged that the 2005 Letter Agreement was authorized pursuant to the penultimate sentence of Section 9.1, which gave the General Partner the discretion to alter withdrawal rights in general. *See* Limited Partnership Agreement § 9.1 ("Withdrawals may also be made at such other times with the consent of, and upon such terms of payment as may be approved by, the General Partner in its sole discretion."). Moreover, the Limited Partnership Agreement is careful to distinguish

between a "complete" and "partial" withdrawal when intending to distinguish between the two. Had the Fund intended to limit FTC's rights, it knew how to do so. The 2005 Letter Agreement, however, gives FTC the right to "withdraw" without any limiting language (that is, FTC may withdraw either partially or completely). Indeed, it makes no sense that the Fund would have agreed to give FTC special rights to withdraw only its entire capital account but not a lesser amount. Obviously, a partial withdrawal is much preferable from the Fund's perspective to a complete withdrawal.

49. With regard to FTC's February 14, 2007 demand for a complete withdrawal, the Fund declared that it was not timely because 120-days notice was not given. According to the Fund,

> [T]he 2005 Letter Agreement permitted Financial Trust to withdrawal under Section 9.1 as of March 31, 2007 (and as of the second anniversary of that date thereafter) on 120 days prior written notice. Because the February 14, 2007 Letter seeking complete withdrawal was not provided 120 days prior to March 31, 2007, it did not constitute valid notice.

Of course, this ignores the fact that Epstein had repeatedly given Zwirn notice of his demand for a complete withdrawal well within that 120-day period. The only reason that FTC had not provided written notice for the complete withdrawal within that period was that in November 2006, Zwirn had induced FTC to change the request. The Fund clearly knew of Epstein's true desire to withdraw FTC's entire capital account well before the 120-day period.

50. The Fund further claimed that each of FTC's investments was subject to a distinct lock-up period. The Fund claimed that the investments were subjected to two-year rolling lock-up periods (*i.e.*, they could be withdrawn on every two-year anniversary of the investment being made). Specifically, the Fund claimed that as of March 2007, FTC could withdrawal on the following schedule:

Investment Date	Withdrawal Date
April 1, 2002	June 30, 2008
September 1, 2002	September 30, 2008
December 1, 2002	December 31, 2008
June 1, 2003	June 30, 2007
January 1, 2005	March 31, 2009

51. In case there was any doubt about FTC's desire to exit the Fund in 2007, FTC responded to the above letter by informing the Fund that without prejudice to its position regarding the effect of the January 1, 2005 Agreement, FTC requested withdrawals on the above specified schedule too.

52. FTC had the right to withdrawal at least $45 million as of March 1, 2007. Based on even the Fund's position that each investment was subject to a distinct two-year lock-up, FTC had the undisputed right to withdraw two of its investment tranches in 2007: (1) FTC's January 1, 2005 investment tranche could have been withdrawn on March 31, 2007 by giving notice before December 1, 2006; and (2) FTC's June 1, 2003 investment tranche could have been withdrawn on June 30, 2007 by giving notice before March 3, 2007. As confirmed by the Fund, the combined values of those two investment tranches on their respective withdrawal dates was approximately $45 Million. On November 13, 2006, FTC gave notice of its demand to withdraw $80 million. Given that the Limited Partnership Agreement provides no rule on the form notice must take (even if such a requirement existed, compliance with such a formality would be

excused under Delaware law), this demand for $80 million was sufficient to put the Fund on notice of FTC's desire to withdraw at least the $45 million that the Fund concedes FTC had the right to withdraw. Yet, the Fund refused to pay even this money out to FTC.

53. Between the end of March 2007 and the end of 2007, the Fund continued to report good performance. However, due to the Fund's problematic accounting issues reported in March 2007, the Fund was unable to produce audited financial statements for 2006. According to the Fund, at the end of 2007, it received massive requests for withdrawals by investors who were frustrated by the inability of the Fund to produce audited financials. As a result, in February 2008, the Fund announced that it would suspend all withdrawals and withdrawal payments. In March 2008, the Fund announced that it would wind down the Fund. FTC now was stuck in the Fund along with all other investors.

54. During 2008 and 2009, the Fund's investments suffered greatly and the value of the Fund dropped precipitously from the 2006 and 2007 valuations.

55. In July 2009, management of the Fund was taken over by Fortress Investment Group, and Zwirn was removed from direct involvement in the Fund.

56. It now appears that Zwirn and the Fund were not honest with Epstein in the October 2006 about the scope of the Fund's problems and Zwirn's involvement in those problems. To begin with, Zwirn had learned of the initial problems—the temporary use of investor money to buy a plane for Zwirn and early payment of management fees—back in the Spring of 2006. Zwirn, however, waited until October 2006 to inform investors.

57. This inexplicable delay by Zwirn injured FTC. Even accepting the Fund's view that each of FTC's investments could be withdrawn on its two-year anniversary, FTC had a right to withdraw a $30 million investment made on December 1, 2002 on December 31, 2006. But

FTC had to give notice 120-days before December 31, 2006. Had Zwirn and the Fund timely revealed the initial irregularities, FTC would have been able to request a timely withdrawal of the December 1, 2002 investment, the value of which was greatly in excess of $30 million as of December 31, 2006. Moreover, when Zwirn did reveal the problems to FTC in October 2006, he falsely portrayed the problems as newly-discovered. This withdrawal would be in addition to the $45 million that could have been withdrawn—again based on the Fund's own position—in early 2007. *See supra* at ¶ 52. It is believed that the total value of these investments would have been $100 million on the withdrawal dates.

58. Zwirn also was well aware that the problems were more significant than he revealed to Epstein and FTC. As noted above, in March 2007, the Fund issued a report that revealed that the Fund had been borrowing money from D.B. Zwirn Special Opportunities Fund, LTD, an offshore sister fund of the Fund, and other managed accounts without any documentation. According to the report, the advances totaled over $100 million. Upon information and belief, FTC alleges that the reason, in part, for the $100 million of intra-fund transfers was that Zwirn required the use of the offshore fund's substantial cash resources, which were lacking in the Fund, in order to fund investments that the offshore fund could not properly make. So, upon information and belief, Zwirn transferred cash from the offshore fund to the Fund to make those investments and, in order to "smooth out" reported earnings between the two funds, Zwirn subsequently documented the cash transfers as loans with excessive interest rates as high as 20% per annum. As a result, the Fund ended up with a disproportionate amount of illiquid investments while the offshore fund received a right to be repaid in cash at exorbitant interest rates. The Fund also explained that Zwirn's management company had overcharged the Fund for operating expenses by $12 million. The Fund also reported that there were additional

examples of Fund money being used to pay personal expenses of management.

59. While the Report claimed that Zwirn was not aware of these issues, the Fund's former CFO recently sued Zwirn, claiming this statement was untrue. The claim is also inconsistent with reported accounts of Zwirn's management style. According to the article published in the November 2008 issue of Institutional Investor's Alpha, Zwirn was a micro-manager. His former employees report that Zwirn "insisted on signing off on every deal and every detail down to the exact furnishings of DBZ's Mayfair offices in London." Upon information and belief, FTC alleges that Zwirn was well-aware in October 2006 of the improprieties detailed in the March 2007 report.

60. Had the Fund or Zwirn been honest with Epstein in October and November 2006 about the nature and scope of the problems and Zwirn's role, Epstein certainly never would have reduced, and would have given timely formal written notice of, FTC's original demand for a complete withdrawal of FTC's capital account, which according to the Fund's March 27, 2007 letter, the Fund would have been obligated to honor.

Causes of Action

First Cause of Action: Breach of Contract

61. Counter-Claimants and Third-Party Claimants repeat and incorporate by reference all of their allegations set forth above.

62. FTC had three contracts with the Fund: the 2005 Letter Agreement, the Limited Partnership Agreement, and an oral agreement formed on November 13, 2006. The Fund breached these agreements by refusing to honor FTC's withdrawal requests.

63. All conditions precedent have been performed. In the alternative, to the extent FTC did not comply with the notice requirements, compliance is excused by—among others—

the inequitable conduct of the Fund and Zwirn and the fact that otherwise an inequitable forfeiture would result.

64. As the general partner of the Fund, Zwirn is liable for the breach.

65. As a result of this conduct, FTC suffered damage.

Second Cause of Action: Promissory Estoppel

66. Counter-Claimants and Third-Party Claimants repeat and incorporate by reference all of their allegations set forth above.

67. To the extent the November 13, 2006 withdrawal request was not authorized under the contracts mentioned above, the request is enforceable under the doctrine of promissory estoppel. Zwirn and the Fund promised to honor FTC's November 13, 2006 request to withdraw $80 million. The promise was clear and unequivocal. FTC relied on the promise by not seeking a full redemption.

68. As the general partner of the Fund, Zwirn is liable for the obligations of the Fund.

69. As a result of this conduct, FTC suffered damage.

Third Cause of Action: Fraud

70. Counter-Claimants and Third-Party Claimants repeat and incorporate by reference all of their allegations set forth above.

71. Zwirn and the Fund made false statements and omitted material information when convincing FTC to reduce its withdrawal request in the Fall of 2006, including, without limitation, misrepresentations about Zwirn's knowledge and participation in the Fund's financial and accounting irregularities, the nature and scope of the problems, and the Fund's true intent not to honor FTC's withdrawal. Zwirn and the Fund had a duty to speak. Zwirn acted in a fiduciary

capacity to FTC. As well, Zwirn and the Fund had a duty to reveal information to make statements they made not misleading.

72. FTC reasonably relied on these misrepresentations and omissions.

73. As a result of this conduct, FTC suffered damage.

Fourth Cause of Action: Breach of Fiduciary Duty

74. Counter-Claimants and Third-Party Claimants repeat and incorporate by reference all of their allegations set forth above.

75. Zwirn owed a fiduciary duty to FTC arising from Zwirn's status as and control over the Fund's general partner.

76. Zwirn breached this fiduciary duty to FTC by, among other things, failing to make timely, full and accurate disclosure about the Fund's internal issues and FTC's withdrawal rights and by failing to inform FTC about the Fund's internal issues when Zwirn first learned of them.

77. As a result of this conduct, FTC suffered damage.

Fifth Cause of Action: Negligent Misrepresentation

78. Counter-Claimants and Third-Party Claimants repeat and incorporate by reference all of their allegations set forth above.

79. Zwirn made false statements when convincing FTC to reduce its withdrawal request in the Fall of 2006. Zwirn had a duty to FTC. At a minimum, Zwirn was negligent in not discovering the true facts underlying its statements and in not revealing, timely or at all, the truth to FTC.

80. FTC reasonably relied on these misrepresentations.

81. As a result of this conduct, FTC suffered damage.

Conclusion

82. As a result of Zwirn's and the Fund's fraudulent and otherwise unlawful conduct, FTC has been damaged in an amount equal to approximately $140 Million plus prejudgment interest, punitive damages, and is also entitled to rescissionary damages, plus interest, together with the attorneys' fees and costs of this proceeding.

Dated: New York, New York
May 21, 2010

Respectfully submitted,

SUSMAN GODFREY L.L.P.

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Attorneys for Respondent Counter-Claimants and Third-Party Claimants Financial Trust Company, Inc. and Jeepers, Inc.

PROOF OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served by email and first class mail, this 21 day of May, on:

Brad S. Karp
Allan Arffa
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Alan Levine
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500 Fifth Avenue, 33rd Floor
New York, NY 10110

Harry P. Susman

EXHIBIT 1

AFFIDAVIT OF GLENN DUBIN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Glenn Dubin, being duly sworn, deposes and says:

1. I am over twenty-one years of age and am competent to testify to the matters stated in this affidavit. I have personal knowledge of the facts and statements herein. Each of the facts and statements herein is true and correct.

2. Starting in 2002, an entity that I both owned and controlled, currently known as Dubin & Swieca Asset Management, LLC ("DSAM"), owned interests in the general partner and in the investment manager of D.B. Zwirn Special Opportunities Fund, L.P. (the "Zwirn Fund"). The Zwirn Fund was named after Daniel Zwirn ("Zwirn"). While Zwirn was responsible for the day-to-day management and operations of the Zwirn Fund, after Zwirn spun off his business from DSAM (then known as Highbridge Capital Management, LLC), I helped introduce investors to Zwirn, invested my personal and family foundation assets with Zwirn, and my firm allocated assets of Highbridge Capital Corporation ("HCC") to an account managed by Zwirn's company which was also the investment manager of the Zwirn Fund.

3. One of the early investors that I introduced to Zwirn was Jeffrey Epstein ("Epstein"). Epstein was both a personal friend of mine and a long-time investor in HCC. My understanding is that beginning in 2002 Epstein invested assets in the Zwirn Fund through an entity called Financial Trust Company, Inc.

4. In the fall of 2006, Zwirn called me and told me that he was firing the Zwirn Fund's Chief Financial Officer. Zwirn told me that there had been various irregularities at the Zwirn Fund, including that investors' money was used to pay for an airplane that would be owned by Zwirn's company.

5. During October 2006, Zwirn told me that he was making attempts to contact each investor in the Zwirn Fund, including Epstein, to explain the irregularities to them.

6. After speaking with Zwirn, Epstein called me very upset. Epstein said that Zwirn had initially described the irregularities as "nonmaterial", but on a subsequent call, Zwirn's description of the issues made it clear to Epstein that the problems were in fact very material. Epstein told me that when he confronted Zwirn about the earlier description of the irregularties, Zwirn said that his counsel had told Zwirn to use the word "non-material". Epstein felt that Zwirn had lied to him. Epstein told me that he wanted to redeem Financial Trust Company, Inc.'s entire capital account in the Zwirn Fund immediately and that Epstein had made that demand to Zwirn.

7. I subsequently spoke to Zwirn about Epstein's demand. Zwirn was concerned that a complete redemption could cause a "run-on-the-bank." Zwirn asked me to discuss with Epstein reducing his demand to one-half of Financial Trust Company, Inc.'s total capital account in the Zwirn Fund at the time, and I agreed I would discuss it with Epstein.

8. Subsequently, I participated in a three-way call with both Zwirn and Epstein. During this call, Epstein demanded from Zwirn the withdrawal of all of Financial Trust

Company, Inc.'s capital account in the Zwirn Fund. Epstein said he wanted to redeem all of Financial Trust Company, Inc.'s 140 plus million dollars in that capital account immediately. Zwirn responded that such a redemption could cause a "run-on-the-bank" and asked Epstein to reduce his redemption demand to half of that amount. Zwirn said that if Epstein made only a partial redemption request, Zwirn would honor the request quickly. During this discussion with Epstein, Epstein agreed to redeem slightly more than half of Financial Trust Company, Inc.'s total capital account and said that Financial Trust Company, Inc. would redeem 80 million dollars, and Zwirn agreed to honor that request. Zwirn did not dispute that Epstein had the right to the total redemption of Financial Trust Company, Inc.'s capital account in the Zwirn Fund. It is my understanding, based on subsequent conversations with Epstein, that after this conversation, Epstein made a written request for that partial redemption of Financial Trust Company, Inc.'s capital account in the Zwirn Fund and that Zwirn refused to honor this request.

Glenn Dubin

Sworn to before me this 3 day of February, 2010.

(Seal)

Notary Public

Timothy Donnelly
State of New York
County of New York
01D06207223
My Commission Expires: 6/8/2013