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24 Case: Fortress v. Jeepers
25 Witness: David Lee
Date: June 1, 2011

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39 Court Reporter: Laurie A. Collins, RPR
40 Reporting Firm: Veritext Reporting Company
41

42

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2 THE VIDEOGRAPHER: Good morning. We're
3 on the record. My name is Chris Martin. I'm
4 the videographer for Veritext Court Reporting.
Today's date is June 1st, 2011, and the time
is 9:06 a.m.

5 This deposition is being held at the
6 office of Susman Godfrey, 560 Lexington
7 Avenue, New York, New York. The caption on
8 this case is Fortress VRF I LLC and Fortress
9 Value Recovery Fund LLC versus JEEPERS, Inc.,
respondent, and Financial Trust Company, Inc.,
and JEEPERS, Inc., counterclaimants and third-
party claimants. This is filed with the
Judicial Arbitration and Mediation Service,
Reference Number 1425006537. The name of the
witness is David Lee.

10 And at this time will counsel please
11 introduce themselves for the record. 09:06:52

12 MR. SUSMAN: Harry Susman for JEEPERS
and FTC, along with Darren Indyke.

13 MR. ARFFA: I'm Allan Arffa from Paul,
14 Weiss, Rifkind, Wharton & Garrison LLP. We
represent the claimants in this proceeding.
Also with me is Hannah Sholl from Paul, Weiss.

15 MS. JOHNSON: Megan Johnson from
Fortress.

16 MR. SIFFERT: John Siffert, Lankler
17 Siffert & Wohl LLP, on behalf of Dan Zwirn
personally. 09:07:27

18 MR. O'BRIEN: William O'Brien from
19 Cooley LLP for the Zwirn entity parties in the
case. There are several of them. I don't
know all the names.

20 MR. SIFFERT: And you're representing
the witness.

21 MR. O'BRIEN: And the witnesses.

22 THE VIDEOGRAPHER: At this time the
23 court reporter, Laurie Collins, will swear in
the witness.^ 09:07:53

24 EXAMINATION BY

25 MR. SUSMAN:

Q. Mr. Lee, can you give us your address
for the record?

A. Sure. 5 Stokes Farm Road, Old Tappan,
New Jersey 07675.

Q. Have you given testimony before?

A. Yes.

Q. In connection with this Zwirn fund? 09:08:16

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2 A. Yes.

3 Q. How many times?

4 A. I can't recall specifically, but more
likely than five.

5 Q. Did you give testimony to the SEC? 09:09:12

6 A. No.

7 Q. In what connection have you given
testimony? What proceedings? 09:09:12

8 A. Fund-related litigation with specific
counterparties involving transactions.

9 Q. Where do you currently work?

10 A. I have my own firm.

11 Q. What is the name of it?

12 A. Colford Capital, C-O-L-F-O-R-D.

13 Q. What does Colford Capital do?

14 A. It is a merchant banking operation
trying to find acquisitions and advising on
corporate transactions. 09:09:51

15 Q. How long has Colford been in existence?

16 A. Today is its first anniversary.

17 Q. Prior to working at Colford, where did
you work?

18 A. Dan Zwirn & Co.

19 Q. How long of a gap was there between
when you left D.B. Zwirn and Colford starting?
MR. O'BRIEN: It's Colford.

20 Q. I'm sorry, could you spell it? 09:10:21

21 A. C-O-L-F-O-R-D.

22 Q. Okay. Got you.
How long of a gap was there between
work -- when you quit at Zwirn or stopped working
and your starting up at Colford?

23 A. None.

24 Q. Does Dan Zwirn have any connection to
Colford?

25 A. No.

26 Q. Anyone who worked with you at the Zwirn
enterprise connected to Colford in any way? 09:10:45

27 A. On an affiliate basis, I do utilize the
services of an assistant that previously worked
with me at Dan Zwirn.

28 Q. Is it a he or she?

29 A. She.

30 Q. What's her name?

31 A. Alicia Ferraro.

32 Q. And when you say "an affiliate basis,"
does she work somewhere else most of the time? 09:11:18

33 A. Yes. She actually works for Dan Zwirn

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2 as well.

3 Q. So you and Dan share the same
assistant?

4 A. Yes.

5 Q. And "assistant," is she your secretary?
A. Secretary.

6 Q. Do you and Dan share offices? 09:11:32
A. Yes.

7 Q. Where are those offices?
A. 595 Madison Avenue.

8 Q. Who else offices at 595 Madison?
A. A person named Todd Meister,
M-E-I-S-T-E-R.

9 Q. Did he have any connection to the Zwirn
operation?

10 A. No. 09:12:01
Q. And what business is it that Mr. Zwirn
runs out of 595 Madison Avenue?

11 A. As I understand it, he has an
investment firm called Alda Capital that has made
12 investments in various financial businesses.
(Mr. Schwartz joins proceedings.)

13 Q. Does Colford and Alda make investments
together?

14 A. No, we have not made any investments
together.

15 Q. Do you and Mr. Zwirn look at 09:12:31
investments together?

16 A. To date we have not looked at any
investments together.

17 Q. Are there plans to do so in the future?
A. Nothing definitive or concrete.

18 Q. I had asked you, I think, whether
19 Mr. Zwirn had any connection to Colford. I also
mean does he provide any financing or investor in
any way.

20 A. No. 09:12:55
Q. How about does Fortress provide any
21 financing to Colford?

22 A. No.
Q. Can you give me your educational
23 background?

24 A. Wharton School, University of
Pennsylvania, 1986 bachelor's.

25 Q. And then after graduating from Wharton,
where did you go to work? 09:13:35
A. Dillon, Read.
Q. How long were you at Dillon, Read?

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2 A. A little under two years.

3 Q. What were you doing at Dillon, Read?

4 A. I was an investment banking analyst.

5 Q. From Dillon, Read where did you go?

6 A. Lazard.

7 Q. How long were you at Lazard?

8 A. I left Lazard in January 1999, so 09:13:53
approximately 11 years.

9 Q. And what were you doing at Lazard?

10 A. I was an investment banker.

11 Q. Where did you go from Lazard?

12 A. Sandler Capital.

13 Q. How long were you at Sandler?

14 A. Two years.

15 Q. What were you doing at Sandler?

16 A. Making private equity investments.

17 Q. Sandler is a hedge fund? 09:14:32

18 A. More of a private equity fund.

19 Q. Private equity fund? Okay.

20 A. And where is Sandler located?

21 A. New York City.

22 Q. So that takes us up to roughly 2001?

23 A. Correct.

24 Q. In 2001 where did you go to work?

25 A. I started a firm called Saturn Venture
Partners.

26 Q. How long did you keep operating Saturn 09:15:06
Ventures?

27 A. For about two years.

28 Q. What did Saturn Ventures do?

29 A. It was a venture capital firm.

30 Q. So now 2003, roughly, where did you go
to work?

31 A. I started a firm called LLJ Capital.

32 MR. O'BRIEN: Could you spell that?

33 THE WITNESS: LLJ.

34 Q. LLJ Capital. What does LLJ stand for? 09:15:40

35 A. It was my last name, my junior
partner's last name, and our wives' names both
started with J.

36 Q. I got you.

37 What did LLJ do?

38 A. It was funded by Dan Zwirn to make
special situation debt investments.

39 Q. Was LLJ owned by Dan Zwirn or just
simply the financing was provided?

40 A. It was financing was provided. 09:16:14

41 Q. How did you come to meet Dan Zwirn?

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2 A. I hired Dan Zwirn out of Wharton in
3 1993, and he worked mostly under my supervision
4 for the first year and a half as an investment
5 banking analyst.

6 Q. So that would have been at Lazard?

7 A. Yes.

8 Q. So you basically gave Dan his first job 09:16:47
9 in finance?

10 A. Well, he had a summer internship
11 before, but I guess his first full-time job.

12 Q. And do you remain friends with Dan?

13 MR. O'BRIEN: Objection to form.

14 Q. I'm sorry, so from 1993 to 1996,
15 roughly, he worked for you?

16 A. No, for about a year and a half.

17 Q. Oh, for just a year and a half?

18 A. Yes. 09:17:14

19 Q. And did he leave Lazard in 1994/'95?

20 A. I actually left Lazard in mid '94 and
21 then returned back to Lazard a year and a half
22 later. Dan left Lazard in '95.

23 Q. Where did you go during this interim
24 period from Lazard between '94 and '95?

25 A. Toronto Dominion Bank.

26 Q. So as I understand it, you hired Dan,
27 he was at Lazard, you left; by the time you came
28 back, then he was leaving? 09:17:57

29 A. He had left when I came back.

30 Q. He had left.

31 A. Yes.

32 Q. You remained friends with Dan from '95
33 through 2003?

34 MR. O'BRIEN: Objection to form.

35 A. We maintained an acquaintance.

36 Q. So in 2003 when he or D.B. Zwirn
37 provided the funding for LLJ Capital, how did that
38 come to be? 09:18:28

39 A. I reconnected with Dan in 2003 over
40 lunch, having not seen him for two or three years.
41 And he discussed with me the possibility of
42 starting a new business with his funding.

43 Q. So the funding that you mentioned that
44 D.B. Zwirn provided to LLJ Capital, what entity
45 exactly provided the funding to LLJ? What Zwirn
46 entity? I'm not so much concerned with the name
47 as was it one of the hedge funds or was it some
48 company he ran. 09:19:13

MR. ARFFA: Objection to form.

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2 A. All the funding we received came from
the D.B. Zwirn Specialty Opportunities Fund L.P..

3 Q. So that would have been the onshore
fund; right?

4 A. Correct.

5 Q. And how much funding did they initially
provide to LLJ? 09:19:32

6 A. It was on a deal-by-deal basis.

7 Q. How long did this -- did LLJ Capital
remain in existence?

8 A. I remained with LLJ until April 2005.

9 Q. What happened in April 2005?

10 A. I joined D.B. Zwirn & Co.

11 Q. At that point how much -- did LLJ
Capital as of April 2005 get money from anyone
else other than D.B. Zwirn?

12 A. No. 09:20:12

13 Q. How much money, roughly, by April 2005
did LLJ Capital have invested on behalf of
D.B. Zwirn?

14 A. I think approximately a hundred
million.

15 Q. So in 2005 you decided to go in-house,
in effect, with the Zwirn management company?

16 A. Yes.

17 MR. O'BRIEN: Objection.

18 MR. ARFFA: Objection to form. 09:20:40

19 Q. And what was your position that you
started in April 2005 with D.B. Zwirn?

20 A. I was a managing director.

21 Q. What entity was it that actually
employed you?

22 A. D.B. Zwirn & Co., L.P.

23 Q. Were you a partner in D.B. Zwirn & Co.,
L.P.?

24 A. No.

25 Q. I meant when you first joined. Did you
ever become a partner in D.B. Zwirn & Co., L.P.? 09:21:20

26 A. No.

27 Q. In the D.B. Zwirn & Co., L.P., what --
it provided investment advisory services?

28 A. It was the management company on behalf
of the funds and managed accounts.

29 Q. By that you mean it would provide
management services for the onshore fund, the
offshore fund, and the various managed accounts;
is that right? 09:22:00

30 A. Yes.

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2 MR. O'BRIEN: Objection to form.

3 Q. As the managing director, what were
4 your job responsibilities? What were you doing?

5 A. Well, I was a managing director, and my
6 responsibilities were to originate and manage a
7 portfolio of investments and to also manage a
8 portfolio of investments that had been originated
9 by others prior to my arrival. 09:22:46

10 Q. And how long were you a managing
11 director of D.B. Zwirn & Co., L.P.?

12 A. Until October '06.

13 Q. How big was the portfolio of
14 investments that you were managing between April
15 '05 and October '06?

16 A. North of 300 million.

17 Q. You mentioned a portfolio of
18 investments that had been made by someone else
19 that you were managing; is that correct? 09:23:32

20 A. By others.

21 Q. By others.

22 Who were the others who had made those
23 investments?

24 A. There was a person named Ivan Zinn and
25 a person named Cameron Fleming.

26 Q. Was there some special area of
27 investments that you were charged -- or type of
28 investment you were charged with making? 09:24:06

29 A. I generally focused on an industry,
30 which was media, telecommunications, and the
31 services that provided those two industries.

32 Q. Now, as a managing director, did you
33 have any role in the administrative functions of
34 the management company?

35 A. None.

36 Q. Did you have any role in meeting with
37 the investors in the actual funds or clients who
38 had managed accounts? 09:24:58

39 A. I occasionally was asked to come in for
40 portions of meetings.

41 Q. What portions of the meetings would
42 those be?

43 A. Most of the time -- frankly, all the
44 times that I can remember, I was asked to discuss
45 the types of investments that I focused on and the
46 portfolio.

47 Q. During that time period from April 2005
48 to October 2006, did you ever have any discussions
49 with investors about what the terms of any 09:25:35

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2 investment would be in the funds or in the managed
accounts?

3 A. No.

4 Q. Did you, when you were making
investments either at LLJ Capital or when you were
5 a managing director, make any investments with
Fortress, side by side or in some sort of
partnership? 09:26:07

6 MR. O'BRIEN: Objection to form.
MR. ARFFA: Objection to form.

7 A. I don't recall closing on any deals
that I originated with Fortress. There were a
8 number of portfolio investments that had Fortress
as a coinvestor that I inherited from Ivan and
9 Cameron.

10 Q. Can you give me a rough estimate of the
size of those investments? 09:26:47

11 A. Of each investment or cumulative?

12 Q. Cumulatively.

13 A. Including Fortress's piece or D.B.
Zwirn piece?

14 Q. Just the D.B. Zwirn piece.

15 A. I'd have to guess, but I would estimate
200 million.

16 MR. O'BRIEN: Let me just say that you
shouldn't guess. You can -- if you can
17 estimate in some range, but just a fat guess
you should not do. 09:27:25

18 THE WITNESS: Okay.

19 No, I cannot.

20 Q. What's that?

21 A. No, I cannot.

22 Q. Was it fair of the \$300 million
portfolio that you were in charge of looking after
that more than half of those investments had
Fortress as a coparticipant?

23 A. No, that would be inaccurate because
investments mature and are repaid. So the numbers
24 that I threw out would be based -- at least on the
300 north number I threw out earlier was an
approximate running tally, and the guess I threw
25 out was cumulative. 09:27:58

26 Q. So that I understand what you're
saying, you're saying the 300 was a sort of
average amount of the portfolio over time, at any
point in time, and the 200 million was some amount
of investment that may have run -- churned through
the portfolio over the year; is that fair? 09:28:40

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2 MR. ARFFA: Objection to form.

3 A. Roughly.

4 Q. Did you yourself have any investment in
the onshore or offshore Zwirn funds prior to
October 2006?

5 A. Yes.

6 Q. What were you invested in? 09:29:08

7 A. The onshore fund.

8 Q. When did you make that investment?

9 A. The spring of 2006.

10 Q. How large of an investment did you
make?

11 A. 400,000.

12 Q. Do you recall what the liquidity option
was that applied to your investment?

13 A. The one year plus liquidity.

14 Q. Did you make any subsequent investments
into the onshore funds after this initial
investment? 09:29:52

15 A. No.

16 Q. Did you ever invest in the offshore
fund?

17 A. No.

18 Q. Did you have at any point any ownership
interest or in any of the Zwirn entities other
than the investment you've mentioned in
offshore -- onshore fund? 09:30:33

19 A. You'd have to be more specific. I'm
not sure I understand your question.

20 Q. Yeah. Did you have any ownership
interest in any of the -- strike that.

21 When we started, Mr. O'Brien said he is
here representing a bunch of Zwirn entities.
There are entities called Zwirn Holdings,
D.B. Zwirn & Co., L.P., D.B. Zwirn & Co. LC.

22 Did you have any ownership interest in
any size in any entity that had the name Zwirn in
it, other than your investment in the onshore
fund? 09:31:06

23 A. So in your -- I just want to make sure
I understand the question. When you're referring
to the Zwirn entities, are you referring to
entities that are affiliated with the management
company?

24 Q. Yes.

25 A. No, I did not.

Q. I'm also referring to just any company
that had the name Zwirn in it, or entity. 09:31:43

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2 MR. ARFFA: Objection to form.

3 Q. It could have been part of the
4 management company, it could have been a hedge
5 fund, any type of entity.

6 A. No.

7 Q. What happened, by the way, to LLJ
8 Capital?

09:32:21

9 A. It was acquired by the onshore fund in
10 the second half of 2005.

11 Q. When it was acquired, did you receive a
12 payment for your ownership interest in LLJ
13 Capital?

14 A. Yes.

15 Q. How much of a payment did you receive?

16 A. Approximately 800,000.

17 Q. Do you remain a limited partner in the
18 onshore fund?

09:33:04

19 A. Yes.

20 Q. Did you ever withdraw any of your
21 initial \$400,000 investment?

22 A. No.

23 Q. Prior to October of 2006, did you --
24 had you ever heard of Jeffrey Epstein?

25 A. Yes.

Q. In what connection had you heard of
Mr. Epstein prior to October 2006? And I'm using
that October date because that's when I understand
you became the acting CFO.

09:33:37

MR. ARFFA: Objection to form.

A. I heard of Jeffrey Epstein through
colleagues at Lazard.

Q. By the way, what had you heard from
your colleagues at Lazard about Jeffrey Epstein?

A. Not flattering things.

Q. Such as?

A. That he was extremely difficult.

Q. Difficult in what way?

09:34:19

A. Generally difficult to do business with
and difficult to negotiate with and belligerent.

Q. Other than what you heard from Lazard
folks about Jeffrey Epstein, had you heard
anything else about him between -- prior to
October of 2006?

A. Other than magazine or newspaper
articles, I do not recall anything else.

Q. Did you know that he was an investor in
the Zwirn fund?

09:34:58

A. Prior to October 2006?

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2 Q. Yes.

3 A. No.

4 Q. Prior to October 2006, had you ever
heard of an entity called Financial Trust Company?

5 A. No.

6 Q. Now, you mentioned -- oh, I want to ask
7 you one last question about some of the background we talked about earlier. 09:35:26

8 How did you and Dan end up sharing
9 office space currently?

10 A. When I left, D.B. Zwirn was housed at
11 Fortress's offices. Dan had a -- and Todd, who
12 shares that floor, had an empty corner office.
13 And Dan had also hired Alicia. And so he made an
14 offer for me to sublet that space, which I found
15 attractive and decided to put my office there.

16 Q. So you left Fortress or D.B. Zwirn, I'm
17 sorry, in roughly June of 2010? 09:36:18

18 A. May 31, 2010.

19 Q. So you continued to work at
20 D.B. Zwirn & Co. even after Fortress acquired the
21 management company?

22 MR. O'BRIEN: Objection.

23 MR. ARFFA: Objection.

24 Q. I'm sorry, I guess it didn't acquire.
25 After Fortress took over management
responsibilities of the funds, the onshore and
offshore funds -- 09:36:46

26 MR. ARFFA: Objection to form.

27 Q. -- did you become an employee of
28 Fortress?

29 A. No.

30 Q. You remained an employee of
31 D.B. Zwirn & Co.?

32 A. Yes.

33 Q. And it moved its offices, then, into
34 Fortress's offices for some period of time? 09:37:03

35 A. Yes.

36 Q. And you made the move at that point?

37 A. Yes.

38 Q. Fortress took over management of the
39 funds in roughly the summer of 2009?

40 A. June 1, 2009.

41 Q. So for roughly a year you were working
42 for D.B. Zwirn & Co. but actually physically
43 housed at Fortress's facilities?

44 A. Yes. 09:37:36

45 Q. In October of 2006 you became the

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2 acting CFO of D.B. Zwirn & Co.?

3 A. Yes.

4 Q. Do you remember what day it was that
5 you were made the acting CFO in October?

6 A. October 5th.

7 Q. Who suggested to you that you become
8 the acting CFO? 09:38:17

9 A. It was a discussion amongst myself, Dan
10 Zwirn, and David Proshan.

11 Q. What was the discussion that occurred?

12 MR. O'BRIEN: I'm just going to caution
13 the witness, since Mr. Proshan you said might
14 have been involved in these conversations, to
15 not in your answer reveal any communications
16 that are in the nature of legal advice or
17 seeking legal advice.

18 A. I don't recall the specifics of the 09:39:05
19 conversation. It's been a long time ago.

20 Q. At that point you obviously knew that
21 Perry Gruss was no longer the CFO?

22 MR. O'BRIEN: Objection to form.

23 Q. Right?

24 MR. O'BRIEN: Objection to form.

25 MR. ARFFA: Objection. Can I just have
a rule that if any of us object to form that
it counts for everyone and that way you don't
have to hear two or three people saying it? 09:39:30

MR. SUSMAN: Yeah, that's fine. I
don't know how you're going to do that in
practice, but fair enough.

MR. ARFFA: The first one to say it;
the others don't have to.

A. Can you repeat the question, please?

Q. Yeah. Before you went to this meeting
with Mr. Zwirn and Mr. Proshan, did you know that
Perry Gruss was no longer the CFO?

A. Yes. 09:39:52

Q. How did you learn that Perry Gruss was
no longer going to be the CFO?

A. I learned in a discussion with Lawrence
Cutler over lunch.

Q. The discussion with Mr. Cutler over
lunch, how -- how many days before or was it the
day before the October 5th, 2006, meeting that you
had?

A. It was on October 5th.

Q. So what did Mr. Cutler tell you at the 09:40:31
lunch that you had?

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2 A. He told me that Perry Gruss had
3 resigned the night before. He told me that there
4 had been an internal investigation and that
5 investigation had resulted in a number of issues
6 regarding management company expenses and the use
7 of money from the funds for the purchase of an
8 airplane but that it had been remediated but the
9 decision had been made that Perry had to go and
10 that we were going to restructure senior
11 management and implement a number of new
12 compliance procedures. 09:41:30

13 Q. Did he at the lunch suggest to you that
14 you might become CFO as part of this
15 restructuring?

16 A. No.

17 Q. Prior to Mr. Cutler telling you at
18 lunch that there had been this internal
19 investigation, did you have any hint that there
20 was an investigation underway? 09:42:14

21 MR. O'BRIEN: Objection to form.

22 A. No.

23 Q. So was it the news that Mr. Cutler told
24 you that there had been an internal investigation
25 that came as a surprise to you; first time you
26 heard of it was October 5th?

27 A. Yes.

28 Q. Had you heard that there were any
29 issues with Perry Gruss's job performance at all
30 prior to October 5th? 09:42:44

31 A. Yes.

32 Q. What issues had you heard existed about
33 his job performance?

34 A. Dan had informed me around September
35 15th that he wanted to make management changes and
36 that he wanted me to consider possibly stepping
37 into a role of managing the firm in the near
38 future. 09:43:25

39 Q. When Mr. Zwirn informed you that he
40 wanted to make management changes, did he
41 specifically mention Mr. Gruss as one of those
42 changes he wanted to make?

43 A. No, he did not.

44 Q. I think I asked you what issues you
45 were aware of about Mr. Gruss's job performance,
46 and you told me in response that you had this
47 discussion with Mr. Zwirn on September 15th.

48 MR. SIFFERT: Objection. 09:44:02

49 Q. My only question is did Mr. Zwirn

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2 mention Perry Gruss during this September 15th
3 conversation.

4 MR. O'BRIEN: Objection to form.

5 A. He mentioned that I should spend time
6 with Perry to learn more about the firm's business
7 and finances.

8 Q. Did you infer from that that there was 09:44:20
9 some issue that he had with Perry Gruss?

10 A. I recall making an inference that there
11 could have been an issue.

12 Q. Did you ask Mr. Zwirn specifically
13 whether there was some problem with Perry Gruss's
14 performance?

15 A. I don't recall asking him that
16 specifically.

17 Q. And prior to the September 15th 09:44:49
18 discussion with Mr. Zwirn, had you heard of any
19 specific issues with Mr. Gruss's job performance?

20 A. No.

21 Q. Did you ask Dan why he wanted to make
22 management changes?

23 A. Yes.

24 Q. And what did he say?

25 (Discussion off the record.)

26 A. My recollection was that he wanted
27 somebody who had deal experience in a role of 09:45:24
28 leadership as opposed to someone that had more of
29 an operational background.

30 Q. So at least during the September 15th
31 conversation, Mr. Zwirn did not mention to you
32 that there was any sort of investigation underway
33 about any sort of improprieties involving
34 Mr. Gruss?

35 A. No, he did not.

36 Q. The only explanation he gave you for
37 why he might want to make management changes was
38 to bring somebody with more deal experience into a 09:46:05
39 leadership role?

40 A. Yes.

41 Q. How is it, by the way, that you
42 remember that this discussion with Mr. Zwirn
43 happened on September 15th, 2006?

44 MR. SIFFERT: Objection.

45 A. I just happen to remember. There
46 were -- there were a number of events that
47 occurred in that short window of time that I seem
48 to have specific recollection of, but obviously 09:46:41
49 there are other things I don't.

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2 Q. So between September 5th and October
3 5th, did you hear any other news about Mr. Gruss's
4 job performance or any investigation about him or
5 any issue with the management company?

6 MR. O'BRIEN: I take it you mean
7 September 15.

8 MR. SUSMAN: Did I -- I did mean 09:47:02
9 September 15. Sorry.

10 MR. ARFFA: Objection to form.

11 A. Repeat the question.

12 Q. I'll ask the question again. Between
13 September 15th, 2006, and October 5th, 2006, did
14 you hear any additional information about
15 Mr. Gruss's job performance or any issues at the
16 management company in terms of how it was being
17 run?

18 MR. ARFFA: Objection to form. 09:47:32

19 Q. Any problems?

20 A. I was not aware of any problems
21 associated with Mr. Gruss's performance.

22 Q. Essentially you had a discussion with
23 Mr. Zwirn on September 15th where he mentioned he
24 might want to make some changes, and October 5th
25 you go to lunch with Mr. Cutler and he tells you
Perry Gruss is going to have to leave, you come
back from lunch, and you're offered his job on
October 5th?

MR. ARFFA: Objection as to form. 09:48:00

16 Q. Is that --

17 A. I'm not sure whether that was a
18 question or a statement.

19 Q. Is that the chronology? Do I have it
20 right?

21 MR. SIFFERT: Objection as to form.

22 A. Those two events occurred on those two
23 dates, yes.

24 Q. I just want to make sure I'm not 09:48:17
25 missing any events that occurred between September
15th and October 5th relative to your becoming
CFO.

26 MR. ARFFA: Objection to form.

27 A. Well, once again, define "events."

28 Q. Any conversations you had with anyone
29 else, any information you learned in the interim
30 that gave you some indication you might become the
31 CFO or have some leadership role.

32 MR. ARFFA: Objection to form. 09:48:45

33 A. Part of the September 15th and

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subsequent September 18th conversation with Dan, as I previously mentioned, Dan suggested I speak with Perry and some others with regard to learning about the firm's operations and its finances and in particular to spend time with Lawrence Cutler to learn about a number of the operational changes that were planned.

09:49:21

Q. You mentioned there was a September 18th discussion with Dan? What was that discussion about?

A. On the 15th he mentioned the idea that he wanted me to think about that he wanted to discuss with his partners. On the 18th we had a confirmation discussion that I was interested in taking on the additional role, and he conferred to me that his partners were in agreement with him.

09:50:04

Q. By the 18th when you said you were interested in taking on the additional role, did you understand that role was going to be the CFO?

A. At that point in time, no. I thought the role would be more of a president- or CEO-type role sometime in the future.

Q. Did you actually talk to Mr. Gruss between September 15th, say, and October 5th, 2006?

A. Yes.

Q. And what did you talk to him about?

09:50:30

A. I recall a couple of conversations and a breakfast meeting where I was trying to gather as much information as I could from him about the firm and the funds and its finances and inner workings.

Q. Did he ask you why you were asking for this information?

A. No, he did not.

Q. Had you ever asked for that kind of information from him before?

09:51:09

A. No.

Q. Did you also meet with Mr. Cutler?

A. Yes.

Q. How many times do you think you met with him during -- between September 15th and October 5th in an effort to learn more about the firm's management?

A. I can't recall how many times.

Q. And Mr. Gruss during this time period never, in any of your discussions, let on that he was under some kind of investigation, perhaps, or

09:51:38

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2 that his job might be in jeopardy?

3 A. No.

4 MR. ARFFA: Objection to form.

5 Q. You say you talked to Mr. Gruss about
6 the firm's finances. By that do you mean the
7 management company's finances or do you also
8 include the funds' finances?

09:52:00

9 A. I would say all of the above.

10 Q. During those conversations did
11 Mr. Gruss tell you anything about the liquidity
12 needs of the funds, the onshore and offshore
13 funds?

14 MR. O'BRIEN: Objection to form.

15 A. No.

16 Q. Did he express any concern to you that
17 the funds did not have a lot of liquidity?

09:52:38

18 A. Not that I can recall.

19 Q. So on October 5th you were offered the
20 job of acting CFO; is that right?

21 A. Yes.

22 Q. Did you get a pay raise?

23 A. At that point in time, no.

24 Q. Mr. Cutler had explained to you that
25 there was this issue with the airplane and the
26 fund expenses that had been the subject of an
27 internal investigation. He explained that to you
28 at lunch; right?

09:53:19

29 A. It was management fees, not fund
30 expenses.

31 Q. And you understood it was prepayment --
32 early payment of management fees --

33 A. Yeah.

34 Q. -- that had occurred, was an issue?

35 A. Yes.

36 Q. And was that the first you'd ever heard
37 of investor money being used to finance an
38 airplane purchase?

09:53:39

39 A. Yes.

40 Q. And was it also the first you ever
41 heard of the early payment of management fees?

42 A. Yes.

43 Q. Did anybody explain to you why the
44 management fees had been paid earlier or what the
45 explanation that had been given for that practice
46 was?

47 MR. ARFFA: Objection to form.

48 MR. O'BRIEN: Since the question

09:54:04

49 doesn't have a time frame, I'm going to direct

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2 you to not, in your answer, communicate
3 something that was communicated to you by
4 counsel.

5 A. I recall Lawrence saying that on a
6 number of occasions management fees were taken
7 after they were accrued but prior to when they
8 were payable. 09:54:37

9 Q. Did Lawrence explain to you or tell you
10 what the explanation was for why that had
11 occurred?

12 A. I can't really recall at that point in
13 time.

14 Q. After you became the acting CFO on
15 October 5th, was that news then conveyed to all
16 the other employees that day or the next day?

17 A. It was conveyed on October 9th.

18 Q. What was the reason for delaying from
19 October 5th to October 9th to tell the employees
20 that you were the acting CFO? 09:55:14

21 MR. ARFFA: Objection to form.

22 A. There was a strategy to make a
23 comprehensive announcement to the employees about
24 Perry's departure and other organizational
25 changes.

26 Q. After the announcement was made that
27 you would be acting CFO, did you then make any
28 effort to contact investors in the funds or
29 managed accounts to let them know about your new
30 job responsibilities? 09:55:59

31 A. There was no effort on my part.

32 Q. I understand there were a series of
33 investor calls to inform investors, roughly about
34 October 10th or October 11th. Do you recall that
35 happening?

36 MR. O'BRIEN: Objection to form.

37 A. My understanding is that Dan and
38 possibly others from the IR department made a
39 number of investor calls I believe starting on
40 October 9th. 09:56:35

41 Q. Did you participate in any of those
42 investor calls in any way?

43 A. I don't recall participating in any of
44 those round of calls.

45 Q. When did you first hear that there had
46 been advances made from the offshore fund to the
47 onshore fund and from some of the managed accounts
48 to the onshore fund? 09:57:09

49 A. On October 9th.

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2 Q. Was it before or after the announcement
3 of your new job and that Perry was gone?

4 A. After.

5 Q. Was the announcement in a conference
6 room?

7 A. It was in Dan's office with a number of
8 employees dialed in globally. 09:57:36

9 Q. On a conference call?

10 A. Yes.

11 Q. After that meeting how did you then
12 come to learn about the advances from the offshore
13 fund to the onshore fund?

14 A. Lawrence came to my office, said that
15 he had had a conversation with Alisa Butchkowski
16 and that Alisa had told him that when her prior
17 boss, LeeAnn Law, left in the summer of 2006 that
18 LeeAnn had told her that the offshore fund was
19 owed money from the onshore fund and that two of
20 the accounting employees, Jason Pecora [phonetic]
21 and Phil Ryu, also knew about it. 09:58:42

22 Q. How much was the amount of these -- the
23 money that was owed at that point?

24 A. As of that moment, I didn't know.

25 Q. Did Larry give you any indication of
how large a sum it was?

A. I can't recall.

MR. SIFFERT: Lawrence? 09:59:34

MR. SUSMAN: Lawrence? Is that what it
is? Fair enough.

Q. What was your reaction to Mr. Cutler
telling you about what Alisa had told him?

A. Surprise.

Q. And then did Mr. Cutler explain to you
when he'd had this conversation with Alisa?

A. It was shortly after the firm
announcement.

Q. So after you had this conversation with
Mr. Cutler, what did y'all do about this
information you'd learn from Alisa? 10:00:17

A. We asked Alisa to come up to my office,
and also Bob Sumberac, and we asked Alisa to
repeat what she had told Lawrence just earlier.

Q. Did she repeat to you the same thing
that Mr. Cutler had conveyed?

A. Yes.

Q. After you had this discussion with
Alisa, what did y'all then do? 10:00:54

A. We asked Jason Pecora to come up to my

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2 office, and we asked Alisa to yet again explained
3 what she had just explained. And then we asked
4 Jason what he knew about this issue that Alisa had
5 brought to our attention.

6 Q. Did Jason confirm what Alisa had said?
7 A. Jason said he had no idea what we were
8 talking about. 10:01:24

9 Q. So what happened after you had this
10 conversation with Jason and Alisa?
11 A. I asked Dan Zwirn and the other two
12 partners, Chris Swan and Vasan, into the office,
13 and we explained what had just happened in the
14 conversation with Alisa.

15 Q. And what was their reaction?
16 A. Dan had a look of utter surprise and
17 shock, screamed out some expletives. And then I
18 recall conversation about trying to figure out if
19 this was true and how do we figure this out. 10:02:06

20 Q. Did y'all come up with a plan to try to
21 figure out if it was true?
22 MR. O'BRIEN: Objection to form.

23 A. My recollection is that the first step
24 we would take would be for Bob Sumberac, who was
25 the controller, to dig into the firm's accounting
26 systems and ledgers to see if he could figure out
27 whether this was true or not.

28 Q. So you tasked Bob with going and trying
29 to dig through the fund's ledgers to see if there
30 were in fact these monies owed? 10:02:40

31 A. Yes.
32 Q. And did Bob do that?
33 A. Over the course of the next two days,
34 yes.

35 Q. Did he report back in some form?
36 A. Well, we had multiple conversations
37 over the course of those two days.

38 Q. Was it all oral? Was there anything
39 written that was prepared by Mr. Sumberac and
40 given to you or Mr. Zwirn? 10:03:14

41 A. I recall a spreadsheet that he put
42 together at some point during those two days.

43 Q. So that takes us to roughly like
44 October 11th, thereabouts?
45 A. Yes.

46 Q. Did the spreadsheet show the
47 outstanding balance of the advance from the
48 offshore fund to the onshore fund? 10:03:57

49 A. The first analysis showed an estimated

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2 balance of 108 million.

3 Q. Did that balance materially change over
the subsequent weeks?

4 MR. O'BRIEN: Objection to form.

5 A. With regard to what we believed the
onshore fund owed the offshore fund, no.

6 Q. Was there at this point any indication 10:04:40
that there had also been advances from the managed
accounts or the TE fund?

7 A. As of October 11th, no.

8 Q. When did you discover that there had
also been advances from the Highbridge managed
account and the TE fund?

9 MR. ARFFA: Objection to form.

10 A. The weekend of the 14th and 15th, we 10:05:14
discovered that there was possibly a balance of
approximately 50 million owed from the onshore
fund to the Highbridge account. And we also
11 thought that there might be balances owed from the
onshore to the TE account as well.

12 Q. How did you discover the \$50 million
advance from the Highbridge account to the onshore
13 fund?

14 A. We had engaged Deloitte & Touche that
week to assist us; and as part of some analyses
and work that we saw, a wire transfer.

15 Q. When did Deloitte & Touche get hired, 10:06:31
roughly, relative to October 9th, when you first
16 heard about the issue from Alisa?

17 A. It was either that Thursday or that
Friday, so either the 12th or the 13th.

18 They were engaged by Fried Frank, so I
don't know if --

19 Q. So Fried Frank was also hired roughly
after -- shortly after October 9th?

20 A. Yes.

21 Q. Did you participate in any of the 10:07:20
meetings to discuss what would be disclosed to
investors during the October 9th, 10th, and 11th
series of calls?

22 A. No.

23 Q. By the way, when you found out about
these advances to the onshore fund, did it cause
you concern that this had occurred?

24 A. Yes.

25 Q. And why?

A. Why -- I don't understand your 10:07:54
question.

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2 Q. What about it was of concern to you?

3 A. It caused a lot of concerns. One of
the concerns that was prominent was did we have an
4 accurate NAV calculation.

5 Q. Any other concerns? 10:08:38

6 A. Yes, of course.

7 Q. Such as?

8 A. The quality of the books and records.

9 Q. Anything else?

10 A. I'm not sure -- do you want me to list
out all the emotions I went through that week?

11 Q. Not really the emotions as much as the
issues that were potentially raised by having
these loans or advances.

12 MR. ARFFA: Objection to form.

13 A. Well, as I said, the primary concern
was did we have an accurate NAV. If we did not
14 have an accurate NAV, then there were a lot of, 10:09:17
you know, consequences.

15 Q. Was there any -- were you concerned
that -- about how investors would react to hearing
about it?

16 A. That would be one of the consequences.

17 Q. But whether or not there was an
accurate NAV calculation, might investors be
upset? Did you believe investors might be upset
18 about this having occurred? 10:09:50

19 A. Yes.

20 Q. Were there any tax issues that were
raised by having these loans or advances occur?

21 MR. O'BRIEN: Does your question have
any time frame?

22 MR. SUSMAN: Sure this October of 2006
time period.

23 MR. O'BRIEN: The whole month?

24 MR. SUSMAN: Yeah.

25 MR. SIFFERT: Well, the concern I 10:10:09
have --

MR. SUSMAN: Look, guys, I'm letting
you all do this, but you've got to stop it.
Okay? Object to form. Don't -- you can
quibble with the question all you want.

MR. SIFFERT: To the extent these
involve privileged conversations -- we're
trying to avoid privilege, Harry. That's the
issue.

MR. SUSMAN: So just instruct him. 10:10:30

MR. SIFFERT: It's not disruptive.

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2 MR. O'BRIEN: Just instruct him, he
3 said.

4 MR. SIFFERT: I'm not obstructing.
5 MR. SUSMAN: Just instruct him.
6 MR. SIFFERT: Okay. Don't report
7 anything about conversations with counsel on
8 these topics. 10:10:46
9 A. Tax issues would be privileged.
10 Q. After October 14th when you also
11 discovered that there might be money from
12 Highbridge's managed account that had been
13 advanced plus you thought there was an issue with
14 the TE fund, were you involved in attempting to
15 document these loans or advances so that there was
16 some piece of paper that actually memorialized,
17 such as a note? 10:11:29
18 A. Yes.
19 Q. Were in fact notes prepared that
20 obligated the onshore fund to repay the money at
21 some point in time?
22 A. Yes.
23 Q. Why didn't you just have the onshore
24 fund repay the money as opposed to entering
25 into a -- a loan agreement that would allow
26 repayment over some period of time?
27 MR. ARFFA: Objection to form.
28 You may answer. 10:12:14
29 A. The onshore fund did not necessarily
30 have the liquidity at that point in time to repay
31 it quickly.
32 Q. There was a second series of investor
33 phone calls like at the end of October; is that
34 correct?
35 A. Yes.
36 Q. Did you participate in those, any of
37 those calls?
38 A. Yes. 10:12:43
39 Q. How many of them did you participate
40 in?
41 A. I can't recall specific number.
42 Q. Was your role to speak during the call
43 or were you just there listening?
44 A. The vast majority of the calls I
45 listened.
46 Q. Who else listened with you?
47 A. It was split amongst Elise Hubsher and
48 I believe Lawrence Cutler. 10:13:21
49 Q. Did you listen to a call that involved

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2 Financial Trust Corporation or Jeffrey Epstein?

3 A. No, I did not, did not.

4 Q. What was the reaction of the investors
5 on the call that you did listen in on? 10:14:15

6 A. Vast majority were supportive.

7 Q. Were any agitated or upset?

8 A. I do not recall any of the calls in
9 which I listened in on an investor openly
10 expressing agitation. 10:14:15

11 Q. Did you hear from Ms. Hubsher,
12 Mr. Cutler, or Mr. Zwirn that there had been other
13 investors who were agitated during these calls,
14 during calls that you didn't listen to?

15 A. The only one I can recall was the call
16 that he had with Financial Trust.

17 Q. What were you told about the call that
18 he had with Financial Trust? 10:15:02

19 A. I recall Dan mentioning that Jeffrey
20 was upset.

21 Q. Did Mr. Zwirn tell you anything more
22 than Jeffrey Epstein was upset?

23 A. I can't recall specifically with regard
24 to that particular call what else was said.

25 Q. We're talking about the second set of
investor calls Mr. Zwirn told you after he had had
one with Financial Trust that Mr. Epstein was
upset? 10:15:59

A. Yes.

Q. At that point you knew who Financial
Trust was and who Mr. Epstein was relative -- that
they were a big investor in the fund; is that
right?

A. Yes.

Q. Did Mr. Zwirn tell you what he planned
to do about Mr. Epstein's being upset?

MR. ARFFA: Objection to form.

A. That he was going to call Glenn. 10:16:17

Q. Glenn?

A. Glenn Dubin.

Q. Did you know who Glenn Dubin was at
that point?

A. Yes.

Q. Had you ever spoken yourself to Glenn
Dubin?

A. I don't recall speaking to Glenn prior
to that second call to investors directly.

Q. I don't mean in any capacity. Had he
ever made an investment where you spoke to him at 10:16:44

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2 any point in time?

3 A. I don't recall speaking to him before
4 that.

5 Q. Did Mr. Zwirn explain to you why he was
6 going to talk to Mr. Dubin about Mr. Epstein being
7 upset?

8 A. I recall that Glenn had a close
9 relationship with Jeffrey and that Dan almost
10 always conferred with Glenn on matters related to
11 Jeffrey. 10:17:05

12 Q. In between the time of the second --
13 the first set of calls and the second set of
14 calls, before you made the second set of calls,
15 you reached out to lenders to the fund; correct?

16 A. Yes.

17 Q. Who was -- I think it's KBC? Do I have
18 the initials right? 10:17:52

19 A. Yes. That was one of the lenders.

20 Q. It was a lender to both the onshore and
21 offshore fund?

22 A. Yes.

23 Q. Were they the biggest lender?

24 A. No.

25 Q. What kind of liquidity did they provide
26 to the funds?

27 MR. ARFFA: Objection to form.

28 A. As of that particular day, they were
29 actually not a lender. We had a credit agreement
30 that was in the process of being closed. 10:18:15

31 Q. Did you reach out to them because you
32 were concerned that the issues with Gruss had
33 potentially -- strike that.

34 Did you have any problems with any of
35 the lenders when you told them about the Perry
36 Gruss issues or these interfund notes?

37 A. No.

38 MR. O'BRIEN: Objection to form. 10:18:50

39 Q. You've told me you heard Mr. Epstein
40 was upset after the second investor call. When
41 was the first time that you heard that Mr. Epstein
42 wanted or was asking for some of his money back
43 from the fund?

44 MR. ARFFA: Objection to form.

45 A. I believe there was a letter faxed to
46 us around November 13th.

47 Q. I'm going so to show you what was
48 previously marked as Exhibit 5. Is that the
49 letter? 10:19:59

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2 (Discussion off the record.)

3 MR. SUSMAN: I'm not going to ask him
4 about the document other than is that the
5 letter you're referring to.

6 MR. ARFFA: What's the exhibit number?

7 MR. SUSMAN: It's Exhibit 5.

8 A. Yes.

10:20:20

9 Q. Prior to seeing Exhibit 5, had you
10 heard from any source that Mr. Epstein might want
11 some of his money back from the fund?

12 A. I don't recall that I had heard he
13 wanted his money back prior to this letter.

14 Q. Now, you had told me during the second
15 set of calls that I think none of the investors
16 who you listened to were upset or agitated, were
17 supportive.

18 Did you hear from Mr. Zwirn or 10:21:04

19 Mr. Cutler or Ms. Hubsher that any of the
20 investors on the calls they had listened to had
21 asked for any of their money back?

22 A. No, I don't recall anyone asking for
23 their money back around those calls.

24 Q. And certainly in the calls you listened
25 to, did any of the investors ask for their money
back?

A. Not that I recall.

26 Q. Prior to receiving Exhibit 5, had you 10:21:40
27 dealt with any investors attempting to redeem from
28 the fund?

29 A. I don't believe so.

30 MR. SUSMAN: I think we've been going
31 for about an hour and 20 minutes. Do you want
32 to take a break? Or keep going? Whatever you
33 want to do.

34 THE VIDEOGRAPHER: There's eight
35 minutes left on the video.

36 MR. SUSMAN: Let's go eight more 10:22:14
37 minutes.

38 Q. Exhibit 5, how did you come to see it
39 first? Did it arrive on the fax machine and
40 someone deliver it to you or did somebody
41 specifically bring it to your attention?

42 MR. ARFFA: Objection to form.

43 A. I don't remember.

44 Q. After you saw Exhibit 5, did you
45 participate in the discussions about Mr. Epstein's
46 \$80 million request, on or about November 13th? 10:22:44

47 A. Can you be more specific? Participate

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2 with whom?

3 Q. Were there any discussions either on
4 November 13th or, say, the next day that you
5 remember about Mr. Epstein's \$80 million request?

6 A. I recall us having discussions about
7 this letter shortly after receiving it.

8 Q. And who were those discussions with 10:23:11
9 that you recall?

10 A. I believe it included counsel.

11 Q. All of the discussions had included
12 counsel that you remember?

13 MR. ARFFA: Objection to form.

14 A. I can't remember conversations that
15 didn't include counsel.

16 Q. Did you have any discussions on
17 November 13th, that day or the next day, with
18 anyone from Mr. Epstein's office about -- 10:24:02
19 specifically about the \$80 million request?

20 A. I recall a telephone call with Harry
21 Beller.

22 Q. And what do you recall from that
23 conversation?

24 A. My recollection was I told Harry that
25 their investment was subject to a lockup agreement
and that there was a schedule of when certain
tranches of their investment were eligible to be
redeemed and that there certainly was no ability
nor right for them to receive an immediate
liquidated cash interest. 10:24:44

Q. Other than the conversation you just
told me about, did you have any other
conversations with Harry Beller about Mr. Epstein
redeeming on November 13th or November 14th, let's
say?

A. I only recall one conversation with
Harry during this time frame with this letter.

Q. From the description of the 10:25:19
conversation, had you already received the letter,
the \$80 million request, at the time you had the
conversation?

A. I believe it was in response to
receiving the letter.

Q. And, for example, that's why you recall
having discussion with him that he could not
immediately redeem the money, which is one of --
what the Exhibit 5 actually requests?

A. Yes. 10:25:41

MR. ARFFA: Objection to form.

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2 Q. Okay.

3 If you look at Exhibit 5, the next page
4 of it, you'll see there's a fax confirm there that
5 shows that it was sent around 6 o'clock at night
6 in the evening.

7 A. Okay.

8 Q. So this conversation with Mr. Beller 10:25:58
9 had to either have occurred later on the evening
10 of November 13th or sometime on the 14th; is that
11 fair?

12 MR. ARFFA: Objection to form.

13 A. I just don't recall specifically what
14 time.

15 Q. I want to make sure I've got your
16 memory of the conversation. You told Mr. Beller
17 that the -- Mr. Epstein's investments were subject
18 to lockups. Do you remember that? 10:26:42

19 A. Yes.

20 Q. And that there was no right to
21 immediately withdraw?

22 A. Yes.

23 Q. What else do you recall from the
24 conversation?

25 A. I recall Harry saying Jeffrey wants his
bait back, and that he'll let the profit ride.

Q. Anything else you recall?

26 A. No. 10:27:22

27 Q. I think you testified that you told him
28 that there was -- did you -- strike that.

29 When you said the investment was
30 subject to a lockup agreement, did you explain to
31 him what the lockup agreement was?

32 A. I don't recall getting into the
33 specifics of the lockup agreement.

34 Q. What did Mr. Beller say to you in
35 response to your saying the investment was subject
36 to a lockup agreement? 10:27:49

37 A. The only thing I can recall Harry
38 saying is that Jeffrey wants his bait back.

39 Q. I think you testified you told
40 Mr. Beller there was a schedule for his -- for --
41 some schedule?

42 A. Yes, that the redemptions were subject
43 to a lockup agreement that had tranches with dates
44 associated with it.

45 Q. PF had Mr. Beller seen the schedule
46 that you were talking about? 10:28:23

MR. O'BRIEN: Objection.

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2 Q. As far as you know?

3 A. I don't know.

4 Q. Did you offer to send him the schedule?

5 A. I don't recall.

6 Q. Did he ask to see the schedule that you
referenced?

7 A. Not that I recall. 10:28:36

8 Q. How did the conversation with
Mr. Beller end?

9 A. I can't recall.

10 MR. SUSMAN: All right. Let's take a
break.

11 THE VIDEOGRAPHER: We're off the
record. The time is 10:28. This is the end
of Tape 1.

12 (Recess taken from 10:28 to 10:43.)

13 (Mr. Indyke joins proceedings.) 10:41:11

14 THE VIDEOGRAPHER: We're back on the
record. The time is 10:43. This is the
beginning of Tape 2.

15 Q. Mr. Lee, after you had the conversation
with Harry Beller that you discussed, did you tell
16 anyone about the conversation?

17 A. I most certainly would have.

18 Q. Would you have told Dan Zwirn?

19 A. Yes.

20 Q. Do you remember what his reaction was? 10:44:09

21 A. No, I don't recall.

22 Q. Did Mr. Zwirn indicate to you whether
he had also talked to Harry Beller?

23 A. I don't recall.

24 Q. I want to focus sort of on the time
period shortly after you got the \$80 million
request. Did you participate in any discussions
25 where Glenn Dubin was present or participated in
some way, about the request?

26 A. I recall at least one but maybe more 10:44:56
than one conversation that Dan had with Glenn, but
I was not on the line. I was sitting in his
office.

27 Q. So you were sitting in Dan's office
while Dan was talking to Glenn?

28 A. Yes.

29 Q. And it was not on a conference call, so
you were just hearing Dan talking to -- his side
of the conversation?

30 A. Yes. 10:45:30

31 Q. When did these conversations occur?

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2 A. Sometime around this date of November
3 13th.

4 Q. And you just happened to be in
5 Mr. Zwirn's office when he called Mr. Dubin up?

6 MR. O'BRIEN: Objection to form.

7 A. I don't recall exactly why I was in his
8 office.

10:45:57

9 Q. And what do you recall from listening
10 to those conversations between Mr. Zwirn and
11 Mr. Dubin about the \$80 million request?

12 A. My recollection was Dan was asking
13 Glenn to have Jeffrey back down.

14 Q. Did Mr. Zwirn make this request to get
15 Jeffrey to back do you know more than once to
16 Mr. Dubin?

17 A. I can't recall.

18 Q. Do you recall the substance of what
19 Mr. Zwirn was saying to Mr. Dubin to get him to
20 get Jeffrey to back down?

10:47:01

21 A. I recall Dan explaining to Glenn or --
22 well, let me rephrase that -- asking Glenn to
23 explain to Jeffrey that he wasn't entitled to
24 immediate payment and that the funds were illiquid
25 in its investment strategy and that people
couldn't just withdraw their money on demand. But
that was in the context of Dan trying to have
Glenn explain that to Jeffrey.

10:47:49

26 Q. Is there anything else you recall from
27 the conversations you listened in on, or at least
28 listened in on the Dan side of the conversation
29 with Mr. Dubin?

30 A. I remember Dan saying the last thing we
31 need is a lawsuit from Jeffrey.

32 Q. After Mr. Zwirn had these calls with
33 Mr. Dubin, did Mr. Zwirn hang up the phone and
34 tell you what Glenn said to him?

35 A. I believe he did.

10:48:37

36 Q. What do you recall Mr. Zwirn telling
37 you Mr. Dubin had said to him on the call?

38 A. That I don't remember exactly.

39 Q. Just so I'm clear, is it you recall one
40 call or two calls where you were listening to the
41 Zwirn side of a conversation with Mr. Dubin about
42 the \$80 million request?

43 A. I recall more than one call, but I
44 can't remember if it was two, three, four.

45 Q. It may have been multiple calls that
46 you recall listening to, at least sitting in the

10:49:08

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2 office listening to, with Mr. Dubin about the 80
3 million?

4 A. As I think about it, I think there was
5 some iteration in the process.

6 Q. This series of calls occurred after you
7 received the written demand for \$80 million or
8 before? 10:49:37

9 A. There may have been a call before
10 receiving the letter having to do with Jeffrey
11 being upset.

12 Q. As I understood your testimony earlier
13 was that until you got the \$80 million written
14 request you were unaware that Mr. Epstein wanted
15 to withdraw his money; is that right?

16 A. That's my recollection.

17 Q. Am I correct that the calls that you
18 would have listened to between Mr. Zwirn and
19 Mr. Dubin about Mr. Epstein's request to withdraw
20 money must have occurred after you got Exhibit 5? 10:50:18

21 MR. O'BRIEN: Objection to form.

22 A. With regard to the 80 million request,
23 that would be my recollection.

24 Q. Do you recall that -- had Mr. Epstein
25 made some other different request to withdraw
26 money prior to the \$80 million request?

27 A. I don't recall Mr. Epstein making a
28 withdraw to -- or making a request to withdraw
29 money from the funds prior to this. 10:51:01

30 Q. During the conversations that you
31 listened to with Dan and Glenn, did Mr. Zwirn ever
32 reference any conversations that he had had with
33 Mr. Epstein?

34 MR. ARFFA: Objection to form.

35 Q. About withdrawing money.

36 A. Not about withdrawing money. I don't
37 recall any conversations that Dan relayed to me.

38 Q. Did you participate in any
39 conversations with Chris Swan about Mr. Epstein's
40 withdraw request in the November 2006 time period?
41 By that I mean any -- were you a participant in
42 any conversation where Chris Swan was present? 10:51:59

43 MR. O'BRIEN: Can you just terminate
44 the question to be that as a whole?

45 MR. SUSMAN: Yes.

46 Q. During November 2006 do you recall
47 participating in any discussions where Chris --
48 about the \$80 million request where Chris Swan was
49 present? 10:52:26

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2 MR. SIFFERT: Again, not privileged
3 conversations.

4 MR. SUSMAN: It can be either/or. I
5 just want to know who was there.

6 A. Many times there were multiple people
7 in the room. I can't recall specifically any time
8 Chris was in the room; I can't specifically say he
9 was never in the room. 10:52:48

10 Q. How many conversations can you recall
11 discussions that occurred within the Zwirn
12 operation -- strike that.

13 During November 2006 how many
14 conversations do you recall occurred for the
15 purpose of discussing this \$80 million request of
16 Mr. Epstein's?

17 A. Specifically with regard to this
18 request, I can't recall, but I would say numerous. 10:53:29

19 Q. Just so make sure I'm clear, other than
20 this conversation that you listened to between
21 Mr. Dubin and Mr. Zwirn, were any of those
22 conversations ones where lawyers were not present?

23 A. I can't recall.

24 Q. Did you ever listen to any conversation
25 between Mr. Zwirn and Mr. Epstein about his
26 request to withdraw money during November 2006?

27 A. I don't recall. I don't believe I did.

28 Q. How about any conversation between
29 Mr. Zwirn and Mr. Beller about the \$80 million
30 request? 10:54:25

31 A. I don't recall.

32 Q. Did you take any notes of the
33 conversations that you listened to where Dan was
34 talking to Glenn?

35 A. No.

36 Q. By the way, the conversation that you
37 say you had with Harry Beller about the \$80
38 million request, did you call Mr. Beller or did he
39 call you? 10:54:59

40 A. I believe I called him.

41 Q. How did you know to call him about --
42 let me ask. Did you know who Harry Beller was --

43 A. Yes.

44 Q. -- prior to -- when did you first learn
45 who Harry Beller was?

46 A. I believe sometime in October.

47 Q. Okay. And who told you who he was?

48 A. People in the IR department. 10:55:26

49 Q. And what did they tell you?

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2 A. Dan also told me.
3 That he was cagey, be very careful what
4 you say to him.

5 Q. They also explained to you that
6 Mr. Beller represented Mr. Epstein --

7 A. Yes.

8 Q. -- in some capacity?

10:55:53

9 A. Yes.

10 Q. Did you understand what capacity
11 Mr. Beller represented Mr. Epstein in?

12 A. At that point in time, I thought he was
13 a tax accountant for Mr. Epstein.

14 Q. So after you received Exhibit 5, the
15 \$80 million request, why did you call Mr. Beller
16 up, the tax accountant, to discuss it?

17 A. I recall having had other conversations
18 with Harry prior to this, and so therefore I felt
19 I had a direct relationship with him
20 telephonically.

10:56:24

21 Q. So you had had discussions with
22 Mr. Beller about other matters related to the FTC
23 investment --

24 A. Yes.

25 Q. -- prior to the 80 million?

26 A. Yes.

27 Q. What were those discussions about?

28 A. He wanted to understand -- or wanted to
29 know what the monthly performance was in October,
30 again in early November, and I would explain to
31 him that the nature of the funds' assets being
32 illiquid resulted in our being able to provide
33 performance data lagged substantially.

10:56:46

34 He also asked me a number of questions
35 about New York State-sourced income.

36 Q. So as I understand it, you had had
37 enough conversations with Mr. Beller that you felt
38 like he was your point of contact at FTC, so
39 that's why you called him about the \$80 million
40 request?

10:57:37

41 A. Yes.

42 Q. Did you make any effort to contact
43 Mr. Epstein directly?

44 A. No.

45 Q. Did somebody ask you to call Mr. Beller
46 about the \$80 million request or did you do it on
47 your own initiative?

48 A. I can't recall.

10:58:07

49 Q. Did anybody -- do you recall anyone

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2 talking about calling Mr. Epstein up directly to
3 request him about the \$80 million request?

4 A. I don't recall.

5 Q. So after these calls that you listened
6 to with Mr. Zwirn where he's talking to Mr. Dubin,
7 what do you recall happening next with
8 Mr. Epstein's \$80 million request? 10:58:39

9 A. I recall hearing through Dan, through
10 Glenn, that Jeffrey was very concerned that if he
11 couldn't have his \$80 million right away then the
12 NAV must not be valid. He wanted to understand
13 how he came to value the assets and came up with a
14 net asset value.

15 MR. O'BRIEN: I'm sorry, had you
16 finished your answer?

17 THE WITNESS: No.

18 Q. Sorry. 10:59:29

19 A. And I can't recall specifically whether
20 this occurred before or after the 80 million
21 request. Jeffrey wanted to speak to Harry Davis
22 at Schulte Roth specifically with regard to why
23 Dan's disclosure in early October didn't allude to
24 the items that were in the disclosure in late
25 October, and then that Jeffrey wanted to meet with
26 PwC and Fried Frank to understand the NAV, and
27 that PwC being the auditor would not speak to
28 investors so that we would have Deloitte make a
29 presentation as to how the NAV was calculated. 11:00:29

30 Q. And that meeting was -- a meeting was
31 set up for you to make a presentation to
32 Mr. Epstein; correct?

33 A. Yes, yes, an appointment was made for
34 sometime that following week, which then had to be
35 rescheduled for the Tuesday before Thanksgiving.

36 (Pause.)

37 Q. So at the time the meeting was
38 scheduled, thereabouts, did you understand that
39 Mr. Epstein was -- strike that. 11:01:37

40 At some point was Mr. Epstein's -- his
41 redemption request was still outstanding. He had
42 made it in writing and not retracted it; correct?

43 MR. SIFFERT: Objection to form.

44 MR. ARFFA: Objection to form.

45 Q. At some point did you hear or did you
46 learn that Mr. Epstein was formally going to
47 retract his \$80 million request?

48 MR. O'BRIEN: Objection. 11:02:10

49 Q. Was going to agree to withdraw it?

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2 MR. O'BRIEN: Objection to form.

3 MR. ARFFA: Objection to form.

4 A. I was informed sometime in December of
5 that year, through Dan, through Glenn Dubin, which
6 was a call I did not participate on, that Jeffrey
7 wanted to move or assign Financial Trust's
8 interest on the onshore fund to a newly formed New York C Corp. because of some New York
9 State-sourced income issue he was concerned with
10 and that if we accommodated his request, because
11 the GP could refuse such a request, that the
12 redemption issue would go away. 11:02:47

13 Q. Mr. Zwirn informed you of this
14 agreement that Mr. Epstein had agreed to; you did
15 not participate in it being -- the deal being
16 struck, if you will?

17 MR. ARFFA: Objection to form. 11:03:35

18 A. Correct.

19 Q. You just heard about it second- or
20 thirdhand?

21 A. Yes.

22 Q. And the way Mr. Zwirn described it was
23 that it was some arrangement that had been agreed
24 to between Jeffrey and Glenn Dubin; is that right?

25 MR. O'BRIEN: Objection to form.

26 A. I don't know if "agreement's" the word.
27 I was informed that if we accommodated this
28 request the redemption issue would go away, were
29 the words I remember. 11:03:53

30 Q. When you were informed that, had
31 Mr. Zwirn decided whether to accommodate
32 Mr. Epstein's request to transfer the interest?

33 A. He asked me to look into whether we
34 could do it because they wanted to do it postdated
35 to 1/1/06.

36 Q. And you did look into it; correct?

37 A. Yes. 11:04:29

38 Q. And determined you could do it?

39 A. With certain representations from
40 Financial Trust that we could be comfortable in
41 doing it since we were within the same tax year.

42 Q. And you conveyed that news to
43 Mr. Zwirn -- is that right? -- that in fact you
44 could do -- you could accommodate the request?

45 MR. ARFFA: Objection to form.

46 A. Yes.

47 Q. And did Mr. Zwirn indicate to you that
48 he was then going to accept Mr. Epstein's proposal 11:04:57

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2 that he -- you cardiac date his request to
3 transfer the interest and he would withdraw the
4 redemption -- or the redemption issue would go
5 away?

6 MR. O'BRIEN: Objection to form.

7 A. My understanding was Dan was going to
8 inform Glenn and Glenn would inform Jeffrey.

11:05:21

9 Q. Did your accommodating Mr. Epstein's
10 request to transfer the interest from FTC to
11 JEEPERS, did that take time and effort and money
12 by D.B. Zwirn & Co.?

13 A. It took some time and some effort and
14 some amount of legal fees to outside counsel to
15 document.

16 Q. Okay.

17 Now, when Mr. Zwirn -- strike that.

18 As I understood your testimony,

11:06:12

19 Mr. Zwirn said that if Mr. Epstein would -- if the
20 fund would accommodate Mr. Epstein's request the
21 redemption issue would go away?

22 A. It's not the fund accommodating; it's
23 the GP of the fund.

24 Q. If the GP accommodated Mr. Epstein, the
25 redemption issue would go away; is that right?

26 A. Yes.

27 Q. And that occurred in December, this
28 conversation?

11:06:34

29 A. Yes.

30 Q. So as of December was the redemption
31 issue still there, still alive?

32 MR. O'BRIEN: Objection to form.

33 MR. ARFFA: Objection to form.

34 A. We never thought it was a redemption or
35 valid redemption, so we didn't look at it this
36 way. We just thought it was somebody demanding
37 his money back, which he wasn't entitled to. So
38 that's how we operated.

11:06:57

39 Q. Did you understand that if -- strike
40 that.

41 If Mr. Epstein did not say the
42 redemption issue would go away, was the GP willing
43 to go through this effort to nevertheless
44 accommodate his transfer of his interest?

45 MR. O'BRIEN: Objection to form.

46 MR. ARFFA: Objection to form.

47 A. I don't understand. Can you ask it
48 again?

11:07:40

49 Q. Yeah. As I -- you say that the general

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2 partner accommodated Mr. Epstein's desire to
3 transfer the interest, and Mr. Epstein said that
4 the redemption issue would go away if you
5 accommodated him; right?

6 A. Through Glenn through Dan, yes.

7 Q. Okay.

8 If -- was the reason why -- one of the 11:08:01
9 reasons why you accommodated Mr. Epstein and went
10 through the effort of helping him transfer it
11 because you wanted him to make the redemption
12 issue go away? That was part of the deal, as you
13 understood it?

14 MR. O'BRIEN: Objection to form.

15 A. My recollection is that was the only
16 reason we would have accommodated the request from
17 Mr. Epstein.

18 Q. After the transfer of the interest in 11:08:43
19 December of '06/early '07 is when the documents
20 were signed. Does that sound right to you?

21 A. My recollection is it was executed
22 sometime in late December 2006.

23 Q. After that point in time when was the
24 next time that you heard that Mr. Epstein, if at
25 all, wanted his money back still?

26 A. I received a phone call message from
27 Harry on January 31st, 2007, when I returned. I 11:09:25
28 happened to be walking down the street in London,
29 so that's -- for some reason I have a specific
30 recollection. But he called and said, Where is
31 Jeffrey's money? I said, what do you mean? What
32 are you talking about? He said, Where is
33 Jeffrey's 80 million? I said, You're not entitled
34 to it and we accommodated your request -- transfer
35 request. We were told that if we did that you'd
36 stop making these demands, it would go away. He
37 said, I don't know what you're talking about on
38 these transfers issues. I just know Jeffrey asked 11:09:59
39 me where his 80 million was, so that's why I'm
40 calling you.

41 Q. So after you had this conversation with
42 Mr. Beller -- strike that.

43 What was your reaction to having this
44 call with Mr. Beller where he's saying, I want my
45 80 million, after you had understood Mr. Epstein
46 said it was going to go away?

47 A. I recall being quite angry.

48 Q. So how did you leave things with 11:10:29
49 Mr. Beller once you had this call with him on

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2 January 31st?

3 A. Something along the lines of if you
4 want your money back, you have a lockup agreement
5 and a schedule of redemption dates, and you can
6 exercise it per the agreement.

7 Q. Did you convey the substance of your
8 conversation with Mr. Beller with Mr. Zwirn?

11:10:55

9 A. Yes, of course.

10 Q. What was his reaction?

11 A. Anger.

12 Q. Did he tell you what he was going to do
13 in response to having heard from Mr. Mr. Beller
14 that Mr. Epstein still wanted his 80 million back?

15 A. I believe he was going to call Glenn.

16 Q. This series of calls happened on like
17 January 31st is what you recall?

18 A. (Nods head.)

11:11:36

19 Q. What then happened to the \$80 million
20 request that had been renewed? What's the next
21 thing you recall?

22 MR. O'BRIEN: Objection to form.

23 A. I can't recall whether there were
24 conversations that Dan relayed to me involving
25 Glenn and including his wife, whether they
26 occurred prior to February 14th or shortly
27 thereafter. But I don't recall being specifically
28 involved in any activities or discussions with
29 regard to Epstein until the morning that they sent
30 us a subsequent letter, which I think was on
31 February 14th.

11:12:15

32 Q. And what -- the letter you're referring
33 to is a letter that was sent on February 14th
34 where Mr. Epstein demanded all of his money back?

35 A. Yes.

36 MR. O'BRIEN: Objection to form. The
37 document speaks for itself. But I think we
38 know what letter we're talking about.

11:12:39

39 Q. What caused you to get back involved
40 with Mr. Epstein's withdraw request on the morning
41 of February 14th?

42 A. My recollection is that Harry was
43 berating some of the junior staff in the IR
44 department about receiving some type of schedule
45 and that the schedule had an error on it. And
46 then Dan also -- I think Harry also called Dan and
47 wanted to see the redemption schedule, and I think
48 he wanted to see a comparison of the redemption
49 schedule, the current version, versus whatever had

11:13:47

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2 been sent to him back in November.

3 I also recall a very heated
4 conversation between Dan and Harry where once
5 again I sat in Dan's office but was not on the
6 phone.

7 Q. What do you recall doing on the morning
8 of February 14th regarding Mr. Epstein's
9 redemption? 11:14:34

10 MR. ARFFA: Objection to form.

11 A. I don't recall a redemption on the
12 morning of the 14th. What I recall was Harry
13 verbally abusing our IR staff with regard to
14 gathering certain information. So I decided to
15 run interference and started examining that
16 information, working directly with the staff to
17 make sure I understood what was right or wrong and
18 to make the corrections and to make sure that what
19 was sent to him was correct. 11:15:06

20 Q. And your memory is that the derating
21 or --

22 MR. ARFFA: Verbal abuse.

23 Q. -- verbal abuse of the IR staff had --
24 by Mr. Beller had to do with Mr. Epstein's
25 redemption rights?

MR. ARFFA: Objection to form.

1 A. I don't believe it was with regard too
2 his rights. I think it was with regard to a
3 schedule and an error in a date on that schedule. 11:15:33

4 Q. The schedule was of what?

5 A. It was a schedule of eligible
6 redemption dates and investment tranches eligible
7 for that redemption date.

8 Q. So your memory is that Mr. Beller was
9 berating the staff prior to February 14th about a
10 schedule of redemption dates?

11 A. Yes.

12 Q. And you decided to -- and he was upset
13 that there was some sort of error on that
14 schedule? 11:16:13

15 A. Yes.

16 Q. And so as a consequence you decided to
17 run interference for them and start dealing with
18 Mr. Beller?

19 A. Well, that's -- I almost -- I always
20 tried to run interference with Mr. Beller, because
21 he had a history of being abusive to our junior
22 staff. So on prior occasions I had asked
23 Mr. Beller to only call me and not to call any of
24 11:16:44

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2 our staff members.

3 Q. You mentioned that Mr. Beller had
4 wanted to see a comparison of the current version
5 of redemption schedule versus one he'd received
6 earlier?

7 A. Yes, I recall a request -- I can't
8 recall whether it was before or after Dan had some 11:17:23
9 conversation with Harry -- that we had to send a
10 comparison schedule.

11 Q. Okay.
12 So what did you do on the morning of
13 the 14th with regard to -- strike that.

14 So let's get the chronology right.
15 January 31st you heard from Mr. Beller that
16 Mr. Epstein wants his 80 million back; right?

17 A. (Nods head.)

18 Q. And on the -- at some point did you 11:17:53
19 hear from your staff that Mr. Beller was
20 complaining about some redemption schedule that
21 he'd received prior to February 14th?

22 MR. ARFFA: Objection to form.

23 A. I don't recall Mr. Beller complaining
24 about a redemption schedule prior to February
25 14th. I don't recall.

26 Q. The complaints that Mr. Beller had
27 about the redemption schedule that you're talking
28 about, did those occur on February 14th? 11:18:29

29 A. I believe they did.

30 Q. They occurred in the hours right before
31 you got the letter from Mr. Epstein asking for a
32 full redemption; right?

33 A. I believe so.

34 Q. Now, after you got the February 14th
35 letter, did you participate in any discussions
36 with Mr. -- where Mr. Dubin was present about
37 Mr. Epstein's redemption?

38 A. I don't recall participating in any 11:19:22
39 conversations between Dan and Glenn where I was on
40 the phone line.

41 Q. You did not talk directly to Glenn?

42 A. With regard to Epstein, no.

43 Q. As I understand it, you -- did Dan
44 convey to you the substance of some conversations
45 he had with Glenn about Mr. Epstein's withdraw
46 request during February of 2007?

47 A. I believe so.

48 Q. And what do you recall Mr. Zwrn 11:19:55
49 telling you about those conversations?

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2 A. Just the general context of my
3 recollection is that Glenn and Ava, his wife, were
4 going to try to talk Jeffrey off the ledge, was
5 the term being used in conveying the conversation.

6 Q. Did you ever hear what had come of
7 those conversations?

8 A. I don't recall any resolution to the 11:20:30
9 conversations.

10 Q. Let me talk to you quickly about the
11 Highbridge managed account. Prior to becoming
12 CFO, did you have any involvement with the
13 Highbridge managed account?

14 A. No.

15 Q. Did you make any investments for the
16 Highbridge managed account?

17 A. I would make investments that would be 11:21:21
18 funded by the various funds, which may have
19 included the managed account, but I didn't have
20 any involvement with those allocation decisions.

21 Q. Who made the allocation decisions?

22 A. Prior to October of '06, I believe
23 allocation decisions were the primary
24 responsibility of Perry Gruss.

25 Q. Was there anyone in particular who was
responsible for managing the Highbridge managed
account within Zwirn? Is there someone who that
was their primary task? 11:21:59

A. Prior to October '06, I was not aware
of anyone whose main job was to manage that
managed account.

Q. Do you have any idea what role Glenn
Dubin had in managing the Highbridge managed
account?

A. Prior to October '06?

Q. Uh-huh.

A. No.

Q. When did you first hear that Highbridge 11:22:34
wanted to withdraw its money from the managed
account?

MR. O'BRIEN: Objection to form.

A. At some point between October '06 and
January '07, I was made aware that Highbridge had
exercised an option to freeze 50 percent of their
account, but I can't recall whether that freeze
date was April '05 or April '06.

Q. Did you understand that --

MR. O'BRIEN: Have you finished 11:23:18
answering the question? Have you finished

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2 your answer?

3 THE WITNESS: I haven't finished my
4 answer.

5 I believe they had an option to put a
6 hundred percent of their account into what we
7 call freeze mode, which is very different from
8 a liquidation or redemption, in April '07. We 11:23:38
9 received letters, the same letter addressed to
10 multiple parties at D.B. Zwirn, in January
11 2007 that instructed us to freeze their
12 account and to turn over management of that
13 account to Highbridge.

14 Q. Prior to that request in January of
15 2007, did you have any indication or hint that
16 Highbridge intended to try to have the account
17 actually liquidated or paid out to them or taken
18 away from D.B. Zwirn's role? 11:24:28

19 MR. O'BRIEN: Objection to form. You
20 asked multiple questions there.

21 Q. Let me ask it this way: As I
22 understand it, you heard that Highbridge had asked
23 to freeze part of the account sometime in '06,
24 which meant that D.B. Zwirn would continue
25 managing it?

26 A. Yes, under -- under the agreement,
27 D.B. Zwirn was to manage it, even with a hundred
28 percent of the managed account in freeze mode. 11:24:50

29 Q. And at their discretion could liquidate
30 investments and pay them out, D.B. Zwirn could?

31 MR. ARFFA: Objection to form.

32 A. Would manage out investments.
33 Q. When was the first time you heard that
34 Highbridge wanted to take over immediate control
35 of the account and take it away from D.B. Zwirn?

36 A. Sometime in late January of '07, we
37 received by hand messenger multiple -- a single
38 letter addressed to multiple parties at
39 D.B. Zwirn. 11:25:22

40 Q. Prior to receiving that lettered, did
41 you have any hint that Highbridge was going to
42 take that kind of action of immediately trying to
43 take control of the account?

44 A. No.

45 Q. Were you familiar with -- strike that.
46 As of the end of '06, how did the
47 assets in the Highbridge managed account compare
48 to the assets held by the onshore fund, in terms
49 of the type of investments? Were they identical? 11:25:53

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2 A. No, they were not identical.

MR. ARFFA: Objection to form.

3 A. There was a tremendous amount of
4 overlap in holdings amongst the various funds in
5 the managed accounts with different allocations
6 based upon liquidity and tax issues. So nearly
7 every investment that was in the Highbridge
8 managed account was a participation in a larger
9 investment that were held by other funds of
10 D.B. Zwirn.

11:26:23

7 Q. As I understand it, a big chunk of what
8 was in the Highbridge managed account was an
9 investment in some German housing company that was
10 publicly traded?

9 A. Yes.

10 Q. Did the onshore fund and offshore fund
11 also have investments in that same company or was
12 that something that was unique to the Highbridge
13 managed account?

11:26:52

12 A. There was an investment in both funds
13 in that company.

13 Q. Given the overlap of investments
14 between the Highbridge managed account and what
15 was in the onshore and offshore fund, was there
16 any concern that if you tried to sell the
17 Highbridge -- the assets just in the managed
18 account that that would negatively impact the
19 onshore and offshore funds?

11:27:27

16 MR. O'BRIEN: Objection to form.

17 A. Absolutely. That was of great concern,
18 and that's one of the primary reasons, as I
19 understand it, why the investment management
20 agreements did not allow for immediate withdrawals
21 or liquidation of the Highbridge account and that
22 they would receive proceeds in the ordinary course
23 when realized but that terminating the account had
24 the practical efficacy of not allocating any new
25 investments to the Highbridge account.

11:28:01

21 Q. Would the opposite be true as well,
22 that if you sold a bunch of assets in the onshore
23 fund or offshore fund it could negatively impact
24 the Highbridge managed account?

23 MR. ARFFA: Objection to form.

24 A. It's quite possible.

24 Q. If you had a run on the onshore fund,
25 for example, and you had to liquidate investments
26 to pay investors back, could that cause Highbridge
27 to be unable to sell its assets?

11:28:27

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2 MR. O'BRIEN: Objection to form.

3 A. Well, your question supposes a
4 hypothetical that couldn't happen because of the
5 redemption schedule in terms and lockups and the
6 ability for the general partner to gate, to
7 prevent a run on the bank from investors.

8 Q. If for whatever reason you needed to
9 liquidate assets in the onshore fund, for example,
10 could that make it harder for Highbridge to
11 liquidate its assets? 11:28:53

12 MR. ARFFA: Objection. I think that's
13 asked and answered.

14 A. You're asking me a hypothetical that
15 preconditions or presupposes the answer, so I
16 don't understand your question.

17 Q. I'm asking -- how does my hypothetical
18 presuppose a condition? 11:29:21

19 A. I said presupposes the answer.

20 Q. Which what?

21 A. Well, I interpret your question as
22 saying if it rains I'll get what. So I don't
23 understand your question.

24 Q. Because it follows logically if the
25 onshore fund has to liquidate its assets
26 Highbridge would have problems selling its assets?

27 MR. O'BRIEN: Objection.

28 MR. ARFFA: Objection. 11:29:39

29 Q. Is that right?

30 A. Not necessarily have problems selling,
31 but it would potentially cause material harm in
32 value to the Highbridge assets.

33 Q. Because they're marked to market, and
34 if you have to have a fire sale of these assets,
35 that would then impact the value of the Highbridge
36 assets that they still held; is that right?

37 MR. O'BRIEN: Objection to form.

38 A. That's a logical conclusion to your
39 hypothetical question. 11:30:00

40 (Discussion off the record.)

41 (Exhibit 60, DESCRIPTION, marked for
42 identification.)

43 Q. I'm going to show you Exhibit 60.

44 (Exhibit 61, DESCRIPTION, marked for
45 identification.)

46 Q. While we're on that, I'm going to show
47 you what we're marking as Exhibit 61.

48 Q. Do you recognize Exhibit 60 and 61? 11:31:11

49 A. Vaguely.

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2 Q. Are the Exhibits 60 and 61 you
e-mailing to yourself these e-mails?

3 A. Oh, when at some point we were notified
4 there'd be potential litigation or arbitration, I
put together information for purposes of having it
5 handy by going through the D.B. Zwirn e-mail
system with certain screens. 11:32:11

6 Q. So in January of 2010, you had access
to everyone's -- or at least Mr. Zwirn's e-mail
7 account at Highbridge -- I mean at D.B. Zwirn; is
that right?

8 A. Yes, I had access to the entire
D.B. Zwirn e-mail system.

9 Q. Including the e-mails that were not
yours?

10 A. Yes.

11 Q. And you went -- and what did you do? 11:32:37
You went through those e-mails trying to find
12 e-mails that you thought might be relevant to a
dispute with Mr. Epstein?

13 MR. ARFFA: Objection to form.

14 A. Yeah, I think so.

15 Q. These are -- right, these are two
e-mails from 2006 between Mr. Dubin and
16 Mr. Zwirn -- right? -- that you originally didn't
have any involvement in; right?

17 A. Correct. 11:33:07

18 Q. So what do you go back into the system
and search for Mr. Dubin's name and Mr. Epstein's
19 name?

20 MR. O'BRIEN: Objection to form.

21 Q. Let me strike that.

22 A. I can't remember exactly how I did it.

23 Q. How did you locate these e-mails, even?

24 A. There was -- there was a program on our
Outlook system where I could search by sender,
25 keywords, date ranges, a whole host of different
parameters. 11:33:35

26 Q. How much time did you spend searching
through these old e-mails?

27 A. I don't recall.

28 Q. Was it days?

29 A. I don't recall in terms of how many
days I spent or how much time per day I spent.

30 Q. Was it a big job? Did it take you many
hours?

31 A. I don't -- I didn't consider it a big 11:34:09
job. I did not -- I don't recall it taking up a

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2 significant amount of time.

3 Q. Did someone ask you to do this?

4 MR. O'BRIEN: Objection to form.

5 Objection on privileged grounds, if there is a
6 privileged response to that.

7 THE WITNESS: Yeah, there is.

8 Q. Did counsel ask you to do this or did 11:34:30
9 you do it on your own initiative?

10 MR. O'BRIEN: I'm going to object to
11 that question on privileged grounds. You can
12 answer the question as to whether or not you
13 did it on your own initiative.

14 Q. Let me ask it this way: Were you given
15 a specific instruction by somebody to do this,
16 search through these e-mails? It's a "yes" or
17 "no."

18 A. It's not a "yes" or "no." I 11:35:08
19 volunteered that I could gather information to
20 counsel. Counsel said that would be good.

21 MR. O'BRIEN: Stop there.

22 THE WITNESS: Yeah.

23 (Exhibit 62, DESCRIPTION, marked for
24 identification.)

25 Q. Let me show you Exhibit 62. Have you
seen Exhibit 62 before?

1 A. I can't recall if I saw this specific 11:36:10
one.

2 Q. Did you participate in preparing state
of the firm talking points that was going to be
given on or about October 30th, 2006?

3 A. I recall being frequently active in
prepare state of the firm talking points. I do
not recall if I participated in this specific date
's talking points.

4 Q. Would Mr. Zwirn be the one to sort of
give the state of -- strike that.

5 Were these talking points for some 11:36:37
meeting of the firm employees?

6 A. It was common practice once a month on
Monday mornings to have a state of the firm
conference call, which could be attended in person
in the main conference room.

7 Q. And Mr. Zwirn would -- would he make
the presentation or would you?

8 A. Dan would.

9 Q. Number 2 on the talking points says 11:37:07
there have been some rumors about our firm needing
to sell assets in order to meet a large investor

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2 redemption. These rumors are false.

Do you know what that's referring to?

3 A. Given that this was the Monday after we
4 had disclosed to the world our talking points
5 about the issues and the internal investigation we
6 were about to undertake, there were lots of rumors
7 out there, including pending newspaper articles
8 that we were aware were being prepared and made
9 those rumors that were false.

11:37:41

Q. So in other words there wasn't some
7 specific rumor about you needing to sell assets to
8 meet a large investor redemption?

8 A. There may have been. But as I said,
9 there were multiple rumors flying around that
weekend.

10 (Exhibit 63, DESCRIPTION, marked for
11 identification.)

11:38:23

11 Q. I'm going to show you real quick
12 Exhibit 63. You will recognize Exhibit 63 was the
13 promissory note from the onshore fund to the
14 offshore fund for the \$108 million?

13 A. Yes, I recognize this.

13 Q. And you signed it?

14 A. Yes.

14 Q. The demand note, it recites that there
15 was a loan made by lender -- it's on the first
16 page -- that there was a loan made by the lender
17 to the borrower on June 13th, 2005, the maximum
18 aggregate principal amount of such loan at the
19 time being \$175 million.

11:38:58

17 Do you see that on there?

18 A. Yes.

18 Q.

19 MR. SUSMAN: It's in the defined terms,
20 Bill.

20 MR. O'BRIEN: Thank you.

20 Q. Was there actually some loan made on
21 June 13th, 2005, of \$175 million?

11:39:20

21 MR. ARFFA: Objection to form.

22 A. No, I think the 175 was sort of the
23 maximum that was outstanding. I think the loan
24 that was made in June of '05 was 78 million.

23 Q. On the Schedule I that you're looking
24 at, is that your handwriting?

24 A. Yes.

25 Q. Where it says notation made by DL,
that's you?

11:40:05

25 A. Yes.

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2 Q. The information that's on Schedule I is
information that you got from whom?

3 A. Bob Sumberac.

4 Q. Got you.

5 If you could, just turn to -- there are
these letter agreements at the end of Exhibit 63
dated October 31st, 2006.

11:40:35

6 A. Yes.

7 Q. I just want to run through real quick,
there are various entities. There's D.B. Zwirn &
Co., L.P.. and that's the manager?

8 A. Yes.

9 Q. And there's also something called
D.B. Zwirn Partners LLC, which was the general
partner of the fund?

10 A. Of the onshore fund.

11 Q. Of the onshore fund.

11:40:57

12 And so D.B. Zwirn & Co., LLP, the
manager, received management fees from the onshore
fund; is that correct?

13 A. I'm sorry?

14 Q. Did D.B. Zwirn & Co. LLP --

15 A. L.P.

16 Q. -- L.P., I'm sorry, receive management
fees from the onshore fund?

17 A. Correct.

18 Q. And the incentive fee went to D.B.
Zwirn Partners, LLC?

11:41:21

19 A. There was an incentive allocation that
went to LLC.

20 Q. You were the CFO of both of those
entities; is that right?

21 A. I can't recall specifically if I was
the CFO of LLC, but I was the CFO of L.P. at that
point in time.

22 MR. SIFFERT: It's been an hour.

23 MR. SUSMAN: Has it? Do you want to
break or do you want to go to 12:30 and have
lunch? What's your reference? It's kind of
of up to you.

11:41:58

24 MR. SIFFERT: I don't think we should
go for another 45 minutes.

25 MR. SUSMAN: Let's take a break.

THE WITNESS: I'm fine.

THE VIDEOGRAPHER: We're off the
record. The time is 11:42. This is the end
of Tape 2.

11:42:17

(Recess taken from 11:42 to 11:50.)

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2 THE VIDEOGRAPHER: We're back on the
3 record. The time is 11:50. This is the
4 beginning of Tape 2 -- 3, sorry.

5 Q. If you could, on Exhibit 63, which is
6 the promissory note from the onshore to the
7 offshore fund, it recites in the first paragraph
8 that the -- it says little I, the outstanding
9 principal amount of the loan payable on the
10 earlier to occur of, and it says written demand by
11 lender and December 31, 2006, maturity date. And
12 then it little 2 is the interest is repayable. 11:51:21

13 Was it the expectation when you entered
14 into this prom sorry note that the loan, the 108
15 million, would be paid by December 31, 2006?

16 MR. ARFFA: Objection to form.

17 A. Yes.

18 MR. ARFFA: Harry, can I also ask, 11:52:00
19 there does not appear to be a Bates stamp on
20 there. I don't think that --

21 MR. SUSMAN: Yeah, because it's like a
22 TI F image. If you notice the signatures and
23 handwriting, for some reason when it prints
24 out, it doesn't come with a Bates number.
25 It's on one of your CDs.

MR. O'BRIEN: This was produced by us?

MR. SUSMAN: Yes.

26 (Exhibit 64, DESCRIPTION, marked for 11:52:25
27 identification.)

28 Q. Let me show you Exhibit 64. This is an
29 unsigned version of a promissory note to --
30 between the onshore fund and Highbridge for \$50
31 million. Do you know was a note like this
32 actually executed?

33 A. Yes, I believe it was.

34 Q. Again, this states a maturity date of
35 the earlier to occur of of December 31, 2006, was
36 listed. Again, was it your expectation that this 11:53:00
37 50 million would be repaid by the end of the year?

38 A. Yes.

39 MR. ARFFA: Objection to form.

40 Q. So what happened? Why wasn't the
41 offshore fund repaid and Highbridge repaid by
42 year-end 2006?

43 A. My recollection is that both of these
44 loans were repaid by the end of 2006.

45 Q. Were new loans put in place?

46 A. Yes. 11:53:22

47 Q. So they were refinanced, in effect?

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2 A. No.

3 Q. What was the difference between the old
4 notes and the new?

5 A. In conjunction with our internal
6 reviews and working with Deloitte, we found that
7 there were other amounts owed from the onshore
8 fund to other funds, and those were documents as
9 notes as well. 11:53:48

10 Q. Actually, I probably marked some of
11 these. Hold on.

12 (Pause.)

13 Q. By the way, when you participated in
14 the investor calls, there were scripts? When you
15 listened there was a script that Mr. Zwirn was
16 supposed to follow?

17 A. Yes.

18 Q. Did you participate in drafting or
19 developing those scripts? 11:54:50

20 A. Yes.

21 Q. Do you know who else participated in
22 drafting those scripts?

23 A. There were a very large number of
24 people who participated in those scripts,
25 including multiple counsels.

26 Q. Do you know whether Glenn Dubin was
27 involved in preparing the scripts?

28 A. I recall that there was a script
29 specifically for Glenn. I do not recall if Glenn
30 made any comments on that crypt. 11:55:24

31 Q. You mean a script that Glenn was
32 specifically supposed to use? For what purpose?

33 MR. ARFFA: Objection to form.

34 A. To the extent he received calls from
35 investors or other parties asking about the Zwirn
36 disclosures.

37 Q. Was it somehow different project the
38 script that Mr. Zwirn was going to use? 11:55:55

39 A. My recollection was that it was
40 consistent with the Zwirn script but less detailed
41 so that if detailed questions occurred Glenn could
42 refer them back to Dan.

43 Q. Were there any particular investors
44 that you anticipated might call Mr. Dubin or who
45 Mr. Dubin was tasked with calling?

46 MR. O'BRIEN: Objection to form.

47 A. I don't recall us tasking Mr. Dubin
48 with making any calls, but we believed he would
49 receive a large number of calls because many of
50 11:56:29

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2 the important investor relationships were
3 originally sourced through Glenn.

4 Q. By the way, were you ever told when
5 Mr. Dubin first heard object these issues
6 regarding the financing of the airplane or the
7 payment of management fees?

8 A. Yes, I do recall shortly after Perry's 11:56:58
9 termination Lawrence Cutler telling me that they
10 had reviewed the results of the Schulte
11 investigation into those two issues at some point
12 in mid to late September and that Glenn's
13 conclusion was that Perry had to be fired.

14 Q. Did Mr. Cutler tell you anything more
15 about what Mr. Dubin's reaction was to hearing
16 about the use of investor funds to finance the
17 plane or prepayment of management fees?

18 A. That's about the only thing I can 11:57:49
19 remember.

20 Q. Let me show you what's been previously
21 marked as Exhibit 38. Oh, wait. Can I see
22 Exhibit 38 real quick? I just want to make sure
23 it's the same.

24 A. (Handing.)

25 Q. It is. Perfect. Sorry.

26 This is a series of e-mails in the late
27 morning of November 13th. Mr. -- first of all,
28 who is Anne Colice? 11:58:44

29 A. She was a junior assistant to Dan's
30 primary assistant.

31 Q. Was she just Dan's assistant or did she
32 work as anyone else's assistant?

33 A. I think just Dan.

34 Q. And she sends an e-mail to Mr. Zwirn
35 that says that Harry Beller has called or these on
36 the phone and that then that he called and it was
37 very important. Mr. Zwirn then forwarded that to
38 you. 11:59:15

39 Did you have any discussions with
40 Mr. Zwirn after you got this e-mail about what
41 Mr. Beller was calling about?

42 A. I don't recall.

43 Q. You -- upon getting the e-mail you then
44 forward it to Elise Hubsher. Why did you do that?

45 A. I don't recall.

46 Q. You have here a note: Need their
47 redemption schedule. Why were you asking her for
48 Mr. Epstein's redemption schedule? 11:59:46

49 A. I just don't recall.

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2 Q. Let me show you what's been previously
3 marked as Exhibit 39. Do you recognize Exhibit 39
4 as Ms. Hubsher sending you a redemption schedule
5 for Financial Trust?

6 A. I don't see an e-mail from Ms. Hubsher
7 to me here.

8 Q. If you look at the top, it's -- oh, is 12:00:32
9 this different? Maybe.

10 MR. O'BRIEN: Let me see.

11 Q. Sorry, let me show you Exhibit 40. I
12 apologize.

13 A. Okay.

14 Q. Exhibit 40, do you recognize it as an
15 e-mail from Ms. --

16 MR. ARFFA: Sorry, which?

17 MR. SUSMAN: This is Exhibit 40.

18 MR. ARFFA: What is the Bates stamp? 12:01:00

19 MR. SUSMAN: The Bates stamp is

20 DBZCO-FTC_2114 is the first page.

21 MR. ARFFA: That's Exhibit 40?

22 MR. SUSMAN: That's Exhibit 40.

23 Q. Do you recognize Exhibit 40 as
24 Ms. Hubsher then sending you this redemption
25 schedule for FTC?

MR. ARFFA: I just want to put on the
record, as we did last time, where the names
of other investors appear, we do ask that that 12:01:18
be treated as confidential.

MR. SIFFERT: It's on the first page of
the document.

A. I see what's on top here. I don't
recall specifically this e-mail.

Q. Do you know what you would have --
why -- what you would have been doing with the FTC
redemption schedule on November 13th, 2006, during
the day?

MR. O'BRIEN: Objection to form. 12:01:50

A. I can't recall specifically this
e-mail.

Q. Do you recall reviewing this redemption
schedule on November 13th, 2006?

A. I don't actually recall reviewing it,
but that doesn't mean I didn't.

Q. Okay. Do you recall sending it to
anyone else?

A. No.

Q. Did you ever specifically send this 12:02:17
redemption schedule to Harry Beller on or about

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2 November 13th, 2006?

3 A. I just don't recall.

4 Q. In your reviewing of the old e-mails
5 that are archived at D.B. Zwirn, have you ever
6 seen any evidence of anybody sending this
7 redemption schedule to Harry Beller on or about
8 November 13th, 2006?

12:02:47

9 A. I don't recall.

10 Q. Let me just for ease show you again
11 another copy of Exhibit 5. You've got it there.

12 A. Okay.

13 Q. That's the \$80 million request. You
14 see there's -- the first sentence of it begins, As
15 per our conversation, I hereby instruct you to
16 liquidate an interest in the amount of \$80
17 million?

18 Did you discuss with Mr. Zwirn what
19 conversation Mr. Epstein was referring to?

12:03:26

20 A. I remember Dan denying that he ever
21 promised Jeffrey \$80 million. But I don't recall,
22 prior to receiving -- or seeing a copy of this
23 letter, Dan mentioning a conversation with Jeffrey
24 regarding 80 million.

25 Q. After you got the letter, did you have
any conversations with Mr. Zwirn about whether he
had had some conversation with Mr. Epstein about
\$80 million?

12:04:17

26 A. As I stated, I remember Dan denying
27 that he was ever promised Jeffrey \$80 million.

28 Q. How did it come up that Mr. Zwirn was
29 denying that he ever promised Mr. Epstein 80
30 million? Why did Mr. Zwirn say that to you?

31 MR. ARFFA: Objection to form.

32 A. Because it's in the letter.

33 Q. And so did you ask Mr. Zwirn
34 specifically: Did you promise Mr. Epstein 80
35 million?

12:04:55

36 A. I can't remember exactly how I phrased
37 the question, but I do recall saying why would
38 Jeffrey think he was entitled to \$80 million,
39 something along those lines.

40 Q. Dan said in response what?

41 A. Absolutely there's no way in the world
42 I would have promised that. It's completely
43 illogical. He's not entitled to it.

44 Q. Correct you thought Mr. Epstein's
45 requests, these redemption requests, he sent in
were bogus; is that right?

12:05:32

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2 MR. O'BRIEN: Objection to form.

3 A. I'm not sure of the ultimate definition
4 of bogus, but we didn't think that they were valid
5 redemption requests.

6 (Exhibit 65, DESCRIPTION, marked for
7 identification.)

8 Q. Let me show you Exhibit 65. This is an 12:05:53
9 e-mail from you to the auditors and Mr. Liebowitz.
10 You say, With you forward to our audit partner the
11 correspondence between us and Epstein re his bogus
12 redemption request; right?

13 A. Uh-huh.

14 Q. I assume you include within the bogus
15 redemption requests Exhibit 5; right? That's the
16 \$80 million letter that's here (indicating).

17 A. I'm not sure whether I'm referring to 12:06:26
18 that or to the February letter.

19 Q. Well, you thought they both were bogus,
20 that's why you say his bogus redemption requests;
21 right?

22 MR. SIFFERT: May I just have a moment
23 with counsel?

24 A. I'm not sure why this isn't privileged.
25 (Discussion off the record.)

26 Q. Put aside Exhibit 65. We'll deal with
27 it later. Mr. Lee, you thought Exhibit 5 was 12:07:09
28 bogus -- right? -- the 80 million?

29 A. Apparently I did at the time I wrote
30 this e-mail.

31 Q. Yeah, okay.

32 Q. Did you have any discussions with
33 Mr. Zwirn about putting in writing to Mr. Epstein
34 immediately after you got the \$80 million request
35 something saying this is bogus or silly or
36 ridiculous or you're lying when you suggest,
37 anything to that effect?

38 MR. ARFFA: Objection to form. 12:07:37

39 Q. Did y'all discuss that?

40 A. I believe we did, but most of those
41 conversations were privileged.

42 Q. Were any of them not privileged?

43 A. It's possible, but I can't recall the
44 specifics of ones that were or were not.

45 MR. O'BRIEN: Can I say with regard to 12:08:07
46 Exhibit 65 an issue comes up it appears to be
47 a privileged communication that should not
48 have been produced. So I'm just putting you
49 on notice right now of that, and we will

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2 follow up with that. I just wanted to give
3 you notice of that immediately.

4 MR. SUSMAN: We'll deal with it. I'm
5 not quite sure how that could be privileged,
6 but no point in fighting about it.

7 Q. So am I correct, Mr. Lee, that without
8 violating the privilege you can't explain to me 12:08:34
9 why D.B. Zwirn didn't respond in writing to
10 Mr. Epstein's \$80 million request at the time and
11 explain it was invalid or anything to that effect?

12 MR. ARFFA: Objection to form.

13 MR. O'BRIEN: Objection to form.
14 Without revealing privileged
15 communications, if you can answer that
16 question, if you understand the question, you
17 can.

18 A. The conclusions as to why we didn't 12:09:06
19 respond were based upon legal advice.

20 Q. Now, you mentioned the meeting with
21 Mr. Epstein where it was canceled, set up. I'm
22 going to show you, to refresh memory, Exhibit 66.

23 (Exhibit 66, DESCRIPTION, marked for
24 identification.)

25 Q. You recall that you had flown in from
26 Florida to attend the meeting, and it was canceled
27 while you were in the air?

28 A. Yes, I remember that pretty vividly. 12:09:36

29 Q. You were on Thanksgiving break with
30 your family?

31 A. (Nods head.)
32 (Exhibit 67, DESCRIPTION, marked for
33 identification.)

34 Q. Let me show you Exhibit 67. This is
35 the day -- you sent an e-mail to Mr. Zwirn I guess
36 the day the meeting was canceled November 21st
37 saying did you end up chatting with him at 10 a.m.
38 today, Mr. Epstein, and then Mr. Zwirn responds to 12:10:17
39 you; correct?

40 A. Yes.

41 Q. Okay. And Mr. Zwirn at the end says
42 bottom line we are showing extreme fealty, which
43 is what he wants. I realize the absolute bizarre
44 nature of this response, but critical to keep him
45 capital.

46 Did you understand why Mr. Zwirn
47 thought it was -- why Mr. Epstein wanted you to
48 show extreme fealty to him? 12:10:48

49 MR. ARFFA: Objection to form.

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2 A. Can you ask the question again?

3 Q. Yeah. Mr. Zwirn is saying, We're
4 showing extreme fealty, which is what he wants.

5 A. Okay. Yeah, I read that.

6 Q. Did you have any understanding where
7 Mr. Zwirn got that idea from?

8 A. We -- Dan believed that Jeffrey liked 12:11:24
9 to be kowtowed to, was a comment he had made to me
10 before. So that would be consistent with that
11 statement.

12 Q. So Dan believed that he -- what Jeffrey
13 really wanted was just for Dan to kowtow to him?

14 MR. O'BRIEN: Objection.

15 Q. Is that --

16 MR. O'BRIEN: Objection to form.

17 A. Ask the question again.

18 Q. Are you saying did you understand that 12:11:59
19 Dan thought it was necessary to kowtow to Jeffrey?

20 MR. ARFFA: Objection to form.

21 A. Yes, I believe it was -- Dan believed
22 it was necessary to kowtow to Jeffrey.

23 Q. Did you understand why Dan said, I
24 realize the absolute bizarre nature of this
25 process but critical to keep him happy.

26 Why was it critical to keep Mr. Epstein
27 happy?

28 A. In light of our announcements and 12:12:27
29 negative press and pending SEC investigation, we
30 thought the last thing we needed was litigation
31 from a major investor who was constantly in the
32 press himself for his other issues.

33 Q. Now I want to show you what have been
34 previously marked as Exhibit 31. Then I'm going
35 to show you what I marked as Exhibit 68.

36 (Exhibit 68, DESCRIPTION, marked for
37 identification.)

38 MR. O'BRIEN: I'm just going to look at 12:13:07
39 Exhibit 31, which I don't have a copy of.

40 MR. SUSMAN: Sure.

41 Q. Do you see that -- am I -- does it look
42 to to you what Exhibit 68 is you forwarding on an
43 e-mail that you had received from Cara Howe on
44 October 18th, 2006, titled "redemption schedule"?

45 A. That would be a logical conclusion.

46 Q. And if you look at Exhibit 31, isn't
47 that the original of the e-mail that you received
48 on October 18th, 2006, from Ms. Howe? 12:13:52

49 A. I have no reason to believe that this

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2 is -- that the answer is not yes.

3 Q. Okay. Why were you -- and if you look,
4 Exhibit 31 is a spreadsheet that shows a --

5 MR. ARFFA: Do you have 31?

6 MR. SUSMAN: I don't have copies with
7 me. It was previously marked. I don't have a
8 copy myself. 12:14:15

9 Q. It's a spreadsheet that shows the
10 redemption rights of various investors.

11 A. Yes.

12 MR. O'BRIEN: When he asks questions
13 like that about a thick document, at least
14 take the time to look at it to see whether
15 it's correct.

16 Q. Who is Brian ray burn CK?

17 A. Brian was a mid level lending officer
18 at Citibank and was part of the group that was in
19 charge of the loan that Citibank had made to
20 D.B. & Co., the management company. 12:14:41

21 Q. This was a loan that allowed the
22 management company to fund its operations; right?

23 A. It was a working capital loan.

24 Q. For the management company itself?

25 A. For the management company.

26 Q. To pay the management company expenses;
27 right?

28 A. Well, money's fungible, but yes, it was
29 a loan to the management company. 12:15:17

30 Q. Why were you sending to Mr. Ray burn
31 this redemption schedule for the redemption -- for
32 the potential redemptions of investors in the
33 funds themselves?

34 A. Because that would have a material
35 impact on the potential revenue of the management
36 company if its assets under management were to
37 decline. And so therefore as part of his
38 diligence, he presumably wanted to have a sense of
39 what the AUM profile would look like to support
40 our revenue projections to support the loan. 12:15:51

41 Q. So, in other words, was Citi attempting
42 to see in November of 2006 or to make sure that
43 investors could not withdraw in large numbers from
44 the funds, which would have a bad impact on the
45 management company?

46 MR. O'BRIEN: Objection to form.

47 MR. ARFFA: Objection to form.

48 A. I can't recall specifically why he
49 wanted to see it, but in conjunction with his
50 12:16:20

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2 duties as a loan officer, it would make sense for
3 him to look at something so material to the
4 operations of the management company.

5 Q. We talked earlier about the transfer
6 from FTC to JEEPERS. You were involved in
7 documenting the assignment from FTC to JEEPERS;
8 correct? 12:16:58

9 MR. ARFFA: Objection, asked and
10 answered, I believe.

11 A. I had some level of supervisory
12 involvement of David Proshan, who was dealing
13 directly I believe with Darren Indyke.

14 Q. Do you recall that there was a release
15 in the assignment that was originally drafted?

16 A. I recall specifically asking for a
17 release from Financial Trust and JEEPERS that the
18 reason for their transfer or whatever reasons for
19 their transfer would have no negative implications
20 to D.B. Zwirn & Co. because we had no idea as to
21 specifically why they were trying to make this
22 confer. 12:17:38

23 (Exhibit 69, DESCRIPTION, marked for
24 identification.)

25 Q. Let me show you what I am going to mark
as Exhibit 69. Do you recognize this as draft of
an assignment between FTC and JEEPERS that
Mr. Proshan sent to Mr. Epstein's representative
Mr. George Delson, I believe was his name? 12:18:28

1 A. I don't recognize the
gdbassociates@aol.com.

2 Q. Do you recognize this is a draft
assignment?

3 A. It appears to be.

4 Q. If you look on page 3, it's F -- it's
5 DBZCOFTC_680 is the Bates number you see there is
6 a clause that says assignor and assignee does
7 hereby release and forever discharge the
8 indemnified persons from all claims, debts,
9 liabilities, demands, and it continues on. Okay?
10 With respect to arising out of this interest or
11 assignment. Do you see that? That's the release
12 that was proposed? 12:19:31

13 A. That was the release that was proposed
14 by David Proshan.

15 Q. If you turn to the paragraph before on
16 page DBZCOFTC_679, there's a paragraph: Each of
17 assignor and assignee does hereby agree to jointly
18 and severally to indemnify and hold harmless the
19 12:20:04

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2 fund; right? That's an indemnification. You know
3 the difference between indemnification and
4 release; right?

5 A. Yes, I do.

6 MR. ARFFA: Objection to form.

7 Q. So you asked to be indemnified in case
8 somehow you guys got in trouble because of the
9 assignment; right? 12:20:21

10 A. When you say "we," to whom are you
11 referring?

12 Q. DBZ.

13 A. Well, I can't speak to what was
14 motivating Mr. Proshan on this draft to put these
15 clauses in other than there would be an obvious
16 benefit if JEEPERS were to agree to it.

17 (Exhibit 70, DESCRIPTION, marked for
18 identification.) 12:21:00

19 Q. Let me show you Exhibit 70. After the
20 assignment, the draft, was sent to Mr. Epstein,
21 Mr. Epstein objected to the release -- right? --
22 and Mr. Proshan informed you and Mr. Dubin of
23 that?

24 A. Yes, I recall this.

25 Q. Was the reason for the release that you
had proposed in part to make sure that Mr. Epstein
couldn't resurrect his \$80 million request?

MR. O'BRIEN: Objection, asked and
answered. 12:21:44

A. David acted --

MR. O'BRIEN: Just answer the question.

A. I don't know what the question is. You
made a statement. Do you want to ask a question?

Q. No, it's a question. Is one of the
reasons why you sought to get a release as part of
this assignment was to make sure that Mr. Epstein
could not resurrect the \$80 million request, that
it had gone away for good? 12:22:15

A. When you say "you," are you referring
to me?

Q. I'm talking about the entity for which
you were the CFO.

A. Once again, I do not know -- my
recollection is until I saw this I wasn't aware
that David Proshan was asking for this.

Q. You have no memory of asking -- that
you asked for a release or what happened with the
release? 12:22:42

A. No, I have a memory that I thought he

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2 was asking for too much, and I instructed him --

3 MR. O'BRIEN: Just -- you can talk
4 about -- inches okay.

5 MR. O'BRIEN: -- what you thought, but
6 in terms of communications with counsel, do
7 not answer.

8 A. My thought when I saw this was that 12:22:58
9 this was overreaching.

10 Q. Asking for the release?

11 A. Yes.

12 Q. And why did you think it was
13 overreaching?

14 A. I just thought it was.

15 Q. You can't remember any reason why other
16 than just you thought it was overreaching? That's
17 it?

18 MR. ARFFA: Objection to form. 12:23:38

19 A. My sense of what was fair to ask for in
20 light of what this accommodation was to accomplish
21 that asking for a blanket release on anything and
22 everything was just too much.

23 Q. Well, did you want to get a release, at
24 a minimum, of Mr. Epstein's \$80 million request?

25 A. That falls into privilege.

26 Q. Did you have any direct discussions
27 with Mr. Epstein or any of his representatives
28 about the terms in the release should be, or the
29 assignment, rather, should be? 12:24:29

30 MR. O'BRIEN: I'm sorry, which one are
31 we asking about?

32 MR. SUSMAN: The assignment.

33 A. I do not recall having any
34 conversations with Epstein or his representatives.

35 Q. In addition the assignment, do you
36 recall that JEEPERS filled out a subscription
37 document, a new subscription agreement?

38 A. I don't recall that one. 12:25:15

39 (Exhibit 71, DESCRIPTION, marked for
40 identification.)

41 Q. I show you Exhibit 71.

42 MR. ARFFA: What's the number on this?

43 MR. SUSMAN: It's Exhibit 71.

44 (Discussion off the record.)

45 Q. Do you recall reviewing Exhibit 71 at
46 any point in time?

47 A. No.

48 (Exhibit 72, DESCRIPTION, marked for
49 identification.)

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2 Q. Let me show you what's been previously
3 marked but I'm going to mark it again. It's
4 Exhibit 72. Remember you said earlier that
5 Mr. Beller had been calling up prior to February
6 14th and berating people about the roll justify
7 schedule or redemption schedule?

8 MR. O'BRIEN: Objection to form. 12:27:18
9 That's not my recollection of what his
10 testimony was.

11 MR. SUSMAN: Yeah.

12 A. No, my recollection of my testimony is
13 that he was berating on February 14th. I think I
14 stated there were prior occasions he had berated
15 people and he had been instructed to speak only to
16 me.

17 Q. Does Exhibit 73 refresh your memory
18 that what he had been berating people about and 12:27:39
19 what had to do with the capital balances and the
20 numbers he was getting and that in response to
21 that on February 12th you asked that he be
22 instructed to only speak to you?

23 MR. ARFFA: Objection to form.

24 A. That does refresh my memory.
25 (Exhibit 73, DESCRIPTION, marked for
identification.)

26 Q. Let me show you Exhibit 73. This is --

27 MR. ARFFA: Seventy-three? 12:28:13

28 MR. SUSMAN: Seventy-three.

29 Q. This is an e-mail that you sent early
30 in the morning of February 14th at 6 a.m. It says
31 the detailed redemption roll-off schedule for
32 Jeffrey Epstein.

33 Do you know what had occurred to cause
34 you to want to ask for the roll-off schedule for
35 Jeffrey Epstein either sometime before 6 a.m. in
36 the morning on February 14th or on February 13?

37 A. I can't remember what precipitated it. 12:28:44

38 Q. You just have no memory why on the 14th
39 you are making this request?

40 A. I can't recall specifically why I was
41 making this request.

42 Q. Now, you did say that you had a call
43 with Mr. Beller on January 31st where he had asked
44 about the 80 million; right?

45 A. Yes.

46 Q. That was the one when you were in
47 London?

48 A. Yes. 12:29:10

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2 Q. And do you recall any discussions
3 between the January 31st call with Mr. Beller and
4 the morning of February 14th at 6 a.m. with anyone
5 about Mr. Epstein's redemption rights?

6 A. Well, I remember having or making a
7 phone call after hanging up with Harry to inform
8 them about that conversation. I do not recall any
9 conversations about Epstein's redemption or
10 roll-off between January 31st and February 14th. 12:29:34

(Exhibit 74, DESCRIPTION, marked for
11 identification.)

12 Q. Let me somehow you Exhibit 74. This is
13 an e-mail from Dan Zwirn to Mr. Dubin on February
14 14th, 2007. This is at 9 a.m. in the morning.
15 And Mr. Zwirn writes, This is what I sent to you.
16 We had also sent to Harry Beller and reviewed with
17 him in excruciating detail. And the title is 12:30:28
18 attached Financial Trust 1/1/13/06.

19 Had you sent the attached schedule to
20 Mr. Beller before February 14th, 2007?

21 MR. ARFFA: I just want to put on the
22 record that we request confidential treatment
23 as to the names of the other investors.

24 A. I believe I had, but I can't recall
25 with definitiveness if I did.

26 Q. When do you believe you had sent it to
27 them prior to February 14th at 9 a.m. in the 12:31:12
28 morning?

29 A. Sometime around that November 13th
30 letter ^ .

31 Q. And you would have sent it to him by
32 e-mail; right?

33 A. I just can't recall.

34 Q. Well, when you say you believe you sent
35 him the redemption schedule, did you tell Dan
36 Zwirn that you had sent him -- sent Harry Beller
37 the redemption schedule? 12:31:47

38 A. I believe -- I believe so, but I can't
39 recall for sure.

40 Q. Why is it that you believe that you
41 sent Mr. Beller the redemption schedule sometime
42 around November 13th, 2006?

43 MR. ARFFA: Objection to form.

44 A. I don't know why I believe it. I just
45 believe I did.

46 Q. I think I asked you before, but to this
47 day you've seen no evidence that you actually did 12:32:11
48 send the redemption schedule to Mr. Beller back in

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2 November of '06; right?

3 A. You have not presented me any evidence
4 of that, no.

5 Q. Well, and you haven't found any when
6 you went searching for the old e-mails; right?

7 A. I didn't go searching for these types
8 of e-mails, so...

12:32:32

9 Q. Well, in your review of historic
10 documents, you haven't seen evidence of you
11 forwarding a redemption schedule to Mr. Beller on
12 February 13th, 2006?

13 MR. ARFFA: Objection to form.

14 A. In my very limited review of documents,
15 I have not seen any evidence that I forwarded.

16 Q. When Mr. Zwirn sent this e-mail to
17 Mr. Dubin that says, we have sent to Harry Beller
18 and reviewed with him in excruciating detail, did
19 you understand Mr. Zwirn was talking about you,
20 David Lee, that that's the "we" who sent it to
21 Harry Beller and went over it with him in
22 excruciating detail?

12:32:54

23 MR. O'BRIEN: Objection to form.

24 A. I can't remember with that level of
25 detail with regard to this e-mail from four years
26 ago.

27 Q. Did you ever ask Mr. Zwirn what he was
28 referring to when he said we had also sent to
29 Harry Beller and reviewed with him in excruciating
30 detail?

12:33:29

31 A. I don't recall asking him that.

32 Q. And Mr. Zwirn says, we will resend to
33 Harry and Jeffrey and go through it again in as
34 much detail as they would like; right? That's how
35 he ends the e-mail; correct?

36 A. That's what I read.

37 Q. And then you -- Exhibit 21, you
38 actually sent this e-mail. You forwarded it to
39 Mr. Beller; correct?

12:33:58

40 A. Apparently.

41 Q. And do you recall what Mr. Beller's
42 reaction was when he got Exhibit 21?

43 MR. O'BRIEN: Objection to form.

44 Q. Do you?

45 A. No, I don't recall.

46 (Exhibit 75, DESCRIPTION, marked for
47 identification.)

48 Q. Let me show you Exhibit 75. Do you
49 recognize Exhibit 75 as you sending another

12:34:36

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2 schedule to Mr. Beller and to a woman named Lesly
3 who you believe to be Mr. Epstein's assistant?

4 A. I can't recall who Lesly is.

5 Q. At a minimum you send it to Mr. Beller;
6 right?

7 A. Apparently.

8 Q. And why did you send Exhibit 75 to 12:35:21
9 Mr. Beller after having sent him Exhibit 21?

10 MR. ARFFA: Sorry, what's the new one,
11 exhibit? What's the JE 2640?

12 MR. O'BRIEN: That's Exhibit 75.

13 MR. SUSMAN: Seventy five.

14 MR. ARFFA: That's Exhibit 75. Thank
15 you.

16 A. I can't recall.

17 Q. Do you have any --

18 A. I believe it was because there was an 12:36:14
19 error in the schedule we sent, so we were trying
20 to send him an amended one.

21 Q. There was an error in the Exhibit 21
22 schedule?

23 A. Yes.

24 Q. Which was the schedule from back from
25 November of 2006?

26 A. Yeah, I think so.

27 Q. Do you remember what the error was?

28 A. I don't recall specifically what it 12:36:31
29 was.

30 Q. Do you recall having any discussions
31 with Mr. Beller about these schedules after you
32 sent them to him on February 14th?

33 A. The conversation I remember is the one
34 Dan had with him where I sat in his office.
35 (Exhibit 76, DESCRIPTION, marked for
36 identification.)

37 Q. Let me show you Exhibit 76.

38 MR. SIFFERT: Have you finished your 12:37:15
39 answer?

40 THE WITNESS: No. Yeah, I'm finished,
41 sorry.

42 Q. So the bottom of Exhibit 76 is an
43 e-mail from Dan to Glenn Dubin that he then
44 forwarded to you, and this is on February 14th.

45 MR. O'BRIEN: I'm sorry, the bottom --
46 you mean on the first page?

47 MR. SUSMAN: The first page, yes.

48 Q. Mr. Zwirn is writing to Mr. Dubin: We 12:37:46
49 sent a detailed schedule to Jeffrey and Harry. We

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called their offices, asked for Jeffrey and Harry, and referred to Harry.

When he's talking about the "we," did he understand he was including -- he meant him and you?

MR. O'BRIEN: Objection to form.

A. Let me read this.

12:38:06

Q. Okay.

(Pause.)

A. Okay. What's your question?

Q. Is the conversation that Mr. Zwirn was reporting to Mr. Dubin on Exhibit 76 the conversation that you recall having with Mr. Beller on February 14th?

A. I believe so.

Q. And so according to -- does Mr. Zwirn's retelling of the conversation jibe with your recollection of the conversation?

12:39:14

MR. O'BRIEN: I'll just note that the e-mail refers to two different conversations.

MR. SUSMAN: Right. That's correct.

A. So you're referring to the paragraph that says, Harry called back after reviewing the sheet?

Q. Yes.

A. It seems to be consistent with my vague recollection.

12:39:47

Q. Okay. And so what I'm -- Mr. Lee, you've told me you had a conversation with Mr. Epstein back on November 13th, 2006 -- I'm sorry, what's that?

A. I never had a conversation with Mr. Epstein.

Q. I meant -- I'm sorry, you had a conversation on November 13th or 14th, 2006, with Mr. Beller about the redemption schedule. We've talked about that conversation; correct?

12:40:18

A. Yes.

Q. And you say you had a conversation on January 31st with Mr. Beller about Mr. Epstein's \$80 million; correct?

A. Yes.

MR. O'BRIEN: That's the very matter in dispute, but we'll pass.

MR. SUSMAN: What's that?

MR. O'BRIEN: Mr. Epstein's request for \$80 million.

12:40:36

MR. SUSMAN: Fine.

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2 Q. And then you had this conversation on
3 February 14th with Mr. Zwirn and Mr. Beller;
correct?

4 A. Yes.

5 Q. Are there any other conversations with
6 Mr. Beller that you had about Mr. Epstein's
redemption that we -- other than those three? 12:40:59

7 A. It's very possible that I had, but I
can't recall with specificity when.

8 Q. Now, Mr. Zwirn says that -- in his
9 Exhibit 76 he writes, Harry called back after
10 reviewing the sheet and asked for immediate
redemption yet again despite the fact he has
11 absolutely no contractual right to that. We would
be making exception for him against our 150 other
investors.

12 And the "immediate redemption yet
again," did you understand what Mr. Zwirn was
referring to there, what prior requests had been
made for an immediate redemption? 12:41:33

13 MR. ARFFA: Objection to form.

14 A. For me to answer your question would be
to make a presumption based upon what I'm reading
now. I don't recall my reaction to reading this
four years ago.

15 Q. Then if you could, at the -- so is it
fair that Mr. Beller's reaction to upon seeing
these schedules on February 14th was that he was
upset? 12:42:13

16 MR. SIFFERT: Objection to form.

17 A. I don't recall Harry being upset in
18 phone conversations that I had or that I listened
to. The memory that sticks out in my mind is
19 Harry had this attitude of Jeffrey wants his
money, just give him his money. We say, you have
20 these -- it doesn't matter; Jeffrey wants his
money. That was sort of the tone he always took. 12:42:55
It was sort of like watching a Woody Allen movie.

21 So I don't recall him expressing anger
or making any type of cohesive arguments with
regard to the request.

22 Q. And then do you recall what Mr. -- how
23 Mr. Beller left it when you were done talking to
him?

24 A. I don't recall other than reading this
paragraph, but I do recall that we were supposed
25 to have a call scheduled with Jeffrey after lunch. 12:43:26

Q. And did that call take place?

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2 A. We attempted to call Jeffrey, but he
never returned our call.

3 Q. And do you recall that shortly
4 thereafter you got the letter demanding a full
redemption?

5 A. Yes, I do recall that.

6 MR. SUSMAN: Do y'all want to take a 12:43:53
lunch break?

7 MR. O'BRIEN: I was just about to
suggest it.

8 MR. SUSMAN: Okay. Fine.

9 THE WITNESS: How apropos. We're
talking about lunch breaks.

10 THE VIDEOGRAPHER: We're off the
record. The time is 12:43. We're off the
record.

11 (Time noted: 12:43 p.m.) 12:44:07

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2 A F T E R N O O N S E S S I O N

(Time noted: 1:16 p.m.)^

3 THE VIDEOGRAPHER: We're back on the
4 record. The time is 1:16. This is the
beginning of Tape 4.

5 Q. Mr. Lee, let me show you Exhibit 48.
Do you recall receiving Exhibit 48 from Alisa
Butchkowski on February 14th, 2007?

01:17:29

6 A. I have a vague recollection. I don't
recall this specific e-mail schedule but...

7 Q. If you look at Exhibit 21 -- you have
8 it in your pile over there. It's the -- here's a
copy of it if you don't --

9 A. I have it.

10 Q. Okay. If you look on -- Exhibit 21 on
the second -- the redemption schedule, it shows --
for each of the tranche investments it simply
shows the amount of invested capital and then the
total appreciated value of the account.

01:18:21

11 MR. ARFFA: Objection to form.

12 A. You're referring to Exhibit 21?

13 Q. Yes.

14 A. Okay.

15 Q. Do you see Exhibit 48 is
Ms. Butchkowski attempting to calculate the
current value of each one of the investments?

16 MR. O'BRIEN: Objection to form.

01:18:50

17 A. I'm having a hard time reading it.

18 Q. You see at the top it says current
tranche value -- you're on the schedule itself?

19 A. Yes. Okay.

20 Q. And if you look, the first line,
there's the April 1, 2002, subscription with the
value of 17,675,619.63?

21 A. Okay.

22 Q. And if you look at the very bottom of
the page, you see balance at 12/31/06, and there's
this 17,675,620 number?

01:19:27

23 A. Okay.

24 MR. O'BRIEN: I'm going to give the
witness my copy, which I think might be a
little --

25 THE WITNESS: More legible?

MR. O'BRIEN: A little less dark.

THE WITNESS: More legible.

Q. In the top of that column is \$10
million?

01:19:48

A. Okay.

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2 Q. Do you recognize Exhibit -- what
3 Ms. Butchkowski was trying to do in Exhibit 48?

4 MR. O'BRIEN: Objection to form.

5 Q. Let me ask a better question. What the
6 calculations that are in these charts, what those
7 are attempting to do in the schedule that's
8 attached to Exhibit 48. 01:20:10

9 MR. SIFFERT: Objection to form.

10 A. Presumably she's trying to calculate
11 the current NAV value of each tranche that
12 Financial Trust invested in.

13 Q. Do you understand how she did the
14 calculation?

15 A. Yes.

16 Q. You understand what -- what is it that
17 you understood she did to try to derive the
18 current NAV of each tranche? 01:21:12

19 A. She took the investment date and the
20 amount of each investment for that tranche,
21 calculated the attributable P&L to that capital
22 account, and then rolled that number forward based
23 upon monthly net P&Ls.

24 Q. Was this a calculation that she -- did
25 you track on a like monthly basis the value of
each tranche of an investment, or is this
something that they had especially calculated at
your request? 01:21:54

MR. ARFFA: Object to the form.

A. I can't specifically recall.

Q. By the way, did you give her any
instructions about how to do this calculation of
the current NAV?

A. I don't recall giving her instructions.

Q. Do you know where she got this
methodology from?

A. I don't recall.

Q. Where is Ms. Butchkowski today; do you
know? 01:22:33

A. I have no idea.

Q. When was the last time you spoke to
her?

A. I believe in early 2007.

(Exhibit 77, DESCRIPTION, marked for
identification.)

Q. Let me show you what I'll mark as
Exhibit 77. Exhibit 77 is an e-mail, and I want
to focus -- it's a chain of e-mails, but let's
focus on the bottom one is an e-mail from Patricia 01:23:08

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2 Peters to Dan cc'd to you; subject: Jeffrey's
3 office. His assistant called to see if you were
4 available to meet with him between 1 and 4 today
or tomorrow. And then you respond, Initial
reaction is not to meet with him.

5 MR. ARFFA: It says not to meet him.
MR. SUSMAN: Not to meet him. 01:23:33

6 A. Yes.

7 Q. Why did you think it wasn't a good idea
8 to meet Mr. Epstein as of February 20th, 2007?

9 A. My recollection is in light of the fact
10 that we had had a number of conversations or Dan
11 had had a number of conversations with Epstein via
12 Glenn Dubin that that our relationship with
13 Mr. Epstein going forward should be more
14 formalized and possibly include attorneys.

15 Q. Did you have any understanding whether 01:24:23
16 Mr. Zwirn ever talked to Mr. Epstein directly
17 without Mr. Dubin's participation?

18 A. Other than the call prior to
19 Thanksgiving and the two rounds of investor calls,
20 I am not aware of any conversations that Dan had
21 with Mr. Epstein that did not include Glenn or
22 Glenn's wife.

23 Q. I'm showing you what I'm marking as
24 Exhibit 78. I'm sorry, withdraw Exhibit 78. I
25 show you what's been previously marked as Exhibit 01:25:17
50. Now, Exhibit 50, the bottom is an e-mail from
Ms. Hubsher to you and Mr. Zwirn on March 2nd,
2007. She's got a chart that shows the difference
in redemptions of new scheme versus original
scheme.

18 A. Okay.

19 Q. Do you recall -- did you ask
20 Ms. Hubsher to perform this calculation?

21 A. I believe I did.

22 Q. And why did you ask her to do it? 01:26:14

23 A. In conjunction with our discussions
24 with Mr. Epstein around February 14th and the
25 letter that was sent, it was the first time I was
aware that there was a side letter that was dated
in January of '05. And in referencing that side
letter in the February 14th letter, there was a
position taken that the rolling redemption
schedule would be based on the entire capital
account as to when the first tranche was made as
opposed to the practice that we had apparently had 01:27:09
in place the entire time, every investor at each

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2 tranche had a two-year rolling lockup.

3 So therefore in light of that
4 assertion, I wanted to see if it would have had a
5 material impact on the amount of redemptions that
6 could occur over the course of the following
7 quarters.

8 Q. You said you wanted to see if it would 01:27:42
9 have a material impact on the amount of
10 redemptions that could occur over the course of
11 the following quarter.

12 What is the "it" that you're referring
13 to?

14 A. The hypothetical scenario that if we
15 took the interpretation asserted by Mr. Epstein in
16 this letter.

17 Q. So in other words you asked Ms. Hubsher
18 to say if Jeffrey Epstein is right about how the 01:28:09
19 redemption schedule rights work, show me what
20 impact it would have on the funds?

21 MR. ARFFA: Objection to form.

22 Q. Is that right?

23 A. I don't know if I asked her in the
24 context of saying if Jeffrey was right. I asked
25 her to see what it would look like under an
26 alternative interpretation based upon the letter.

27 Q. But the alternative interpretation was
28 the Epstein view of the redemption rights; 01:28:37
29 correct?

30 A. As communicated in the February 14th
31 letter, yes.

32 Q. By the way, here's Exhibit 49. It's
33 been previously marked. That's the model that was
34 actually attached to Exhibit 50 when it was
35 originally sent to you, just to save trees and not
36 passing out copies.

37 A. Okay.

38 Q. Okay? 01:29:12

39 A. Is there a question?

40 Q. Do you recognize Exhibit 49 as the
41 document that you actually got initially from
42 Ms. Hubsher?

43 A. I don't recall the backup. I do recall
44 the summary.

45 Q. Why, Mr. Lee, if you thought
46 Mr. Epstein's position was bogus or not bright,
47 why did you have Ms. Hubsher go through all this
48 trouble? 01:29:41

49 MR. ARFFA: Objection to form.

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2 A. We ran lots of "what if" analysis for
many different situations constantly.

3 Q. Why would it matter what impact
4 Mr. Epstein's -- if you -- Mr. Epstein's view was
5 accepted, why would it matter what impact that
6 would have on the fund versus the old
7 interpretation? 01:30:09

8 MR. ARFFA: Objection to form.

9 A. Can you --

10 Q. Strike that.

11 As I understand it, you asked
12 Ms. Hubsher to model the redemption -- the
13 liquidity of the fund under the existing
14 interpretation of redemption rights versus what
15 would happen if Epstein's view of the world were
16 right; is that fair? 01:30:33

17 A. Yes.

18 Q. Why did you care to know what the
19 difference would be?

20 MR. ARFFA: Objection to form.

21 A. Because I wanted to see what the
22 possible scenario would look like.

23 Q. Was one reason why you wanted to see
24 that because if it were more helpful to the fund
25 you might considering adopting Mr. Epstein's view?

MR. ARFFA: Objection to form.

26 A. No, I don't recall thinking that. I 01:30:59
27 just wanted to know what the answer was.

28 Q. Just for curiosity's sake?

29 A. Yes.

30 Q. Am I correct that based on what
31 Ms. Hubsher modeled, if you look at the results,
32 if you accept the Epstein view it would permit
33 greater redemptions earlier; right?

34 A. It would permit greater but not in a
35 material way.

36 Q. So, for example, \$128 million more of 01:31:40
37 redemptions in June of 2007 would not have been a
38 material change to the fund?

39 A. Not in the context of a fund that was a
40 nearly \$2 billion NAV at that point in time.

41 Q. And then to have 116 million in
42 September of additional redemptions also wouldn't
43 be material if you added those up?

44 A. Where you're referring to 116, you're 01:32:13
45 referring to both funds. In that case then you're
46 referring to over \$5 billion of AUM. So no, it
47 would not be material.

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2 Q. Can I ask why was this exercise being
3 done in early March since Mr. Epstein's request
4 had been sent in mid-February, February 14th?

5 A. During that time frame, the first
6 quarter of 2007, we were dealing with thousands of
7 critical issues, including an SEC investigation
8 that was quite active internally, dealing with
9 auditors, dealing with investors, employees.

01:32:54

10 Epstein was nowhere near at the top of
11 our list of priorities at that point in time.

12 (Exhibit 78, DESCRIPTION, marked for
13 identification.)

14 Q. Let me show you Exhibit 78.

15 MR. ARFFA: Sorry, what number?

16 MR. SUSMAN: Seventy-eight.

17 Q. This is a series of e-mail chains, and
18 you started off with an e-mail to Gordon
19 Goldenstein; and subject: Rudman called today,
20 what is agenda. And he responds Epstein and WR
21 back channel to George Mitchell to preempt a
22 blowup.

01:33:52

23 Do you remember what you were referring
24 to -- I'm sorry, that he was referring to?

25 A. I think there was a belief that Jeffrey
had a close relationship with George Mitchell and
Senator Warren Rudman, who was on our advisory
board, also had a close relationship with George
Mitchell. And we were trying to see if there was
a possibility to create a dialogue by utilizing
Mr. Mitchell.

01:34:35

1 Q. To preempt a blowup, a blowup of what?

2 A. I think it's -- there was a presumption
3 that -- not a presumption, excuse me. We did not
4 want public litigation at a time where the firm
5 and the fund was vulnerable. And we felt that
6 Jeffrey was the type of person that could blow up
7 and launch litigation, making spurious
8 allegations. And given his issues and constant
9 press attention for his felonious acts that that
10 was not the kind of press coverage we wanted to
11 have.

01:35:21

12 Q. This says, Epstein and WR back channel
13 to George Mitchell to preempt a blowup, and you're
14 saying that was to preempt a blowup but -- Epstein
15 and Warren Rudman would back channel to George
16 Mitchell to preempt a blowup of Epstein.

17 MR. ARFFA: Objection.

01:35:56

18 MR. O'BRIEN: Objection.

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2 Q. Am I misreading what was meant there?

MR. ARFFA: Asked and answered.

3 MR. SIFFERT: It's not what he said.

4 A. I already answered your question. My
5 inference and recollection of this e-mail and
6 conversation was George Mitchell, who is a
7 well-known political figure and diplomate, through 01:36:17
8 relationship that he had with Epstein and Senator
9 Rudman, could possibly create a bridge to
10 communication.

7 Q. To Jeffrey?

A. Yes.

8 Q. To prevent him from suing you?

A. Yes.

9 Q. And then you respond, By the way, the
10 Highbridge guys told me there is tons of details
11 on J Epstein's pick dill low in the public 01:36:42
12 deposition files. Can Alex get those?

11 Why did you want to get details about
12 Jeffrey Epstein's peccadillos?

12 A. Because I thought it would be entering
13 and entertaining to read.

13 Q. Again, just out of curiosity's sake?

A. Yes.

14 Q. And what Highbridge guys told you that
15 there was tons of details on Mr. Epstein's 01:37:08
16 peccadillos?

A. Bob Caruso and possibly others. I
17 don't recall who the others would be.

17 Q. Was Glenn Dubin one of them?

A. Not that I recall.

18 Q. Did you ever talk to a Brenda Ames at
19 Highbridge about the situation with Mr. Epstein?

A. I don't recall speaking to Brenda
20 specifically about Mr. Epstein, but I just don't
21 recall.

20 Q. Did you ever tell her that 01:38:07
21 Mr. Epstein's facts supporting his redemption
22 demands weren't particularly good facts and the
23 fund should agree to resolve things with him as a
24 result?

A. I don't recall.

23 Q. Do you deny that you ever said that to
24 her?

A. All I say is I don't recall.

(Exhibit 79, DESCRIPTION, marked for
25 identification.) 01:38:48

Q. I show you Exhibit 79.

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2 By the way, before I talk about Exhibit
3 79, Mr. Lee, you -- I think you've mentioned more
4 than once the notion that the fund was concerned
5 about Mr. Epstein making a public fight with the
6 fund because of his -- in particular because of
7 his bad publicity that he had. Do you recall?

8 A. Yes.

01:39:33

9 Q. Was that a concern that was shared by
10 Dan Zwirn, as far as you know?

11 A. I believe so.

12 Q. Did y'all discuss that we really don't
13 want Jeffrey to make a big stink?

14 A. I believe so.

15 Q. And was the concern that you didn't
16 want people to associate Jeffrey Epstein with the
17 fund --

18 MR. O'BRIEN: Objection to form.

01:39:58

19 Q. -- because of who Jeffrey was?

20 A. That was one of the reasons.

21 Q. So you wanted to do what you could to
22 keep any dispute with Mr. Epstein out of the
23 public eye, or any sort of public association of
24 him with the fund; right?

25 A. Ask the question again.

26 Q. Yeah. Actually, that's okay.

27 Let's look at Exhibit 79. Who is Eric
28 Dillon?

01:40:27

29 A. He is the managing partner of the
30 Silver Creek Capital, which was the fund that had
31 the largest investment in the onshore fund.

32 MR. ARFFA: We ask for confidential
33 treatment as to the names of the other and
34 identities of the other investors.

35 Q. Did you tell Mr. Dillon that
36 Mr. Epstein was a crazy man?

37 A. I don't recall specifically telling
38 Mr. Dillon that Epstein was a crazy man.

01:41:10

39 Q. Mr. Dillon wrote in an e-mail where he
40 says, You told me he was a crazy man and
41 threatening to sue. Do you have some reason to
42 dispute Mr. Dillon's accounting -- attributing to
43 you having called Mr. Epstein a crazy man?

44 A. I generally was very deferential to
45 Mr. Dillon, and so I don't recall why I would take
46 umbrage with his statement and try to have a fight
47 over it.

48 Q. So are you saying you didn't call
49 Mr. Epstein a crazy man but you just didn't want

01:41:48

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2 to fight with Mr. Dillon about it?

3 A. I said I don't really recall telling
4 Mr. Dillon Mr. Epstein was a crazy man.

5 Q. Do you recall telling other people that
6 he was a crazy man?

7 A. I don't know whether I used the word
8 "crazy," but -- so I can't recall if I told other
9 people I thought he was crazy. 01:42:10

10 (Exhibit 80, DESCRIPTION, marked for
11 identification.)

12 Q. I show you Exhibit 80. Who is Travis
13 Metz from Monitor.com -- I'm sorry, from Monitor?

14 A. Monitor is a private equity fund based
15 in Boston affiliated with the Monitor Consulting
16 Company.

17 Q. Why were you discussing with Mr. Metz
18 in the summer of 2007 various issues relating to
19 the management company? 01:43:00

20 A. We were seeking a potential minority
21 investment in the management company from Monitor.

22 Q. How much money were you seeking as an
23 investment?

24 A. I can't recall specifically, but I
25 think we were seeking to raise somewhere around 30
26 to 100 million dollars.

27 Q. Why did you need the capital infusion?

28 A. Because of all the expenses associated
29 with the internal investigation. There were
30 remediations to the fund, the payment of interest
31 on behalf of the onshore fund that was made on the
32 \$108 million loan to the offshore fund, and the
33 nonreceipt yet of the 32 million estimated 2006
34 incentive fee from the Highbridge managed account. 01:43:38

35 Q. Did you contact anyone else besides
36 Monitor about making an investment in the
37 management company during the 2007 time period?

38 A. We spoke to a large list of people. 01:44:17

39 Q. And who was Berenson?

40 A. Berenson is an investment banking firm
41 that was advising us.

42 Q. Did Mr. Dubin have any participation in
43 these efforts to raise money for the management
44 company?

45 A. No.

46 Q. At some point in time in two
47 thousand -- strike that.

48 A. At some point in time -- strike that
49 too. 01:44:39

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2 By the time -- when you became CFO,
3 what was Mr. Dubin's role in this operations of
4 the management company that you could perceive?

5 MR. O'BRIEN: Just so we're clear,
6 you're talking about early October '06?

7 MR. SUSMAN: Yeah.

8 MR. O'BRIEN: He was acting CFO at that 01:44:54
9 time.

10 MR. SUSMAN: Okay. Fair enough.

11 A. My understanding was that Dubin Swieca
12 Asset Management, of which Glenn was partners with
13 Henry Swieca, had a profit participation in the
14 management company and its affiliated entities
15 equal to 31 percent.

16 Q. But on a day-to-day basis, what did you
17 see Mr. Dubin do in terms of running or
18 participating in the running of the management 01:45:36
19 company?

20 A. What I saw as of October I think going
21 forward was very little involvement other than
22 dealing with Mr. Epstein and occasionally some of
23 the other investors to which he had personal
24 relations.

25 Q. Before October of '06 when you were a
managing director of the fund, or even in your
days at LLJ, did you see Mr. Dubin acting to help
run the management company in any capacity? 01:46:14

26 A. On a firsthand basis, no, I had never
27 seen or met Mr. Dubin.

28 Q. That's prior to October of 2006?

29 A. Correct.

30 Q. What about for Henry Swieca, did you
31 ever see him or meet him?

32 A. I have to date never met him.

33 Q. Did you have any understanding that --
34 from Mr. Zwirn or anyone that Mr. Dubin's level of
35 activity with the management company underwent any 01:46:40
36 change as of October 2006 versus what it had been
37 before that time period?

38 A. Ask the question again.

39 Q. Yeah. I think -- you observed
40 Mr. Dubin's role in the management company after
41 October 2006 when you were CFO.

42 A. Right.

43 Q. And I think you said it was limited;
44 fair?

45 A. Yes. 01:47:12

Q. Did anybody tell you that he had been

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2 more active in the recent past?

3 A. Define "recent."

4 Q. Last year or two.

5 A. My understanding was that he had a
6 fairly active participation in the management
7 company, especially with regard to procurement of
8 investors through -- less and less active, but 01:47:32
9 from '03/'04 it was very active, '05 a little less
10 active, and '06 much less active is my
11 understanding from conversations and other
12 anecdotes.

13 Q. After October 2006, did you witness any
14 change in Mr. Dubin's role in the management
15 company?

16 A. I noticed a dramatic change after we
17 received the letters in January 2007.

18 Q. Those are the letters from Highbridge? 01:48:10

19 A. Yes.

20 Q. And what was the nature of the change
21 after you got the letters from Highbridge in
22 January of 2007?

23 A. A role of trying to be supportive to
24 one of being in opposition to each other.

25 Q. Did you and Mr. Zwirn ever discuss what
caused Mr. Dubin's attitude to change in January
of '07?

A. We had many conversations that were 01:48:44
based on speculations.

Q. And what were the situations?

A. One of the primary speculations was
that Highbridge was undergoing a routine SEC
examination at the time of our disclosures in late
October 2006 and our self-reporting in turn caused
their examination to be extended and for them to
receive some type of letter or reprimand from the
SEC.

Q. Did you ever have any knowledge of what 01:49:23
exactly the SEC's investigation of Highbridge
entailed?

A. I do not believe it was an
investigation; I believe it was a routine
examination. My only reference point as to what
actually occurred was contained in a lawsuit from
Highbridge's former general counsel that was filed
in New York State court.

Q. That's the Carol Rubin file?

A. Yes. 01:49:50

Q. But you haven't seen the letter that

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2 Highbridge received from the SEC regarding its
subadvisory role with Zwirn?

3 A. No, I never saw such a letter.

4 Q. By the way, one of the things that
Mr. Metz mentions -- and it's covered in the third
5 star from the bottom, right above a star that says, What is JCK? Do you see that that star that 01:50:20
6 says, Can you explain the various liquidity
redemption options that investors have in
different funds, including key dates?

7 A. Okay.

8 Q. It says, What I want to focus on is how
much do you know about what people are going to do
9 on September 1st. Remind us again why September
1st matters so much.

10 Do you know what he's referring to?
MR. O'BRIEN: There's another sentence. 01:50:52

11 MR. SUSMAN: I don't want to ask about
that.

12 A. A majority of the investors were in a
redemption option called one year plus liquidity,
13 which was the same option that Travis Metz
personally was in as an investor in the onshore
14 fund. The notice requirement for redemption at
the end of the year was 120 days. Therefore
15 September 1st was an important date to know how
many people and dollar amounts were going to 01:51:24
redeem under that option.

16 MR. ARFFA: I hadn't realized until now
he was an investor. So again we'd ask for
17 confidential treatment of that.

18 (Exhibit 81, DESCRIPTION, marked for
identification.)

19 Q. I show you Exhibit 81. Did you
participate in the negotiation of this agreement
between DSAM and the D.B. Zwirn entities?

20 A. Yes, I did. 01:52:04

21 Q. Why is it that Mr. Zwirn -- I'm sorry,
Mr. Dubin and Mr. Swieca were being bought out of
the management company?

22 A. It was a demand being made in
conjunction with the payment of the incentive fee
23 that was owed by Highbridge to D.B. Zwirn & Co.

24 Q. In other words, in order for Highbridge
there was -- strike that.

25 There was an incentive fee or
management fee that was owed to the management 01:52:44
company from the Highbridge managed account; is

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2 that right?

A. Yes.

3 Q. I understand you're saying Mr. Dubin
4 said in order for you to get paid that fee from
5 Highbridge you have to buy me out of the
6 management company?

A. That's not how he phrased it. 01:53:01

Q. How did he phrase it?

6 A. Meeting in Glenn's conference room
7 sometime in June of 2007, Glenn had a prepared
8 script which he seemed to be reading or
9 paraphrasing from where he said that he would
10 agree to have Highbridge pay their incentive
11 fees -- and I can't remember exactly what the
12 conditions were for that -- and in addition you
13 will buy me out of my interest in D.B. Zwirn for
14 \$30 million. And if you don't agree to my
15 conditions, I will sue you. 01:53:36

11 Q. Did he say what he would sue you for?

A. No.

12 Q. Well, was one of the conditions for
13 payment of the fee from Highbridge that you let
14 Highbridge's assets go, in effect?

MR. O'BRIEN: Objection to form.

14 A. I think the agreement is self-evident
15 in terms of how the managed account would be
16 managed. So we weren't letting them go; we were
17 still managing the assets, but subject to their
18 direction. 01:54:07

17 Q. You entered into -- at the same time
18 you entered into Exhibit 81, right, you entered
19 into Exhibit -- what I'll mark as Exhibit 82.

18 (Exhibit 82, DESCRIPTION, marked for
19 identification.)

19 Q. You were involved in negotiating
20 Exhibit 82?

A. Yes. 01:54:52

20 Q. And Exhibit 82 is the settlement
21 agreement in effect between Highbridge -- the
22 entity that owned the Highbridge managed account
23 and D.B. Zwirn; right?

A. Correct.

23 MR. ARFFA: Objection to form.

24 Q. And that agreement calls for a
25 liquidation of the Highbridge managed account and
26 payment, and as well there's a provision that
27 talks about Highbridge will in turn pay the
28 management company the incentive fees and
29 01:55:15

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2 management fees that are owed.

A. Yes.

3 Q. Right?

4 It doesn't tie -- Exhibit 82 does not
5 tie payment of the management fees or incentive
6 fees to buying Mr. Dubin out of the management
7 company; correct?

01:55:36

A. Correct.

6 Q. But you're saying in a meeting
7 Mr. Dubin effectively tied the two together?

A. I believe he did.

8 Q. Did Mr. Dubin explain why he thought he
9 was entitled to be bought out of the management
10 company?

A. No.

10 Q. He just demanded it and said, If you
11 don't do it, I'm not going to -- or implied if you
12 don't do it you won't get paid your fees from
13 Highbridge?

01:56:05

MR. ARFFA: Objection to form.

12 A. My inference was yes.

13 Q. Well, did you have any discussion with
14 Mr. Dubin about why he felt entitled to be bought
15 out of the management company?

A. With Mr. Dubin? No.

16 Q. Did in fact the management company use
17 the management fees or incentive fees that
18 Highbridge paid it to fund the payments to
19 Mr. Dubin?

01:56:32

A. In part. Money's fungible.

17 Q. In fairness, who did the -- you
18 negotiated Exhibit 81; right? Strike that.

18 Was there any effort to conceal the
19 existence of Exhibit 81 from Highbridge, to your
20 knowledge? Exhibit 81 is the agreement with
21 Mr. Dubin.

A. To conceal?

01:57:04

Q. Yeah.

21 A. No.

22 Q. Highbridge knew that both agreements
23 were being entered into at the same time; correct?

23 A. Well, Bob Caruso was the CFO of
24 Highbridge. Bob Caruso was the counterparty from
25 the business side with whom I negotiated.

24 Q. Both agreements?

A. Yes.

25 Q. Did Mr. Caruso ever link the payment of
the Highbridge management fees to Mr. -- to the

01:57:27

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2 buyout of Mr. Dubin from the management company?

3 A. Not explicitly.

4 Q. Under Exhibit 81 Mr. Dubin -- not
5 Mr. Dubin, Mr. Dubin Swieca asked that management
6 is supposed to be paid \$30 million in a series of
7 payments.

8 A. Correct. 01:58:01

9 Q. Were those payments all made?

10 A. No.

11 Q. How much of it was paid?

12 A. Let me look at the payment schedule.

13 Q. It's probably in paragraph 2(b), the
14 first page, the very bottom.

15 A. The 3.12 million was paid. The 17 --
16 the 9.5 was paid. The 17.5 was not paid.

17 Q. Was it ever paid? It wasn't paid on
18 time, but was it paid at all? 01:58:42

19 A. No.

20 Q. Has there been any sort of resolution
21 of that outstanding payment?

22 A. Yes. It's my understanding that as of
23 I believe May 1, 2009, DSAM relinquished all
24 claims to any future payments with regard to this
25 agreement.

26 Q. Was there an agreement that
27 memorialized that?

28 A. There was a letter, I believe. 01:59:08

29 Q. And what was the background that led to
30 DSAM agreeing in May of 2009 to any of these
31 future payments?

32 MR. O'BRIEN: I just caution you not
33 to --

34 Q. Strike that. Sorry.

35 Was the May 1, 2009, agreement
36 connected to the acquisition or takeover by
37 Fortress?

38 MR. ARFFA: Objection to form. 01:59:32

39 A. I don't know if it was connected, but
40 it did occur coincidentally at the same time.

41 Q. Is it your understanding it was
42 designed to facilitate Fortress taking over
43 management of the funds?

44 A. Without their relinquishment, I don't
45 believe the transactions could have occurred.

46 Q. By the way, there is on Exhibit 81 the
47 necked "whereas" clause. It says, whereas DSAM
48 does not receive through its interest any fees
49 accruing from DBZ L.P.'s management of HCN/Z 02:00:03

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2 Special Opportunities LLC.

Was that an accurate recitation?

3 A. I believe so.

4 Q. Well, except I think -- didn't you just
tell me in some of the money from Highbridge deal
was used to pay for the interests?

5 A. Once again, money is fungible. Their 02:00:35
capital accounts had a special allocation to
6 exclude amounts earned from the Highbridge managed
account.

7 Q. In Exhibit 81 there's provisions about
DSAM releasing all of its interests in any DBZ
8 entity. Did that include Mr. Dubin's personal
interest in the fund, do you know one way or the
9 other? Is that what the intent was?

10 A. No. His personal interest in the 02:01:15
onshore fund and I believe in the tax-exempt fund
were completely segregated from this agreement.

11 Q. Now, let's talk briefly about Exhibit
82, the Highbridge agreement.

12 A. Okay.

13 Q. I'll tell you what, to give you a
little background, let's just go through this real
fast.

14 (Exhibit 83, DESCRIPTION, marked for
identification.)

15 Q. I show you Exhibit 83. Exhibit 83 is 02:01:55
the letter that you referred to that you received
16 in late January '07 from Highbridge, or series of
letters?

17 A. Yes.

18 Q. So from this -- from the time after you
received this letter, was the relationship with
Highbridge adversarial?

19 A. In terms of actual day-to-day
interactions, they were quite cordial. But the
20 presumption was that we were adversaries. 02:02:29

21 (Exhibit 84, DESCRIPTION, marked for
identification.)

22 Q. Exhibit 84. Do you recall receiving or
seeing a copy of Exhibit 84 an April 11, 2007,
letter to Larry Cutler?

23 A. Yes.

24 Q. In the letter Highbridge specifically
accuses you of having promised to transfer the
shares of GAGFAH on February 15th and then
25 essentially reneging on that promise; right. The 02:03:15
first paragraph, if you're confused, says, David

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2 Lee assured us at that meeting that the improper
3 activities were under investigation and that Zwirn
4 would immediately begin to transfer assets to us,
5 such as the GAGFAH shares, which were reason ply
6 liquid. Further, since February 15th meeting
7 David Lee has advised us that Zwirn would transfer
8 the GAGFAH shares to us provided we put the
9 request in writing. We cannot tolerate you taking
10 positions in writing that are in conflict with
11 reassurances made to us verbally. 02:03:44

12 Right?

13 A. I remember this very well.

14 Q. Their position was you told them that
15 you'd give them the shares if they put it in
16 writing. They did. The fund responded by saying
17 they're not going to do it. And they wrote this
18 letter to you. Right? 02:04:09

19 A. My recollection -- this is pretty
20 vivid -- is I felt it was bald-faced lying and I
21 had other witnesses in that meeting that
22 corroborated I never made such assurances.

23 (Exhibit 85, DESCRIPTION, marked for
24 identification.)

25 Q. Look at Exhibit -- I show you Exhibit
26 85. This was a letter that you were sent in
27 connection with the audit of Highbridge from
28 August 10th, 2007, and what it says is that the
29 NAV of the Highbridge managed account was \$580
30 million as of December 31, 2006. Do you see that? 02:04:48

31 A. Yes.

32 Q. This one -- did you send back anything
33 to confirm whether this was correct or not?

34 A. I believe we had discussions with
35 Highbridge and with PwC to help assist in the
36 completion of their audit. I don't recall us
37 sending a letter that addressed this letter
38 specifically but that it was more of a process. 02:05:44

39 Q. All right. So let's just -- I want to
40 walk through some of the numbers, Exhibit 85. It
41 says there's an NAV of 580 million. But then
42 there's a paragraph below it that says subsequent
43 to year end we received redemption proceeds of 146
44 million, roughly, which are not included in the
45 NAV as detailed below -- above.

46 A. Okay.

47 Q. Does that mean that the NAV of the
48 Highbridge managed account was roughly \$720
49 million as of December 31, '06? 02:06:14

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2 A. I don't know because the ownership in
3 CG Holdings was a liquid stock that had
4 significant volatility. So that value could have
5 been materially lower or materially higher.

6 Q. CG Holdings is what held the GAGFAH
7 shares?

8 A. The GAGFAH shares.

02:06:53

9 Q. Does the number of 700 million sound
10 about right as of December 31, '06?

11 A. I don't recall.

12 Q. You don't. Okay. Suffice it to say
13 sometime after December 31 Highbridge got \$146
14 million out of the managed account; right?

15 A. Yes.

16 Q. If we could, let's look at Exhibit 82.

17 A. Okay.

18 Q. Do you know as of the time you quit
19 working at DBZ whether there was still any money
20 in the Highbridge managed account or had it all
21 been distributed?

02:07:33

22 A. My recollection was that there were
23 still assets in the Highbridge managed account as
24 of May 31, 2010.

25 Q. How significant in size?

26 A. I don't know.

27 Q. Now, if you turn to page 2 --

28 MR. O'BRIEN: We're on Exhibit 82?

02:08:10

29 Q. -- of Exhibit 82, there's paragraph D,
30 additional payments.

31 A. Okay.

32 Q. It says essentially it calls for the
33 repayment of the loan from the onshore -- to the
34 onshore account; correct?

35 A. Yes.

36 Q. Did that loan get repaid?

37 A. There are essentially two loans. The
38 50 million loan from October of '06 that was
39 documented was repaid. This is referring to the
40 amount of intercompany or interfund payables to
41 the Highbridge account that we did not have a
42 definitive answer to because it was pending the
43 completion of the 2006 audits.

02:08:39

44 Q. So by the time of the agreement of
45 Exhibit 82, had the Highbridge -- the \$50 million
46 Highbridge loan been repaid in full?

47 A. The loan that was referred to and
48 documented in October '06 had been repaid.

02:09:21

49 Q. Okay. And then this -- the interfund

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2 balances that were not reconciled, I guess, as of
3 the time of this agreement, were they ultimately
4 reconciled and repaid to Highbridge by the end of
5 2007?
6 A. There was a reconciliation. I can't
7 remember when it was paid down.
8 Q. And do you know how much money, 02:09:52
9 roughly, was paid out to Highbridge from the
10 managed account from the time of Exhibit 82 until
11 you stopped working at DBZ & Co.?
12 A. I don't know offhand.
13 Q. Do you know if it was hundreds of
14 millions of dollars? Any idea?
15 MR. ARFFA: Objection to form.
16 A. I don't recall.
17 Q. Do you have any ballpark of what
18 percentage of the Highbridge account was actually 02:10:26
19 liquidated and paid out to Highbridge?
20 A. No.
21 MR. SUSMAN: Let's take a quick break.
22 THE VIDEOGRAPHER: We're off the
23 record. The time is 2:10.
24 (Recess taken from 2:10 to 2:19.)
25 THE VIDEOGRAPHER: We're back on the
record. The time is 2:19. This is the
beginning of Tape 5.
Q. Whether did you first hear that this 02:20:01
dispute with Mr. Epstein actually had erupted into
litigation? Do you remember who you heard that
from?
A. I don't remember specifically who I
heard it from.
Q. Have you heard that -- or have you seen
an affidavit that Mr. Dubin has signed in
connection with this dispute?
A. I recall reading an affidavit.
Q. Have you and Dan talked about that 02:20:41
affidavit?
A. Yes.
Q. And what have you and Dan talked about
regarding that affidavit?
A. That Dan has no recollection and does
not believe that it's conceivable that he ever
would have made such a promise to Jeffrey.
Q. Anything else?
A. Speculation as to why Glenn would put
himself in such a position in support of Jeffrey. 02:21:14
Q. And what was that speculation?

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2 A. We have no idea what relationships
3 exist beyond business relationships between
4 Jeffrey and Glenn.

5 Q. Mr. Zwirn had an interest in something
6 called Corbin Capital Partners, I believe. Were
7 you aware of that?

8 A. I don't know the full name of the
9 entity, but yes, I was aware that Dan had an
10 interest in an entity called Corbin.

02:21:53

11 Q. Did you know what Corbin did?

12 A. I believe them to be a fund-to-fund
13 manager.

14 Q. Did they ever invest in D.B. Zwirn?

15 A. I don't believe they did.

16 Q. Do you know how Dan came to have that
17 interest in Corbin?

18 A. My understanding is that when Glenn was
19 setting up Corbin he asked Dan for various advice
20 and analyses and that he received some type of
21 interest as payment for such advice and that Dan
22 also purchased an interest in that entity by
23 writing a check.

02:22:20

24 Q. Do you know that Mr. Zwirn and
25 Mr. Dubin had some dispute over the Corbin
26 interest?

27 A. Yes.

28 Q. That resulted in litigation?

02:23:07

29 A. Yes.

30 Q. Did you testify at all in that
31 litigation?

32 A. No.

33 Q. Are you aware of how that litigation --
34 what the outcome is?

35 A. Not really.

36 Q. I think you said you never gave
37 testimony to the SEC. Did I hear that right?

38 A. That's correct.

02:23:28

39 Q. Were you interviewed by them in any
40 capacity?

41 A. No, I was not.

42 Q. Have you spoken to investors in the
43 onshore fund about the dispute with Mr. Epstein?

44 A. I believe I mentioned or had some
45 discussions with various investors about the
46 Epstein settlement agreement that was entered
47 into. I don't recall specifically any other
48 conversations with Epstein -- about Epstein to
49 investors.

02:24:08

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2 Q. We saw earlier I think it was Silver
3 Creek, for example. That was one of the
4 conversations that you had about the Epstein
5 settlement?

6 A. Yes.

7 Q. And what was the reason you told them
8 the fund had entered into this agreement with
9 Mr. Epstein? 02:24:26

10 MR. ARFFA: Objection to form.

11 A. I don't really recall telling them the
12 reason other than that I read in the e-mail you
13 just gave me.

14 Q. Well, in the e-mail you said, Call me
15 up, and it's a short e-mail exchange. So do you
16 recall what you actually told people when they
17 asked you why the fund gave a \$45 million priority
18 payment to Mr. Epstein? 02:24:56

19 MR. O'BRIEN: Objection to form.

20 A. Other than pursuant to a settlement
21 agreement, I don't recall having conversations
22 specifically as to why.

23 Q. Did you ever talk to Chris Swan about
24 this dispute with Mr. Epstein?

25 A. Which dispute with Mr. Epstein?

26 Q. Over his redemption requests.

27 A. Which one?

28 Q. All of them. 02:25:39

29 A. I don't recall any specific
30 conversations with Chris about Epstein. I do
31 believe that he was in the room when we had group
32 discussions about Epstein, which most likely
33 included legal counsel when we had those
34 discussions.

35 Q. By the way, you've -- other than
36 talking to investors and to the lawyers for the
37 various parties in this case, who have you
38 discussed this dispute with Mr. Epstein with? 02:26:30

39 A. Once again, which dispute are you
40 referring to?

41 Q. Well, let's talk about the dispute
42 since February of 2007.

43 A. February 2007.

44 A. We had -- I'm trying to think of
45 discussions that weren't with counsel. The only
46 think I can really think of was discussions with
47 potential parties during our strategic process
48 when we were seeking a change in control,
49 including Fortress and others that were in that
50 02:27:24

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2 process, as part of their diligence efforts.

3 Q. And did the Fortress people ask, as
4 part of the diligence, inquire into this dispute
5 with Mr. Epstein what was the issue?

6 A. I believe so, but I really am having
7 difficulty remembering details about those kind of
8 discussions. There were lots of items going on at 02:27:49
9 that time.

10 Q. Do you remember who you had the
11 discussions with at Fortress, about the Epstein
12 issue?

13 A. It would have been with a large
14 collection of their transaction team that was
15 conducting the transaction with us.

16 Q. By the way, when I was asking you, you
17 know, about these -- the Chris Swan discussions
18 and you said that you had had -- there were a lot 02:28:24
19 of group discussions about dealing with Jeffrey
20 Epstein's redemption requests and Chris may have
21 been in those or not and lawyers may have been
22 present, do you recall whether was Glenn Dubin
23 ever present in any of those discussions?

24 A. I do not believe he was.

25 Q. So whatever discussions were had with
26 Mr. Dubin were between Mr. Zwirn and Mr. Dubin off
27 in private, in effect, other than what you
28 listened to over the phone? 02:28:53

29 A. Yes, I believe so.

30 Q. By the way, on the managed account, the
31 accounting for the managed account, was it handled
32 separately from the accounting for the onshore and
33 offshore funds?

34 MR. O'BRIEN: Objection to form.

35 A. What do you mean, "handled separately"?

36 Q. Were there a different group of
37 accountants who dealt with the managed account's
38 books and records than, say, for the onshore fund 02:29:23
39 or was it the same accounting staff that dealt
40 with everything?

41 A. The same accounting staff dealt with
42 everything, but at some point after the settlement
43 agreement with Highbridge I did assign a couple of
44 people to specifically keep track of Highbridge's
45 assets.

46 Q. To your knowledge did -- oh, I know you
47 said you were an investor in the onshore fund.
48 Was Dan Zwirn an investor in the onshore fund? 02:29:59

49 A. I believe he was.

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2 Q. Was he an investor in the offshore
3 fund?

4 A. He was an investor by virtue of an
5 offshore deferral.

6 Q. In other words, the incentive fee was
7 deferred and rolled into an investment in the
8 offshore fund itself, in effect?

02:30:18

9 A. Yes.

10 Q. Other than as a -- by virtue of his
11 deferral arrangement, was he an investor in the
12 onshore fund -- offshore fund?

13 A. I do not believe he was.

14 Q. Who was the -- by the way, you
15 mentioned you assigned a specific accountant to
16 deal with the Highbridge managed account post the
17 settlement agreement?

18 MR. ARFFA: Objection to form. I don't
19 think that's what he said. 02:30:45

20 Q. A particular accounting person?

21 A. I assigned a couple of -- if I said
22 accounting, I meant operations.

23 Q. Okay. Those people were in charge of
24 running off the assets, in effect, liquidating
25 them?

26 A. No. The assets were not segregated
27 from the other assets of the funds, so their
28 assets -- other than the GAGFAH shares, were not
29 liquidated in any priority fashion over any other
30 fund assets. 02:31:07

31 Q. Even post the settlement agreement?

32 A. Yes.

33 Q. So just as whatever asset could be
34 sold, if the Highbridge managed account happened
35 to own some of it, then it would become liquid for
36 the Highbridge managed account?

37 A. Yes. So, for example, if the onshore
38 fund owned half of this water bottle and
39 Highbridge owned the other half and I sold it for
40 \$10, \$5 would go to the onshore fund and \$5 would
41 go to Highbridge. 02:31:36

42 The onshore fund had leverage, so that
43 money would get used to repay debt; and Highbridge
44 didn't have leverage, so that money would go back
45 to Highbridge.

46 (Mr. Schwartz leaves proceedings.)

47 Q. Since you left Fortress a year ago --
48 I'm sorry, since you left D.B. Zwirn & Co., have
49 you had continuing contact with either D.B. Zwirn
50 02:32:09

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2 or Fortress?

3 A. Define D.B. Zwirn.

4 Q. The entities that were the management
5 company and the general partner. 02:32:36

6 A. The former management company entities
7 I believe do not have any employees, so it would
8 be difficult to have contact with them other than
9 through things like this.

10 Q. And what is the status of the entities
11 that were called DBZ & Co., L.P., and the various
12 Zwirn entities that Mr. O'Brien represents?

13 MR. O'BRIEN: You may want to break
14 that down specifically. The answer may be
15 different, and it may be hard to answer in a
16 global way. I don't know. I'm just saying.

17 Q. Do you know what the status is of
18 D.B. Zwirn & Co., L.P.? 02:33:20

19 A. I believe the name was legally changed
20 to something else called Irvington, but I don't
21 know the full name.

22 Q. Yep.

23 A. And I don't know what's left anymore.

24 Q. Where did the name Irvington come from?

25 A. Don't know. I assume it came from Dan.

26 Q. What assets did it have when you last
27 worked for D.B. Zwirn & Co.? 02:33:52

28 A. I don't believe it had any assets of
29 any materiality, nor do I believe it had any
30 liabilities of any materiality at that point.

31 Q. How about D.B. Zwirn Partners LLC, do
32 you know what's happened to it?

33 A. I don't believe it exists. I believe
34 that entity is, if not dissolved, has no reason to
35 exist.

36 Q. And how about Zwirn Holdings?

37 A. Don't know, don't have the foggiest
38 idea. 02:34:33

39 Q. And when you were last working for --
40 so the entity you last worked for would have been
41 D.B. Zwirn & Co.?

42 A. L.P..

43 Q. L.P.?

44 A. Correct.

45 Q. You last worked for it as of the summer
46 of 2010; right?

47 A. Correct.

48 Q. And how much was your salary in that
49 last year? 02:34:49

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2 A. My base salary was at the rate of 1
million per year.

3 Q. Was there a bonus function to it?

4 A. Yes.

5 Q. And how long had your base salary been
at a million a year? 02:35:08

6 A. Since 2007.

7 Q. With a bonus component?

8 A. My bonuses were approximately 2.5
million per year.

9 Q. 2.5 million per year for 2007, 2008,
2009?

10 A. Yes.

11 Q. And 2010?

12 A. No. 2010 was at a lower rate and
prorated for the five months.

13 Q. And how was the bonus calculated? Was
there a formula? 02:35:31

14 A. It was an agreed number.

15 Q. It was an agreed number? Between who
and who?

16 A. Between Dan and myself.

17 Q. Was it based on some performance
metric?

18 A. No.

19 Q. Where did D.B. Zwirn & Co. get the
money to pay you this salary? 02:35:54

20 A. D.B. Zwirn & Co. received management
fees and incentive fees.

21 Q. Even once the gates went up in 2008?

22 A. The gates never went up.

23 Q. Well, the fund went into -- I'm sorry,
the funds that D.B. Zwirn & Co. and managed, the
onshore and offshore funds --

24 A. Yes.

25 Q. -- they in 2008 ceased taking new
investments; correct? 02:36:27

26 A. They actually ceased taking new
investments far earlier than that. I believe we
stopped taking new investments as early as late
'06.

27 Q. From late '06?

28 A. Yes.

29 Q. So from late '06 on there were no new
investments in the offshore fund?

30 A. I do not believe there were.

31 Q. But DBZ -- D.B. Zwirn & Co. L.P.
continued to receive these management fees up 02:36:49

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2 until Fortress took over?

3 A. Yes.

4 Q. And that was the source of cash flow
5 that it had was the management fees?

6 A. And incentive fees prior to 2009.

7 Q. Got you.

8 D.B. Zwirn & Co. in the summer of last year?

02:37:16

9 MR. O'BRIEN: Objection to form.

10 A. In conjunction with the transaction
11 with Fortress, I had an employment agreement that
12 lasted through 12/31/09. I was asked by
13 representatives of Fortress to stay through May 31
14 of 2010 in conjunction with the transaction.

15 Q. Do you have any continuing -- or did
16 you, after May 31, 2010, have any continuing
17 contractual arrangement with Fortress?

02:37:52

18 A. I have certain confidentiality and
19 nonsolicit arrangements that were in conjunction
20 with my employment there.

21 Q. Any compensation paid to you post May
22 2010?

23 A. Not a penny.

24 Q. And do you -- and D.B. -- were you
25 working for D.B. Zwirn & Co., L.P., when its name
was changed?

26 A. I don't recall if the name change
27 occurred prior to May 31, 2010, or after.

02:38:25

28 Q. Was it formally wound down in some --
29 "it" being D.B. Zwirn & Co. -- in some fashion?

30 A. I do not believe it was formally
31 liquidated under Delaware law.

32 Q. Did you ever have any position with
33 Zwirn Holdings or was that simply Dan Zwirn's
34 entity?

MR. ARFFA: Objection to form.

35 A. Zwirn Holdings I believe it was an
36 intermediate holding company for Dan's interest in
37 the Dan Zwirn affiliates, so no.

02:38:59

(Pause.)

38 Q. Did you participate in -- as I
39 understand it, the onshore fund would make
40 investments in certain -- would originate loans,
41 let them season, and then transfer them to the
42 offshore fund after a period of time?

MR. ARFFA: Objection to form.

43 A. The onshore fund engaged in a lot of
44 activities, and yes, loan origination was one of

02:40:03

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2 them. And on occasion the onshore fund, either
3 directly or through its CLO, wholly owned CLO,
4 would syndicate or participate in portions of
5 loans to the offshore funds to its managed
6 accounts and to third parties.

7 Q. And the reason the onshore fund -- with
8 the onshore fund they would have to let the loan
9 season before it could give it -- before the
10 offshore fund could invest because the offshore
11 fund could not be originating loans in the United
12 States; is that right? 02:40:34

13 MR. O'BRIEN: Objection to form. And
14 to the extent that your answer has anything to
15 do with legal advice that you might have
16 received or been aware of, I direct you not to
17 reveal that information.

18 A. It's contained in the audit. The
19 offshore fund as a general matter should not be
20 engaged in a U.S. active trader business, which
21 would include loan origination as a matter of
22 business practice. 02:40:57

23 Q. One of the reasons why you were
24 concerned about the loans from the offshore fund
25 to the onshore fund is they might be perceived to
be loan origination in the U.S.; is that right?

26 MR. ARFFA: Objection to form.
27 A. The concern was not a single loan from
28 the onshore fund or even two or three loans; the
29 concern was an offshore entity providing capital
30 for purposes of having another entity originate
31 loans for its benefit, as a matter of practice. 02:41:31

32 Q. It could be a problem for the tax
33 status of the offshore fund?

34 A. It could be a potential risk in
35 jeopardizing the tax status of the offshore fund.

36 MR. SUSMAN: I have no further
37 questions. 02:42:03

38 THE VIDEOGRAPHER: This is the end of
39 today's deposition. The time is 2:42. We're
40 off the record.

41 (Time noted: 2:42 p.m.)

42

43

44