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6 FORTRESS

7

8 -against-

9

10 ZWIRN

11

12 _____

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2 THE VIDEOGRAPHER: My name is
3 Marc Friedman of Veritext New York.
4 The date today is June 14, 2011. The
5 time is approximately 9:13 a.m.

6 This deposition is being held in
7 the office of Susman Godfrey located
8 at 560 Lexington Avenue, New York, New
9 York. The caption of this case is
10 Fortress VRF 1, LLC and Fortress Value
11 Recovery Fund 1, LLC versus Jeepers,
12 Inc., et al. in the JAMS arbitration
13 reference number 1425006537.

14 The name of the witness is
15 Daniel Zwirn.

16 At this time the attorneys will
17 identify themselves after which time
18 our court reporter, Wayne Hock of
19 Veritext, will swear in the witness
20 and we can proceed.

21 MR. SIFFERT: John Siffert,
22 Lankler Siffert and Wohl for the
23 witness.

24 MR. REYNOLDS: Daniel Reynolds
25 also from Lankler Siffert and Wohl.

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2 MR. LEE: Andrew Lee also from
3 Lankler Siffert and Wohl.

4 MR. SCHWARTZ: William Schwartz
5 from Cooley, LLP for the Zwirn
6 entities.

7 MR. O'BRIEN: Bill O'Brien also
8 of Cooley.

9 MR. ARFFA: I'm Allan Arffa from
10 Paul, Weis, Rifkind, Wharton and
11 Garrison, LLP. We represent the
12 claimants in this proceeding.

13 MS. SHOLL: Hannah Sholl also
14 from Paul Weiss.

15 MEGAN JOHNSON: Megan Johnson
16 from Fortress.

17 MR. SUSMAN: Steve Susman and
18 Seth Ard are here representing Jeepers
19 and FTC. And Jeffrey Epstein is here.

20

21

22 EXAMINATION BY

23 MR. SUSMAN:

24 Q. Would you please state your full
25 name for the record.

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2 A. Daniel Bernard Zwirn.

3 Q. Mr. Zwirn, how old a man are
4 you?

5 A. Thirty-nine.

6 Q. Where do you live?

7 A. New York City.

8 Q. Where in New York City?

9 A. 3 East 84th Street, apartment
10 four.

11 Q. How long have you lived there?

12 A. About a year.

13 Q. And where did you live before
14 then?

15 A. 800 Fifth Avenue, apartment 20F.

16 Q. How long were you there?

17 A. Two years.

18 Q. Do you have any other homes
19 currently than the one on East 94th Street
20 (sic)?

21 A. No, I don't.

22 Q. You have testified I know a
23 number of times before the Securities and
24 Exchange Commission related to the matters
25 we're going to talk about today.

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2 Have you given your testimony
3 other than that before under oath either
4 in court or at deposition in any other
5 kind of matter?

6 A. Yes.

7 Q. What kind and when?

8 A. Do you want me to list them
9 or --

10 Q. Yes, sir.

11 A. There was a transaction in which
12 my former firm was involved where there
13 was a leasing transaction. There was a
14 case of some two former employees of my
15 former firm. There was a lending
16 transaction in some entertainment assets
17 in which my former firm was involved.

18 Q. Excuse me, let me just stop you
19 one second.

20 A. Okay.

21 Q. The former firm, what firm are
22 you referring to?

23 A. DB Zwirn and Company. And I was
24 in the --

25 Q. DB Zwirn and Company?

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2 A. Just to be clear, in the first
3 and third situations, I was helping our
4 funds --

5 Q. I'm sorry, could you speak up a
6 little?

7 A. Sure.

8 In the first and third
9 situations I referenced, I was called to
10 help our funds. In the second one, it was
11 with regard to the management company of
12 DB Zwirn and Company.

13 Q. Give me the first one again.

14 Where was that case pending?

15 A. I don't know.

16 Q. Was it a case in court or was it
17 an arbitration?

18 A. It was two different depositions
19 regarding the leasing transaction. I'm
20 not sure -- I don't know the circumstances
21 of that sort.

22 Q. Who was the opposing party?

23 A. In the first instance within
24 that situation, I believe it was a
25 trustee, but I don't recall. And then the

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2 second instance --

3 Q. The first --

4 A. In the second instance with
5 regard to the first situation --

6 Q. I'm not even sure I understand
7 what the situation was.

8 What situation were you talking
9 about?

10 A. It was a leasing transaction.

11 Q. With whom? Between whom?

12 A. Some of my -- of the entities
13 that my former firm managed had invested
14 in a lease transaction with one or two
15 businesses in New Jersey.

16 Q. What were the entities that your
17 former firm managed that were involved in
18 this leasing transaction?

19 A. I don't recall which of the
20 specific funds was invested in it or
21 accounts.

22 Q. You have no idea what those
23 entities were; is that right?

24 A. It was -- we managed several
25 different entities. I just don't recall

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2 which entities were involved. It was many
3 years ago.

4 Q. What entities did you manage?

5 A. It depends on the time.

6 Q. The firm in question, your
7 former firm was DB Zwirn and Company?

8 A. That was generally -- that's a
9 reasonable way to call the management
10 company, but there were other entities
11 that were generally referred to as the
12 management company. But DB Zwirn and
13 Company is a fair way to put it.

14 Q. And DB Zwirn and Company, is
15 that a limited partnership or an LLC?

16 A. By the way, that was -- that
17 also depends on the time. That was after
18 early '04. It was DB Zwirn and Company,
19 LP and DB Zwirn Partners, LLC. Before
20 that it was Highbridge Zwirn Capital
21 Management, LLC, I believe, and Highbridge
22 Zwirn Partners, LLC. And I was also
23 during an earlier a managing director of
24 Highbridge Capital Management.

25 Q. And these former entities that

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2 you referred to, they were -- what were
3 they leasing?

4 A. I don't recall whether it was a
5 -- what type of lease it was, but they
6 were -- the entities to which I referred
7 managed funds or other entities with
8 capital that invested in leases for
9 various types of computer equipment.

10 Q. Were these -- were the funds,
11 the entities that you were managing the
12 claimants or the plaintiffs in that
13 dispute?

14 A. In the -- in the first instance,
15 those fund entities were managed entities
16 were creditors of the estate.

17 In the second one, in the second
18 instance within that situation that was
19 more recent, I believe, they were I guess
20 Plaintiffs in the situation. I don't know
21 the legal specifics.

22 Q. Okay.

23 And when was your testimony in
24 that matter, the one involving the leasing
25 transaction?

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2 A. In the first instance, it was
3 several years ago, between three, four
4 years ago, something like that. I just
5 don't recall.

6 Q. When?

7 A. And when in the second instance
8 of that first situation, it was last week.

9 Q. You testified last week?

10 A. Uh-huh.

11 Q. Was it in court or in a
12 deposition?

13 A. Deposition.

14 Q. And that was -- was it the same
15 case?

16 A. It was regarding the same
17 ultimate borrower, but I don't think it
18 was the same case. But I just don't --
19 it's been -- I don't manage the entities
20 any more. I just don't know.

21 Q. And so the testimony you were in
22 last week, who took your deposition?

23 A. An attorney.

24 Q. Which attorney?

25 A. I don't recall his name.

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2 Q. Who did he represent?

3 A. A company called Cincom.

4 Q. Spell that, please.

5 A. I don't know -- I really don't
6 recall how to spell it. C I N C O M.

7 Q. What's that?

8 A. Perhaps C I N C O M.

9 Q. Cinton (sic)?

10 A. Sin come, C I N, as in Nancy, C
11 as in cat, O M, as in Mary. Again, I
12 think that's the spelling, but I just
13 don't recall.

14 MR. SIFFERT: Mr. Susman is
15 having difficulty hearing, so if you
16 could keep your voice up, that would
17 help.

18 THE WITNESS: Okay.

19 Sorry.

20 Q. Okay.

21 And the first testimony you gave
22 was in a deposition, also; correct?

23 A. Yes, I believe so.

24 Q. And what was in what year?

25 A. As I said, I just don't recall.

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2 I would guess perhaps four years ago,
3 three years ago. I just don't recall.

4 Q. Okay.

5 Those are two separate occasions
6 you've testified.

7 What's -- has there been a
8 third?

9 A. Well, going back to my previous
10 answer, there was an employee case with
11 regard to the management companies.

12 Q. Who were the employees?

13 A. Susan Chen and Todd Dittmann.

14 Q. Susan?

15 A. Chen, C H E N, and Todd
16 Dittmann, D I T T M A N N.

17 Q. Who had they been employees of?

18 A. The management company of my
19 former firm.

20 Q. Of DB Zwirn and Company?

21 A. Yes, or its affiliates.

22 Q. Okay.

23 And what were they suing -- they
24 were suing that former company?

25 A. I believe so.

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2 Q. For what?

3 A. I don't recall their complaint.

4 Q. Was your testimony in a
5 deposition?

6 A. Yes, I believe so.

7 Q. When was that deposition taken?

8 A. Maybe a year and a half or two
9 years ago. Maybe more. I just don't
10 recall.

11 Q. And has there been any other
12 testimony either in a deposition or in
13 court or to an enforcement agency or
14 arbitration?

15 A. There was another lending
16 transaction that I had previously
17 referenced for a company, a series of
18 companies in the entertainment area.

19 Q. All right.

20 What can you tell us about that
21 matter?

22 A. Again, it was with regard to a
23 borrower of some of the -- of money from
24 some of the entities that I had been
25 involved in managing through the

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2 management company.

3 MR. ARFFA: Could I hold on a
4 second and take a break.

5 THE VIDEOGRAPHER: Stand by.

6 The time is 9:27. We are going
7 off the record.

8 (Whereupon a break was taken)

9 THE VIDEOGRAPHER: The time is
10 9:29. We are back on the record.

11 MR. ARFFA: Let me just say on
12 the record we believe there's a
13 confidentiality order with respect to
14 the last matter that was just
15 referenced, so to the extent I have
16 the ability to designate that as
17 confidential under our order that
18 testimony, I may so -- I do so right
19 now.

20 MR. SUSMAN: Oh, does that solve
21 the problem? Can I then ask him about
22 it?

23 MR. ARFFA: No, because I think
24 the way the order works he's not
25 supposed to be testifying about that

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2 at all.

3 MR. SUSMAN: He can't even

4 testify that he --

5 MR. ARFFA: Well, you already

6 have that, that fact.

7 MR. SUSMAN: Generally the matter

8 is? If you're making the

9 representation, Mr. Arffa, that he is

10 prevented by some confidentiality in

11 the matter by describing that he was

12 testifying in a lawsuit between A and

13 B and what that lawsuit was about, I

14 will not ask him any other questions.

15 But I will ask to see the

16 confidentiality order and then, if you

17 are wrong, we may have to talk to him

18 again.

19 MR. ARFFA: My point is I don't

20 have the order with me so I'm not sure

21 of the exact terms. I didn't have a

22 problem so far with his just saying he

23 testified and he gave you a very

24 generally description of what the

25 matter involved. I think that's fine.

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2 MR. SUSMAN: Why don't we leave
3 at this. I'm coming back to the
4 matter after lunch, so why don't you
5 get the order for us and then that
6 will guide me on how far I can
7 inquire.

8 MR. ARFFA: I will attempt to do
9 so.

10 MR. SUSMAN: Okay. So I'll come
11 back to that.

12 Q. Was there any other matters that
13 you have testified in?

14 A. Not that I recall. Oh, oh,
15 wait, wait, auto I'm sorry. With regard
16 to 9 former CFO of our management company.

17 Q. With regard to --

18 A. There was a case regarding the
19 former CFO of our management company.

20 Q. That's Mr. Gruss?

21 A. Yes.

22 Q. You testified in that matter?

23 A. Yes.

24 Q. In a deposition?

25 A. Yes, I believe so.

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2 Q. When did -- was that testimony?

3 A. Within the last year.

4 Q. Is that lawsuit still pending or
5 has it been resolved?

6 A. Still pending, I believe.

7 Q. Any others?

8 A. Not that I can recall.

9 Q. Mr. Zwirn, where are you
10 currently employed?

11 A. I'm not.

12 Q. Are you working these days?

13 A. I spend time, you know, trying
14 to look at new opportunities sometimes or
15 talk to people about different small
16 investments or situations, but nothing
17 that -- I'm not employed or no full-time
18 commitments of any sort.

19 Q. Do you have an office outside of
20 your home?

21 A. I do.

22 Q. Where is your office located?

23 A. It's at 595 Madison,
24 thirty-third floor.

25 Q. What is the name on the door?

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2 A. 595 33, LLC.

3 Q. 595 --

4 A. Space 33, LLC. It's the lessee
5 of the space.

6 Q. Space 33 LL --

7 A. LLC, yes.

8 Q. What's the name on the door?

9 A. There is no actual name on the
10 door. I just assumed you meant --

11 Q. Are you the only one who offices
12 there?

13 A. No, I'm not.

14 Q. Who else offices there?

15 A. Another -- a guy called Todd
16 Meister.

17 Q. Who is Todd Meister?

18 A. He's just a guy I've known since
19 we worked together almost twenty years at
20 Lazard and there are a couple of
21 administrative-type people.

22 Q. Do you do any business with Mr.
23 Meister?

24 A. I have not, no.

25 Q. What business do you understand

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2 him to be in?

3 A. I would say he's an investor and
4 kind of intermediary of transactions or
5 something like that. I don't really know.
6 I don't really engage with him that much
7 on what he does. I just know him
8 personally.

9 Q. Okay.

10 Do you pay half the rent; is
11 that --

12 A. About half. We also sublet to
13 David Lee, a former employee of mine.

14 Q. He also what?

15 A. We also sublet an office space
16 to David Lee, a former employee of mine.
17 And he does his own stuff.

18 Q. David Lee?

19 A. Uh-huh.

20 Q. He offices there, too?

21 A. Yes.

22 MR. SCHWARTZ: Can I ask Mr.
23 Zwirn to speak up, please?

24 THE WITNESS: Sure.

25 Q. Is Mr. Lee still employed by

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2 you?

3 A. No, he's not.

4 Q. Is he still employed by any
5 companies you have been associated with?

6 A. No, he is not. Not that I know
7 of.

8 Q. Are you in the process of
9 raising a fund?

10 A. No, I'm not.

11 Q. Is Mr. Meister, to your
12 knowledge?

13 A. Not that I know of.

14 Q. Or Mr. Lee?

15 A. I'm not sure what he's doing.

16 Q. You don't have any idea what Mr.
17 Lee is doing today for a living?

18 A. I know he talks to different
19 companies. I know he advised some sort of
20 telecom company on some capital raising
21 alternatives or something like that.

22 Q. But you -- other than that, you
23 don't know the source of his income today?

24 A. No, I don't.

25 Q. Let me show you what's been

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2 marked as -- by the way, do you have a
3 home in Quogue?

4 A. I do not own a home in Quogue.

5 Q. Do you rent one there?

6 A. No, I don't.

7 MR. O'BRIEN: Can I just ask, has
8 Exhibit 86 already been marked?

9 MR. SUSMAN: I'm told it has not
10 been marked. Mr. Ard is the one who
11 gave me that, who did the telling.

12 MR. ARD: That's correct. It's
13 on that sheet as being marked.

14 MR. SIFFERT: Shouldn't it be
15 with the real tag?

16 MR. ARD: I think he's marking it
17 now with the real tag.

18 MR. SUSMAN: I'm sorry, what I'll
19 do is I have them previously marked.
20 I'll hand them to the witness. When
21 he's done with them, he'll hand it to
22 the reporter and the reporter will put
23 a sticker on them to just save the
24 time.

25 MR. SIFFERT: That's fine.

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2 MR. SUSMAN: I'll try to get
3 these numbered in a way that --

4 THE WITNESS: So is this not
5 Bates stamp.

6 MR. SIFFERT: It is Bates stamped
7 but it's not been previously marked at
8 a deposition.

9 Q. Do you recognize -- this is a
10 confidential memo copy number 001 that was
11 sent to Mr. Epstein in April of 2002 by
12 Highbridge Capital Management, LLC.

13 And you recognize this document;
14 do you not, sir?

15 A. I don't recall the document
16 being sent or -- but I recognize it. It
17 looks like the original offering memo.

18 Q. Okay.

19 I'm just going to use it to ask
20 you some questions about how this all got
21 going.

22 When did you first meet Glenn
23 Dubin?

24 A. Summer of 2001.

25 Q. In 2001?

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2 A. Summer of 2001, roughly.

3 Q. Where did you meet him?

4 A. In his office.

5 Q. What was the occasion for your
6 meeting him?

7 A. One of his employees wanted to
8 introduce me to him.

9 Q. And did you discuss with him on
10 that occasion going to work for Highbridge
11 Capital Management?

12 A. I just -- I don't recall the
13 specifics of the conversation.

14 Q. At the time you met with Mr.
15 Dubin for the first time where were you
16 working?

17 A. MSD Capital.

18 Q. Okay.

19 Did there come a time when you
20 joined Mr. Dubin's company?

21 A. Yes.

22 Q. When was that?

23 A. September of 2001.

24 Q. Okay.

25 And what position did you have

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 when you joined his company?

3 A. Managing director.

4 Q. And the company -- it was a
5 managing director of what company?

6 A. Highbridge Capital Management.

7 Q. And in that capacity, what did
8 you do when September of '01 and up to
9 April, '02? Let's focus on that period.

10 A. I began -- I took the securities
11 exams, seven and sixty-three, for their --
12 that they wanted employees to do. I began
13 interviewing people and began investing
14 some amount of capital from their main
15 fund.

16 Q. Their main fund being?

17 A. I believe it was called
18 Highbridge Capital Corporation.

19 Q. Now, when did -- when was it
20 decided to -- how did Highbridge Zwirn
21 Special Opportunities Fund, LP come about?

22 A. I think in early 2002 we created
23 a separate management company, Highbridge
24 Zwirn Capital Management, LLC, with a view
25 toward raising funds that would invest in

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 the same types of things -- additional
3 funds that would invest in the same types
4 of things I was investing in with
5 Highbridge Capital.

6 Q. And that was created when, in
7 January, '02?

8 A. Early '02. I don't remember the
9 month.

10 Q. Highbridge Capital Management,
11 LLC, when it was set up, who was the
12 managing member?

13 A. You mean Highbridge Zwiirn
14 Capital Management, LLC?

15 Q. Yes, HZCM.

16 A. HZCM.

17 I don't recall the entity's
18 structure.

19 Q. Do you recall who owned a piece
20 of it?

21 A. Me, Glenn Dubin, and Henry
22 Swieca. In their case I believe it was an
23 entity that they controlled. I don't know
24 that they were the only investors in that
25 entity.

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2 Q. How much did you own?

3 A. Half.

4 Q. 50/50?

5 A. I believe so, yeah.

6 Q. And were you going to be the

7 person that was going to run this

8 management company?

9 A. I was going to select

10 investments for it but strategically on

11 the strategic decisions, key hires, and

12 things of that sort and capital raising, I

13 worked mostly with Glenn.

14 Q. Now, was the Highbridge Zwirn

15 Special Opportunities Fund, LP and there

16 was a -- can we all that the onshore fund?

17 Okay?

18 A. Okay.

19 Q. There was an offshore fund, too,

20 created at the same time?

21 A. I don't know that it was exactly

22 the same time, but around that time.

23 Q. Do you know which came first?

24 A. I don't recall.

25 Q. We'll call that the offshore

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2 fund.

3 Other than those two funds, were
4 any other funds set up in 2002 which were
5 going to be managed by HZCM?

6 A. Not that I recall, other than of
7 course the capital from Highbridge which
8 was channeled through an entity called
9 HCM/Z I forgot what. But it was a
10 subsidiary of Highbridge Capital
11 Corporation.

12 Q. Let's take a look at page JE 228
13 of the document I've just given you.

14 MR. SIFFERT: That's number
15 eighty-six.

16 A. And to be clear, you said 2002.
17 I don't recall it -- whether we began
18 investing for Highbridge Capital
19 Corporation in '01. I'm not sure when the
20 CMZ Specialty Opportunities, LLC was
21 created, '01 or '02.

22 Q. Do that again?

23 A. You asked me which -- were there
24 any other entities created other than
25 onshore fund and offshore fund in 2002.

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2 Q. Right.

3 A. So there was an entity called
4 HCM/Z Special Opportunities. I'm not sure
5 whether it was formed in 2001 or 2002. It
6 was a subsidiary of Highbridge Capital
7 Corporation or potentially another entity
8 of Highbridge called Highbridge
9 International. I don't recall. And I
10 don't recall whether it was formed in 2001
11 and 2002. Or 2002.

12 Q. But it was formed before the
13 onshore and offshore funds were formed?

14 A. We were investing on behalf of
15 Highbridge before that, before the onshore
16 and offshore funds were started. I
17 believe the entity, that entity was
18 created before that time but I couldn't be
19 sure. We may have invested directly into
20 the Highbridge funds and then Highbridge
21 put those investments in that entity.
22 Either way it was Highbridge Capital
23 Corporation money in some form.

24 Q. If you will look at the last
25 paragraph of this page you're looking at,

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2 it says, "the fund intends to establish
3 its initial portfolio by purchasing
4 investments from HCM/Z Special
5 Opportunities, LLC, the HCC subsidiary, a
6 Cayman Islands limited liability company
7 which is a subsidiary of Highbridge
8 Capital Corporation, a collective
9 investment fund managed by HCM."

10 So it's your recollection that
11 HCM/Z Special Opportunities, LLC was --
12 how long after you -- well, let me ask
13 that.

14 You don't recall when it was set
15 up; right?

16 A. I do not. I believe 2001 or
17 2002.

18 Q. Okay.

19 And did you have any ownership
20 in that entity?

21 MR. SIFFERT: Which entity?

22 MR. SUSMAN: The HCC subsidiary.

23 A. No.

24 MR. SIFFERT: That's the HCM/Z?

25 MR. SUSMAN: Huh?

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2 MR. SIFFERT: You're referring to
3 HCM/Z.

4 MR. SUSMAN: Special
5 Opportunities, LLC.

6 MR. SIFFERT: And the question is
7 did Mr. Zwirn have any ownership
8 interest in HCM/Z?

9 MR. SUSMAN: Correct.

10 A. No.

11 Q. And did you make -- before April
12 of '02, were you making investment
13 decisions for it?

14 A. As I said, we were making
15 investments starting in late '01 on behalf
16 of Highbridge. Whether they were through
17 HCM/Z, the HCM/Z entity or not, I just
18 don't recall.

19 Q. Do you know why this HCM/Z
20 special opportunities, LLC was set up?

21 A. I don't recall.

22 Q. But you never had -- did you
23 have any kind of indirect ownership in
24 that entity?

25 A. I don't know what you mean by

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2 that.

3 Q. You owned no interest in that
4 entity?

5 A. No, I did not.

6 Q. Let's go to DB Zwirn and
7 Company, LLC.

8 MR. SIFFERT: Are we done with
9 eighty-six?

10 MR. SUSMAN: No, we're not.

11 Q. You were the managing member as
12 of April, '02?

13 A. I don't recall the structure.
14 I'm reading it here so I have no reason to
15 believe that wasn't the case.

16 Q. Okay.

17 A. But I don't know that that has
18 anything to do with what became DB Zwirn
19 and Company, LP. As I sit here today, I
20 just don't recall.

21 Q. Were there other members of DB
22 Zwirn and Company, LLC other than you?

23 A. I just don't know how that
24 worked at that time. I don't recall.

25 Q. Do you recall -- it was a

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2 company.

3 Were there any officers or
4 directors of the company other than you
5 that you recall?

6 A. When?

7 Q. Back in 2002.

8 A. We began hiring people. I don't
9 know that any of those people were
10 officers of that, but I just don't recall
11 how it was structured.

12 Q. Okay.

13 This says that DBZ was the
14 managing member of Highbridge Zwirn
15 Partners, LLC which is referred to it says
16 as HZP or as the general partner.

17 Do you see that?

18 A. Or -- I don't see that.

19 Where are you talking about?

20 Q. I'm reading from the second --
21 the middle paragraph on the page we're
22 looking at.

23 A. Okay.

24 Q. HZP or the general partner is
25 the fund's general partner.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Okay?

3 A. HZP. Okay. I see that.

4 MR. O'BRIEN: Is that HZP, Z as
5 in zebra? Because I think the
6 reporter is getting it down as a C.

7 MR. SIFFERT: We're going to have
8 to show the reporter this because the
9 initialing is all wrong throughout.

10 Q. When this was set up, who were
11 the other members, who else had an
12 ownership interest in HZP other than DB
13 Zwirn and Company?

14 A. To the extent that that or the
15 other one, HZCM was managing the outside
16 funds and being compensated for doing so,
17 as a general matter in some form, Glenn
18 and Henry had half and I had half. Again,
19 I just don't recall the mechanics of this.

20 Q. Okay.

21 And did -- and then there was an
22 entity called Highbridge Zwirn Capital
23 Management, an LLC, the trading manager,
24 and again that was a 50/50 ownership, as
25 you recall?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. What I said was to the extent
3 that the outside funds were compensated
4 for being managed, my general
5 understanding is Glenn and Henry in some
6 form their entity had half and I had half.
7 Again, I don't recall how the legal
8 structure worked.

9 Q. Okay.

10 Now, did there come a time when
11 there were other owners or members added
12 to either Highbridge Zwirn Partners or
13 Highbridge Zwirn Capital Management?

14 A. I don't recall whether these
15 specific entities had additional members
16 added. As a general matter over time in
17 terms of the entities that were paid to
18 manage the outside funds, there were
19 additional people that were added as
20 owners.

21 Q. Okay.

22 So you say there were different
23 people added to the trading manager over
24 time?

25 A. Again, I don't recall. Trading

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2 manager I think was a Highbridge kind of
3 construct. I just don't recall the
4 structure. I'm just trying to make it
5 simple and say in terms of the owners of
6 the management company or companies that
7 managed the funds, additional owners were
8 added. Whether it was the trading manager
9 or not or whether it was called Highbridge
10 Zwirn Capital Management at the time or
11 not I just don't recall.

12 Q. Who was added?

13 A. In terms of people who were
14 added over time to the ownership group,
15 those people included Chris Suan, Vasam
16 Kesavan.

17 Q. Chris Suan what?

18 A. Chris Suan, S U A N, Vasam
19 Kesavan, and Perry Gruss at some point.

20 Q. And do you recall who
21 percentages of ownership each of them had?

22 A. I don't recall the specific
23 numbers. I would say probably less than
24 five.

25 Q. Less than five for each of them

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2 or collectively?

3 A. Each of them. And they may have
4 changed over time. I don't recall.

5 Q. Did you have any ownership
6 interest in Highbridge Capital
7 Corporation?

8 A. No.

9 Q. There was a -- at some point in
10 time Highbridge Zwirn Capital Management
11 or the manager, it's called here the
12 trading manager, handled a what's called a
13 managed account for Highbridge.

14 Do you know what that refers to?

15 A. There was a time I guess
16 starting in 2004 in conjunction with our
17 moving offices where Highbridge wanted to
18 change the structure because of their
19 internal reasons and at that point I
20 became -- I stopped being a managing
21 director of Highbridge and became we
22 referred to it as a senior adviser of
23 Highbridge and the capital that was
24 managed on behalf of Highbridge, instead
25 of having a portfolio manager effectively

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2 who was an employee of Highbridge which
3 would have been me, became a managing
4 account effectively of the management
5 companies that were being -- that were
6 managing the various funds that we were
7 managing.

8 Q. Well, that -- look if you will
9 at page 234 of this document eighty-six.
10 At the top of the page it says, "the
11 non-U.S. fund" -- this is the first full
12 paragraph. "The non-U.S. fund and the HZC
13 subsidiary will be managed using trading
14 strategies generally similar to those the
15 trading manager will use for the fund."

16 Do you see that?

17 A. I do.

18 Q. But the trading manager was not
19 actually managing the HZC subsidiary or
20 was it at that time?

21 A. Well, as I said, I think at that
22 time before the 2004 relocation that I
23 described, I was an employee of Highbridge
24 who was managing the subsidiary.

25 Q. Okay.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Which was a subsidiary of the
3 Highbridge Capital Corporation.

4 Q. Right.

5 It says the next under general
6 partner, the last sentence says, "the
7 general partner's responsible for the
8 management and administration of the fund
9 generally." And then it says trading
10 manager, "the trading manager" -- last
11 sentence -- "is responsible for all
12 investment activities of the fund."

13 Now, is that, in fact, how it
14 was divided up or did that change?

15 MR. ARFFA: I object to form.

16 A. As I said, I don't recall how
17 the entities were structured at that time
18 beyond what I've said.

19 Q. Do you recall at any point in
20 time -- well, my question is the general
21 partner.

22 Was it, in fact, in practice did
23 this ever handle management and
24 administration of the fund generally
25 itself?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I don't understand by itself.

3 Q. Well, the trading manager --

4 A. Okay.

5 Q. -- here Highbridge Zwirn Capital
6 Management is responsible for investment
7 activities of the fund; right?

8 A. I can read it, yes. Barely.

9 Q. Did -- HZCM had employees;
10 correct?

11 A. At this time I believe we were
12 hiring the employees into Highbridge.

13 Q. They were being hired by
14 Highbridge?

15 A. I believe.

16 Q. Okay.
17 Highbridge Capital Management?

18 A. I believe so.

19 Q. Okay.
20 And that's true for the general
21 partner, too, its employees were all hired
22 by Highbridge Capital Management?

23 A. I don't know that the general
24 partner as described here in this case had
25 any employees at this time. But again, I

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 just don't recall how it was structured.

3 Q. Fair enough.

4 Now look at Exhibit 93.

5 A. Am I done with this?

6 Q. Yes.

7 MR. SIFFERT: Is this also a new
8 exhibit?

9 MR. SUSMAN: Yes.

10 MR. SIFFERT: So the reporter
11 will mark it later.

12 Q. Now, this is a redlined version
13 of a confidential offering memo from May,
14 2005 and I want you to look at page 2999
15 because obviously the structure changed
16 and this may help us discuss what changes
17 took place.

18 Okay, Mr. Zwirn?

19 A. Okay.

20 Q. If you look at the second full
21 paragraph, DB Zwirn Partners, LLC.

22 Now, that is the -- DBZP or the
23 general partner is the fund's general
24 partner.

25 Okay?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Okay.

3 Q. And Zwirn Holdings, LLC is the
4 fund's manager. I'm sorry, DB Zwirn and
5 Company, LP was the fund's manager.

6 Do you see that?

7 A. I do see it.

8 Q. Okay.

9 And so this was just a change in
10 the entities that did these functions?

11 MR. SIFFERT: Objection as to
12 form.

13 A. I don't understand.

14 What's the question?

15 Q. Huh?

16 MR. SIFFERT: He said he didn't
17 understand the question is what he
18 said.

19 Q. Okay.

20 Under the original onshore fund,
21 the general partner was something called
22 Highbridge Zwirn Partners, LLC. Now it is
23 changed to DB Zwirn Partners, LLC.

24 Okay?

25 A. Yes. Again, I heard you say

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2 that. I don't know that that's how it
3 switched. There is a number of moving
4 parts here. I don't see -- one, I don't
5 know that this is what we ended up with
6 because this is a draft document.

7 Two, I don't see the notion of a
8 trading manager or how that works with
9 this. I just don't recall.

10 Three, there's some complexity
11 here caused by the JP Morgan transaction
12 for Highbridge where they're changing
13 around what's Swieca versus which
14 Highbridge, et cetera. I don't recall.
15 It wasn't my business; I don't recall what
16 they were doing there. I don't know that
17 you can map one to one from that document
18 to this. I don't know that you can't. I
19 just don't know.

20 Q. Daniel B. Zwirn it says is a
21 managing member of Zwirn Holdings.

22 And it says here, "Dubin and
23 Swieca Asset Management, LLC formally
24 known as Highbridge Capital Management,
25 LLC, will, for a period of time, be a

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2 minority member of the general member, a
3 minority partner of the manager, as well
4 as a minority member of the manager's
5 general partner."

6 What ownership interest did they
7 have? Was their interest the same in all
8 three?

9 A. Again, I don't recall exactly
10 the structure and I don't know that this
11 was the final structure since this is a
12 draft document.

13 As a general matter, what we
14 referred to as the firm that we had, they
15 were originally fifty percent and then
16 that changed over time.

17 Q. And how did it change over time?

18 A. It went to somewhere in the 40s
19 over a period of time, then it would have
20 gone to somewhere in the 30s, and
21 ultimately gone to zero.

22 Q. Do you recall when it went --

23 A. I don't recall the specific
24 years.

25 Q. -- that it made the change?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I'm sorry, what was the
3 question? What change?

4 Q. Okay.

5 And this is --

6 MR. SIFFERT: I'm sorry, Mr.

7 Susman, I don't think there was an
8 answer to the question because I don't
9 think he heard the question properly.
10 He interrupted the question and said
11 he didn't understand your question.

12 A. You referred to a change. I
13 don't know what you meant.

14 Q. From fifty to forty to thirty.

15 A. It's fifty to somewhere in the
16 40s to somewhere in the 30s. I don't
17 recall the years during which that
18 happened.

19 Q. Do you recall when it went to
20 zero?

21 A. As originally scheduled, it
22 would have occurred somewhere around 2008
23 or nine, but it was ultimately -- it went
24 to zero earlier than that.

25 Q. It was ultimately what? When?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. At the time of --

3 MR. ARFFA: Asked and answered.

4 Q. When?

5 MR. SIFFERT: You may answer the
6 question of when it went to zero, if
7 you remember.

8 A. I guess in -- I believe in 2007
9 which was earlier than originally
10 scheduled.

11 Q. Now, if you will look at this
12 document -- oh, there's something here
13 called DB Zwirn Special Opportunities Fund
14 TE.

15 What was that?

16 A. Where are you looking?

17 Q. The same paragraph we've been
18 looking at but towards the bottom.

19 A. I think that was another fund
20 that was for tax exempt onshore investors.

21 Q. Why was that set up?

22 A. I believe because those people
23 had separate treatment on -- for various
24 things. I believe it was related to a
25 thing called UBTI, but I don't recall the

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 specifics of it.

3 Q. Were you the person who decided
4 to set it up?

5 A. I don't recall how the decision
6 was made.

7 Q. Do you recall when it was set
8 up?

9 A. I don't recall.

10 Q. Now, from 2002 when the onshore
11 fund got going to two thousand -- through
12 2006, let's focus on that time frame, an
13 entity which you ran managed the onshore
14 fund; right?

15 A. I don't recall the specific
16 structure. It was a management company or
17 multiple management companies of which I
18 was originally the managing partner with a
19 different set of owners at different
20 percentages at different times over the
21 time frame that you've described.

22 Q. Because it's changed, I tried to
23 make it kind of more generic, Mr. Zwirn, I
24 said you ran it, you were the boss.

25 A. I spent the majority of my time

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2 on -- focusing on the investments.

3 Q. Okay.

4 And the -- and to make this as
5 -- investments for whom?

6 A. The investments that would be
7 owned by the funds that were being -- or
8 entities that were being managed.

9 Q. And what were the funds or
10 entities that were being managed during
11 the time frame May 1, 2002 through 2006?

12 MR. ARFFA: I'm going to object
13 to form.

14 Is it easier to break down the
15 management entities from the funds?

16 Q. Go ahead, you may answer the
17 question.

18 A. It changed over time.

19 Q. I want to know the complete list
20 of funds or entities that were being
21 managed by some entity with which you in
22 turn were running.

23 A. Over that period of time, there
24 were management companies of which I was a
25 partner or equivalent where my primary

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2 focus was selecting investments. I was
3 not necessarily running those entities
4 depending on the entities. The funds or
5 entities over that period of time that
6 were managed at any one point during that
7 time but not necessarily at all times to
8 my recollection would have included the
9 Highbridge subsidiary, the onshore fund,
10 the offshore fund, the TE fund, I believe
11 at some point there was a thing called an
12 offshore two. I forgot what
13 differentiated that from the offshore
14 fund. There were some managed accounted
15 associated with individual investors.
16 There was an --

17 Q. Who would those have been?

18 MR. ARFFA: Let the record
19 reflect the witness was cut off before
20 he concluded his prior answer.

21 MR. SUSMAN: Oh, I'm sorry.

22 A. In addition, there was an Asian
23 fund, I believe.

24 Q. Asian fund?

25 A. Yeah.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 And then there were entities in
3 which the management company had an
4 interest where the investment involvement
5 varied that included a European real
6 estate fund, potentially private equity
7 fund -- I don't recall where we were on
8 that -- a value equity fund --

9 Q. Hang on.

10 It was a European real estate --

11 A. Fund, yeah.

12 Q. -- fund?

13 A. I believe a private equity fund.

14 Q. Do you know the name of it?

15 A. It would have been under ZM.

16 Q. ZM, what is ZM?

17 A. It would have stood for Zwirn
18 Morgan.

19 Q. Zwirn Morgan?

20 A. Yes.

21 Q. What is Zwirn Morgan?

22 A. That was a partnership whose
23 owners included a guy called Quinn Morgan
24 and the owners of -- and the DB
25 Zwirn-related management companies for the

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 purpose of doing private equity-type
3 investments.

4 Q. Anyone else?

5 A. I think that's all the funds.
6 Again, I don't know that -- all of those
7 were certainly not managed continually
8 over the time frame you've described, but
9 at least at some point I think were during
10 that time.

11 Q. Now let me go back.

12 I know the onshore fund, the
13 Highbridge subsidiary, we've talked about
14 it, offshore funds, tax -- TE fund, tax
15 exempt fund; correct?

16 A. Yes.

17 Q. There was an offshore two, and
18 then you said there were managed accounts.

19 Which managed accounts?

20 A. I don't recall the actual names
21 of the accounts, but there were managed
22 accounts --

23 MR. ARFFA: I would designate
24 here as confidential any of the names
25 of the specific investors.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 You can go ahead.

3 MR. SUSMAN: I think the whole
4 thing's confidential, isn't that the
5 way it works, and then you review it?

6 MR. ARFFA: That's fine. Why
7 don't we do it that way.

8 THE WITNESS: Should I say that
9 or should I not?

10 MR. SIFFERT: You may.

11 A. There was -- there were entities
12 managed o behalf --

13 Q. I'm sorry, who were the managed
14 accounts?

15 MR. SIFFERT: He said I don't
16 recall the names but there were
17 managed accounts --

18 Q. Go ahead.

19 A. Managed on behalf of a company
20 called Coast Asset Management.

21 Q. Called what?

22 A. Coast.

23 Q. How do you spell it?

24 A. C O A S T.

25 Q. Coast Asset Management?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I don't know if it's Coast
3 Management or Coast Asset Management,
4 something like that, but Coast. And there
5 were some entities managed on behalf of a
6 company called Delphi Financial.

7 Q. Called what?

8 A. Delphi Financial.

9 Q. Okay.

10 A. That's all I recall.

11 Q. What was the -- Delphi, is that
12 the -- I notice they're listed on your
13 investor list.

14 There were managed accounts for
15 them, you say, that were brought to you by
16 Delphi?

17 MR. ARFFA: Objection to form.

18 A. I don't know what you mean by
19 brought to us, but they were the company
20 that -- for whom we managed these
21 accounts.

22 Q. Okay.

23 And did you know -- did you know
24 at the time or have access to the names of
25 the accounts?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I believe it was --

3 Q. Or was it just Delphi.

4 A. No, I don't think there were
5 different names. I just don't recall.

6 Q. Did Delphi have money of its own
7 invested with you?

8 A. I don't know that the money that
9 was under the different names wasn't
10 theirs. I don't know how they were
11 structured.

12 Q. And was Delphi -- who did you
13 deal with at Delphi, was that Robert
14 Rosenkrantz?

15 A. Him, Robert Smith, Rick Waldis.

16 Q. And Coast Asset Management, who
17 was that?

18 A. That was an asset management
19 company.

20 Q. Huh?

21 A. It was an asset management
22 company.

23 Q. Yeah.

24 Who was -- what was Coast Asset
25 Management?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. My best understanding, it was an
3 asset manager focused on different
4 alternative investment strategies.

5 Q. Who did you deal with there?

6 A. And again, to answer that
7 question, I didn't deal with them most of
8 the time. That's the same thing with
9 Delphi. But when I did, there were
10 several people. The only one whose name I
11 see Rick is Des Worthman. Des with a W.
12 I don't recall the last name.

13 Q. What was the name of the Asian
14 fund?

15 A. I don't recall the name,
16 specific name of that.

17 Q. What was the name of the
18 European real estate fund?

19 A. It was called ThreadGreen.

20 Q. Spell it, please.

21 A. T H R E A D capital G R E E N,
22 all one word.

23 Q. Okay.

24 And the private equity fund was
25 called what?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I think we discussed that. It
3 was ZM.

4 Q. ZM?

5 A. Yeah. I don't recall the full
6 name of the funds or also where we were in
7 the development of that over the time
8 frame you discussed.

9 Q. Now, if you will look at --

10 MR. SIFFERT: I think I'm going
11 to want to take a break in about two
12 or three minutes.

13 MR. SUSMAN: I just want to ask
14 one question here.

15 THE VIDEOGRAPHER: You have eight
16 minutes left on the tape.

17 Q. Look at page four. It's 3007,
18 Bates number 3007.

19 Do you see the general partner
20 description there?

21 A. (Reviewing).

22 I do.

23 Q. And it says the general
24 partner's responsible for the management
25 and administration of the fund. And if

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 you look down at manager, it says the
3 manager is responsible for all investment
4 activities of the fund.

5 Do you see that?

6 A. I do.

7 Q. Now, is that the way things
8 actually worked, that administrative and
9 management of the fund was handled by the
10 general partner and investment activities
11 were handled by the manager?

12 A. Well, I don't know that this
13 document was ever operative or in what
14 form it ultimately became operative. This
15 is a draft.

16 Q. I'm not asking you whether the
17 document was operative. I'm using it the
18 document only to ask you to -- as kind of
19 a help for you to explain, Mr. Zwirn, what
20 functions, for example, were being
21 performed by the general partner -- let's
22 take 2006 for example.

23 You had a general partner and
24 you had a manager; right?

25 A. As I said, I don't recall the

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 specific structure and how it changed over
3 time with regard to the different entities
4 or whether this description in the draft
5 document was correct at any given point in
6 time.

7 Q. I don't want you to worry about
8 the description in the document.

9 A. Okay.

10 Q. As far as what was concerned in
11 2006, were all management, administration,
12 investment decisions of the onshore fund
13 being handled by a single entity known as
14 the manager?

15 A. I don't recall how that was
16 structured. As a general matter, I
17 focused the majority of my time on the
18 investments.

19 Q. So the answer is you don't
20 recall that?

21 A. I don't recall how the different
22 activities were organized in different
23 legal entities and structures for
24 different entities and how they changed
25 over that five-year period. I don't

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 recall that.

3 Q. Do you recall -- was there ever
4 -- do you recall, was there ever a
5 division between two entities or was it
6 always handled by one entity?

7 MR. ARFFA: Objection to form.

8 A. I just don't recall how it was
9 done.

10 Q. Let me be specific with you.
11 Do you know who was -- who
12 employed, for example, Mr. Kahn?

13 A. I don't recall the legal entity
14 that did so.

15 Q. He was the chief operating
16 officer; correct?

17 A. Of what I would generally refer
18 to as the firm or basically the management
19 companies of the firm starting in 2005, I
20 believe.

21 Q. He was -- the firm you refer to
22 as the management company?

23 A. The DB Zwirn and Company, LP
24 management company or affiliate managing
25 companies.

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2 Q. Did -- and Mr. Gruss was
3 employed by the firm?

4 A. He was originally employed by
5 Highbridge Capital Management and then
6 after the time that we described in early
7 '04 became an employee of the firm as
8 we've described it and ultimately was
9 appointed a partner of the firm.

10 Q. Okay.

11 Did any of those people -- did
12 the general partner itself have any
13 employees?

14 A. As I said, I don't recall which
15 of the legal entities hired which person
16 with regard to what managed entity for
17 that period of time. I just don't recall.

18 MR. SUSMAN: Let's take your
19 break.

20 THE VIDEOGRAPHER: Stand by.

21 The time is 10:32.

22 We are going off the record.

23 This will end tape one.

24 (Whereupon a break was taken)

25 (Whereupon, a document entitled

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2 April, 2002 Offering Memo was marked
3 Exhibit 86 for identification.)

4 (Whereupon, a document entitled
5 Confidential Memorandum was marked
6 Exhibit 93 for identification.)

7 THE VIDEOGRAPHER: The time is
8 10:44 and we are back on the record.
9 This is the start of tape two.

10 Q. Mr. Zwirn, I pass you what's
11 been marked as Exhibit 33.

12 And you recognize this as --
13 you've seen this document before; correct?

14 A. I believe so.

15 Q. Is any of that -- any of the
16 handwriting on there your writing?

17 A. Most of it, I believe.

18 Q. Excuse me, what?

19 A. I believe most of it is.

20 Q. There's something on the top
21 that says all dates off by one.

22 Do you see that?

23 A. I do.

24 Q. Is that your handwriting?

25 A. I believe so.

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2 Q. Okay.

3 And this is -- there's something
4 at the bottom that says correct dates
5 starting --

6 A. Yes.

7 Q. -- 10/16.

8 Do you know what that means?

9 A. I don't recall writing that at
10 the time. As I sit here today, I believe
11 I just made a mistake regarding what date
12 we were making these calls.

13 MR. SIFFERT: Try to keep your
14 voice up, if you can.

15 THE WITNESS: Okay.

16 Q. Okay.

17 So as I understand this, these
18 were -- this is a list of investors.

19 Now, were these investors in the
20 onshore and offshore fund or only the
21 onshore fund?

22 A. These would appear to be
23 investors in -- some people who were
24 invested in onshore, potentially some who
25 were in both, and some people who were in

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 offshore, some who may have not invested
3 yet, potentially -- I don't know whether
4 -- which of these people invested in any
5 of the other entities that we're talking
6 about.

7 Q. Okay.

8 Well, would it have been the
9 investors in the TE fund, for example, do
10 you know whether they would have been
11 included?

12 A. I don't recall. My sense is
13 looking at the numbers it would appear
14 that these were totals, not necessarily by
15 entity. There were many investors who
16 were in multiple entities, I believe.

17 Q. Looking at the numbers here,
18 you're saying the numbers look like they
19 were -- these are numbers from people that
20 invested across the -- before the break,
21 you listed nine funds that were being
22 managed.

23 A. Right.

24 Q. By the firm.

25 This would have been an all

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 inconclusive list? That's what I'm trying
3 to get.

4 A. Those that I listed, as I said,
5 I don't recall which of those entities
6 were active over the period about which
7 you asked me.

8 Q. Okay.

9 A. Can you refresh me on the
10 question regarding this?

11 Q. My question is the document's
12 called call list re PG departure
13 balance/investor status as of 7/1/06. And
14 this would be for all the money you were
15 managing or were you excluding certain --

16 A. I don't --

17 MR. SIFFERT: Objection as to
18 form.

19 Q. -- customers? Do you know?

20 A. I just don't recall.

21 Q. Okay.

22 And then at the top you --

23 MR. ARFFA: Steve, I'd just like
24 to make sure we have the same rule at
25 the other depositions with Harry Reid

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2 is we don't each have to object to
3 form. I mean one objection to form
4 will cover all the other parties so
5 you don't need five people saying
6 object to form.

7 MR. SUSMAN: No. And if you
8 want, we can agree that every question
9 -- you can reserve your form objection
10 until time of trial.

11 Do you want to do that? You've
12 got them all.

13 MR. ARFFA: I'd rather object to
14 form, frankly.

15 MR. SUSMAN: You have your
16 choice.

17 Q. Okay.

18 At the top of this list on the
19 left do you see there's something that
20 says fifty plus one hundred seventy MA and
21 there's a blank.

22 Do you know why that's blank?

23 A. No, I don't.

24 Q. Okay.

25 Do you know who that is?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. No, I just don't recall why it's
3 blank.

4 Q. Okay.

5 Those numbers don't ring any
6 bell to you?

7 A. Not as I sit here today. I
8 don't recall.

9 Q. Delphi Capital Management there,
10 it shows twenty-five plus two hundred
11 eighteen managed account.

12 What does that mean?

13 MR. SIFFERT: It says MA, it
14 doesn't say managed account.

15 Q. MA means management account;
16 right?

17 A. I don't recall. I didn't make
18 this document originally. I don't recall.
19 I have no reason to think it doesn't. I
20 don't know what the other number would be.

21 Q. You don't have any idea what the
22 other number would be?

23 A. I mean, I can speculate.

24 Q. What do you think it is?

25 MR. SIFFERT: Don't guess. If

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 you know, you know. If you think, you
3 can say that.

4 Q. What do you think it is, sir?

5 A. Perhaps an investment in one of
6 the funds that's separate from the managed
7 account, but I just don't know.

8 Q. And for example, let's look at
9 Highbridge Capital Management. That's Mr.
10 Dubin and it's five hundred forty-five
11 million was the amount in the managed
12 account, eighteen million was an
13 investment he made in -- he had a personal
14 investment and a foundation investment in
15 either the onshore or the offshore funds
16 or both; right?

17 MR. ARFFA: Objection to form.

18 A. I remember that he was invested
19 personally in some form. I don't recall
20 how and in what entities.

21 Q. Okay.

22 And then the next one under that
23 is UBP, Union Bancaire Privee, that's a
24 huge investor.

25 What fund were they in?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I don't recall the specific
3 balances by fund. I think -- I believe
4 they were mostly in the offshore fund.

5 Q. And we have down there Coast
6 Asset Management, that is one you
7 mentioned.

8 Do you see that one? It's a
9 small, \$220,000, I guess.

10 MR. ARFFA: Objection to form.

11 A. No, I don't believe so.

12 Q. Huh?

13 A. I don't believe so.

14 Q. What was Coast Asset Management?

15 A. As I sit here today, I think
16 that means two hundred twenty million
17 because there was nothing after the
18 decimal point.

19 Q. Oh, two hundred twenty million?

20 A. Yes, I think so.

21 Q. And was that some of the managed
22 accounts?

23 A. As I said, I think we managed
24 accounts on their behalf. I don't know --
25 they may have also been invested in the

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 funds in some form. I don't recall how it
3 all broke down.

4 Q. Now, these -- is this your
5 writing on the top here? I can't read it.

6 Can you read this?

7 A. I can't read it.

8 Q. Is it your writing?

9 A. I would think that is. But to
10 be clear, on the top right I don't think
11 that is. I also can't read that. But I
12 can't read what it says.

13 Q. Okay.

14 Now -- so this first batch of
15 calls that you made to investors, did you
16 make that over the Columbus Day weekend?

17 A. In 2006, I believe so, yes.

18 MR. SIFFERT: Can I just say for
19 the record so it's clear that we're
20 looking at a photocopy and not an
21 original so that it's the poorness of
22 the photocopy that makes it illegible.

23 MR. SUSMAN: I take it you have
24 the original that --

25 MR. SIFFERT: I have not seen the

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 original ever. But I want the record
3 to be clear that what the witness is
4 looking at is a photocopy. I have
5 never seen an original.

6 Q. You seem to recall it was a
7 three-day weekend; right, when you made
8 these calls?

9 A. I believe so.

10 Q. And you began making them on
11 Saturday or Sunday?

12 A. I believe Saturday.

13 Q. Saturday?

14 A. I believe so.

15 Q. Columbus Day --

16 MR. SUSMAN: Does someone have a
17 BlackBerry? A calendar from 2006.
18 October, please.

19 MR. SIFFERT: The fourteenth is a
20 Saturday.

21 MR. SUSMAN: Huh?

22 MR. SIFFERT: I don't know which
23 would be the -- Columbus Day is --

24 MR. SUSMAN: First Monday, I
25 believe.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 MR. SIFFERT: That would be the
3 second.

4 MR. SUSMAN: Maybe it's the
5 second Monday.

6 MR. SIFFERT: Which would be the
7 ninth. The second Monday is the
8 ninth. So Saturday was the seventh.

9 MR. SUSMAN: And Sunday the
10 eighth.

11 Q. And the dates down here commence
12 on the tenth, but you believe all those
13 days that are listed the tenth should have
14 been listed the ninth?

15 A. I don't recall. I have a
16 recollection we were off -- I was off when
17 I did the dates. I don't know what the
18 correct date starting 10/16 means. I just
19 don't know.

20 Q. But the calls would have begun
21 on Saturday, you believe, and continued
22 through Monday?

23 A. Yes.

24 Q. So these dates are neither in
25 the Saturday to Monday time frame, they're

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 clearly off; right?

3 A. As I said, I remember that it
4 was the Saturday to the Monday and I
5 remember that I had made a mistake in
6 terms of what the first date was.

7 Q. When someone says down here
8 correct dates starting 10/16, what did
9 that mean?

10 A. I don't know. I don't recall.
11 I do recall it was over a three-day
12 weekend that included Columbus Day from
13 Saturday through Monday.

14 Q. Did you personally invest -- did
15 you make any personal investments in --
16 that were in accounts or entities that
17 were managed by the firm?

18 A. Yes.

19 Q. Which ones?

20 A. I believe -- I don't recall the
21 timing but I was in the onshore fund and I
22 believe through a deferral structure I was
23 in the offshore fund. And I may have had
24 also small investments in some of the
25 different entities we discussed before

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 including the European real estate, a
3 couple of hundred thousand max or so in
4 that, maybe the private equity. I don't
5 know when and where that was in
6 development and potentially the Asia,
7 again small that I can recall. Although
8 I'm not sure about that. I don't recall.

9 Q. Now, was the money you invested
10 in the onshore fund, are you listed down
11 here anywhere?

12 A. Not that I can see.

13 Q. How about do you have an
14 interest, direct or indirect, in any of
15 the entities that are listed on these
16 three pages?

17 A. I don't today and I don't think
18 I did at the time.

19 Q. Do you think -- well, do you
20 still have an investment in the onshore or
21 offshore funds?

22 A. In the onshore.

23 Q. In the onshore funds?

24 A. Yes.

25 Q. How much is your investment?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I think the latest NAV is
3 somewhere in the two hundred thousands.

4 Q. And was your investment ever
5 larger? Did you ever take any money out
6 of the funds?

7 A. Not that I recall. In the
8 deferral structure which was I believe
9 owned by the management company, the
10 management company took all of that money
11 out to spend on the expenses relating to
12 this situation.

13 Q. Excuse me, say that again?

14 A. In the offshore deferral
15 structure --

16 Q. What does that mean?

17 A. It was an account that I believe
18 was owned by the management company. I
19 don't know how the structure worked but it
20 would have been for the benefit of me and
21 Glenn Dubin and perhaps Henry Swieca, I
22 don't recall, and that structure had an
23 investment in the offshore and that
24 structure was broken to pay expenses on
25 behalf of the investors.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. What was the name of that
3 structure?

4 A. I don't recall.

5 Q. Is it listed here?

6 A. I don't believe so.

7 Q. Do you know how much the
8 investment was?

9 A. I believe at its peak it was
10 over \$40 million, but I don't recall. I
11 don't recall the specific number and when
12 that was.

13 Q. Now, why do you say it was a
14 deferral structure?

15 A. It was -- again, I'm not an
16 attorney or a tax attorney. It was some
17 sort of deferral of offshore fees received
18 by the management company.

19 Q. And you say that was broken,
20 broken to pay expenses?

21 A. On behalf of the -- that the
22 management company expended on behalf of
23 its investors primarily as a result of
24 this situation.

25 Q. When was that done?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I don't recall what date.

3 Q. And how was it -- how much money
4 did you get out?

5 A. I received nothing.

6 Q. Huh?

7 A. I received nothing.

8 Q. How much money did the
9 management company's entity get out?

10 A. I don't recall.

11 Q. Did Mr. Dubin take any of that
12 money?

13 A. Well, money is fungible. There
14 was a time later when he wanted to be paid
15 by the management company.

16 Q. And the management company got
17 that money from this offshore -- from
18 breaking the offshore deferral?

19 A. No, as I said, money is fungible
20 so you can't necessarily trace every
21 dollar to every expense, but a significant
22 amount of money was used for management
23 company expenses primarily as a result of
24 the Gruss actions, et cetera, and sometime
25 -- I forget the timing -- but Glenn wanted

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 to be paid.

3 Q. Do you currently have any kind
4 of business relationship to Glenn Dubin?

5 A. Well, I am -- I own four and a
6 half percent of a company called Corbin --
7 I guess Corbin Capital Partners or Corbin
8 Capital Management of which he and Henry
9 Swieca are the majority owners.

10 Q. What did you say, four and a
11 half percent?

12 A. Yes.

13 Q. And what does Corbin do?

14 A. They are a fund of hedge funds.

15 Q. And do you have any -- is your
16 role in that just passive?

17 A. Yes.

18 Q. Is that the only business
19 relationship you currently have with Mr.
20 Dubin?

21 A. There's a small personal
22 investment that we made several years ago
23 in an employee entity to invest in a
24 private equity fund that we -- it was
25 myself, Glenn Dubin, and one of our

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 employees. That's the only other one I
3 can think of.

4 Q. What was the name of that fund?

5 A. The fund in which the capital
6 was invested?

7 Q. Yes.

8 A. It was an entity managed by
9 Roark Capital Partners.

10 Q. What is your -- in what form is
11 your investment in Roark Capital Partners?

12 A. It was a commitment of -- well,
13 to be clear, Roark Capital Partners, I
14 believe, is a management company for a
15 private equity firm. I don't know what
16 the fund is called. I several years ago
17 made a \$500,000 commitment that has been
18 drawn down over time.

19 Q. Do you currently have a
20 commitment or is it gone?

21 A. I think there's some outstanding
22 commitment, but I don't recall the amount.

23 Q. And the other two people who
24 made a commitment alongside you were Mr.
25 Dubin for \$500,000?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Yes.

3 Q. And the other person, what was
4 his name?

5 A. Matt Rothfleisch.

6 Q. His commitment was a lot less.
7 Do you remember what it was?

8 A. \$50,000.

9 Q. Any other current business
10 relationship with Mr. Dubin?

11 A. Not that I can recall.

12 Q. By the way, was your role in
13 Corbin always passive?

14 A. I was never employed by it but I
15 did a bunch of -- a decent amount of work
16 on it.

17 Q. What kind of work were you doing
18 on it?

19 A. Working with Glenn to think
20 about the strategy, think about some of
21 the employees, things of that sort.

22 Q. What was -- who ran Corbin, was
23 it Glenn Dubin?

24 A. No.

25 Q. Who?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. It changed over time.

3 Q. When did it begin?

4 A. I think in the 80s or something.
5 But I don't know the circumstances around
6 its founding.

7 Q. You became involved in it when
8 you went to work for Mr. Dubin?

9 A. Yes.

10 Q. And who was running it at that
11 time?

12 A. Initially a woman named Anna
13 Tan.

14 Q. And then how did that change?

15 A. Then a man named Mark whose last
16 name I don't recall.

17 Q. And then?

18 A. A woman named Tracy McHale
19 Stuart.

20 Q. Is she currently running it?

21 A. I don't know for a fact. I
22 believe so. But I just wouldn't know.

23 Q. You worked pretty closely with
24 Mr. Dubin since 2001 when you went to work
25 for Highbridge?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Yes.

3 Q. Into 2007; correct?

4 A. There was a time certainly
5 through '06 and a good chunk of '07, there
6 was a time when it decreased. I don't
7 recall the date or dates.

8 Q. Did you consider Mr. Dubin to be
9 an honest and honorable person?

10 A. I don't recall my thoughts at
11 the time, but I thought he was very smart
12 and great at what he did.

13 Q. Did he ever lie to you?

14 A. Directly verbally that I could
15 recall? I don't think so. But I don't
16 recall specifically.

17 Q. Have you seen an affidavit that
18 Mr. Dubin executed in connection with this
19 matter?

20 A. Yes.

21 (Whereupon, a document entitled
22 Affidavit of Glenn Dubin was marked
23 Exhibit 87 for identification.)

24 Q. Let me show you what's been
25 marked as Exhibit 87.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 MR. SIFFERT: Are we done with
3 thirty-three?

4 MR. SUSMAN: Yeah, for the time
5 being. I'm coming back to it. The
6 way I take a deposition, you're never
7 done.

8 MR. SIFFERT: I can see.
9 How did you mark the affidavit,
10 what number?

11 MR. SUSMAN: It's number
12 eighty-seven.

13 Q. This is the affidavit you have
14 seen before?

15 A. Yes.

16 Q. I want you to look at paragraph
17 two, read it to yourself, and then tell me
18 if there's anything in there you disagree
19 with.

20 A. (Reviewing).

21 The first place sentence, as I
22 said, I don't recall how his entities
23 worked. I wouldn't know about that.

24 The second sentence --

25 Q. Okay.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I'm still going.

3 Q. The easy thing, let's make sure
4 we get the right question so you
5 understand.

6 A. Okay.

7 Q. If you don't recall something,
8 you don't have to tell me; okay?

9 A. Okay.

10 Q. If reading it you say that's
11 just wrong, I know that's wrong, then I
12 want you to tell me.

13 Is there anything in paragraph
14 two that you can say shit, that's just
15 wrong?

16 A. Well, the sentence, "while Zwiirn
17 was responsible," depending on the time
18 there was a group of people who were
19 responsible for different aspects of the
20 management of the business that operated
21 the funds so I personally was not
22 depending upon the time. I don't --

23 Q. Let me make sure we understand
24 that.

25 A. Okay.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. You were the -- it's fair to say
3 you were the CE -- the CEO of the firm?

4 A. We didn't use that title.

5 Q. Huh?

6 A. We didn't use that title.

7 Q. What was your title?

8 A. I don't recall the specific
9 legal titles within the entity. As a
10 general matter, once the firm was off
11 starting in '04 I was managing partner of
12 the entity. Before that, I was managing
13 director of Highbridge Capital, head of
14 its special opportunities group, and a
15 managing principal of the entities that
16 managed the outside funds that had no
17 employees.

18 Q. Okay.

19 But the people that worked for
20 the firm ultimately reported to you;
21 correct?

22 MR. ARFFA: Objection to form.

23 What firm are you referring to?

24 MR. SUSMAN: What he's referring
25 to as the firm throughout.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 MR. SIFFERT: At all periods of
3 time; is that what you're saying?

4 MR. SUSMAN: Yes, sir.

5 A. No.

6 Q. At what period of time did
7 people who worked for the firm not report
8 to you?

9 A. Before the early 2004 move, we
10 had a number of people who were reporting
11 to me and to other senior people at
12 Highbridge.

13 Q. After the early --

14 MR. SIFFERT: Let him finish the
15 answer.

16 A. Before that time, initially the
17 operations were done wholly by Highbridge
18 and then after that they were done by a
19 combination of Highbridge people and
20 Highbridge employees focusing on our
21 business. In early '04, it was mostly
22 people who were employed by the management
23 company at sort of that time, although
24 there were still interconnects with senior
25 Highbridge people.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 In terms of the management and
3 operations, throughout all of that time I
4 focused primarily on the investments made
5 by the various management company
6 structures that managed the various
7 entities that we talked about. Over that
8 in terms of the operations, when we
9 started off, it was a combination of
10 Highbridge personnel, including Rich
11 Batchek, Ron Resnick, Glenn and Henry in
12 various forms, and then that evolved as
13 their senior management changed on the
14 non-investment part of it along with
15 Glenn.

16 Over time, after '04 it was
17 primarily people who were employed
18 primarily being the management companies
19 that we had at that time and thereafter.
20 Initially led by Perry Gruss, then a
21 combination of Perry Gruss and Harold
22 Kahn, and then a combination of David Lee
23 and Lawrence Cutler. And at different
24 times Glenn was the majority before the
25 issues arose involved in all of the kind

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 of key strategic decisions, some of the
3 hiring decisions, and involvement with key
4 investors.

5 Q. From January 1, 2005 on, the
6 people who -- the senior officers of the
7 firm, the management company, reporting to
8 you; correct?

9 A. On a day-to-day basis, the
10 managing directors focused on investments
11 reported to me as a general matter. There
12 were senior employees who were front
13 office oriented who reported to me and
14 then became partners of the firm. Some of
15 whom spent times on key committees,
16 primarily non-investment-related
17 committees that some of those people
18 managed. All of the non-investment people
19 of the firm reported first to Perry Gruss,
20 then to a combination of Perry Gruss and
21 Harry Kahn, and ultimately to a
22 combination of David Lee and Lawrence
23 Cutler. I focused the vast majority of my
24 time on the investments that we made but
25 also served as part of the management

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 committee whose components changed over
3 time that dealt with some of the bigger
4 strategic issues, some of which were front
5 office related, some of which were not.

6 Q. Okay.

7 Let's -- let me divide this up a
8 little.

9 In two thousand --

10 MR. ARFFA: I don't mind but I
11 want the record to reflect that, as
12 we're taking this diversion, that the
13 witness was not allowed to continue,
14 just so the record's clear, going
15 through the affidavit, so we're all
16 clear on that. In other words, I
17 don't want anyone every saying he was
18 given the full opportunity to list
19 every statement here that he disagreed
20 with.

21 Q. I'm not letting you off the hook
22 that easy.

23 There was something called a
24 management committee?

25 A. Yes.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Who was on the management
3 committee in 2006?

4 A. I don't recall. I think it
5 changed over time. Key decisions included
6 myself around that time in '06 before that
7 time, myself, Chris Suan, Harold Kahn,
8 Perry Gruss, Vasan Kesavan.

9 Q. Who?

10 A. Vasan Kesavan.

11 Q. How do you spell his name?

12 A. V A S A N K E S A V A N.

13 Different people were on that committee at
14 different times. And also we involved
15 Glenn on all the key important matters as
16 he was referred to as a senior adviser of
17 our business.

18 And then after October of '06 --

19 Q. Hang on, hang on. I just want
20 to make sure I get up to October of '06.

21 It was you, Suan, Kahn, Gruss,
22 Kesavan?

23 A. Kesavan.

24 Q. Anyone else?

25 A. Suan.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Got him.

3 A. And I said for key issues, Glenn
4 Dubin. Who was on the management
5 committee when I don't recall. But key
6 issues were brought to that group.

7 MR. SIFFERT: You started to
8 answer the question after '06? Let
9 him finish the answer.

10 A. After October of '06, it was a
11 combination of myself, David Lee, Lawrence
12 Cutler, Chris Suan, Vasam Kesavan, and
13 Glenn Dubin in various forms.

14 Q. Who?

15 A. And Glenn Dubin. Again, not
16 necessarily on the management committee
17 but as a senior adviser to us.

18 Q. Sorry, it was you, Chris Suan?

19 A. Vasam Kesavan.

20 Q. Lee, David Lee?

21 A. David Lee.

22 Q. Lawrence Cutler?

23 A. What's his first name.

24 Q. Lauren?

25 A. Lawrence. Also at different

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2 times our counsel, either David Proshan
3 and/or Stuart Sindell, and Glenn Dubin as
4 a senior adviser. Again, I don't know who
5 was on the management committee per se at
6 what time, but those were --

7 Q. Was Cutler and Proshan on the
8 management committee before October of
9 '06?

10 A. I don't know that Proshan was
11 ever on the management committee but no,
12 neither of them were on the management
13 committee before October of '06.

14 Q. And Cutler was -- what was
15 Cutler's title?

16 A. Originally he was I believe
17 chief compliance officer and then he was
18 chief administrative officer and chief
19 compliance officer and then he was chief
20 operating officer as well as CAO and CCO.

21 Q. How often did the management
22 committee meet?

23 MR. ARFFA: When are we?

24 A. The committee itself, depending
25 who was on it, different times, et cetera,

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 might meet weekly, might meet more
3 frequently. It just totally depended on
4 the circumstances at a given time.

5 Q. Were there ever minutes kept of
6 the meetings?

7 A. Not that I recall.

8 Q. The members of the management
9 committee that you listed in '06,
10 yourself, Suan, Kahn, Gruss, and
11 Kesavan --

12 A. I didn't say they were members
13 of the management committee. I said some
14 subset of the people that I listed were
15 members of the management committee at
16 different times. I don't recall which
17 ones at which time. I roughly refer to
18 them collectively as senior management.
19 But again, that changed over time.

20 Q. Where could we find out who was
21 a member of the management committee?

22 A. I don't recall.

23 Q. Where would you go to look?

24 A. I just -- I don't know as I sit
25 here today.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Ultimately did senior
3 management, as you have listed them,
4 report to you?

5 A. Key management people reported
6 up to the management committee. I was a
7 managing partner so I would have been the
8 senior partner.

9 Q. So the answer to my question is
10 yes, the buck stopped with you?

11 A. The vast majority of my time was
12 focused on the investments part and --

13 Q. I would ask you --

14 MR. SIFFERT: Don't interrupt
15 him, don't interrupt him.

16 You can ask the next question.

17 Q. Go ahead.

18 A. The vast majority of the time
19 that I spent focused on investments. The
20 non-investment part of the firm was
21 managed by different people over different
22 times. From my prospective as managing
23 partner, I focused on putting the right
24 people in place, making sure there were
25 systems, the right procedures, systems, et

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 cetera, taking advice from other senior
3 people about how that should work, putting
4 the right people in seats, focusing on
5 hiring. I was not involved in the
6 day-to-day components of the
7 non-investment parts of the firm.

8 Q. Did you have the right to hire
9 and fire senior management?

10 A. As a matter of course, I don't
11 recall doing so unilaterally. I would
12 talk to other senior people about it if
13 there was an issue or they would talk to
14 me. I don't recall that.

15 Q. Did you have the right to hire
16 and fire senior management?

17 MR. ARFFA: Objection.

18 A. I just told you what was in
19 practice. I don't know where it might
20 have been written. I don't recall that it
21 was written or not, whether I unilaterally
22 had that option or not. I just don't
23 recall.

24 Q. Is the answer to my question --
25 is the answer you don't know whether you

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 had the right?

3 A. I would have substantial
4 influence if I wanted to terminate
5 someone, but as a matter of practice I
6 don't recall doing so unilaterally and I
7 don't know where it was written, if it
8 was, regarding specifically whether I did
9 or not.

10 Q. All right.

11 Let's -- by the way, when did
12 Mr. Kahn leave?

13 A. I believe 2007. I don't recall.

14 Q. He was not listed as a member of
15 the management committee after October,
16 '06.

17 Is there a reason for that or --

18 MR. ARFFA: Objection to form.

19 A. As I said, that changed over
20 time and we collectively made a decision
21 to elevate Lawrence Cutler and David Lee
22 into that position specifically with
23 regard to the non-investment parts of the
24 firm primarily.

25 Q. So Kahn left in '07 sometime?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I believe so.

3 Q. Was he fired or did he quit?

4 A. I don't know the mechanics of
5 how we separated from him. I don't
6 recall.

7 Q. Do you recall why he left?

8 A. I don't recall the specific
9 reasons or the mechanics associated with
10 that.

11 Q. Excuse me?

12 A. I don't recall the specific
13 reasons or the mechanics of it and I don't
14 recall what he thought at that time or I
15 don't know what he thought at that time.

16 Q. Were you happy to see him leave
17 or unhappy to see him leave or
18 indifferent?

19 A. I don't recall having a feeling
20 one way or the other. He was a nice
21 person, but I don't recall having a
22 feeling at that time.

23 Q. Was Mr. Kahn ever reprimanded by
24 you for anything he did at the company?

25 A. What do you mean by reprimanded?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. You really screwed up, Mr. Kahn.
3 I'm really disappointed. You're a bad --
4 something -- did you ever face-to-face
5 express to him your dissatisfaction with
6 his job performance?

7 A. I don't recall doing that.

8 Q. Was his compensation ever cut
9 while he was working for you?

10 A. I don't know.

11 Q. Who would know the answer to
12 that question?

13 A. David Lee and Lawrence Cutler or
14 Lawrence Cutler. But I don't know that
15 they would.

16 Q. All right.
17 Is there anything in paragraph
18 two that you disagree with?

19 A. I think we went over that
20 before.

21 Q. Yes, sir.

22 MR. SIFFERT: That clause,
23 anything beyond that clause.

24 MR. SUSMAN: Mr. Siffert,
25 sometimes in these depositions you ask

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 questions and you interrupt witnesses.

3 Q. I don't mean to, Mr. Zwirn. If
4 I do, I'm going to try to come back and if
5 I don't, you can stop me at any time and
6 say you don't let me finish; okay?
7 Because I want to get your -- the
8 testimony as full and as complete as it
9 can be.

10 So is there anything else in
11 paragraph two?

12 A. I think I said that I don't
13 agree and I took a while to clarify how
14 but I don't agree with while Zwirn was
15 responsible for the day-to-day management
16 and operations, et cetera, et cetera.

17 Q. Got it.

18 MR. SIFFERT: Is there anything
19 else in the paragraph besides what
20 you've already testified to?

21 Q. So when he says you were
22 responsible for the day-to-day operations
23 and management of the Zwirn fund, you
24 think that is false; correct?

25 A. It depends. We can go through

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 it from '02 through -- over time the
3 different roles and committees and all
4 that stuff.

5 Q. I'm sorry.

6 You certainly have said that's
7 false prior to 2004.

8 MR. SIFFERT: He said what he
9 said and you're trying now to
10 characterize what he said?

11 MR. SUSMAN: No.

12 MR. SIFFERT: Isn't your question
13 other than that clause, what else do
14 you disagree with?

15 Q. Was it false, Mr. Zwirn? Was
16 that statement false for the period of
17 time 2006?

18 A. As I said, during the year 2006,
19 there was a management committee and other
20 senior management. I focused the majority
21 of my time on the investments that were
22 invested in by the entities that were
23 managed by the various management
24 companies.

25 As I said also, during 2006,

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1 *** UNCERTIFIED ROUGH DRAFT ***
2 there were different people who were part
3 of seep I don't remember management and
4 who were part of the management company --
5 excuse me, management committee. I don't
6 recall who was on it when specifically
7 beyond that which I had discussed before.
8 I can did go through the whole thing again
9 if you'd like. It's a long answer. But
10 it's not --

11 Q. Was his statement false, as far
12 as you're concerned, for the period 2006?

13 MR. ARFFA: I object. I think
14 it's been asked and answered three
15 times and I think at this point you're
16 just trying to --

17 MR. SUSMAN: Excuse me?

18 MR. ARFFA: I'm objecting. I
19 think you asked and answered it three
20 times.

21 MR. SUSMAN: I think the question
22 can be answered with a yes or no or I
23 don't know.

24 MR. SIFFERT: Well, that may be
25 what you think the answer is, but he

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 answered the question the way he
3 answered the question and you don't
4 seem to like the answer so you're
5 asking it again. But if you want to
6 do that, go ahead.

7 MR. SUSMAN: I'll try it again.
8 Because I think Judge Carpinella is
9 entitled to see this witness handle
10 whether he can answer a question.

11 Q. My question it --

12 MR. ARFFA: I object to the
13 commentary and I don't think the
14 witness should pay attention to that
15 kind of thing.

16 Q. Was Zwirn responsible for the
17 day-to-day management --

18 MR. SIFFERT: You're talking to
19 the witness?

20 MR. SUSMAN: Excuse me?

21 MR. SIFFERT: Are you reading? I
22 don't know what you're doing.

23 MR. SUSMAN: I'm asking him
24 whether the following statement is
25 true or false for the year 2006.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Zwirn was responsible for the
3 day-to-day management and operations of
4 the Zwirn fund.

5 MR. ARFFA: Objection to form.

6 Q. Was that statement true or false
7 during 2006?

8 MR. ARFFA: Objection to form.

9 MR. SIFFERT: And I also will
10 point out that's not what the
11 affidavit says. The affidavit started
12 with the sentence starting in 2002 and
13 then it goes on as if 2002 is in that.
14 So you're now asking a separate
15 question other than what is in the
16 affidavit.

17 MR. SUSMAN: Without regard to
18 the affidavit.

19 MR. SIFFERT: So is the statement
20 Zwirn was responsible for the
21 day-to-day operations and management
22 of the Zwirn fund true or false in
23 2006?

24 MR. SUSMAN: You got it.

25 MR. ARFFA: Objection. Asked

 *** UNCERTIFIED ROUGH DRAFT
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1 *** UNCERTIFIED ROUGH DRAFT ***

2 answered.

3 MR. SIFFERT: And I object to the
4 form because you're saying it's a
5 binary question.

6 THE WITNESS: Should I answer it
7 again?

8 MR. SUSMAN: In fact, you can
9 answer it yes or no if you want, Mr.
10 Siffert, and he can adopt it. I don't
11 care.

12 MR. SIFFERT: My name is Siffert
13 and he can answer it for himself. He
14 doesn't need my help.

15 Q. Go ahead.

16 A. Over 2006, there were different
17 people involved in senior management, some
18 of whom were on the management committee.
19 The management operation of the fund
20 included many different components. I was
21 primarily responsible for the day-to-day
22 focus on the investments that we made.

23 During 2006, the non-investment
24 portion of the firm that managed the funds
25 was managed by a different combination of

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1 *** UNCERTIFIED ROUGH DRAFT ***
2 people. It reported -- in early '06 and
3 onward those functions were reporting to
4 Perry Gruss and Harold Kahn who were
5 reporting to and/or part of the management
6 committee. After '06, that was primarily
7 David Lee and Lawrence Cutler who were
8 both then effectively reporting to the
9 rest of the management committee and
10 senior management and were also members of
11 the management committee.

12 Q. Look at paragraph three.
13 True or false?

14 A. (Reviewing).

15 MR. ARFFA: Objection to form.

16 A. I just don't have standing to
17 know whether most of this is true or
18 false.

19 Q. It is true that Glenn Dubin
20 introduced Jeffrey Epstein to you;
21 correct?

22 A. Yes.

23 MR. SUSMAN: Let me have
24 Exhibit 88, please.

25 (Whereupon, an e-mail dated

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 October 2, 2005 was marked
3 Exhibit 88 for identification.)

4 Q. Exhibit 88 you recognize is an
5 e-mail exchange you had with Mr. Kahn on
6 October 2, 2005?

7 A. I don't recall the e-mail.

8 Q. It appears to be an exchange
9 between you and Mr. Kahn; doesn't it?

10 A. Yes.

11 Q. And Mr. Kahn asks you in the --
12 you begin the questioning by saying, "FYI,
13 was chatting with Glenn re big guy
14 potential DBZ chairman and he noted that
15 Jeffrey Epstein, large LP investor,
16 mysterious billionaire, godfather to
17 Glenn's kids, is quite close with George
18 Mitchell." That's where it begins.

19 Do you see that one? Do you see
20 that?

21 A. Yes me? Yes, I do.

22 Q. Your response -- and then Mr.
23 Kahn writes an e-mail to you, "is Glenn
24 Dubin proprietary about his relationship
25 with him or do you think there's an

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 opportunity for you to develop your own
3 straight line relationship."

4 Do you see that question?

5 A. I do.

6 Q. And your response is, "not
7 remotely possible to develop direct
8 relationship. If you met him, you'd see
9 why. He's had eighty million with us for
10 three years and I've had a total of two
11 conversations with him, one for fifteen
12 minutes and one for ten minutes."

13 Okay?

14 A. Yes.

15 Q. The first conversation, the
16 fifteen-minute conversation, took place
17 back in 2002?

18 A. I don't recall specifically the
19 year, but I think it was quite early.

20 Q. Okay.

21 A. Something like that.

22 Q. Do you recall, was that a
23 personal meeting?

24 A. Yes.

25 Q. Do you recall how that came

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 about?

3 A. I have a recollection that Glenn
4 told me to go see Jeffrey at his office.

5 Q. Did you go to his office?

6 A. Yes.

7 Q. Can you describe as much as you
8 can remember about what happened during
9 that meeting, what he said and what you
10 said.

11 A. I recall going to his office at
12 lobby and being led into his office. He
13 had spent the -- I recall that -- I don't
14 recall the specific words of the
15 conversation word by word. My
16 recollection is that the majority of the
17 time was spend where he was telling me
18 about problems he was having with getting
19 utilities to a house he either owned or
20 was buying in the Virgin Islands of some
21 sort and how he was dealing with the
22 government there. I have some
23 recollection, also, that he asked me a
24 little bit about my personal background
25 and upbringing.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 That's about all I can recall.

3 Q. And do you recall what you said?

4 A. With regard to the -- first the
5 majority of the time I just listened and I
6 just might have said -- I recall something
7 about talking about how I grew up in
8 Pittsburgh, et cetera, but I don't recall
9 much of anything beyond that.

10 Q. It was very short, about fifteen
11 minutes; right?

12 A. Fifteen or seventeen minutes,
13 less than twenty. Small, it was short.

14 Q. And the only ones present were
15 you and Mr. Epstein?

16 A. In his office during that time,
17 yes. I was led into his office by other
18 people. That I can recall.

19 Q. Now, the second conversation --

20 A. Yes.

21 Q. -- the ten-minute conversation,
22 was that in person or by the phone?

23 A. In person.

24 Q. Huh?

25 A. In person.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. And where was that?

3 A. At a house that I thought was
4 his in the upper east side. But I don't
5 recall how I thought it was.

6 Q. What was the occasion of that
7 meeting?

8 A. I believe Glenn told me to go up
9 there. It was -- I don't recall
10 specifically when it was. It was at least
11 a couple of years after the first time,
12 perhaps before one of the times that he
13 invested but I just don't recall.

14 What was your question
15 specifically?

16 Q. Why you went there. What was
17 the occasion that sent you there?

18 A. Glenn told me to go there.

19 Q. But about what? Was it about
20 trying to get his second investment?

21 A. No, it was -- as I recall, it
22 was to give a brief update of the
23 distressed credit market.

24 Q. Of the distressed credit market?

25 A. Yes.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Do you recall what year it was?

3 A. I don't recall the year, perhaps

4 '04 or '05. I just don't recall.

5 Q. Was it -- do you recall, was it

6 after or before the management company

7 became unconnected from Highbridge? I

8 think you said that was the beginning of

9 '04.

10 A. Well, there was no ownership

11 change with it. I don't know if it was

12 unconnected. But when we moved offices, I

13 think it was after we moved offices. I

14 have a recollection of walking -- I walked

15 to and from it. I don't recall.

16 Q. Okay.

17 And what do you recall about

18 that meeting?

19 A. I went to the front door of the

20 house. A maid in a black and white

21 uniform led me into a room or a study of

22 some sort on I think the first floor. I

23 waited there for a period of time and I

24 believe she showed me into some sort of

25 other study or something like that, a room

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1 *** UNCERTIFIED ROUGH DRAFT ***
2 where I had to walk up. I don't recall
3 how high. And there were -- and then she
4 red me into that room and sat and directed
5 me where to sit, I recall, and there were
6 two people there.

7 I recall Jeffrey introduced me
8 to the other person. I don't recall her
9 name. I don't recall that she said
10 anything during the meeting.

11 I started -- Jeffrey said -- I
12 recall telling Jeffrey about what was
13 going on in primarily distressed debt.
14 Very, very soon after, seven or eight
15 minutes, something very short, maybe ten,
16 under, Jeffrey said something to the
17 effect of, you know, he was done or that
18 was enough or whatever it was and
19 basically in some form directed me that,
20 you know, he was ready to end the meeting.
21 And then I walked home or walked back to
22 my office.

23 Q. And that's all you recall about
24 that meeting?

25 A. Yeah.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Do you recall -- it was a woman
3 sitting in the room with Jeffrey?

4 A. Yes, next to him.

5 Q. Huh?

6 A. Next to him.

7 Q. Do you recall anything about
8 her?

9 A. She was a very young woman. I
10 don't know how young. She had long,
11 straight blond hair. And after he
12 introduced her name, the name of which I
13 don't recall, she didn't say anything
14 afterward. And she sat directly next to
15 him.

16 Q. All right.

17 Now, those were the two
18 occasions that you met with Jeffrey. In
19 fact, the two occasions you had with him
20 at the time you wrote this October 2, 2005
21 e-mail; correct?

22 A. As I said, I don't recall the
23 e-mail. I believe those were the only
24 live meetings I had ever had with him up
25 until I guess today.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Until today?

3 A. That I can recall, yeah.

4 Q. I guess what about your fifteen
5 and ten-minute meeting caused you to
6 conclude that if you met him, you'd see
7 why?

8 A. As I said, I don't recall all
9 the e-mails. I don't recall what I was
10 thinking at that time.

11 Q. Did Glenn describe to you
12 Jeffrey in some way that made you conclude
13 that it was impossible to establish a
14 direct relationship with him?

15 A. As I said, I don't recall the
16 e-mail. As a general matter, Glenn was
17 very focused on making sure any and all
18 communication associated with Jeffrey went
19 through him in some way or it was directed
20 by him.

21 Q. Do you recall after -- at some
22 point in time in late 2005 or early 2006
23 did you have a series of conversations
24 with Jeffrey about interesting someone to
25 become the -- to go on the board of your

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 management company?

3 A. We were thinking about having
4 someone who would -- could chair some sort
5 of international advisory board and
6 primarily through Glenn we communicated
7 with Jeffrey about that. I don't recall
8 the substance around that specific
9 conversations.

10 Q. Did you have any direct
11 conversations with him then that you can
12 recall?

13 A. I have a recollection that I was
14 on the phone with him and Glenn at the
15 same time. I don't recollect any
16 situation where I was only speaking to
17 him.

18 Q. And that was -- would have been
19 -- was it about getting George Mitchell;
20 was that the guy's name?

21 A. Yes.

22 Q. And after that -- that was one
23 call you remember with Glenn on the phone?

24 A. I don't remember that it was
25 only one. I don't recall.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Do you recall your next call
3 with Jeffrey?

4 A. I don't -- if there were more
5 than one, then it would have been next. I
6 just don't know about that series of call
7 including Glenn and Jeffrey. I just don't
8 recall.

9 MR. SIFFERT: He said he didn't
10 recall.

11 MR. SUSMAN: Okay.

12 Q. After the George Mitchell thing
13 was -- you said not to pursue that, after
14 that time you had some calls with Jeffrey
15 in the fall of 2006?

16 A. Yes, I believe so.

17 Q. Do you recall how many times you
18 talked to him?

19 A. No, I don't.

20 Q. Do you recall when the first
21 call was?

22 A. During the round of calls in
23 October where we talked to our investors.

24 Q. Was it during the first round or
25 the second round?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. First.

3 Q. And when you -- how did that
4 call come about; did you call him, did he
5 call you?

6 A. I believe I called him.

7 Q. The first time you called him
8 you left a message?

9 A. I don't recall.

10 Q. If you look back at Exhibit 33
11 which should be --

12 MR. SIFFERT: How much time is
13 left on the tape?

14 THE VIDEOGRAPHER: Nine minutes.

15 MR. SUSMAN: How much?

16 THE VIDEOGRAPHER: Nine.

17 MR. SIFFERT: Do you want to
18 break or go for nine minutes? Dan, do
19 you want to break or go for the nine
20 minutes?

21 THE WITNESS: We can go for
22 whatever you want, whatever's most
23 convenient.

24 Q. Your entry on this log in your
25 handwriting says, "no answer. Left

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2 message 10/12." Okay? Which I think we've
3 established the date's wrong; right?

4 A. Yes.

5 Q. Because it had to be either --
6 was he one of the first calls you made or
7 do you know?

8 A. I don't recall.

9 Q. In any event, it says left
10 message, would the message would be for
11 him to call you?

12 A. I don't recall what I said on
13 the left message.

14 Q. Well, you have a number of these
15 where you have left message.

16 A. Yes.

17 Q. Was the message -- do you recall
18 whether you typically -- I mean, you
19 didn't give him the whole -- I mean, it
20 wasn't a long explanation, was it, left on
21 some answering machine; right?

22 A. I don't recall leaving the any
23 of the details regarding the situation on
24 anybody's answering machine.

25 Q. So you left a message for

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2 someone to call you back; right?

3 A. I would think so but I can't
4 tell you I remember the specific message
5 that I left or how he left it, whether I
6 left it with somebody or on a machine. I
7 just don't recall.

8 Q. So do you recall that he'd call
9 you back?

10 A. I know we spoke during that
11 round of calls. I don't know whether I
12 called him again or he called me. I just
13 don't recall.

14 Q. Did you make any notes or memos
15 about that call?

16 A. Not that I recall.

17 Q. Did you record the call?

18 A. No.

19 Q. Was anyone on the phone
20 listening in on your line?

21 A. No.

22 Q. That call was made from where,
23 your home?

24 A. I was in my office and Elise
25 Hubsher was in the office with me.

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2 Q. And what do you recall -- as
3 best you can recall, recap that call for
4 me.

5 A. I recall that I had a script for
6 all of those calls. I recall I did not
7 veer from it. I don't recall the specific
8 text of the call. I have a recollection
9 that Jeffrey Epstein tried to ask for
10 information that would have been off the
11 script and therefore different than the
12 information we were giving to everybody
13 else and that I remained on the script.

14 MR. SUSMAN: Exhibit 100.

15 (Whereupon, a document entitled
16 Talking Points-Investors was marked
17 Exhibit 100 for identification.)

18 MR. SIFFERT: Can we have it
19 so --

20 MR. SUSMAN: It's coming around.
21 It's been marked as Exhibit 100.

22 Q. Is Exhibit 100 the script you
23 were referring to?

24 A. I believe so.

25 Q. And do you know who prepared the

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2 script?

3 A. A combination of senior
4 management at the time and attorneys from
5 Schulte, Roth and Zabel.

6 Q. Okay.

7 A. I'm not sure individual by
8 individual who did it.

9 Q. Okay.

10 And so you would have
11 essentially basically read this script?

12 A. Basically. I don't know that I
13 read it. I don't recall the specific
14 words of each of the one-plus
15 conversations, but I know that I -- I
16 believe I stuck to the script.

17 Q. Did Mr. Dubin help prepare the
18 script?

19 A. I believe he received it before
20 and would have had an opportunity to
21 comment on it before we went out to
22 people.

23 Q. Now, do you recall what, if
24 anything, Mr. Epstein said? Did he
25 interrupt you in the mid or did he let you

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2 get to the end and then say something?

3 MR. SIFFERT: Objection to the
4 form.

5 A. I just don't recall the
6 specifics beyond what I said.

7 Q. But he tried to get you to go
8 beyond the script?

9 A. I recall that. I just don't
10 recall how or the wording, et cetera, my
11 best belief.

12 Q. Did -- was he upset?

13 A. I don't recall having a view as
14 to his state of mind. I recall some level
15 of again pushing to hear that he told
16 things different from the other investors,
17 but I don't recall much specifics.

18 Q. Do you recall anything else he
19 said?

20 A. I don't. I have a recollection
21 again that I stuck to the script and
22 focused on that.

23 THE VIDEOGRAPHER: Change tape?

24 MR. SUSMAN: We'll take a break
25 now and come back in ten.

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2 THE VIDEOGRAPHER: The time is
3 12:05. We are going off the record.

4 This will end tape two.
5 (Whereupon a break was taken)

6 THE VIDEOGRAPHER: The time is
7 12:17.

8 We are back on the record. This
9 will be the start of tape three.

10 Q. Okay.

11 Did you, Mr. --

12 MR. SUSMAN: How long do you want
13 to go to; just tell me?

14 MR. SIFFERT: 1:00.

15 MR. SUSMAN: 1:00? Fine by me.

16 Q. Did you record your early
17 October discussions with any investors?

18 A. No. Not that I recall.

19 Q. Look back at the Dubin
20 affidavit, paragraph four. "Beginning in
21 the fall of 2006, Zwirn called me and told
22 me that he was firing the fund's chief
23 financial officer."

24 Do you see the rest of that
25 paragraph?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Yes.

3 Q. Is there anything in there that
4 you disagree with?

5 A. Yes.

6 Q. Okay.

7 Tell me what.

8 A. The funds, first of all, didn't
9 have a chief financial officer. Gruss was
10 the CFO. Actually, at that time CAO of
11 the management company entities. I did
12 not inform Dubin of the firing of the CFO.
13 Dubin actively participated in it and made
14 the final decision or made the final
15 judgment that led management to conclude
16 we needed to separate from him.

17 Q. Okay.

18 A. This next sentence refers to
19 "Zwirn told me," et cetera?

20 Q. Yes, the next sentence.

21 A. In June of '06, when I had
22 learned of the fact that there were two
23 irregularities and that Lawrence Cutler
24 and David Proshan wanted to move forward
25 with a separate inquiry led by Schulte

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2 Roth, I told Glenn about that. When --
3 within a day of our first meeting with
4 Schulte Roth at Schulte Roth's offices in
5 September, we had another meeting, a
6 second meeting at Schulte Roth that
7 included Glenn where he learned everything
8 that we knew at that time and was kept up
9 contemporaneously during that period with
10 the other senior management team members.
11 I don't recall informing him of any of
12 Schulte Roth's findings.

13 And I believe that the issue
14 regarding the airplane was that the
15 capital was used for the equity of an
16 airplane for forty-five days.

17 Q. Okay.

18 Did you say that Mr. Dubin was
19 the one who made the final judgment that
20 you had to separate with Mr. Gruss?

21 A. His view, given his experience
22 and seniority as we were reviewing
23 options, that view was his view and we
24 agreed with it. I don't recall any other
25 senior management team members disagreeing

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2 with it.

3 Q. Now, let's talk about the plane
4 a second.

5 It's your recollection that Mr.
6 Proshan and Cutler went to you in March or
7 April of 2006 to tell you that Tim Woo
8 brought to your attention an issue with
9 the plane and premature payment of
10 management fees; correct?

11 A. No.

12 Q. Huh?

13 A. No.

14 Q. That's not your testimony?

15 A. I believe in March of '06 David
16 Proshan and Lawrence Cutler came to me to
17 say that there was some irregularity with
18 regard to the management fees, they
19 weren't sure whether there was or what it
20 was specifically. I don't know what they
21 told me about the plane equity issue at
22 that time. And they told me they wanted
23 to -- they weren't sure enough to give me
24 a firm recommendation other than they
25 wanted to spend more time working on it

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 and come back to me. And the person that
3 they had learned information from was a
4 guy called Tim Wong, not Tim Woo, who was
5 a guy that I had driven to be hired not
6 specifically him but --

7 Q. Tim Wong?

8 A. Wong, W O N G who was the
9 management company controller, a position
10 that I wanted filled for the management
11 company in contemplation of an audit of
12 the management company that I wanted done.

13 Q. He was the management company
14 controller, Wong?

15 A. Yes.

16 Q. Who did Mr. Wong report to?

17 A. All of the people, all the
18 non-investment people in the firm
19 ultimately reported at that time to Harold
20 Kahn and Perry Gruss in early '06. He
21 worked with -- I recall him working with
22 each of Harold and Perry.

23 Q. And you say you wanted some kind
24 of audit done?

25 A. I wanted -- my understanding in

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2 '05 was that we didn't need an audit of
3 the management company but, as a matter of
4 trying to focus on best possible
5 practices, I wanted to get an audit of the
6 management company separate from an audit
7 of the funds. I was told that we needed
8 to hire a more seen management company
9 controller to get ourselves ready to go
10 through that process with PriceWaterhouse.
11 As a result, a search was done and Tim
12 Wong was hired. I don't recall who
13 specifically hired him.

14 Q. Was the management company ever
15 audited?

16 A. No.

17 Q. So when Proshan and Cutler came
18 to you -- the best you can do is it's in
19 March or April, in that time frame?

20 A. I think so, yes.

21 Q. You can't come any closer to the
22 date; right?

23 A. No.

24 Q. And you're sure they talked to
25 you about -- something about premature

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 payment of management fees, they may have
3 mentioned the plane but you don't recall?

4 MR. ARFFA: I object to form.

5 A. I believe they mentioned
6 something regarding the management fee
7 issue or irregularity. I don't know the
8 words that they used. I don't recall
9 whether they talked about the
10 forty-five-day use of the capital for the
11 plane issue.

12 Q. Whatever you were told then by
13 Mr. Proshan who was -- he was the general
14 counsel?

15 A. Yes.

16 Q. And Mr. Cutler who was the chief
17 compliance officer at the time?

18 A. Yes.

19 Q. Did you share that information
20 with Mr. Dubin?

21 A. I don't recall doing so. I
22 recall them saying they weren't sure what
23 they had or whether there was anything to
24 discuss ultimately, that they wanted to do
25 more work.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. And they came back to you four
3 or six weeks later, four to six weeks
4 later; right?

5 A. I believe it was June of '06.

6 Q. Huh?

7 A. I believe it was June of '06.

8 Q. Okay.

9 And how do you know when it was?
10 How do you place it in June of '06?

11 A. I know that we retained Schulte
12 soon after.

13 Q. Within days?

14 A. I don't know when Lawrence and
15 David did it, but my understanding would
16 be immediate or near immediate. They
17 asked -- they recommended that we do that
18 and I told them go ahead.

19 Q. Do you know when Schulte was
20 retained?

21 A. I don't recall the date.

22 Q. Okay.

23 Now, when they came back to you,
24 Proshan and Cutler, who did they report
25 back to, was it you alone or was Mr. Dubin

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 with you at the time?

3 A. I believe it was just the three
4 of us, Proshan, Cutler, and me. I believe
5 immediately subsequent to that I reached
6 out to Glenn.

7 Q. And did you share with Mr. Dubin
8 everything that you had learned?

9 A. Yes.

10 Q. How about the other people on
11 the management committee, were they -- did
12 you talk to them about it at the time, Mr.
13 Suan?

14 A. I don't recall the specific
15 conversations. I would have -- I would
16 think they would have know since we
17 retained Schulte and Schulte was doing
18 interviews, but I just don't recall.

19 Q. I take it when they came back in
20 June, Proshan and Cutler, they did talk to
21 you about the airplane, that's short use
22 of funds for the airplane?

23 A. For the equity of the airplane,
24 I believe so.

25 Q. And you told that to Mr. Dubin;

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 correct?

3 A. I believe so.

4 Q. And I assume you at that time
5 informed Mr. Kahn, Mr. Gruss, the other
6 people in management that Schulte was
7 going to come on site and do an
8 investigation; correct?

9 A. I don't recall doing so
10 directly. I don't know that David or
11 Lawrence didn't or how they might have.

12 Q. Did Schulte interview people?

13 A. Yes.

14 Q. So it's pretty safe to assume
15 that someone got the word out that this --
16 they were coming to investigate; right?

17 A. I don't know how the -- I don't
18 know if that term was used or how it was
19 done, but people were interviewed.

20 Q. Did Mr. Dubin concur that
21 Schulte should be hired for this task?

22 A. I don't recall asking him. I
23 recall David and Lawrence recommending we
24 go ahead do that and I recall agreeing
25 with them and I recall then subsequently

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 telling Glenn about it.

3 Q. Okay.

4 Then there came a time in
5 September where Schulte made a report to
6 you about what they had found; correct?

7 MR. SIFFERT: We're not waiving
8 the privilege. I think he can say
9 that.

10 A. Me and other senior management
11 team members.

12 Q. Okay.

13 And you were testified under
14 oath, to your best recollection, that it
15 was on a Sunday evening?

16 A. I believe so.

17 Q. At Schulte's offices?

18 A. Yes.

19 Q. Do you know what Sunday evening
20 it was on?

21 A. I don't recall.

22 Q. September 17 sound reasonable to
23 you?

24 A. It could be, but I just don't
25 recall the date.

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2 Q. Who was present --

3 MR. SUSMAN: Let me have

4 ninety-three, please.

5 (Whereupon, a memorandum dated

6 September 17, 2006 was marked

7 Exhibit 92 for identification.)

8 Q. Here's ninety-three.

9 MR. ARFFA: This is Exhibit 93?

10 MR. SUSMAN: Ninety-three.

11 MR. SIFFERT: You already had

12 ninety-three.

13 MR. SUSMAN: Sorry. I already

14 had ninety-three?

15 MR. SIFFERT: Yes.

16 MR. ARD: That should be

17 ninety-two.

18 MR. SIFFERT: Is there a

19 particular page you want him to look

20 at?

21 MR. SUSMAN: Excuse me?

22 MR. SIFFERT: Is there a

23 particular page you want him to look

24 at.

25 Q. Well, my first question is did

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 they give you -- did they share with you
3 this document when you met with them on
4 that Sunday evening?

5 A. Not that I recall.

6 Q. How long did the meeting last?

7 A. Perhaps two or three hours. I
8 don't recall the specific length of time.

9 Q. And who was present at the
10 meeting? Was Mr. Davis there?

11 A. Yes.

12 Q. Was Mr. Elovitz there?

13 A. Yes, I believe so.

14 Q. Ms. Clark?

15 A. I don't recall.

16 Q. Do you recall anyone else from
17 Schulte being present?

18 A. I believe Steve Fredman.

19 Q. Who?

20 A. Steve friend man.

21 I believe Fred Ragucci. I don't
22 recall others. Oh, I believe Holly Weiss.

23 Q. Were those all lawyers that had
24 been involved in the investigation?

25 A. Well, Schulte was retained

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 regarding the investigation and disclosure
3 and other items and I guess different
4 combinations of them were involved in that
5 and employment issues.

6 Q. Okay.

7 Now, if you'll look over at page
8 -- I'll give you the bottom page since
9 this page is paginated -- page three.
10 Schulte Roth findings.

11 Do you see that?

12 A. Yes.

13 Q. Finding number one, "there's
14 been explosive" -- "this management
15 company is perpetually cash short.
16 Explosive growth. Expenses are
17 outstripping management and incentive
18 fees."

19 Would you agree with that
20 characterization?

21 A. I don't recall what I believed
22 at the time.

23 Q. Item number two of their
24 findings, "excessive management fee and
25 incentive fee deferrals done to provide

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 tax advantages. Leave management company
3 without enough cash to pay expenses."

4 Were there management fee and
5 incentive fee deferrals?

6 A. I believe there were, as I
7 mentioned.

8 Q. For both the onshore and the
9 offshore fund?

10 A. I don't know that you could do
11 that with the onshore fund. I just don't
12 know.

13 Q. What was the reason for the
14 deferrals?

15 A. I forgot why they were
16 recommended to me. I don't have a
17 recollection.

18 Q. If you don't recall, it was to
19 provide some tax advantage?

20 A. Yeah, I think so. I have no
21 reason to believe that's not the case. I
22 don't have a specific recollection of the
23 guys who worked on that giving me a whole
24 run down on the reasons.

25 MR. SIFFERT: Are these attorneys

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 giving you this advice?

3 THE WITNESS: Yes.

4 MR. SIFFERT: Then I direct you
5 not to answer.

6 Q. Did -- were you aware that
7 excessive deferrals of fees was leaving
8 the management company without enough cash
9 to pay expenses?

10 A. What I know about the situation
11 came from Schulte and then subsequently
12 Gibson Dunn.

13 Q. That was something you were not
14 aware of when you got that report from
15 Schulte?

16 A. I don't recall seeing this
17 before. I believe getting a binder where
18 they pointed out different e-mails. I
19 don't recall this.

20 Q. You got a binder from them; is
21 that what you gave you, the people at the
22 meeting?

23 A. I believe so.

24 Q. Oh, I didn't finish who was at
25 the meeting.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Okay.

3 Q. It was you?

4 A. In the first meeting, the
5 lawyers we talked about, me, Lawrence
6 Cutler.

7 Q. Chris Suan?

8 A. Chris Suan, Vasam Kesavan, David
9 Proshan. I don't recall whether David Lee
10 was at that first meeting or not.

11 Q. Was Mr. Kahn there?

12 A. I don't believe so.

13 Q. Was Mr. Gruss present?

14 A. No.

15 Q. Okay.

16 Was Glenn Dubin present?

17 A. Not at the first one. We had
18 one immediately after in the next day or
19 two where he was there.

20 Q. Okay.

21 There were two meetings with the
22 lawyers?

23 A. I think there were many meetings
24 live and on the phone, but those were the
25 first two, I believe, that I recall.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. The first one that was a Sunday
3 night, you don't recall Mr. Dubin being at
4 that one?

5 A. No.

6 Q. When was the second meeting with
7 the lawyers?

8 A. I believe soon after, I don't
9 recall whether one day, two days, but
10 relatively soon.

11 Q. Was it a continuation of kind of
12 the first meeting?

13 A. Yes.

14 Q. Was it because you hadn't gotten
15 through everything?

16 A. No, I don't know that there were
17 any new findings that I can recall, it was
18 more discussion of bringing Glenn up to
19 speed on the findings as well as, you
20 know, the deliberations regarding what
21 Schulte had been engaged to do.

22 Q. And do you remember who was at
23 the second meeting?

24 A. I believe roughly the same
25 people plus Glenn.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. And what was the second meeting,
3 at Schulte's offices?

4 A. Yes.

5 Q. During the day?

6 A. I don't recall whether it was an
7 afternoon or evening.

8 Q. How long did it last?

9 A. Again, I don't recall the
10 specific length of time. My sense would
11 be two to three hours again.

12 Q. Was it within a matter of two or
13 three days of the first meeting, as you
14 recollect?

15 A. I believe it was very soon
16 after. I don't know whether it was one
17 day or four days or two or three, I don't
18 remember, but in my mind I recall it being
19 very soon after.

20 Q. And at the first meeting you got
21 a binder -- the participants were given a
22 binder of e-mail or other documents or
23 just e-mails?

24 A. I know it had e-mails. I don't
25 recall if it had other documents.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 Q. Was a PowerPoint presentation
3 made?

4 A. I'm not sure. I don't recall.

5 Q. Were the binders available at
6 the second meeting, also?

7 A. I believe so.

8 Q. Was Mr. Dubin allowed to look at
9 them?

10 A. I believe everybody was.

11 Q. The reason for bringing him up
12 to speed was that he was --

13 A. He and Henry were the largest
14 owners along with me and he was very
15 experienced and our senior adviser.

16 Q. Okay.

17 Going down the Schulte report,
18 under early payment of management fees it
19 says, "in March or April Tim Wong informed
20 Cutler that management fees may have been
21 paid prematurely. In May, '06, Cutler
22 directed Wong to conduct an analysis."

23 Do you see that?

24 A. I see it.

25 Q. Do you have any explanation of

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 why the delay from March or April to May?

3 A. I didn't -- I don't recall

4 seeing this document.

5 MR. ARFFA: Objection to form.

6 A. Nor do I recall anything other

7 than the first time when David Proshan and

8 Lawrence Cutler came to me and said they

9 wanted to do some more work and the second

10 where they said they wanted to retain

11 Schulte.

12 Q. Okay.

13 Look at page seven.

14 A. (Reviewing).

15 Q. And at the bottom of the page it

16 says, "Gruss told us he had no choice but

17 to take management fees early because of

18 the management company's constant cash

19 shortages. He took management fees early

20 whenever the management company did not

21 have enough money to pay its expenses."

22 You understood that the

23 management company had cash shortages;

24 didn't you?

25 A. As I said, in terms of his

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 conduct, I understood it when I was told
3 about it through Schulte and then
4 ultimately Gibson Dunn.

5 With regard to the management
6 company, there were a variety of different
7 ways for it to be funded, whether it was
8 through lines, et cetera, and there are a
9 variety of different mechanisms by which
10 expenses could be controlled up or down in
11 terms of hiring, offices, other expenses,
12 et cetera. At no point was there a
13 discussion about improperly taking
14 management fees from the funds at any time
15 in any way.

16 Q. If you look over on page nine,
17 the bottom of the page it says, "the
18 following facts suggest Kahn was willfully
19 blind. Kahn was the COO, Kahn knew the
20 management company was constantly cash
21 strapped. Kahn knew management fees were
22 being diverted. Kahn was having a hard
23 time getting a \$10 million loan for the
24 management company in the fall of 2005
25 because of the management company's

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 negative cash flow."

3 Do you see those?

4 A. Yes.

5 Q. Well, you knew that Kahn was the
6 COO, too; right?

7 A. Yes.

8 Q. Did you know the management
9 company was constantly cash strapped or is
10 that the first time you learned it at the
11 Schulte meeting?

12 A. I don't recall what was told to
13 me if at that time regarding the
14 management company being cash strapped.
15 As I said, I don't recall seeing this
16 document. I know that he was looking for
17 the loan that they're talking about.

18 Q. If someone told new September
19 that the company was constantly cash
20 strapped, would that come as a surprise to
21 you?

22 A. I know we had discussions
23 regarding working capital and timing
24 because we had very significant incentive
25 fees that came at the end of the year.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 In terms of the -- other than on
3 a seasonal basis, did I know of that? No,
4 I did not.

5 Q. You knew the management fees
6 were being converted, that you did know;
7 right?

8 A. Some of them.

9 Q. And did you know that the
10 company had a negative cash flow?

11 A. I knew that there were timing
12 differences and, including the incentive
13 fees, I don't believe it did.

14 Q. Did you know that Kahn had a
15 difficult time getting a \$10 million loan
16 in the fall of 2005?

17 A. Not that I recall.

18 Q. If you look at page ten, bottom
19 of the page, "using investor money to pay
20 plane expenses, in March or April of '06
21 Tim Wong informed Cutler that money from
22 the funds may have been used to pay
23 expenses relating to the purchase of Dan
24 Zwirn's plane. In May Cutler directed
25 Wong to conduct an analysis."

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2 This is the one you don't know
3 whether you were told about in March or
4 April; right?

5 A. I don't know whether I heard
6 about it in the first conversation that
7 occurred in March or April. I believe I
8 heard about it in the June conversation
9 where we also said that there were -- that
10 there was reason to retain Schulte and I
11 agreed with that recommendation.

12 Q. Cutler did not tell you that in
13 May -- he did not tell you in May of '06
14 he was directing Wong to conduct an
15 analysis?

16 A. As I mentioned before, I don't
17 recall any communications between the
18 March or April first conversation and the
19 June conversation where David Proshan and
20 Lawrence Cutler suggested there was reason
21 to retain Schulte and I agreed with them.

22 Q. Did the deferral of management
23 fees, did it result in a personal tax
24 benefit to you?

25 A. I think all the deferrals,

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2 assuming one made money in the investment,
3 would have been beneficial from a tax
4 prospective to folks who did that, so that
5 would have been to me and to Glenn and
6 whoever else was in the deferral. I don't
7 recall who else was, whether it was Henry,
8 Chris, et cetera.

9 Q. Now, do you recall anything --
10 do you recall anything different about the
11 substance of the second meeting at Schulte
12 from the first meeting at Schulte?

13 A. Glenn was there on that one.
14 And in terms of I don't think we learned
15 anything new, I think it was continued
16 discussion regarding the recommendations.

17 Q. Okay.

18 I think we've established that
19 you think that paragraph four of the Dubin
20 affidavit is not accurate; correct?

21 MR. ARFFA: Objection to form.

22 A. I mean, I went through it piece
23 by piece.

24 Q. Yes, yes.

25 There are two sentences there

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2 and I think you told me that both of them
3 are wrong.

4 MR. ARFFA: Objection to form.

5 MR. SIFFERT: His testimony is
6 his testimony. Why don't you ask the
7 next question.

8 MR. SUSMAN: I will.

9 Q. How about number five?

10 A. I don't recall -- I don't
11 believe that Glenn and I had -- I don't
12 know that Glenn and I were -- understood
13 at a different time that we were going to
14 reach out to all the investors in the
15 fund. In fact, I believe that we
16 discussed the merits of doing that with
17 counsel included.

18 Q. Is this -- I'm not sure I
19 understand.

20 Is this accurate or inaccurate?

21 A. I don't believe I told him about
22 it. I believe that he was actively
23 involved in the decision regarding how we
24 would reach out to investors.

25 Q. And he was also involved in the

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2 decision about what they would be told;

3 correct?

4 A. With counsel present.

5 Q. Huh?

6 A. With counsel present.

7 Q. Yes.

8 But it is clear, is it not, that
9 they were not told what you learned from
10 Schulte, Roth and Zabel's report of their
11 investigation?

12 MR. SCHWARTZ: Objection to form.

13 A. Who is they?

14 Q. The investors.

15 We saw the script you used for
16 the investors during the first call.

17 MR. SIFFERT: Objection to form.

18 Do you understand the question?

19 THE WITNESS: Yes, I understand
20 it.

21 Q. You understand the question?

22 A. We retained Schulte Roth
23 regarding the investigation as well as
24 disclosure as well as employment issues.
25 We concluded what we concluded and we

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2 acted.

3 Q. I'm sorry, you have testified
4 before that, in your opinion, using
5 investor moneys for the purchase of a
6 plane and for early withdrawal of
7 management fees was "qualitatively
8 material and completely unacceptable."

9 Do you recall that testimony?

10 MR. SCHWARTZ: Can we have a
11 reference to where that testimony is,
12 please?

13 MR. SIFFERT: That was in the
14 SEC.

15 Do you recall that testimony is
16 the question.

17 A. I recall it.

18 Q. If it was completely
19 unacceptable and qualitatively material,
20 explain to Judge Carpinella why you didn't
21 tell investors about it when you called
22 them all over the Columbus Day three-day
23 weekend in early October.

24 MR. ARFFA: Objection to form.

25 MR. SIFFERT: I don't think

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2 you've completely read the transcript
3 of the SEC because the SEC transcript
4 goes on and clarifies what that meant.

5 MR. SUSMAN: I'm not asking him
6 what he meant. I'm asking him whether
7 he said it. You can clarify that. I
8 assume you will.

9 Q. But for the time being my
10 question is explain to the judge why, if
11 you thought the use of investor funds to
12 pay plane expenses and the premature
13 payment of management piece, you thought
14 it was totally unacceptable and
15 qualitatively material, why didn't you
16 tell the investors when you called them on
17 October 8, 9, and 10?

18 MR. ARFFA: Objection to form.

19 A. I think there was substantial
20 context around that discussion, so if I
21 can get my testimony and read through it,
22 I'd appreciate that.

23 And as a general matter, as a
24 business matter, it was absolutely
25 unacceptable.

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2 Q. You cannot explain why you
3 didn't completely level with the investors
4 in your first call --

5 MR. SIFFERT: Objection.

6 MR. ARFFA: Objection.

7 Q. -- without reviewing your prior
8 testimony?

9 MR. ARFFA: Objection.

10 MR. SIFFERT: That is a -- that's
11 not a fair question. I object to the
12 form. He completely leveled with them
13 as was appropriate.

14 MR. SUSMAN: Make your
15 objections, gentlemen. You're
16 instructing the witness not to answer
17 the question? I'll let the judge
18 decide whether that's a fair question.
19 Because that's the first question I'm
20 going to play at the beginning of my
21 case next month.

22 Q. I'll give you a chance to answer
23 it right now.

24 Tell the judge why you did not
25 disclose to your investors that you called

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2 on October 8, 9, and 10 of 2006, why did
3 you not disclose to them things which you
4 thought were totally unacceptable and
5 qualitatively material.

6 MR. ARFFA: Objection to form.

7 A. To the best of my judgment as a
8 businessperson, not a lawyer, I did the
9 right thing, the moral thing, the
10 honorable thing throughout every episode
11 do with Gruss' actions. That's the best I
12 can -- that's my best view.

13 MR. SUSMAN: On that, ladies and
14 gentlemen, we will eat lunch.

15 THE VIDEOGRAPHER: Stand by.

16 The time is 1:01.

17 We are going off the record.

18 (Lunch recess taken at 1:01
19 p.m.)

20

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2 A F T E R N O O N S E S S I O N

3 June 14, 2011

4 1:49 p.m.

5 THE VIDEOGRAPHER: The time is

6 1:49.

7 We are back on the record.

8

9 EXAMINATION CONTINUED BY

10 MR. SUSMAN:

11 Q. Okay.

12 Now, after your phone call with
13 Mr. Epstein over the Labor Day -- over the
14 Columbus Day weekend, when was your next
15 phone conversation with Mr. Epstein?

16 A. I recall having a conversation a
17 few weeks later as part of the second
18 round of calls.

19 Q. That was a second round of
20 calls; right?

21 A. Yes.

22 Q. Do you have --

23 MR. SIFFERT: Try to keep your
24 voice up, if you can.

25 THE WITNESS: Okay.

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2 Q. Did you have any communication
3 with Mr. Epstein directly between the
4 first call and the second call?

5 A. I don't recall.

6 Q. Did you speak to Mr. Dubin about
7 Mr. Epstein between the first call and the
8 second call?

9 A. I don't recall doing so. I just
10 don't know. Other than I would have
11 reported back to him about the call after
12 the call.

13 Q. I'm sorry, about the first call?

14 A. After the first call -- any
15 communication with Mr. Epstein I would
16 report to Glenn. He wanted to know.

17 Q. And what did you tell him after
18 the first call?

19 A. I don't recall the specifics of
20 the conversation. But the general matter,
21 I told him whatever occurred with regard
22 to Mr. Epstein.

23 Q. Okay.

24 But --

25 A. And I don't know whether it was

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2 communicated through voice or e-mail or
3 both. I just don't recall.

4 Q. But you did not report to him
5 that Mr. Epstein was upset, only that Mr.
6 Epstein tried to get you to go off script
7 and you didn't; right?

8 MR. SIFFERT: Objection.

9 A. No, as I said, I don't recall
10 the text of the conversation. As a
11 general matter, whatever was going on that
12 involved Mr. Epstein Glenn wanted to know
13 immediately, so we would tell him our best
14 understanding of it.

15 Q. Okay.

16 Now, look at Mr. Zwirn's
17 affidavit.

18 MR. SIFFERT: Mr. Who?

19 Q. Paragraph six. You have it
20 there before you.

21 MR. SIFFERT: You mean Mr.
22 Dubin's affidavit, not Mr. Zwirn's.

23 MR. SUSMAN: I'm sorry, Mr.
24 Dubin's affidavit.

25 Q. Paragraph six.

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2 Would you read that.

3 A. (Reviewing).

4 Okay.

5 Q. Have you read it?

6 A. Yes.

7 Q. Okay.

8 Now, obviously you were not part
9 of these communications Mr. Dubin had with
10 Mr. Epstein; correct?

11 A. Correct.

12 Q. But did Mr. Dubin ever tell you
13 anything like he says in paragraph six,
14 did he ever report to you anything like
15 that?

16 MR. SCHWARTZ: Objection to form.

17 A. Not that I recall. I don't
18 believe this happened to the extent it was
19 regarding the first call.

20 Q. I'm sorry, do that again?

21 A. It says, "Zwirn said that his
22 counsel had told Zwirn to use the word
23 'non-material.'" I don't believe that
24 occurred on the first call. I don't
25 believe I said anything about that. I

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2 believe I stayed with the script in the
3 first call. And both calls, without
4 waiving privilege, I consulted with my
5 lawyers on what to say and when to say it
6 and I did it.

7 Q. So in one of the calls did you
8 describe irregularities as non-material?

9 A. I believe that was part of the
10 second script.

11 Q. Did Mr. Dubin ever tell you,
12 without regard to whether it was the first
13 call or second call, that Mr. Epstein was
14 upset with your characterizing the
15 irregularities as being non-material?

16 A. I don't recall that ever
17 happening.

18 Q. Okay.

19 Did you ever tell Mr. Epstein
20 that your counsel had told you to use the
21 word "non-material?"

22 A. I believe that was -- that word
23 may have been used in the second script.
24 I don't have it in front of me. I don't
25 believe I veered from the script in either

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2 the first or the second case.

3 MR. SUSMAN: Let me have one
4 hundred six. Thirty-five and one
5 hundred six.

6 (Whereupon, document entitled
7 Talking Points-Investors was marked
8 Exhibit 106 for identification.)

9 Q. I'm passing you Exhibit 35
10 and 106. Let's begin with thirty-five.

11 Do you recognize what
12 thirty-five is?

13 A. Yes.

14 Q. Okay.

15 What is this?

16 A. I believe this was the sheet I
17 used to make the contacts for the second
18 round of calls.

19 Q. Is that your handwriting on the
20 -- over to the last two columns and your
21 check marks?

22 A. (Reviewing).

23 I believe so.

24 Q. Now, these calls were -- see, I
25 believe the earliest dates here are -- can

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2 you tell me what the earliest date is?

3 MR. SIFFERT: On the document,

4 thirty-five?

5 Q. There's some that show the

6 twenty-fifth.

7 A. I don't think so. I think it's

8 the twenty-eighth.

9 Q. I may be misreading them.

10 A. I could be wrong but it's hard

11 for me to tell.

12 Q. You think they're the

13 twenty-eighth?

14 A. I'm just trying to read it as I

15 sit here. I don't recall.

16 Q. Huh?

17 A. I'm just trying to read it as I

18 sit here. I don't recall. It's hard to

19 read. It's a copy of a copy or something

20 like that.

21 Q. The first page, on the first

22 page there's some calls on the

23 twenty-eighth.

24 A. I think so, yes.

25 Q. Huh?

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2 A. I think so. That's what I think
3 I read.

4 MR. SIFFERT: Steve, if it helps,
5 the twenty-fifth is a Wednesday and
6 the twenty-eighth was a Saturday, if
7 that helps.

8 Q. Well, it looks -- when did you
9 do these calls; do you remember? Was it
10 over a period of two or three days?

11 A. Yes, all together. That's not
12 to say someone couldn't have returned a
13 call later or something like that.

14 Q. If you look at Financial Trust
15 Company at the bottom, Epstein, did you
16 call both Mr. Beller and Mr. Epstein?

17 A. I don't recall. I believe I
18 spoke to Mr. Epstein.

19 Q. Did you ever speak to Mr.
20 Beller?

21 A. I don't believe so at this
22 point. I believe I spoke to him in
23 November.

24 Q. You did speak to him in
25 November?

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2 A. Yes, not in the context of the
3 second round of calls.

4 Q. Was that the only time you had
5 talked to Mr. Beller?

6 A. I don't recall other
7 conversations with him.

8 Q. Okay. We'll get to that in a
9 second.

10 In here you have under Mr.
11 Epstein on October 30 left message;
12 correct?

13 A. Yes.

14 Q. But you say you did eventually
15 talk to him; right?

16 A. There's a check mark there. I
17 believe I was using the check marks to
18 indicate I had connected.

19 Q. Do you know when you connected?

20 A. I don't recall.

21 Q. Now, did you take any notes of
22 these calls?

23 A. No, I didn't.

24 Q. Were any of them recorded?

25 A. Not that I recall.

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2 Q. Was anyone on the phone with you
3 or did you do it by yourself?

4 A. I believe Elise was in the room
5 with me during the majority over that
6 period of time. At times -- yeah, I think
7 it was Elise throughout.

8 Q. Ms. Hubsher?

9 A. Yes.

10 Q. Were you making these on a
11 speakerphone?

12 A. I don't believe so.

13 Q. So she would have heard your
14 side of the call, not the other side? Was
15 she listening in to the calls?

16 A. No, I don't believe so.

17 Q. So if she was sitting in the
18 room, she would have heard what you said,
19 not what the other party said; correct?

20 A. I believe so.

21 Q. Now look at one hundred six.

22 Is this the text you used for
23 the domestic -- the calls with the onshore
24 fund, the domestic fund?

25 A. (Reviewing).

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2 Q. Are you still reading?

3 A. No, I'm done.

4 Q. My question was this the text
5 that you used for those calls.

6 A. This is the script for that
7 second round of calls. I believe it had
8 other material with it that wasn't part of
9 the script.

10 Q. Okay.

11 MR. SUSMAN: One hundred seven,
12 please.

13 (Whereupon, document entitled
14 Q&A For Investors was marked
15 Exhibit 107 for identification.)

16 Q. And is one hundred seven the
17 other material you're referring to?

18 A. (Reviewing).

19 Q. Is this the other material
20 you're referring to?

21 A. I'm still going through it.

22 Q. Huh?

23 A. I'm still going through it.
24 (Reviewing).

25 Q. You got through enough to know

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2 that this is the document you used?

3 A. I believe so. I don't know that
4 it's a final version of it.

5 Q. Well, let me ask you a few
6 questions.

7 Did you actually -- this Q and
8 A, it says, "the proposed answers below
9 are for use with investors asking
10 follow-up questions after Dan discloses
11 the three issues to them."

12 So did you have to use any of
13 these follow-up things with Jeffrey
14 Epstein or do you remember?

15 A. Beyond the script, I recall that
16 Mr. Epstein wanted to speak to Harry Davis
17 or our lawyers.

18 Q. He asked to speak to your
19 lawyers?

20 A. Yes. Which is one of the things
21 covered in here that I read.

22 Q. Huh?

23 A. It's one of the things covered
24 in here that I read. I don't know if I
25 literally turned to it as Mr. Epstein

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2 asked me about that. I know it's covered
3 in the QA that comes with the script are
4 you saying the script says that -- I'm not
5 sure I follow.

6 You first went over the script
7 with Jeffrey; correct.

8 MR. SIFFERT: Exhibit 107?

9 MR. SUSMAN: Exhibit 106.

10 A. I believe with all investors I
11 went through the script, including Jeffrey
12 Epstein.

13 Q. And do you recall anything that
14 Mr. Epstein said other than I want to
15 speak to your lawyer?

16 A. Not that I recall, no.

17 Q. Do you recall in what context it
18 was that he wanted to speak to your
19 lawyer?

20 A. You know, I think consistent
21 with the first call he was -- he seemed to
22 be looking for more information than what
23 was script. I don't recall delivering any
24 more information other than that. I know
25 he then said he wanted to speak to our

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2 lawyer and I said I would try to do that.

3 Q. Okay.

4 Look, if you will, at page four
5 of these additional descriptions.

6 MR. SIFFERT: One hundred seven?

7 MR. SUSMAN: Page four of one
8 hundred seven.

9 Q. On the subject of interfund
10 transfers, the question is how was this
11 discovered and the answer is we discovered
12 it as a result of our control systems.
13 Someone came forward and brought this to
14 our compliance officer's attention who
15 immediately brought this to me.

16 Who was the someone who came
17 forward?

18 A. I don't have firsthand knowledge
19 of it occurring, although my best
20 understanding is it was a woman named
21 Alissa Butchkowski.

22 Q. Look at page six, paragraph
23 eight.

24 A. I see it.

25 Q. The question is -- the answer is

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2 those to whom we know to be directly
3 responsible are gone.

4 Who besides Perry Gruss was in
5 that category?

6 A. I don't recall today who else
7 was deemed to be directly responsible at
8 that time or if anyone else was at that
9 time. I just don't recall.

10 Q. Look at paragraph seven of the
11 Dubin affidavit.

12 A. Are we done with six?

13 Q. We are.

14 A. I didn't finish answering --

15 Q. I'm sorry, go ahead.

16 A. Just to be clear, obviously I
17 was not privy to a conversation solely
18 between Glenn and Epstein. I believe in
19 the last sentence it talks about Epstein
20 having made that demand to Zwirn. That
21 did not happen.

22 Q. Excuse me, let's try it again.

23 What did not happen?

24 A. In either the first call or the
25 second call, I have no recollection of

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2 Epstein making a demand to me regarding
3 the entire capital account.

4 Q. Do you have until either call --

5 A. Or any of his capital accounts.

6 Q. You're not saying it didn't

7 happen, you just don't recall it

8 happening?

9 A. No, I don't believe it happened.

10 Q. In either of the calls?

11 A. Correct.

12 Q. And do you also believe that Mr.

13 Dubin never told you that Epstein had made

14 that demand of him?

15 A. I believe that's correct, he did

16 not.

17 Q. So if we go to --

18 A. Glenn did not, to be clear.

19 Q. Huh?

20 A. To be clear, Glenn did not tell

21 me that Epstein had made that demand of

22 him.

23 Q. So when Glenn says in paragraph

24 seven, "I subsequently spoke to Zwirn

25 about Epstein's demand," that is a lie;

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2 correct?

3 A. It didn't occur.

4 Q. Then Mr. Dubin says, "Zwirn was
5 concerned that a complete redemption could
6 cause a run on the bank."

7 Did you ever discuss that
8 concern with Mr. Dubin?

9 A. No.

10 Q. Did you ever have that concern?

11 A. No.

12 Q. If Mr. Epstein had demanded his
13 entire -- to withdraw his entire capital
14 account in October of '06, did the onshore
15 fund have the liquidity to pay it?

16 MR. SCHWARTZ: Objection to the
17 form.

18 A. I mean, I don't really
19 understand. In any of his five tranches
20 he had different liquidity rights. I
21 don't recall there being a time of us not
22 being able to handle any demands that we
23 understood there to be.

24 Q. So were you able to pay -- were
25 you able to -- did you have the ability to

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2 return to him \$80 million, for example?

3 MR. ARFFA: Objection to form.

4 A. I don't recall the financials of
5 the firm at that point in time and I
6 wouldn't have needed to because he didn't
7 have a right to it.

8 Q. And where Mr. Dubin says in this
9 affidavit, "Zwirn asked me to discuss with
10 Epstein, reducing his demand of one half
11 of the Financial Trust Company's total
12 capital account in the Zwirn fund at the
13 time," that did not happen; correct?

14 A. No, and I don't understand the
15 notion of total capital account. Jeffrey
16 had five different pieces of money. I
17 guess collectively they could have been
18 referred to as a capital account in
19 discussion, but this didn't happen.

20 Q. And then it says, "I agree" --
21 well, he didn't agree he was going to
22 discuss anything with Epstein because he
23 never told you anything he had to discuss
24 with Epstein; correct?

25 A. I know he was chatting with Mr.

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2 Epstein about what we could do to be good
3 customer service people but no, that was
4 not correct.

5 Q. And paragraph eight,
6 "subsequently I participated in a
7 three-way call with both Zwirn and
8 Epstein."

9 There was no such call?

10 A. I believe there were calls that
11 included Glenn, me, and Mr. Epstein as
12 well as Glenn's wife. They were much
13 later.

14 MR. SIFFERT: Okay.

15 Let's change the tape.

16 THE VIDEOGRAPHER: The time is
17 2:24.

18 We are going off the record.
19 This is the end of tape three.

20 (Whereupon a break was taken)

21 THE VIDEOGRAPHER: The time is
22 2:27.

23 We are back on the record, the
24 start of tape four.

25 Q. Mr. Zwirn, did you report to Mr.

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2 Dubin about your second call with Mr.
3 Epstein, the one you had at the end of
4 October?

5 A. I believe so.

6 Q. And you would have told him that
7 you read the script and that Epstein
8 simply wanted to talk to a lawyer?

9 MR. ARFFA: Objection to form.

10 MR. SCHWARTZ: Objection to form.

11 MR. SIFFERT: Objection to form.

12 MR. SUSMAN: I'm sorry?

13 MR. SIFFERT: Objection to form.

14 The word "simply" is a problem, I
15 think.

16 MR. ARFFA: Other problems as
17 well.

18 MR. SCHWARTZ: It's also a
19 compound question.

20 Q. He would have told -- well, what
21 did you --

22 A. I believe I would have told him
23 my best understanding of what happened
24 which is I stuck to the script. He may
25 have attempted to access information not

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2 given to other investors and that he
3 wanted to speak to our attorney. I don't
4 recall whether we talked specifically
5 about the name Harry Davis or not, but
6 that's who I believe he ended up speaking
7 with.

8 Q. What information did he seek
9 which was not being given out to
10 investors?

11 A. I don't recall what information
12 he sought that would have been different
13 than that which had been given out to all
14 the other investors. It's my general
15 sense of what occurred. I don't recall
16 the specific script of the call. And to
17 be clear, by script, I mean our
18 conversation, not the script I had.

19 Q. I didn't understand that.
20 What was the last thing you
21 said?

22 A. I used the word "script" because
23 I said and I don't recall the script of
24 what Mr. Epstein and I discussed. By that
25 I meant what the precise words were that

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2 we used. I did not mean the script that I
3 stuck to that came through discussion with
4 Schulte Roth.

5 Q. Do you recall saying anything
6 more to Mr. Dubin about that conversation
7 with Mr. Epstein than you've told us now?

8 A. No, I do not.

9 Q. Did Mr. Dubin say anything in
10 response?

11 A. I don't recall a specific
12 response. As a general matter, in
13 discussions general frequently referred to
14 how we should do our best do whatever we
15 were able do for Mr. Epstein in terms of
16 meetings or access or whatever we could do
17 within the bounds of what we're able to do
18 for everybody and that he wanted to be
19 treated well.

20 Q. Your impression after the second
21 call you had with Mr. Epstein was that he
22 was not upset or did you have an
23 impression one way or the other?

24 A. I didn't know him and I don't
25 know him. I don't recall having a

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2 specific impression.

3 Q. Okay.

4 When do you recall having the
5 next conversation with Mr. Epstein?

6 A. I think it was after we received
7 his demand for a wire by fax. I don't
8 know whether it was also before or after
9 we had agreed to begin work on his behalf
10 for the assignment of his account. I just
11 don't recall.

12 Q. Okay.

13 We can -- let's finish the Dubin
14 affidavit.

15 Paragraph eight, would you read
16 that?

17 A. (Reviewing).

18 Okay.

19 Q. Is that -- is there anything in
20 there that's truthful?

21 A. This said we may have had a
22 three-way call at some point after the
23 second round of calls that excluded Mr.
24 Dubin's wife. I don't recall
25 specifically.

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2 Q. Is the rest of it false?

3 A. I can't dispute Glenn's
4 understanding in the last sent sense.

5 Q. What?

6 A. I can't dispute Glenn's
7 understanding. His understanding is his
8 understanding. But I recall none of this.
9 It didn't happen.

10 Q. It did not happen?

11 A. No.

12 There is a reference to a
13 written request. There was a fax demand
14 for an illiquid immediate payment or an
15 immediate wire that did occur and that's
16 the first we knew about that demand for
17 payment.

18 Q. But otherwise that, none of had
19 occurred and Mr. Dubin's just making
20 things up?

21 MR. SIFFERT: Objection.

22 MR. SCHWARTZ: Objection to form.

23 A. I can't characterize Mr. Dubin.

24 Q. Huh?

25 A. I don't know how to characterize

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2 Mr. Dubin. That's his business. None of
3 this other stuff happened that we
4 reviewed.

5 Q. Do you have any explanation as
6 to why he would not be truthful in
7 preparing this affidavit?

8 A. I'd be speculating. I don't
9 know. I can't tell you.

10 Q. Okay.

11 The next conversation you think
12 was --

13 MR. SUSMAN: Exhibit 5, please,
14 Seth.

15 Q. I show you what's been marked as
16 Exhibit 5.

17 This is a fax you have referred
18 to you got from Mr. Epstein on
19 November 13; correct?

20 A. I believe I did. I don't recall
21 actually getting it off a fax, but I
22 believe so.

23 Q. And then it begins by saying,
24 "as per our conversation, I hereby
25 instruct you."

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2 Do you recall any such
3 conversation?

4 MR. ARFFA: Objection to form.

5 MR. SCHWARTZ: Objection to form.

6 A. I don't recall a conversation
7 where he previously instructed me to do an
8 immediate liquidation of an interest or an
9 immediate wire, no.

10 Q. As per our conversation, do you
11 recall any conversation where he discussed
12 with you the subject of withdrawing his
13 capital or any part thereof?

14 A. No.

15 Q. And you think it was after you
16 received this fax that you had a three-way
17 conversation with Mr. Epstein, Mr. Dubin,
18 and yourself?

19 A. Well, there was a -- after that
20 fax, there was a call from Glenn Dubin who
21 basically said that if we would work on
22 some sort of tax issue regarding Epstein's
23 interest, that we would be done with this
24 situation.

25 Q. Okay.

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2 I was asking you about was there
3 a three-way call between you, Mr. Dubin,
4 and Jeffrey Epstein.

5 A. I believe so, after the prior
6 call that I described.

7 Q. That was after -- do you know
8 when that call -- either of those calls
9 took place other than after November 13?

10 A. I don't recall the specific
11 dates. I believe in November but I don't
12 know for sure.

13 Q. And what do you recall was said
14 by anyone in the three-way call?

15 A. My best recollection, it was
16 basically that we were going to go do this
17 work.

18 Q. Do that again, sir?

19 A. The only thing I recall is that
20 the firm, we were going go do this work.

21 Q. What work?

22 A. The work on Epstein's interest,
23 the transfer or the attempt to transfer.

24 Q. Do you know what that transfer
25 was all about?

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2 A. I don't recall from that time.
3 I know it was tax-related. In preparation
4 for this, I know my understanding is it
5 has something do with New York-sourced
6 income and that he would have needed our
7 -- I guess they needed us to work on it
8 with them and that they would have needed
9 or approval for it.

10 Q. Do you have any idea the
11 magnitude of what that was worth to Mr.
12 Epstein?

13 A. I don't.

14 Q. So during your conversation
15 about this work, was there any discussion
16 about his withdrawal of funds or his not
17 withdrawing funds or his agreeing he
18 wouldn't withdraw funds if he did the work
19 or anything like that?

20 A. I don't recall the specific
21 discussion of it other than we had -- my
22 impression of it was -- again Glenn was
23 very clear with us that this would stop,
24 the demands for immediate payment would
25 stop if we did this work.

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2 Q. When you got this demand for
3 immediate payment, the Exhibit 5, did you
4 call Mr. Epstein or e-mail Mr. Epstein or
5 write him that he wasn't entitled to make
6 this kind of demand?

7 A. I don't recall doing that. I
8 wouldn't have done that without talking to
9 Glenn anyway, that I can recall.

10 Q. I'm sorry, you believe that he
11 had no right to make the demand; correct?

12 A. The demand to liquidate an
13 interest instantly and get a wire? I
14 believe that he did not have a right do
15 that, correct.

16 Q. So why were you interested in
17 his agreeing not to press it? Why was
18 that of interest to you at all?

19 MR. ARFFA: Objection to form.

20 A. We wanted -- we always wanted to
21 make any customer happy. Glenn was
22 consistently very focused on us doing
23 whatever we could from a customer service
24 prospective with him. We had a bunch of
25 other issues as a management that we were

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2 dealing with for all of our investors and
3 it was a -- it was time-consuming dealing
4 with it.

5 Q. But just so I'm clear, is the
6 idea that Mr. Epstein would agree to
7 retract this withdrawal request for \$80
8 million if you assisted him on this
9 assignment issue, that came to you
10 exclusive via Glenn Dubin, not directly
11 from Mr. Epstein at all; correct?

12 A. He may have been on the -- I
13 believe we discussed the fact that we were
14 going do that on Mr. Epstein's behalf on
15 the three-way call. I don't know that it
16 was reiterated that there was a direct
17 quid pro quo. That only came from Glenn.

18 Q. Okay.
19 Did you have just one three-way
20 call with Mr. Dubin and Epstein or was
21 there more than one subsequent to the
22 November 13 withdrawal request?

23 A. I don't recall. I know we --
24 consistent with Mr. Dubin's request, we
25 wanted to do as much that we could in the

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2 context of what we were doing for other
3 investors for Jeffrey, so we spent a bunch
4 of time trying to set up meetings for
5 access to data on the NAV, NAV, for him.
6 I just don't recall whether all three of
7 us were on calls regarding that.

8 Q. You say you -- so do you recall
9 any call with Mr. Epstein -- you said that
10 there was one with Glenn Dubin's wife on
11 the phone, Eva Dubin?

12 A. Either one or two with the four
13 of us on the phone.

14 Q. With the four you have on the
15 phone?

16 A. I don't think there was ever a
17 call with me, Mrs. Dubin, and Jeffrey on
18 the phone.

19 Q. When was there a call with four
20 of you on the phone?

21 A. I believe there were one or two
22 after the topic of some sort of immediate
23 cash request came up a second time.
24 Perhaps February of the following year.

25 Q. Do you have any -- are you able

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2 to date that at all?

3 MR. ARFFA: I object to the form.

4 A. I don't recall the specific
5 dates.

6 Q. You think it was in February of
7 '07?

8 A. I think so.

9 Q. What was the -- how did those
10 calls come about?

11 A. I don't recall.

12 Q. What was said during those
13 calls?

14 A. I just don't recall the
15 substance of them. I don't know that
16 there was anything new. I just don't
17 recall.

18 Q. Do you recall what the purpose
19 of them was?

20 A. I think there was -- I believe I
21 have a recollection that it was set up
22 somehow to kind of, you know, continue to
23 try to soothe Mr. Epstein.

24 Q. Do you recall what was said by
25 you or Mr. Dubin or Mrs. Dubin towards

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2 that goal?

3 A. I don't recall the specific
4 conversation at that time.

5 Q. And you don't recall anything
6 specifically that Mr. Epstein said; right?

7 A. I don't recall specific words of
8 it, no. As I said, I don't think there
9 was anything new beyond what we had
10 previously discussed.

11 Q. Mr. Zwirn, I'm looking here at a
12 press report of your -- it's titled Dan
13 Zwirn Seeks Comeback With Alda Three Years
14 After Shutting Hedge Fund. It's based on
15 a May 18 release.

16 Do you know anything about your
17 setting up some new closed-end fund for
18 Alda Capital Corporation?

19 MR. ARFFA: Could we see that?

20 A. Can I see it?

21 Q. Do you know anything about it?
22 Does it ring any bell to you?

23 MR. ARFFA: I object to this.

24 Q. Go ahead.

25 A. It's an entity that doesn't

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2 exist for which I would serve as neither
3 an officer, director, or employee.

4 Q. Is this something you were
5 thinking --

6 A. What was the question?

7 Q. My question is: Is this still in
8 the works or has it been abandoned?

9 MR. SCHWARTZ: Objection.

10 A. There is a document regarding
11 it. It's neither in the works or not,
12 it's just out there. It would be a small
13 investment with which I would have no
14 day-to-day involvement as an officer,
15 director, or employee.

16 Q. What would be your role?

17 A. To the extent that it existed, I
18 would have an interest in an outside
19 investment adviser that would advise it if
20 it ever happens.

21 Q. Who would be involved with you
22 here?

23 A. There's a guy called Al Gordon
24 who would be the day-to-day CEO.

25 Q. How do you know Mr. Gordon?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I've known him for a year or so,
3 become friendly with him.

4 Q. Did you have any business
5 dealings with him while you were running
6 the firm?

7 A. The former firm? No.

8 Q. The former firm.
9 Did you -- which lawyers were
10 you using to set up Alda, this fund, this
11 new fund?

12 MR. SCHWARTZ: Objection to form.

13 Q. With Alda.

14 A. The firm of Greenberg Traurig
15 worked on it. And to be clear, I don't
16 accept the premise of the article either.
17 I was not seeking a comeback. That was
18 not my wording.

19 Q. Did you go and interview for
20 that article?

21 A. No, I did not.

22 MR. ARFFA: Can someone at least
23 read into the record what the article
24 is if we're going to have testimony
25 about it?

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2 MR. SCHWARTZ: Just mark it.

3 MR. SIFFERT: Is there any reason
4 not to mark it? Steve, why don't you
5 just mark it?

6 MR. SUSMAN: I don't have an can
7 extra copy of it. We'll make one at
8 the break.

9 MR. SIFFERT: Seth said he did.
10 Seth has copies.

11 MR. SUSMAN: You don't have
12 copies; do you, Seth?

13 MR. ARD: I do.

14 MR. SUSMAN: What's this number?
15 One hundred nineteen.

16 (Whereupon, a three-page
17 document was marked Exhibit 119
18 for identification.)

19 Q. You've seen this article before,
20 one hundred nineteen?

21 A. I've seen different versions of
22 it. I don't know that I saw this version
23 of it.

24 Q. It says on the second page here
25 -- look at page two. This is like the

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2 second paragraph above the word
3 "attractive margins." It says --

4 A. I don't see that.

5 Q. Do you see, "Gordon and Zwirn
6 are the co-managers of Alda Capital, LLC,
7 a private equity firm formed last year,
8 according to the SEC filing."

9 Is that true?

10 A. It's not a -- there's an entity
11 that we would be co-managers of, yeah. I
12 don't know that it's a private equity
13 investment firm. It's just a holding
14 entity.

15 Q. There was apparently an SEC
16 filing?

17 A. I think so.

18 Q. "Gordon and a member of Zwirn's
19 family hold a stake through the private
20 equity firm in Alda Capital Manager, LLC,
21 the loan fund's investment adviser."

22 Who is your family, the member
23 of your family that holds that stake?

24 A. I don't know that that's the
25 case.

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2 Q. Huh?

3 A. I don't know that that's the
4 case.

5 Q. Was it you personally that had
6 the stake? Is this just an error?

7 A. It's not correct. There's a
8 separate -- there was an entity that I
9 don't own that owns a stake.

10 Q. Who owns that entity?

11 A. It's multiple -- there are
12 multiple members including my wife.

13 Q. What's the name of the entity?

14 A. The holding company? I believe
15 it's Alda Capital, LLC.

16 Q. Alda Capital, what's the last
17 name?

18 MR. SIFFERT: LLC, it's the name
19 in this article.

20 Q. And that is owned by a company
21 which your family has an interest in; is
22 that what you're saying?

23 A. Yes.

24 Q. Is your wife active in this
25 business?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. Nobody's active in the business.

3 It's not a full-time thing. It's an

4 entity.

5 Q. Would you look, please,

6 Exhibit 89.

7 (Whereupon, an e-mail dated

8 December 23, 2004 was marked

9 Exhibit 89 for identification.)

10 Q. Here is Exhibit 89. On the

11 bottom of the page there's an e-mail from

12 Mr. Dubin to you, "twenty million

13 January 1 domestic. We're done. FTC in

14 for twenty million January 1 LP."

15 Was it -- you got this e-mail

16 from Mr. Dubin?

17 A. I don't recall the e-mail, but I

18 have no reason to think I didn't.

19 Q. Was it Mr. Dubin who was

20 responsible for getting Mr. Epstein to put

21 in this \$20 million to invest in the

22 onshore fund?

23 MR. ARFFA: Objection to form.

24 A. I don't know who was responsible

25 for that.

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2 Q. When Mr. Epstein invested that
3 \$20 million, did you somehow become aware
4 that he was interested in getting a
5 two-year lockup on his investment?

6 A. Yes. On that \$20 million, yes.

7 Q. How did you become aware of
8 that?

9 A. I believe Glenn had said he had
10 been speaking to Jeffrey about investing
11 some more in another tranche -- and again,
12 I don't recall the specific words from
13 Glenn -- but that he would do it if we
14 agreed for that tranche to do it as a
15 two-year rolling lockup instead of a
16 three-year rolling lockup.

17 Q. Was that fine with you?

18 A. We agreed to that.

19 Q. Huh?

20 A. We agreed to that. I don't
21 recall how I personally felt about it.
22 But in talking to counsel, et cetera, I
23 know that we agreed to it in a note.

24 Q. Did you have any discussion with
25 anyone from FTC about that, you

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2 personally?

3 A. I don't recall that, no.

4 Q. And then --

5 MR. SUSMAN: Would you hand him
6 Exhibit 90.

7 (Whereupon, an e-mail dated
8 September 7, 2004 was marked
9 Exhibit 90 for identification.)

10 Q. Exhibit 90.

11 A. (Reviewing).

12 Q. Have you seen this -- obviously
13 you've seen this e-mail before.

14 A. I don't recall doing so.

15 Q. Huh?

16 A. I see that I'm cc'd on it, but I
17 don't recall doing so.

18 Q. Do you recall why you were -- do
19 you recall going through an exercise at
20 the request of Mr. Dubin back towards the
21 end of 2004?

22 A. No, I don't.

23 Q. Comparing the difference between
24 a one and a half percent and a two percent
25 management fee?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I just don't recall it.

3 Q. Do you recall that Mr. Dubin was
4 assigned the task of approaching Jeffrey
5 Epstein to see whether he would agree to
6 increase the management fee to two
7 percent?

8 A. I don't have any reason to
9 believe he wouldn't, Glenn wouldn't have,
10 but I don't recall the episode.

11 MR. SUSMAN: Exhibit 91.

12 (Whereupon, an e-mail dated
13 September 8, 2004 was marked
14 Exhibit 91 for identification.)

15 Q. Do you recognize this as an
16 e-mail exchange you had with Mr. Dubin on
17 September 8, 2004?

18 A. I don't recall the e-mail.

19 Q. You don't recall it, but Mr.
20 Dubin writes to you, he says, "I just paid
21 for breakfast. Put FTC in the fund at two
22 percent." And you respond, "I might even
23 ship over the extra croissants from the
24 morning. Thank you."

25 Does that ring any bell?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I don't recall it. Again, I
3 don't have any reason to think it didn't
4 occur or I didn't receive it. I just don't
5 recall.

6 Q. But this doesn't ring any bell
7 about Mr. Dubin being involved on behalf
8 of the fund going to Mr. Epstein and
9 asking for this change in the management
10 fee?

11 A. We had a change in the
12 management fee that occurred for either
13 all or virtually all the investors from
14 one and a half to two percent and, as I
15 said, Glenn was the point person at all
16 times with regard to how we would deal
17 with Mr. Epstein. I just don't recall
18 this one back and forth regarding the
19 change in management fee.

20 MR. SUSMAN: Could I get
21 Exhibit 94?

22 MR. ARD: Steve, could we skip
23 over that one? I've got a bad copy of
24 it.

25 MR. SUSMAN: Not really.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 MR. ARFFA: Can we take a break?

3 MR. ARD: They want to take a
4 break.

5 THE VIDEOGRAPHER: Stand by.

6 The time is 3:02.

7 We're going off the record.

8 (Whereupon a break was taken)

9 THE VIDEOGRAPHER: The time is
10 3:19.

11 We are back on the record.

12 MR. SUSMAN: Okay.

13 Could I have Exhibit 95, please.

14 MR. ARD: Ninety-four, you mean,
15 the one we skipped over?

16 MR. SUSMAN: Ninety-four is fine.

17 (Whereupon, an e-mail dated
18 October 25, 2004 was marked
19 Exhibit 94 for identification.)

20 Q. Let me show you Exhibit 94.

21 This is an e-mail that you sent to Mr.
22 Dubin on October 25 in which you apologize
23 for sending out a letter without his
24 explicit okay.

25 Do you see that in your e-mail

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 to him?

3 A. Yes.

4 MR. SIFFERT: The year is '04,
5 October of '04.

6 THE WITNESS: Yeah, October of
7 '04.

8 Q. October, '04.

9 Do you see that?

10 A. Yes, I do.

11 Q. And essentially he was upset
12 because you had sent out a letter
13 suggesting that he no longer had a
14 relationship with DBZ and Company;
15 correct?

16 A. He wrote. I don't know what his
17 interpretation of it was.

18 Q. And he writes you here and says,
19 "why don't you have Perry and David field
20 the calls from Jeff Epstein, Bob
21 Rosenkrantz, Michael Sachs, Robert Wood
22 Johnson Foundation, Neil Tripplet, the
23 University of Chicago."

24 Were those your investors that
25 he was personally handling primarily?

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2 MR. ARFFA: Objection to form.

3 A. He was involved with many of the
4 investors. I don't know that those were
5 the only ones.

6 Q. He was involved with those;
7 right?

8 A. I believe so, yes.

9 Q. In fact, in Mr. Epstein's case,
10 he was really your contact person, your
11 point person; wasn't he?

12 A. Yes, he was.

13 Q. So since he was a partner of the
14 firm and he was -- he knew as much about
15 the irregularities as you did and knew
16 about them when you knew about them;
17 correct?

18 MR. ARFFA: Objection to form.

19 MR. SCHWARTZ: Objection to form.

20 A. I don't think I said that.

21 Q. Isn't that true?

22 MR. SCHWARTZ: Objection to form.

23 A. What I said was after the June
24 meeting with Lawrence and David Proshan, I
25 told him about what was going on with the

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2 Schulte thing and in the meeting
3 immediately after the first meeting, he
4 was aware of all the stuff that was going
5 on with Schulte wand ass kept informed
6 throughout that time.

7 Q. So my only question is why
8 wasn't he assigned the job of talking to
9 Jeffrey Epstein in early October and t the
10 end of October when these scripts were
11 prepared?

12 A. We would have taken direction as
13 to who should call Jeffrey from Glenn.

14 Q. And did you ask him to make the
15 calls at any time?

16 A. Our relationship didn't work
17 like that. He would tell me what he
18 wanted do.

19 Q. Were you taking orders from him?

20 A. In the case of interactions with
21 Mr. Epstein, he instructed us what we
22 thought should be done and we always did
23 it, to my knowledge.

24 Q. And he was the one who wanted
25 you do the talking to Epstein, not him?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 MR. SCHWARTZ: Objection to form.

3 A. I don't know what you -- I don't
4 understand the generalization. I believe
5 that he wanted me do the first and second
6 round calls and when he wanted me to set
7 up meetings or try to set up meetings, we
8 would do it. As a general matter, he
9 wanted to make sure that we did whatever
10 we can including the assignment to make
11 Mr. Epstein happy as much as we could.

12 Q. Was he -- did he ever say
13 anything to you critical of you for
14 allowing these irregularities to happen?

15 A. Not that I recall. It didn't
16 happen.

17 Q. Did -- in any of the calls that
18 you had with Mr. Epstein prior to 2007
19 when I think in February of 2007 you said
20 -- mentioned some calls where Mr. Dubin's
21 wife was on the phone and you were trying
22 to soothe things over with Mr. Epstein --

23 A. I didn't say that.

24 Q. Well, the transcript will
25 reflect what you said.

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. I think what I said was that
3 Glenn, Eva, Mr. Epstein, and I were on the
4 phone and my impression of the purpose of
5 the calls was to soothe Mr. Epstein.

6 Q. To soothe Mr. Epstein?

7 A. Uh-huh.

8 Q. Did you perceive that he was
9 upset then about something?

10 A. I don't recall having a
11 perception of his feelings at that time.

12 Q. Excuse me?

13 A. I don't recall having a
14 perception of his feelings at that time.
15 I knew he had an accountant who was
16 harassing our junior IR, investor
17 relations, people and I knew that we had
18 already previously put this to bed in an
19 analysis for the transfer that occurred in
20 November vis-a-vis what Glenn had told us
21 and we were quite busy.

22 Q. Well, he was upset about -- the
23 purpose was to soothe him.

24 What was he upset about?

25 A. Apparently not getting a direct

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2 wire or \$80 million out of the funds.

3 Q. And is it your testimony, sir,
4 that you had no perception that Mr.
5 Epstein was upset about anything prior to
6 that time?

7 A. I don't have a recollection of
8 what my perception of Mr. Epstein's
9 feelings were as of that time.

10 Q. So you have -- do you have any
11 understanding or any theory as to why Mr.
12 Epstein on November 13 made that demand
13 for an \$80 million withdrawal?

14 A. Other than that he wanted it
15 wired when he wanted it, I don't.

16 Q. That came as a complete surprise
17 to you?

18 A. That was the first time we had
19 heard he wanted to withdraw money through
20 his demand for immediate wiring.

21 Q. Was it the first time that you
22 had heard he wanted to withdraw money at
23 all?

24 A. That was the first time I heard
25 that, yes, or understood that.

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2 Q. So you had mentioned that you
3 had a conversation with Mr. Beller on the
4 thirteenth?

5 A. I believe I had one in November.
6 I don't know the specific date. And there
7 may have been -- I just don't recall right
8 this second. There may have been others
9 in February, but I don't recall the
10 specific text of them.

11 Q. Was that conversation with Mr.
12 Beller before or after you got the \$80
13 million withdrawal demand?

14 A. The November one?

15 Q. Yes.

16 A. I don't recall.

17 Q. Why did you have a conversation
18 with Mr. Beller?

19 A. My best recollection it was to
20 review the liquidity of the various pieces
21 of money that had been invested by Mr.
22 Epstein.

23 Q. To do what?

24 A. Review the liquidity election
25 for each of the pieces of money or the

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2 tranches that Mr. Epstein had invested.

3 Q. By that you mean the withdrawal
4 rights, the redemption rights?

5 A. The lockups, yes.

6 Q. The lockups?

7 A. Uh-huh. That's my best
8 recollection.

9 Q. So how did that get instituted?
10 Did Mr. Beller call you?

11 A. I don't recall.

12 Q. Who was on the call with Mr.
13 Beller besides yourself?

14 A. I don't recall there being
15 anyone else on the call. I don't recall
16 whether someone was in the room at the
17 time.

18 Q. Huh?

19 A. I said I don't recall there
20 being someone else on the phone.

21 MR. ARFFA: Objection to form.

22 A. I don't recall there being
23 someone else on the line at the time. I
24 don't recall also whether there was
25 someone else in the room. There may have

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2 been but I just don't know.

3 Q. Did you make any notes of the
4 call?

5 A. I believe subsequently I sent an
6 e-mail regarding it to Glenn.

7 Q. Did you -- and you have no
8 explanation why you were having that
9 conversation with Mr. Beller when you were
10 having it with him?

11 MR. ARFFA: Objection to form.

12 A. I just don't recall that.

13 Q. And Mr. Beller, what did you
14 tell him about the lockup provisions?

15 A. My best recollection is I just
16 went through the two-year rolling. I
17 don't know whether I went through the
18 specific dates of each of the five.

19 Q. And did he say anything or just
20 listen?

21 A. I don't recall.

22 Q. What is the basis of you are of
23 the view that the withdrawal dates were
24 calculated separately for each separate
25 investment an investor made?

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2 A. That's the way we always did it.
3 That's how we treated every investor.
4 That's how every investor, to my
5 knowledge, interpreted it.

6 Q. Okay.

7 Would it have been impractical
8 or impossible if you didn't have a tranche
9 by tranche lockup to run a hedge fund?

10 MR. ARFFA: Objection to form.

11 A. I don't know about any hedge
12 fund. I know that we needed lockups we
13 did for the businesses we pursued.

14 Q. Why did you need it?

15 A. Because as we discussed with our
16 investors, we were a -- we described
17 ourselves as what we referred to as a
18 global chaser of illiquidity, so we would
19 want to have assets and liabilities
20 matched as much as possible.

21 Q. Were a -- what did you call
22 that, a global --

23 A. A global chaser of illiquidity.

24 Q. Okay.

25 And have you ever invested in

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2 funds that used a single withdrawal date
3 for an investor's capital account
4 regardless of how many investments were
5 made?

6 MR. SCHWARTZ: Objection to form.

7 A. I have not and I have not heard
8 of that, to my knowledge.

9 Q. You have not heard of funds that
10 calculate the withdrawal date in that way
11 based on a single capital account?

12 MR. ARFFA: Objection to form.

13 A. Again, there's no way for me to
14 know about every fund. I just have
15 personally not heard of that.

16 Q. Did you eve realize that there
17 was some ambiguity in your duties as to
18 whether there was a tranche-by-tranche
19 lockup or whether it was just a single
20 lockup date for a capital account?

21 A. I'm not a lawyer. My best
22 understanding as a businessperson in all
23 of our practice was that it was tranche by
24 tranche that would be the only way that
25 would make sense in terms of maintaining

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2 liquidity.

3 Q. Do you recall any documents that
4 were sent to investors in the onshore or
5 offshore fund explaining that their
6 investments will be locked up on a
7 tranche-by-tranche basis?

8 A. I believe we sent offering memos
9 and subscription documents to all the
10 investors who subscribed.

11 Q. It would be in the offering
12 memorandum or the subscription documents?

13 A. That would be my best
14 understanding.

15 Q. Anything else?

16 A. To the extent that those were
17 updated or evolved over time, other
18 versions of them perhaps, that would be
19 the only thing I could recall.

20 Q. Did you --

21 A. To be clear, with regard to
22 investors generally, I know that we
23 interacted with investors. Our investor
24 relation partner I believe interacted with
25 investors and discussed different

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2 tranches, different pieces of money,
3 transfers, things of that sort.

4 Q. At some point in time did you
5 provide in your -- for the investors to
6 have that one-year liquidity option? Do
7 you know what I'm talking about?

8 A. Yes, the one-year plus liquidity
9 option.

10 Q. What's it called?

11 A. One-year plus, I believe.

12 Q. Could you explain to us what
13 that is.

14 A. It meant that in the calendar
15 year after the investor invested and in
16 every calendar year thereafter, with four
17 months' notice, the investor could elect
18 to not receive new investments and
19 therefore receive the proceeds and they
20 naturally occurred over time from his pro
21 rata -- his ratable share of the
22 investments with appropriate holdbacks.

23 Q. And how many -- of the amount
24 invested in the onshore fund, what
25 percentage of it had elected to use that

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2 one-year plus liquidity option?

3 A. It depended on the time. The
4 percentage would have changed every month.

5 Q. Let's say as of the fall of '06.

6 A. I don't recall the number.

7 Excuse me, the percentage.

8 Q. Before 2007, did you ever
9 establish loss recovery accounts for
10 investors?

11 A. I don't recall the circumstances
12 of the loss recovery accounts. I'm not
13 sure what that is, that I can recall.

14 Q. That doesn't ring a bell to you
15 what that is?

16 A. I recognize the term. I don't
17 recall what that meant.

18 Q. Was there ever a loss that you
19 recall that would require setting up such
20 accounts?

21 A. I'm not sure what the mechanics
22 of the account to be set up were for or
23 that they were, in fact, set up. I think
24 they were and I recall the term. I just
25 don't recall what they were for.

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2 Q. For purposes of determining a
3 lockup, what does it mean for a withdrawal
4 request to be treated on a first in, first
5 out basis?

6 MR. SCHWARTZ: Objection to form.

7 A. I just don't know as a general
8 matter.

9 Q. That doesn't mean anything to
10 you?

11 A. Not that I recall.

12 MR. SUSMAN: Exhibit 95, please.

13 (Whereupon, an e-mail dated
14 January 14, 2005 was marked
15 Exhibit 95 for identification.)

16 Q. I pass you what's been marked as
17 Exhibit 95. This is a series of e-mails
18 that you read backwards but it begins over
19 on page five with an e-mail -- from a
20 January 13, 2005 from you to Suzanne
21 Kelly.

22 Who was Suzanne Kelly?

23 A. She was a senior officer on the
24 front office who focused on domestic real
25 estate investments. Primarily lending.

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2 Q. She was a senior officer of the
3 company?

4 A. A managing director or the
5 equivalent.

6 Q. A managing director?

7 A. I believe so, yes.

8 Q. And her response to your e-mail
9 is what.

10 Do you see that?

11 A. I do.

12 Q. And your response to her is
13 initially, "we have a bulge in the snake
14 during January re cash. Best case need to
15 move what can be moved to February."

16 What was your response?

17 A. To be clear, I don't recall the
18 e-mail back and forth, but I see it as you
19 read it.

20 Q. I mean, you don't deny that's
21 what you wrote?

22 A. No, I don't deny it.

23 Q. And you write another e-mail to
24 Mr. Perry and Mr. Suan in which you say,
25 "I don't need what from a team player

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2 senior officer of the firm when everyone
3 has to pitch re this. May have to
4 discuss."

5 Mr. Gruss writes to Mr. Suan on
6 the next e-mail -- go to page three -- Mr.
7 Suan being a partner at the time; correct?

8 A. I believe so.

9 Q. "He's panicked re cash."

10 And then Mr. Suan, the partner,
11 writes to Mr. Gruss, "no shit. How bad is
12 it."

13 MR. SIFFERT: That's not a quote.

14 We accept your interpretation.

15 Q. And Mr. Gruss responds to Mr.
16 Suan, "bad. We have approximately 1
17 twenty-five million in cash but we owe
18 Highbridge one hundred fifty million and
19 CDC a hundred. We're paying back
20 Highbridge seventy-five on Tuesday." And
21 Suan says, "that's a bed shitting. Bad
22 cash management." And Mr. Perry writes
23 back and says --

24 MR. ARFFA: Gruss.

25 Q. Mr. Gruss writes back and says,

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2 "bullshit. Bad pipeline management.
3 Biting off more than he can chew. We
4 don't need sourcing capability, we need
5 more onshore money." Mr. Suan writes to
6 Mr. -- it looks to me like he's writing it
7 to Mr. Perry, Mr. Gruss, "can we use Metis
8 still."

9 Do you see what that is?

10 A. Yes.

11 Q. What is it?

12 A. I believe it was a turn on
13 recourse debt funding structure for
14 certain obligations. I don't recall what
15 specifically.

16 Q. Were you aware that your CFO and
17 your partner were having this conversation
18 about how tight the situation was?

19 A. I think they're referring to the
20 funds here, not the management company, to
21 be clear.

22 Q. Okay.

23 A. So I wasn't on the e-mails past
24 the ones I was on.

25 Q. Were you aware -- okay.

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2 I think we talked about -- were
3 you aware that the fund itself, the
4 onshore fund was having tremendous
5 liquidity problems?

6 A. I don't know that it was.

7 Q. Huh?

8 A. I don't think it was or I don't
9 know that it was.

10 Q. You're saying you don't think it
11 was?

12 A. Well, I think it's worth
13 stepping back so that we understand the
14 business and we were in the business of
15 trying to be invested and we had a
16 pipeline for our illiquid business. Each
17 of the front office had a pipeline that we
18 would discuss with various other people in
19 the firm. And based on the relative
20 likelihood of those illiquid fundings
21 being made, they would then go on a
22 treasury pipeline.

23 There was a constant review
24 where we were trying to be -- trying to
25 get as much competition for space within

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2 the entities as we could to try to
3 optimize return per unit of risk for our
4 investors. In terms of how we would
5 source cash to make investments, it came
6 from a variety of different places,
7 whether it was cash in the funds, a
8 variety of different single asset turn on
9 recourse structures, multi-asset class,
10 multi asset turn on recourse structures,
11 yield in interest coming from various
12 investments, repayments coming from
13 various investments of principal, full
14 refinancings or takeouts of investments,
15 as well as a variety of recourse financing
16 structures for our more liquid
17 investments. So we were always trying to
18 create this competition to optimize return
19 per unit of risk.

20 Frequently front officers who
21 were trying to do transactions might have
22 a view that their transaction was better
23 than I might have thought or that they
24 thought a transaction was more important
25 to do than I might have thought. So there

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2 was a constant interaction between front
3 office, mid office, treasury, et cetera,
4 with respect to optimizing that return per
5 unit of risk and we were always trying to
6 be as thoughtfully invested as possible
7 given the liquidity of the funds.

8 Q. At some point in time it was
9 discovered that there was a practice of
10 transferring funds from the offshore fund
11 to the onshore fund.

12 You were not aware that was
13 going on?

14 A. Correct, at the time that it was
15 occurring.

16 Q. But you are now aware that it
17 was done -- the people who were
18 responsible for doing it and who knew
19 about it have said that it was done
20 because you needed money in the onshore
21 funds.

22 MR. SIFFERT: Objection.

23 A. I don't recall the specific
24 testimony of those people. It was not
25 permitted activity and there's no reason

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2 it should have been done.

3 Q. Explain to the judge how it's
4 possible that you weren't aware of the
5 financial circumstances that led to your
6 employees, including Mr. Gruss, to be
7 doing something that they shouldn't have
8 been doing.

9 MR. SIFFERT: I'm going to
10 object.

11 You're asking him to talk about
12 how it's possible he's not aware?
13 He's testified he wasn't aware.

14 Q. Go ahead.

15 MR. SIFFERT: Can you answer that
16 question?

17 Q. I don't mean to be argumentive
18 to you, but I think the judge will be
19 interested in having your best
20 explanation, which I'm giving you an
21 opportunity to give now, of -- as to how
22 this could have been -- how the
23 circumstances which led these people to do
24 things like transfer millions of dollars
25 from the offshore fund to the onshore

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2 fund, how those circumstances could have
3 been unknown by you.

4 MR. SIFFERT: So you want him to
5 testify to the facts that he now knows
6 others did to mislead him; is that
7 what you want?

8 Q. Go ahead.

9 A. I don't understand the question.

10 Q. Are you saying that you never
11 understood that people working for you
12 perceived that there was a real liquidity
13 problem with the onshore fund?

14 A. As I said, there was always a
15 tension between those who wanted to
16 originate transactions and those people
17 who were focused on treasury as well as
18 the various types of non-recourse funding
19 structures that we use to finance
20 transactions. We wanted that tension
21 because we wanted to optimize return per
22 unit of risk. There were a variety of
23 analyses including our treasury pipeline
24 and a variety of risk management analyses
25 that I looked at frequently and in those

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2 the improper activity was not included or
3 those were changed to cover that activity
4 and none of those was that -- to the
5 extent that those would have been filled
6 out correctly, it would have shown in
7 proper activity. At no time did I receive
8 any of those where that was the case.

9 Q. Who was responsible in the
10 company for reconciling the tension
11 between the treasury function and the
12 investing function?

13 A. As a general matter, we would
14 have discussions on a weekly basis with
15 each of the front office teams frequently
16 in conjunction with the asset management
17 folks to the extent that it was illiquid
18 and the at risk management people to the
19 extent that investments were liquid. We
20 would also have primarily in the illiquid
21 discussions folks from treasury frequently
22 and there would be an iterative process
23 where those people would discuss it --
24 treasury, asset management, myself, the
25 front office people -- and we'd try to get

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2 to the best possible return per unit of
3 risk.

4 Q. Was Mr. Dubin involved in those
5 discussions?

6 A. No.

7 Q. Was Mr. Dubin aware of whatever
8 liquidity problems you had?

9 A. I don't believe that there were
10 liquidity problems in the funds that I was
11 ever made aware of. As I said, we wanted
12 to optimize return per unit of risk and we
13 wanted to have our capital invested.

14 (Whereupon, an e-mail dated
15 January 15, 2005 was marked
16 Exhibit 96 for identification.)

17 Q. Here's Exhibit 96.

18 A. (Reviewing).

19 Q. By the way, did you ever discuss
20 Mr. Epstein with Chris Suan?

21 MR. SIFFERT: You gave a
22 document. He's reading it, I'm trying
23 to read it.

24 Do you want us to read the
25 document or not?

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2 MR. SUSMAN: I'm not asking you
3 to read the document right now.

4 Q. Did you ever discuss Mr. Epstein
5 with Chris Suan?

6 A. Not that I recall.

7 Q. But look at ninety-six now. The
8 first e-mail is from Mr. Kesavan to you.
9 And what you respond is, "what you're not
10 seeing and I've seen in the last few
11 weeks, only seen in the last few weeks so
12 there's no reason why you should know or
13 understand this, is that in the JPM era,
14 the relationship cannot and will not be as
15 tight with Highbridge. Interestingly we
16 have had several prior instances where
17 liquidity was tight at or near the level
18 where it currently is. In all instances a
19 hole was filled by Highbridge with a phone
20 call from me or Perry. This is no longer
21 able to happen given their new masters.
22 Rather, it's much more arms-length private
23 account. It will be a much more
24 arms-length private account that we
25 manage."

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2 Do you see that?

3 A. Yes, I see it.

4 Q. Those were your words, you did
5 use those?

6 A. I don't recall this e-mail.

7 Q. You're not denying that you said
8 that; correct?

9 A. No.

10 Q. In fact, what you said there is
11 true; isn't it?

12 MR. SIFFERT: Did you read the
13 whole e-mail including the one that
14 follows?

15 Q. In that paragraph, what you said
16 is true; isn't it?

17 A. I don't know that you can take
18 it out of context. We can go sentence by
19 sentence through.

20 Q. Is what you say in that
21 paragraph true?

22 A. I said I don't recall the
23 e-mail. As a general matter, Glenn liked
24 to do a lot of our business and we --
25 among the many different places that we

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2 financed transactions, we borrowed from
3 Highbridge at different times. It does
4 refresh me back to several hours ago, we
5 did have a private account at one point
6 with Duquesne. I forgot about that.

7 Q. Is what reported in that
8 paragraph, the first paragraph of your
9 e-mail in the middle, is it true?

10 A. I'm not sure what you mean.

11 Q. You're not sure what I mean --

12 MR. SIFFERT: What sentence are
13 you talking about? I don't know what
14 sentence you're talking about in the
15 paragraph.

16 Q. Is there anything in that first
17 paragraph which is not true?

18 A. I think it refers to the fact
19 that we developed ever increasing numbers
20 of different places where we were doing
21 turn on recourse financing structures. So
22 I think what I'm referring to is the fact
23 that at one point very early on we only
24 had Highbridge but then we got more
25 accounts and we got more sources of turn

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2 on recourse financing, places like CDC and
3 Bernard. That's my interpretation of it.

4 Q. I want to make sure the -- I
5 didn't ask you for your interpretation. I
6 asked you whether it's true or not.

7 Are you telling the judge that
8 you can't answer that question yes or no?

9 MR. ARFFA: Objection to form.

10 A. I'm trying to answer the
11 question --

12 MR. SIFFERT: Why don't let him
13 answer a question.

14 A. -- as well and completely and
15 appropriately as I can.

16 Q. Can you answer --

17 A. Can I answer the question
18 through a single word response to one
19 sentence picked out of an e-mail
20 communication? I don't think that's
21 optimal for my ability to answer the
22 question. That's my opinion.

23 MR. SUSMAN: Could I have
24 Exhibit 97, please.

25 (Whereupon, a facsimile dated

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2 August 19, 2005 was marked
3 Exhibit 97 for identification.)

4 MR. ARFFA: What are you calling
5 this?

6 MR. ARD: Ninety-seven.

7 Q. Do you recognize attached to
8 this fax a letter from Glenn Dubin to
9 yourself dated April 29 which says,
10 "pursuant to section 1P of the advisory
11 agreement among Highbridge Capital
12 Management, LLC, HCM/Z Special
13 Opportunities, and DB Zwirn and Company
14 dated January 1, 2004, the trading manager
15 hereby provides to the adviser notice and
16 request a reduction and withdrawal of
17 fifty percent of all assets."

18 Do you recall getting this
19 written request from Mr. Dubin?

20 A. No, I don't. I have no reason
21 to think I didn't receive it.

22 Q. And does this refer to a request
23 from Dubin to Highbridge Capital
24 Management that the managed account be
25 reduced by fifty percent?

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2 A. I think it refers to a request
3 for a withdrawal of fifty percent of all
4 assets that I don't think occurred.

5 Q. Excuse me?

6 A. I think it refers to a request
7 for an immediate withdrawal of fifty
8 percent of assets that I don't believe
9 occurred.

10 Q. Do you know why the request was
11 made?

12 A. I have some recollection that
13 the convertible markets, convertible bond
14 markets in the spring of '05 were very
15 difficult and that I recall that there may
16 have been some issues dealing with that
17 for Highbridge which had a very large
18 exposure to that marketplace.

19 Q. Did Highbridge have a lockup on
20 its managed account?

21 A. My best understanding was that
22 it was as long or longer than any other
23 investor and could only be -- and
24 effectively was the equivalent, I believe,
25 of a three-year plus versus the one-year

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2 plus that we had. So there was no ability
3 to get specific assets.

4 MR. ARFFA: I just want to point
5 out for the record this doesn't seem
6 to have any Bates stamps on it. I
7 don't know who produced it and whether
8 it was produced.

9 MR. SIFFERT: It's the first I'm
10 seeing it.

11 MR. SUSMAN: It doesn't say
12 there.

13 MR. SIFFERT: Do you know where
14 it came from?

15 MR. ARFFA: And whether it was
16 produced to all the parties, let's put
17 it that way.

18 MR. SUSMAN: I don't know where
19 it came from.

20 MR. SIFFERT: Did you get this
21 directly from Mr. Dubin?

22 MR. SUSMAN: I don't know is the
23 answer.

24 Q. Do you recall what became of
25 this request?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 A. As I said, I don't recall that
3 there was any withdrawal. There may have
4 been some form of role off reduction based
5 on not funding new investments not
6 receiving cash or assets. I just don't
7 recall.

8 Q. When did Highbridge begin to
9 take money out of the onshore funds?

10 A. They were never invested in the
11 onshore funds.

12 Q. Sorry, when did they begin to
13 take money out of their managed account?

14 A. I don't recall the specific
15 dates. As I said, I don't think any --
16 there was any liquidation that occurred.
17 I think they simply stopped participating
18 in new investments for a period of time or
19 for certain investments.

20 MR. SUSMAN: Go ahead and change
21 the tape.

22 THE VIDEOGRAPHER: The tape is
23 4:03.

24 We are going off the record.
25 This is the end of tape four.

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2 (Whereupon a break was taken)

3 THE VIDEOGRAPHER: The time is

4 4:09.

5 We are back on the record. This

6 will be the start of tape five.

7 Q. Was Mr. Dubin aware that the
8 firm was -- the management firm was
9 deferring taking management fees from the
10 funds?

11 A. You mean the early taking of
12 management fees?

13 MR. SIFFERT: No, the deferral.

14 Q. The deferral take management
15 fees.

16 A. Was he aware that there was a
17 fee deferral?

18 Q. Yes.

19 A. Yes, he was, as he elected to
20 participate in it.

21 Q. The answer is he was and he
22 elected to participate in it?

23 When did that change? When did
24 it change that you stopped deferring
25 taking management fees?

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2 A. I don't recall the date.

3 Q. Do you recall taking a
4 distribution of around \$10 million from
5 the fund in 2006 or five to make a payment
6 on a condominium?

7 A. From the funds? No, I don't
8 recall that.

9 Q. Where did you get the money to
10 make the down payment or the payment?

11 A. I believe it was an advance
12 against my expected compensation from the
13 management company and it came from the
14 management company.

15 Q. It was an advance from the
16 management company?

17 A. That's my understanding.

18 Q. When was that advance made to
19 you?

20 A. I don't recall the date.

21 Q. Was Mr. Dubin aware of it?

22 A. I don't recall. I think it was
23 \$7 million.

24 MR. SUSMAN: Let me have
25 Exhibit 99, please.

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2 (Whereupon, a multi-page
3 document was marked Exhibit 99
4 for identification.)

5 Q. Exhibit 99, sir.

6 A. (Reviewing).

7 Q. You recognize this as an audited
8 financial report for the onshore fund for
9 the period ended December 31, 2005?

10 A. I believe so, yes.

11 Q. And the auditor's report is
12 dated April 19, 2006 as reflected on
13 page 736.

14 And would you look, sir, at page
15 thirty-one. Under withdrawals, do you see
16 at the top there withdrawals. And it
17 says, "a limited partner may, upon at
18 least one hundred twenty days prior
19 written notice to the general partner,
20 withdraw a part or all of its capital
21 account as of the last business day of a
22 calendar quarter ending at least three
23 years after the limited partner initially
24 purchases an interest and as of the third
25 anniversary of that date thereafter."

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2 Did that accurately, as far as
3 you knew, cover the withdrawal rights for
4 -- under the partnership agreement except
5 for those that were granted by your letter
6 to Mr. -- to FTC?

7 A. I believe that none of the
8 people who had previously invested
9 tranches on a two-year rolling basis had
10 to change to three-year, so there -- and
11 I'm not sure when the one-year plus kicked
12 in. I don't recall a specific date. To
13 the extent that it hadn't, there would
14 have been a combination of people who had
15 investments, specific investments that
16 either had two-year rolling or three-year
17 rolling liquidity.

18 Q. Where does it say rolling?
19 Where do you get this rolling idea from?

20 A. That's the way it always was. I
21 believe that was in our PowerPoint
22 presentation from the very beginning.
23 It's the only way we had anybody interpret
24 it that I can recall. And that made sense
25 for our business. It was two-year

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2 rolling, three-year rolling, and one-year
3 plus.

4 Q. Have you ever seen the term
5 "rolling" in any partnership agreement or
6 offering memorandum?

7 A. I don't recall the specific
8 wording.

9 Q. Have you ever seen the term
10 "tranche" in any offering memorandum or
11 partnership agreement?

12 A. I believe each of the offering
13 memos/partnership agreements were
14 regarding specific investments that we're,
15 in this case, referring to as tranches.
16 Each investment was its own investment.
17 We always took investments on an
18 investment-by-investment basis. We had
19 multiple investors who had multiple
20 individual investments and we maintain
21 records that each of them had those
22 multiple investments. We never added to
23 -- at no time when they came in with new
24 money did we ever add to a prior
25 investment that I can recall.

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2 Q. When you provided your investors
3 with a statement of the value of their
4 capital accounts, did you ever do it on a
5 tranche-by-tranche basis?

6 A. I don't recall the specific
7 communications on an investor-by-investor
8 basis. I recall that we kept records on a
9 tranche-by-tranche or piece of investment
10 by piece of investment basis and our
11 investor relations people were interacting
12 with our investors as a general matter all
13 the time.

14 Q. You see the words in this
15 sentence here, "at least three years after
16 the limited partnership initially
17 purchases an interest."

18 Can you explain to the court
19 what is meant by at least? What does that
20 mean, at least? Does that mean three and
21 a half years I can withdraw it, four
22 years, four and a half years?

23 A. My best understanding of the
24 three-year rolling lockup was that, to the
25 extent that an investor invested, he could

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2 only apply to redeem that piece of money
3 three years I believe starting from the
4 first -- I forgot how the first date was
5 calculated -- and only subject to I
6 believe only twenty days notice. If he
7 didn't do that, then he would then roll
8 again for three more years.

9 Q. Do you have any explanation why
10 the word "at least," those two words "at
11 least" is put in there?

12 A. I didn't draft this.

13 Q. When did you -- when did
14 Highbridge begin to withdraw or liquidate
15 its managed account?

16 A. As I've said, I don't recall the
17 specific date and I don't recall us
18 liquidating anything proactively for them
19 at that time. I know we -- perhaps toward
20 the end of '07 there was a liquid position
21 that we gave them to handle on their own
22 that was separable from the position held
23 in the funds. But in terms of their
24 reduction of their NAV by not doing new
25 investments originally, I don't recall

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2 that date.

3 Q. Do you recall when they asked to
4 begin withdrawing their fund, their funds?

5 A. I see the exhibit -- un-Bates
6 stamped exhibit, but I don't have a
7 specific recollection other than what I'm
8 seeing here. I'm not saying it didn't
9 happen. I don't recall the date.

10 Q. Is there any written schedule of
11 how their account was liquidated over
12 time?

13 A. I believe there was some sort of
14 agreement around that. I just don't
15 recall how that worked.

16 Q. Who would know about that?

17 A. I believe David Lee would.
18 Especially Lawrence Cutler, Robert
19 Sumberac.

20 Q. Do you have any idea how much
21 you were able to return to Highbridge
22 during 2006?

23 A. I don't recall.

24 Q. During 2007?

25 A. I said I don't recall the

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2 specific numbers.

3 Q. Did the Highbridge managed
4 account have the same assets as the
5 onshore fund?

6 A. Same types or the exact same?

7 Q. Well, the same exact -- they
8 couldn't have the same exact assets.

9 For example, stock in a company,
10 ownership of an interest in a property?

11 A. It frequently had similar
12 investments or interest in investments
13 that were split in illiquids. It wouldn't
14 have been the same ratio, the same time,
15 the same way because each of the funds
16 continuously had different levels of
17 liquidity and access to turn on recourse
18 fundings and other sources of cash at
19 different times, but there would have been
20 overlap in positions.

21 Q. Was it a goal of yours to try to
22 have the funds you were managing achieve
23 as much as possible the same rate of
24 return?

25 A. As a general matter, we wanted

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2 to optimize the return per unit of risk
3 for each of the entities that we managed
4 taking into account the different
5 limitations we had in terms of the
6 investors or entities that we were
7 managing. So on its face, it wasn't a
8 notion that they should have the exact
9 same returns but to the extent possible
10 again given those constraints, adjusted
11 for those constraints, we wanted to
12 optimize return per unit of risk.

13 Q. Did Mr. Dubin ever talk to you
14 about how to go about liquidating the
15 investments in Highbridge's managed
16 account?

17 A. The only specific position that
18 I can recall a discussion about was a
19 formally private and then subsequently
20 listed public investment in a German real
21 estate company.

22 Q. What was that about? What was
23 that discussion about?

24 A. My best recollection -- I don't
25 recall the specific words of the

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2 discussion -- my best recollection is that
3 I thought it was something that we
4 collectively should get out of and that I
5 was going do that for the funds. He had
6 had a discussion with one of the
7 principals of the larger partner in that
8 investment and had a view that, on behalf
9 of the Highbridge entity, he wanted to
10 retain it.

11 Q. All right.

12 Did Mr. Dubin invest any of his
13 own or his foundation's money in the
14 offshore fund?

15 A. I don't know how he would have
16 owned if he's onshore. I don't recall
17 regarding the foundation, what its taxable
18 status was or how it invested or whether
19 he invested separately personally away
20 from the foundation. I just don't recall
21 the specifics of his account or accounts.

22 Q. Did Mr. Dubin ever request
23 withdrawal of his personal or foundation
24 funds?

25 A. I just don't know for sure. I

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2 think at least some of it but I just don't
3 know. I don't recall.

4 Q. Do you know whether he obtained
5 any redemption of his personal or
6 foundation funds?

7 A. I don't recall.

8 MR. SUSMAN: One hundred nine,
9 please.

10 (Whereupon, a letter dated
11 November 3, 2006 was marked
12 Exhibit 109 for identification.)

13 Q. I show you Exhibit 109. This is
14 a letter you got from the Fine Family
15 Limited Partnership requesting a
16 withdrawal. Actually, requesting to
17 rescind immediately, I'm sorry, a \$5
18 million investment that the partnership
19 made in the fund on October 1, 2006.

20 Do you see that?

21 A. I see it.

22 Q. Did you immediately return the
23 \$5 million?

24 A. My best recollection is that we
25 mandatorily redeemed them and that our --

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2 I believe our management company bought
3 that interest. I don't believe that they
4 were given funds from the -- capital from
5 the funds when we redeemed them.

6 Q. The management company bought
7 their interest; is that what happened?

8 A. That's my best recollection. I
9 don't recall the specifics around that.

10 Q. And he says -- he refers to here
11 the circumstances regarding the
12 September 25, '06 termination of the
13 employment of David Becker from DB Zwirn
14 and Company.

15 Who is David Becker?

16 A. He was a former employee of the
17 management company who focused on had.

18 Q. What did he do with the
19 management company?

20 A. He focused on energy-related,
21 primarily illiquid investments.

22 Q. And why was he terminated?

23 A. I don't recall the specifics
24 around specifically why he was terminated
25 contractually.

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2 Q. You don't have any
3 recollection --

4 A. And to be clear, I don't recall
5 receiving this. It's not addressed to me,
6 this letter.

7 Q. And you don't recall anything
8 about Mr. Becker's being terminated?

9 A. I recall that -- I don't know
10 that it was an outright termination. I
11 don't recall the legal documentation
12 around his separating from the firm. I
13 recall that we were told that he had had
14 some sort of -- I don't know how to
15 characterize it, I'm not a lawyer -- a
16 legal issue and in discussing it with
17 counsel, we then separated from him.

18 Q. Do you have any idea why this
19 Fine Family Partnership would say that was
20 something material that should have been
21 disclosed to them?

22 A. I don't know their thinking
23 today. I don't recall having a thought on
24 their thinking at the time. As a
25 non-lawyer, I don't know about the notion

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2 of material.

3 MR. SUSMAN: Mr. Arffa, did you
4 find the confidentiality agreement at
5 noon that we talked about?

6 MR. ARFFA: Yes, but we have to
7 circulate it. We were going to
8 recirculate to make sure we all have
9 the right one.

10 MR. SUSMAN: Could I have
11 Exhibit 110.

12 MR. ARFFA: You're talking about
13 a different confidentiality agreement.
14 I apologize.

15 (Whereupon, a memorandum dated
16 November 3, 2006 was marked
17 Exhibit 110 for identification.)

18 Q. Here is Exhibit 110.

19 A. (Reviewing).

20 Q. Exhibit 110, is this something
21 you wrote?

22 A. If I can just finish it up,
23 please.

24 (Reviewing).

25 Okay. I'm done.

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2 Q. Is this something you wrote?

3 A. I believe -- I don't have a
4 specific recollection of how it was
5 written. I would imagine -- I believe I
6 was involved in its drafting. I would
7 have imagined also other people in senior
8 management as well as disclosure counsel
9 would have been involved.

10 Q. Was this sent to your investors,
11 in fact?

12 A. I believe it was.

13 MR. SUSMAN: Exhibit 111, please.

14 (Whereupon, an e-mail dated
15 November 13, 2006 was marked
16 Exhibit 111 for identification.)

17 Q. I show you what's been marked as
18 Exhibit 111.

19 A. (Reviewing).

20 Okay.

21 Q. This is an e-mail you sent to
22 Mr. Dubin on Monday, November 13?

23 A. I don't recall sending it, but I
24 don't have any reason to believe I didn't
25 send it.

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2 Q. Do you know why you sent this to
3 Mr. Dubin at that time?

4 A. I don't recall. If he had asked
5 for something, we would have gotten it for
6 him. But I don't recall the specifics
7 around it. As I said, I don't recall the
8 e-mail.

9 Q. Excuse me?

10 A. As I said, I don't recall
11 sending the e-mail. I'm not saying I
12 didn't send it. I don't recall the
13 specifics around why we sent it, although
14 had he asked for it I'm sure we would have
15 sent it.

16 Q. Okay.

17 A. But I don't recall him
18 specifically asking for it either by
19 e-mail or by phone. I just don't recall.

20 Q. Do you recall sending this
21 schedule, this document you have here, did
22 you send it to FTC, also, or do you know?

23 A. I just don't know.

24 MR. SUSMAN: Let me have number
25 twenty-seven.

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2 Q. Exhibit 27 is an e-mail you got
3 on November 14 from Dan Zwirn -- I mean
4 from Glenn Dubin. The question is, "did
5 you speak to JE." That's Jeffrey Epstein.
6 The response is, "turned out reasonably
7 well. We have some deliverables to give
8 them and then he said we can come to his
9 office. Ilysa, please make sure GD
10 reads."

11 Do you know what you were
12 talking to Mr. Epstein about at this time?

13 A. I don't recall the specific
14 e-mail. I do recall that we had spoken
15 with Glenn about Jeffrey's desire to prove
16 out the NAV to his comfort and I believe
17 we worked with Jeffrey's office to try to
18 schedule a time where we would come and
19 review it with him and I believe we
20 couldn't. We reached out but were unable
21 to get PriceWaterhouse to do that with us
22 and I believe Deloitte and Touche was
23 willing do that with us.

24 MR. SUSMAN: Let me have
25 Exhibit 116, please.

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2 (Whereupon, a memorandum dated
3 March 26, 2007 was marked
4 Exhibit 116 for identification.)

5 Q. You recognize this as a memo you
6 sent to investors on March 27, 2007?

7 A. (Reviewing).

8 I believe that the firm sent
9 that out to investors.

10 Q. When you found out -- Gibson
11 Dunn did its review, found out about the
12 interfirm transfers, did the remediation
13 that you undertook involve some promissory
14 notes which were issued from the onshore
15 fund to the offshore fund?

16 A. I believe that there were --
17 there was documentation done with regard
18 to the advances that had been made by the
19 CFO and his colleagues. I don't recall
20 the structure of how that was done.

21 Q. Do you recall the --

22 A. And to be clear, I was not -- I
23 delegated authority to David Lee and
24 Lawrence Cutler with regard to the entire
25 independent review.

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2 Q. If you'll look at page two of
3 your letter at the bottom of the page, it
4 talks about some interfund transfers the
5 amounts which are due from the onshore
6 fund to the offshore fund in a management
7 account are in excess of a hundred million
8 dollars.

9 Do you see that?

10 A. I believe you referred to it as
11 your letter. Again, the letter came from
12 the firm. And I do see it there.

13 Q. Well, you approved it; correct?

14 A. No, I don't recall having the
15 authority to approve the contents of this
16 memo.

17 Q. You didn't?

18 A. As I said --

19 Q. Who did?

20 A. As I said, I delegated authority
21 with regard to the entire independent
22 investigation by Gibson Dunn to David Lee
23 and Lawrence Cutler.

24 Q. And Mr. -- so at the point in
25 time when you quantify how much the

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2 onshore fund owed the offshore fund, was
3 it paid immediately or was there some note
4 issued?

5 A. I didn't quantify it.

6 Q. At the time the firm quantified
7 it.

8 A. I recall that there were notes
9 used to document advances already done by
10 the previous CFO. I don't recall the
11 mechanics of that, that I recall.

12 Q. Can you explain to the court if
13 you had sufficient liquidity in the
14 onshore funds, why didn't you just pay the
15 amounts that the onshore fund owed to the
16 offshore fund to the extent that you
17 quantified that amount?

18 MR. SCHWARTZ: Objection to form.

19 Q. Why a promissory note?

20 A. To be clear, my views on the
21 investigation to which I delegated
22 authority, I didn't have independent
23 views. I was told what was done through
24 this letter and how it was going to be
25 fixed. I don't recall the thinking

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2 underlying it. And I was never presented
3 with the underlying analysis.

4 Q. Again, in your view, did the
5 onshore fund have the liquidity to pay the
6 offshore fund what it owed it as a result
7 of the independent review?

8 A. I don't recall having a specific
9 view. I don't know how the decision
10 regarding notes was arrived at
11 specifically or I don't have a
12 recollection of it today.

13 Q. Now would you look at
14 Exhibit 117.

15 (Whereupon, a facsimile dated
16 March 27, 2007 was marked
17 Exhibit 117 for identification.)

18 Q. There's Exhibit 117.

19 A. (Reviewing).

20 Q. This is a letter from Mr.
21 Elovitz from Schulte, Roth and Zabel to
22 Mr. Indyke dated March 27, 2007.

23 Did you see this letter before
24 it was sent?

25 A. I don't recall seeing it before

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2 it was sent.

3 Q. Did you see it after it was
4 sent?

5 A. I don't recall whether I did or
6 not around that time. I have seen it in
7 preparation for this.

8 MR. SUSMAN: One hundred
9 eighteen, please.

10 (Whereupon, an e-mail dated
11 July 11, 2007 was marked
12 Exhibit 118 for identification.)

13 Q. This is Exhibit 118. This is an
14 e-mail that was -- includes that it was
15 sent to Mr. Lee that includes a written
16 letter from Highbridge Capital Management
17 to its investors dated July 6, 2007. And
18 if you'll look at page 37905, the
19 Highbridge Capital Management letter says
20 in the third to the last paragraph, "prior
21 to being notified of the accounting issues
22 at DBZ, HCM submitted a full redemption
23 request to liquidate the separate
24 account."

25 Is that false?

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2 A. I don't think so.

3 Q. Huh?

4 A. I don't recall receiving this
5 e-mail. I'm not sure -- I'm sure I did.
6 I don't think it's false. But I'd have no
7 independent recollection of whether it was
8 or not.

9 Q. There were reports made by
10 Gibson Dunn lawyers to the SEC on
11 January 9, 2007 and again on March 20,
12 2007.

13 MR. SIFFERT: I believe that
14 there's now only one hour left before
15 your time is expired and I would like
16 to take a break so that we --

17 MR. SUSMAN: Let me just finish
18 this. I'm not middle of a question
19 and we'll quit.

20 MR. SIFFERT: One question.

21 Q. There were reports made by --
22 presentations made by Gibson Dunn lawyers
23 to the SEC on behalf of Zwirn and Company,
24 LP. One was made on January 9 and one was
25 made on March 20, 2007.

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2 Were you present for any of
3 those presentations?

4 A. No.

5 MR. SIFFERT: We'll take a break.

6 Q. Did you ever --

7 MR. SIFFERT: Let's take a break.

8 I want to take a break. I'm tired.

9 MR. SUSMAN: Fine.

10 THE VIDEOGRAPHER: The time is
11 4:48.

12 We're going off the record.

13 (Whereupon a break was taken)

14 THE VIDEOGRAPHER: The time is
15 5:00.

16 We are back on the record.

17 Q. Mr. Zwirn, when we broke, I was
18 asking you about the presentations made by
19 the lawyers of Gibson Dunn to the SEC.
20 You were not present personally.

21 Did you ever see copies of their
22 presentations?

23 A. No. It was not reviewed with
24 me. And I did not read it.

25 MR. SUSMAN: Mr. Arffa, what was

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2 it -- about which lawsuit I couldn't
3 ask him questions about?

4 MR. ARFFA: It was a matter -- I
5 know it was in the Los Angeles area.

6 MR. SUSMAN: Could you speak up
7 so I can hear you.

8 MR. ARFFA: Yes, there was a
9 litigation that he gave a deposition
10 in that involved certain investments.
11 I know the litigation was pending in
12 Los Angeles. We've determined that he
13 probably didn't learn anything that
14 was covered by the confidentiality
15 order. The testimony he gave is
16 subject, the transcript itself is
17 subject to the confidentiality order,
18 but we don't believe he probably,
19 depending upon your question, has
20 knowledge of the other discovery that
21 would be subject to a confidentiality
22 order. So it's probably okay.

23 MR. SUSMAN: What was the lawsuit
24 called? Pending in Los Angeles, you
25 said?

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1 *** UNCERTIFIED ROUGH DRAFT ***

2 MR. ARFFA: I believe so.

3 MR. SUSMAN: Do you know which --

4 MR. ARFFA: If you ask me any
5 more questions, I want to be sworn in
6 and I want to have Siffert
7 representing me.

8 MR. SIFFERT: And we're going to
9 take a break.

10 (Whereupon, a multi-page
11 document was marked Exhibit 122
12 for identification.)

13 Q. Would you please look at
14 Exhibit 122.

15 Have you seen this document
16 before?

17 A. (Reviewing).

18 I'm sorry, what was the
19 question?

20 Q. Have you seen this before?

21 A. I don't recall seeing it at the
22 time or near the time. I do have a
23 recollection of seeing it in preparation
24 for today.

25 Q. Do you know what it is?

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2 MR. SIFFERT: Other than what
3 counsel may have told you, do you know
4 what it is?

5 A. I believe it has something to do
6 with, you know, our keeping track of what
7 we kept by hand, but I just don't recall
8 the specifics of it, how it mixed with
9 that previous exhibit. Beyond that, it
10 would be with counsel.

11 Q. On the top of this document
12 there's something called DB and next to
13 that is PG.

14 What does DB stand for?

15 A. I would assume it's David
16 Becker, but I'd be guessing. I don't know
17 for sure.

18 Q. All right.

19 And obviously under the DB
20 column there are some yeses with David
21 Becker; correct?

22 A. Under the DB column.

23 Q. And there's also some nos;
24 right?

25 A. That's what I see.

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2 Q. In the case of --

3 MR. SIFFERT: There are also some
4 question marks.

5 Q. There are in the case of --
6 well, in the case of the yeses, that means
7 you spoke with these investors about Mr.
8 Becker where it says DZ spoke with or left
9 message.

10 MR. ARFFA: Objection to form.

11 A. I don't disagree with you. I
12 don't recall the document being created at
13 the time.

14 Q. My question is do you have a
15 recollection of what you talked to people
16 about Mr. Becker? Why were you disclosing
17 something about Mr. Becker?

18 MR. ARFFA: Objection to form.

19 A. I don't recall outside the fact
20 that we had Schulte as disclosure counsel
21 and received counsel regarding what to say
22 and when to say it with regard to
23 investors and followed it.

24 Q. Was Mr. Becker involved in the
25 offshore fund or the onshore fund?

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2 A. He was an employee of the
3 management company entities. I don't know
4 what the proportion of investments he was
5 involved with. They were very, very
6 small. I don't know how they were
7 attributed across the different accounts.

8 Q. Do you have any understanding of
9 why you would talk to some investors about
10 him but not others?

11 A. As I said, I don't recall this
12 document or the underlying thoughts
13 regarding it outside of what we discussed
14 with counsel.

15 Q. Did Mr. Dubin -- as best you can
16 recall is that Mr. Dubin learned about the
17 plane in June of '06?

18 MR. ARFFA: Objection.

19 MR. SIFFERT: When you say he
20 learned about the plane, about the
21 purchase of the plane or the use of
22 the funds for the capital?

23 MR. SUSMAN: I'm sorry, let's go
24 back to the plane.

25 Q. Mr. Dubin knew a plane was being

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2 bought; right?

3 A. Yes.

4 Q. As you did.

5 Did he encourage you to buy the
6 plane?

7 A. Yes.

8 Q. And did you have a discussion
9 with him about where he would get the
10 money to buy the plane?

11 A. I don't recall that.

12 Q. Did you understand that you were
13 going to get the money to buy the plane by
14 making a bank loan?

15 A. For the majority of the
16 proceeds, I understood we were going to
17 get a turn on recourse bank loan.

18 Q. From which bank?

19 A. I believe Harold went out to
20 several people and I think the loan was
21 done with Merrill Lynch.

22 Q. Okay.

23 And did Mr. Dubin understand in
24 -- was he told in June that some of the
25 Highbridge managed account money had been

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2 used for a brief time to pay the plane
3 expenses?

4 A. He was -- I believe, I don't
5 recall a specific conversation. I believe
6 in June when David approached him and
7 Lawrence Cutler told me that there were
8 issues regarding management fees taken as
9 well as the forty-five-day funding for the
10 equity of the plane and that they wanted
11 to move forward and retain Schulte, I told
12 them about that. I don't know if they
13 told me from which entities the plane
14 equity was funded for forty-five days and,
15 as a result, I don't recall whether I said
16 that to Glenn or not.

17 Q. Who at -- did you have any --
18 after JP Morgan Chase purchased Highbridge
19 at the end of 2003, did you have any
20 communications with people at JP Morgan
21 Chase?

22 MR. ARFFA: Objection to form.

23 A. I'm not sure if it happened in
24 '03 or '04 that they got bought. I just
25 don't recall. I think I had a

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2 conversation that included Jes Staley
3 maybe once.

4 Q. Jes Staley once?

5 A. Yeah, I think I met him briefly
6 in a lobby of a building once when I was
7 with Glenn. I don't recall the substance
8 of that.

9 Q. No business was discussed then?

10 A. I don't recall beyond something
11 about, you know, if we needed a management
12 company advance given what was going on,
13 you know, would they actually give it to
14 us or something along those lines. I just
15 don't recall the specifics of it.

16 Q. Did you have any communication
17 with anyone else at JPMC?

18 A. Not that I recall.

19 Q. Can you describe for us the
20 buyout of Dubin and Swieca Asset
21 Management's interest in the management
22 company?

23 A. Highbridge owed the management
24 company a substantial amount of money for
25 incentive fees, as I recall, that they

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2 were holding back. Glenn invited David
3 Lee and me to come see him in his office
4 where he was with Bob Caruso. He
5 basically -- I don't know if he had a
6 script or it felt like he was reading from
7 a script basically -- said that he would
8 like to -- he wanted to be paid \$30
9 million for his capital account in the
10 context of separating his and Swieca's
11 interests from the management company. I
12 said I think your capital account is
13 negative, something to the effect of --
14 again, I don't remember word by word but
15 why would we do that and how would we do
16 that. He said basically I don't care if
17 you pay me \$30 million, I'm going to sue
18 you. And I said, well, if we were to --
19 something to the effect of if we were to
20 make an effort to do that, it could injure
21 -- it would injure our investors and/or
22 someone like myself and our family and our
23 investors. And he said, I don't care
24 about that. I want \$30 million or we're
25 going to sue you. I then said, for what.

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2 And I don't think he said what he was
3 going to sue us for, he just reiterated
4 that he was going to sue us until we gave
5 him \$30 million. And I think we left soon
6 after. And then there was negotiation
7 between David Lee and Bob Caruso.

8 Q. And how was it resolved?

9 A. We paid him I think in two
10 pieces something like \$13 million and then
11 had a note for \$17 million which was
12 ultimately I believe extinguished or
13 cancelled by him in some form before the
14 Fortress transaction.

15 Q. Before what?

16 A. The Fortress transaction where
17 the investors acquired the right to manage
18 the funds and wanted to then reassign that
19 right in some form to Fortress to manage
20 the funds.

21 Q. Okay.

22 How much of incentive fees were
23 held back?

24 A. Thirty or thirty-five million,
25 something like that, to my best

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2 recollection.

3 Q. Did they get paid as part of the
4 settlement?

5 A. I believe so. I'm not sure if
6 it was every dollar or not or how and on
7 what schedule but I think so. Most of it.
8 I just don't recall the numbers.

9 Q. Did you get a regular monthly
10 report showing the amount of cash
11 available in the funds, the onshore fund?

12 A. I looked at P&Ls in a variety of
13 different reports that showed not only
14 cash but what was invested in various
15 types of turn on recourse funding
16 structures as well as the expected
17 interest payments from various investments
18 and various treasury reports on terms of
19 expectations of repayments of various
20 entities.

21 Q. What was the name of the report
22 you looked at that showed you at a glance
23 what the cash flow was going to be in the
24 near future?

25 A. There was a -- for the illiquids

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2 and the most significant return on
3 recourse funding line structures there was
4 a thing called the treasury pipeline, but
5 then there are a variety of other risk and
6 analyses that were done that showed
7 different components of what was available
8 and different components of cash.

9 Q. Did you consider Glenn Dubin to
10 be part of the senior management team at
11 the management firm at the firm?

12 MR. ARFFA: Objection to form.

13 Q. Back in 2006.

14 A. Certainly at least through the
15 majority of it, I don't recall when he
16 became less involved, but he was a senior
17 adviser and a grey -- in quotes, grey
18 hair, someone smarter who had been around
19 a long time, and we cared about his
20 opinion.

21 Q. So you would consider him in
22 part senior management?

23 MR. ARFFA: Objection.

24 MR. SIFFERT: Asked and answered.

25 A. I think we referred to him as

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2 the senior advisor.

3 Q. Did he have the -- he had input
4 on who to hire obviously; did he not?

5 MR. ARFFA: Objection.

6 A. It depends. At different times
7 he was more involved with that versus not
8 as well as who would make partner.

9 Q. He did have a -- he did make --
10 when was it decided to admit Mr. Gruss to
11 the partnership?

12 A. We had two-year -- I don't
13 recall the exact date or the contract. We
14 had two-year partnership pools. I believe
15 one was I think '04/'05 and then '06/'07.
16 He would have been for the second one.

17 Q. The first one is four '04/'05?

18 A. I think it was for 2004/2005.
19 And the second one I think was 2006/2007,
20 I believe.

21 Q. Okay.

22 But when was the decision
23 actually made to make him a partner?

24 A. As I said, I don't recall the
25 actual timing of the decision.

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2 Q. Was -- he had a three percent
3 interest; correct?

4 A. I believe that was the number.
5 I don't know that we ultimately executed
6 that document. But we viewed him and
7 treated him as a partner.

8 Q. But do you recall, was he --
9 when was it announced that he was a
10 partner? Was that announced?

11 A. I believe -- I don't recall
12 specifically the date. I believe it was
13 -- it may have been in one of our investor
14 letters. I just don't recall. It may
15 also have been communicated through one of
16 our monthly calls to the firm from
17 employees or both. I just don't recall.

18 Q. You don't recall what month that
19 would have been?

20 A. I don't recall.

21 Q. When did you become aware that
22 the money was taken out of the onshore
23 fund to pay for certain of your capital
24 calls in Roark, in the Roark fund?

25 A. I don't think it was.

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2 Q. Where did the money come from?

3 A. I believe I wrote checks for it
4 either directly or reimbursing the
5 management company. I don't believe any
6 capital calls of mine came from the fund.

7 Q. Huh?

8 A. I believe it was either directly
9 to from me through checks or where I
10 reimbursed the management company. I
11 don't believe there was any advance from
12 the fund to make capital calls for me for
13 Roark.

14 Q. Are you familiar with the term
15 "tailoring" as used to describe your
16 investment policy for investing for these
17 onshore and offshore funds, managed
18 accounts?

19 A. I believe --

20 MR. ARFFA: Objection to form.

21 A. I believe that was a shorthand
22 reference sometimes used where -- that
23 referred to the fact that in certain
24 situations where an investment would be
25 viewed as an onshore trade or business

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2 that there were situations where it would
3 be originated by onshore entities. After
4 a period of time, it would then be subject
5 to confirmation of value between the two
6 entities transferred -- parts of it could
7 be transferred to offshore entities and
8 the mechanics around how that was done
9 evolved over time.

10 MR. SUSMAN: I have no further
11 questions.

12 MR. SIFFERT: Before we go --
13 stop, I'd like to just go off the
14 record for two seconds because I want
15 to ask the witness whether he made a
16 mistake in something he just answered
17 you.

18 MR. SUSMAN: If what?

19 MR. SIFFERT: He made a mistake.
20 We'll go off the record for a minute.

21 THE VIDEOGRAPHER: Stand by.

22 The time is 5:23. We're going
23 off the record.

24 (Whereupon a break was taken)

25 THE VIDEOGRAPHER: The time is

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2 5:23.

3 We're back on the record.

4 MR. SIFFERT: No questions.

5 MR. SUSMAN: We're done?

6 MR. SCHWARTZ: No questions.

7 THE VIDEOGRAPHER: This ends

8 today's deposition. The time is 5:23.

9 We're off the record.

10 (TIME NOTED: 5:23 p.m.)

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