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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17342

In the Matter of

RD LEGAL CAPITAL, LLC and RONI DERSOVITZ,

Respondents.

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DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT

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PROPOSED FINDINGS OF FACT

I. Entities and Individuals

A. Respondents and the RD Legal Funds

1. **Roni Dersovitz**, age 57, was a personal injury lawyer licensed in New York and New Jersey.[1] He is the president and chief executive officer of RD Legal Capital, LLC ("RDLC"), and the owner of RDLC and RD Legal Funding, LLC.[2] As the sole Member of RDLC, he was vested exclusively with the management and control of that company.[3] Dersovitz has invested in discounted legal receivables owed to attorneys, law firms, and plaintiffs since 1998.[4]

2. **RDLC** is a Delaware limited liability company with its principal office in Cresskill, New Jersey. RDLC is the general partner and investment manager of the investment funds (RD Legal Funding Partners, LP and RD Legal Funding Offshore Fund, Ltd.). RDLC was registered with the Commission as an investment adviser from August 2008 through July of 2014.[5]

3. **RD Legal Funding Partners** (the "Onshore Fund" or "Onshore Flagship Fund"), is a Delaware limited partnership organized in 2007. Its principal place of business is in Cresskill, New Jersey. RDLC is the general partner of RDLP.[6]

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1 August 5, 2016 Answer of Respondents RD Legal Capital, LLC and Roni Dersovitz ("Ans.") at 5 (admitting to allegation in OIP ¶ 5 (Dersovitz "is an attorney licensed in New York and New Jersey")).

2 Ans. at 5 (admitting to allegation in OIP ¶ 5 (Dersovitz "is the president and chief executive officer of RDLC, and the owner of RDLC and RD Legal Funding, LLC")).

3 Ans. at 1 (Dersovitz "is the principal of RDLC"). See infra Section VI.D.

4 Ans. at 1 ("Since 1998, [Dersovitz] has invested in discounted legal receivables owed to attorneys, law firms, and plaintiffs.").

5 Ans. at 5 (admitting to allegation in OIP ¶ 6 describing RDLC as set forth above).

6 Ans. at 1 ("RDLC is . . . the investment manager of [the Offshore Fund]"), 6 (admitting to allegation in OIP ¶ 7 describing the Onshore Fund as set forth above).

4. **RD Legal Funding Offshore, Ltd.** (the "Offshore Fund" or "Offshore Flagship Fund" and, together with the Onshore Fund, the "Funds" or "Flagship Funds"), is an exempted company organized in 2007 under the laws of the Cayman Islands and managed from RDLC's offices in New Jersey.[7]

1. The Return Structure of the Funds

5. The Funds offered to their investors a targeted cumulative annual return of 13.5% per annum.[8]

6. At the end of each month, the net profits and losses of the Funds, including realized and unrealized gains and losses, are allocated to the accounts of the limited partners of the Onshore Fund and to the shareholders of the Offshore Fund.[9]

7. Net profits in excess of the investors' targeted return are allocated to the capital account of RDLC.[10]

8. If returns are insufficient to meet the preferred return due to the investors, RDLC is required to reserve the entire amount of any shortfall owed to investors and to allocate funds from future gains to cover any shortfall prior to RDLC receiving any further return.[11]

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[7] Ans. at 1, ("RDLC is the general partner of [the Onshore Fund]"), 6 (admitting to allegation in OIP ¶ 8 describing the Offshore Fund as set forth above).

[8] Ans. at 6 ("Respondents admit the Funds offer investors a targeted cumulative annual return of 13.5% per annum."); see also Ex. 66 at 24 ("The 'Limited Partner Return' is an amount which equals 13.5% per annum of the average balance of each limited partner's capital account balance calculated as of the end of each month.").

[9] Ans. at 6 ("At the end of each month, the net profits and losses of the Funds, including realized and unrealized gains and losses, are allocated to the accounts of the limited partners of the domestic fund and to the shareholders of the offshore fund."); see also Ex. 66 at 24 ("Allocation of Net Profits and Losses" section).

[10] Ans. at 6 ("Any net profits in excess of the limited partner and shareholder returns are allocated to the capital account of RDLC as the general partner and investment manager."); see also Ex. 66 at 24 ("Allocation of Net Profits and Losses" section).

9. All expenses of operating the Funds are borne by RDLC.[12]

10. Investors were locked into the Funds for a period of at least 12 months before they could redeem in whole or in part any of their investments.[13]

a. The General Partner, i.e., RDLC and by extension Dersovitz, had the authority to waive the one-year lock.[14]

11. Withdrawals were made "as of the last day of any calendar quarter" following the at least 90-day notice period, and paid "within 30 days" following the quarter-end.[15]

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[11] Ex. 64 at 7-8 ("The Limited Partner Return [in the Onshore Fund] is cumulative, and if a limited partner fails to receive its entire Limited Partner Return in any particular month, the General Partner agrees to reserve the entire amount of such shortfall, as well as the entire amount of any shortfall owed to [investors in the Offshore Fund] to the extent, if any, that it is permitted to make a withdrawal from its capital account. In the event that such reserve by the General Partner is insufficient to cover the entire amount of such shortfall, then the amount of the remaining shortfall shall be satisfied by allocating any future net profits of the Partnership to the limited partner's capital account prior to the payment of any General Partner Return. For the avoidance of doubt, the General Partner will not receive any payment of the General Partner Return with respect to any month until the entire amount of the cumulative Limited Partner Return has been allocated to the limited partner's capital account."), 120 (same); Ex. 65 at 9-10(describing substantially the same method for allocating returns for the Offshore Fund); see also Exs. 57 at 7, 23-24 (same); 58 at 8, 19-20 (same).

[12] Ans. at 7 ("All expenses of operating the Funds (employee payroll, payroll taxes, audit fees, rent, health insurance, etc.) are paid out of the return to RDLC.").

[13] E.g., Ex. 66 at 26 ("A limited partner . . . may, upon at least 90 days' prior written notice to the General Partner, withdraw up to 25% of its capital account attributable to a particular capital contribution as of the last day of any calendar quarter only if that capital contribution has been invested in the Partnership for at least 12 months.").

[14] Ex. 66 at 27 ("Notwithstanding the foregoing, the General Partner, in its sole discretion, may waive or modify any terms related to withdrawals for limited partners that are principals, employees or affiliates of the General Partner, relatives of such persons, and for certain large or strategic investors."); Ex. 275 at 1-2 (Mar. 8, 2012 email from Dersovitz to Craig, Gumins, Ishimaru) ("If it makes you more comfortable, what I believe I can do is agree to waive your hard lock of a year for any shift in the underlying business that you're concerned with.").

[15] E.g., Ex. 66 at 26 ("A limited partner . . . may, upon at least 90 days' prior written notice to the General Partner, withdraw up to 25% of its capital account attributable to a particular capital contribution as of the last day of any calendar quarter only if that capital contribution has been invested in the Partnership for at least 12 months.").

12. Investors who completely redeemed their investments would be paid from their capital account in the following quarterly schedule: 25% of the capital account value, followed by 33% of the remaining value, followed by 50% of the remaining value, and the remainder (save for a "Holdback" amount).[16]

13. The "Holdback" was 10% of the each redemption payment to be paid "[p]romptly after the General Partner has made a final determination of the value of the capital accounts of all the partners as of the date of withdrawal[.]"[17]

14. The General Partner may suspend the right of limited partners to withdraw in certain circumstances, including a "period of extreme volatility or illiquidity[,]"[18] and distributions were to be in cash, except in "certain limited circumstances" when assets could be distributed to a liquidating trust or account.[19]

a. Redemptions from the Funds were suspended as of April 30, 2015.[20]

15. The assets in the Flagship Funds are "self-liquidating" such that, regardless of whether Respondents manage the investments or not, payments are due to the Flagship Funds on the assets from the insurance company that is making the payment on a receivable or, as in the case of the Peterson receivables, by the administrator of the Qualified Settlement Fund. The only exception is assets for which affirmative efforts at collection, such as litigation, are necessary.[21]

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16 E.g. Ex. 66 at 26.

17 E.g. Ex. 66 at 26.

18 E.g., Ex 66 at 27-28.

19 E.g., Ex 66 at 28.

20 Ex. 446 (Apr. 30, 2015 letter to investors); Ex. 451 (May 29, 2015 letter to investors); Ex. 452 (May 29, 2015 letter to investors).

21 Tr. 5878:18—5879:7 (Dersovitz) ("Q: What about the operation of the funds; would you be able to continue to operate the funds today? A: The answer to that is yes. Q: In what way? A: So the funds to some extent are self-liquidating which is an unusual characteristic of this asset class,

B. Other Significant Entities and Individuals

1. RD Legal Entities[22]

16. **RD Legal Funding, LLC** ("RDLF"), is a New Jersey Limited Liability Company owned by Dersovitz formed in 1997 to conduct the factoring business.[23] It originates the receivables that are entered into by the Flagship Funds.[24]

17. **RD Legal Special Opportunities Offshore Fund I, Ltd.** ("Offshore SPV"), is an exempted company incorporated under the laws of the Cayman Islands in 2012 for the purpose of investing in accounts receivables arising from law firms and the judgments of plaintiffs arising from multiple civil actions against the Islamic Republic of Iran.[25] RDLC was the investment

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except for litigation that you have to monitor -- I shouldn't say 'litigation.' Let me clarify. Except for collection-type actions that you really need to oversee assets, collect and self-liquidate, that's one of the nice things about this asset class. An insurance company is making a payment or a class action is settling or the USF is distributing regardless of what happens to me, so that's a nice feature of this asset class.").

22 Respondents, together with the Flagship Funds, RDLF, the Iran SPV, and any other affiliated entities are sometimes referred to generically as "RD Legal" herein.

23 Ex. 63 at 12 ("RDLF is owned by Roni Dersovitz. RDLF was formed as a New Jersey limited liability company in 1997 for the purpose of purchasing Legal Fee Receivables at a discount.").

24 Tr. 5439:19—5440:1 (Dersovitz) ("Q: And what is RD Legal Funding, LLC? A: So RD Legal Funding is the same entity that I created in '98. Today it is an origination platform and generates the assets for the funds regardless of where they wind up. It's simply the origination platform. And then they're originated in the names of whatever vehicles they're going to go into.").

25 Ex. 70 at 8 ("The Fund is an exempted company incorporated with limited liability under the laws of the Cayman Islands on June 19, 2012."), 18 (the Offshore SPV was "incorporated . . . for the purpose of investing its assets in accordance with the investment program set forth in this Confidential Explanatory Memorandum[.]"), 19 ("The Fund will purchase from law firms and attorneys . . . certain of their accounts receivable representing legal fees derived by the Law Firms from litigation, judgments and settlements . . . arising from multiple civil actions against the Islamic Republic of Iran related to the bombing of the U.S. Marine Corps barracks in Beirut, Lebanon in 1983[.]"). See Section II.C for a description of the Peterson Matter, as described therein.

manager for the Offshore SPV.[26]

18. **RD Legal Special Opportunities Partners I, LP** ("Onshore SPV" and, together with the Offshore SPV, the "Iran SPV"), is a Delaware limited partnership formed in 2013 for the purposes of investing in accounts receivables arising from law firms and the judgments of plaintiffs arising from multiple civil actions against the Islamic Republic of Iran.[27] RDLC was the general partner for the Onshore SPV.[28]

19. **RD Legal Finance, LLC** is a Delaware Series LLC owned by Dersovitz and entities he controls, formed in 2015 for the purposes of raising money for legal investments such as reimbursement rights, and that is currently raising money for such investments,[29] in keeping with

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[26] Ex. 70 at 18 (RDLC "is the investment manager of the Fund").

[27] Ex. 69 at 6 (the Onshore SPV "is a Delaware limited partnership organized on April 26, 2013"), 17 (the Onshore SPV was "formed for the purpose of investing its assets in accordance with the investment program set forth in this Confidential Explanatory Memorandum"), 18 ("The Fund will purchase from law firms and attorneys . . . certain of their accounts receivable representing legal fees derived by the Law Firms from litigation, judgments and settlements . . . arising from multiple civil actions against the Islamic Republic of Iran related to the bombing of the U.S. Marine Corps barracks in Beirut, Lebanon in 1983[.]"). See Section II.C for a description of the Peterson Matter, as described therein.

[28] Ex. 69 at 17 (RDLC "is the general partner of the Fund.").

[29] Ex. 596 at 5 (prospective agreement for money raising relating to certain legal cases between RD Legal Finance, draft dated December 2015); Tr. 3243:24—3244:11 (Schall) ("Q: I see. And it says, "Ultimately transferred to a new entity, RD Legal Finance, LLC." Do you see that? A: Yes. Q: What is RD Legal Finance, LLC? A: RD Legal Finance, LLC is a new entity formed. Q: For what purpose? A: Making investments. Q: In what? A: In legal settlements. Q: When was it formed? I'm sorry? A:It was formed sometime in 2015."); Tr. 5483:17—5484:2 (Dersovitz) ("Q: Mr. Dersovitz, I know we've been going awhile, but I'm going to try to plow through to finish out some of this topic area. You talked about a new type of investment that you were engaged in with regard to reimbursement rights. Is that something that you are operating through the legacy funds that are at issue here? A: No. It's one of the newer vehicles. It might be a little bit of it in the legacy, but primarily just the attorney fee component. But mostly in the legacy -- in the RD Legal Finance."); Tr. 5874:4-11 (Dersovitz) ("Q: How have you managed to come up with money to
continue the operation of the fund? A: With the advice that we received in March of 2015, we began creation of other vehicles. RD Legal Finance came into existence. That's an LLC came into

Dersovitz's admonition that it is his present intention to continue work in the business of raising money to finance legal settlements "for years to come" because he is "here to stay."[30]

2. Other Entities and Individuals

20. **Steven Perles** is an attorney employed by the Perles Law Firm in Washington, D.C., who focuses on international claims and reparation matters.[31] Mr. Perles has worked on such matters since 1986,[32] and has prosecuted actions against foreign nations such as Libya, Iran, Syria, and the Sudan.[33] Mr. Perles, through the Fay & Perles firm, represented the plaintiffs in the Iran related Peterson litigations.[34]

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existence and operation in, as best as I can recall, middle of -- middle of '15. And that is the Delaware Series LLC that I was referring to a moment ago."); see also infra n.1301.

30 See, e.g, Tr. 5856:23—5857:5 (Dersovitz) (Q If you are losing a little over $7 million in the last two years of 2015 and 2016, why are you still operating the fund? A I have always done it right. I will continue to do it right when this is over, thank God. I have investors and business acquaintances that have allowed me to get over these hard times and they stood by me. So I have no intent of going away; I'm here to stay."); Tr. 6180:13-22 (Dersovitz) ("Q: You saw this page during the course of this trial? A Yes. I was very proud to see the returns that my office and I were able to achieve for our investors. And the only request that I have of the Court is that I be permitted to carry on with this activity for years to come and benefit my investors and continue to offer the same benefits to my investors at -- my employees and my family.")

31 Tr. 1539:6-24 (Perles) ("Q: Who are you employed by? A: I am employed by the Perles Law Firm. Q: What is the Perles Law Firm? A: The Perles Law Firm is a boutique law firm in Washington, D.C. We focus on primarily international claims and reparation matters. . . . We are generally regarded as the leading experts in the United States on the reconstruction of terrorist attacks. . . . [B]asically we hunt the financial end of those kinds of attacks.").

32 Tr. 1539:25—1540:3 (Perles) ("Q: . . .And how long have you been engaged in this line of work? A: I began my first project in the spring of 1986.").

33 Tr. 1540:24—1541:7 (Perles) ("Q: And have you ever had occasion to bring lawsuits against foreign sovereigns in your line of work? A: We have brought lawsuits against both foreign sovereigns and nongovernmental entities as a result of that work. Q: Which foreign sovereigns, for example, have you brought lawsuits against? A: Libya, Iran, Syria and the Sudan.").

34 Ex. 558 (Fay & Perles Retainer Agreement); Tr. 1557:11—1559:1 (Perles) ("Q: . . . Did there come a time that you filed the litigation on behalf of victims and their families for the Marine barracks bombing? A: Maybe late 2000, early 2001. . . . Q: And what was the name -- what was the name of the main case? A: Peterson vs. The Islamic Republic of Iran."). See also Section II.C for a description of the Peterson Matter, as described therein.

21. Mr. Perles entered into funding transactions with RDLC and the Flagship Funds related to the Peterson litigations.[35]

22. **Thomas Fortune Fay** is an attorney at the Fay Law Group, PA, who has practiced antiterrorism law since 1996.[36] Mr. Fay has prosecuted actions against foreign nations such as Iran[37] and Libya.[38] Mr. Fay, through the Fay & Perles firm, represented the plaintiffs in the Iran related Peterson litigations.[39]

23. Mr. Fay entered into funding transactions with RDLC and the Flagship Funds related to the Peterson litigations.[40]

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[35] Tr. 1594:3—1595:4 (Perles) ("Q: [discussing Ex. 227 at 23] Do you recognize that, sir? A: It's a schedule addendum to the Master Agreement that I executed with RD Legal. Q: . . . So you had, in fact, executed a Master and Sale Agreement with RD Legal, this is on behalf of the Perles Law Firm; is that correct? A: That is correct. . . . Q: . . . do you recall approximately when . . . the Perles Law Firm first entered into a transaction with RD Legal with respect to the Peterson case? A: I assume it's 28 May 2010."). Exs. 227 (Perles Master Assignment and Sale Agreement); 1109 (Perles Sch. A-2); 1150 (Perles Sch. A-3); 1164 (Perles Sch. A-4); 1171 (Perles Sch. A-5); 1172 (Perles Sch. A-6); 1232 (Perles Sch. A-7); 1458 (Perles Sch. A-9).

[36] Tr. 2398:24—2399:15 (Fay) ("Q: What do you do for a living? A: I'm an attorney. . . . I'm admitted in Maryland and D.C. . . . Q: And do you practice law as a member of a firm? A: Yes. It's Fay Law Group, PA. . . . My particular area of practice is just in antiterrorism. Q: And how long have you been working in that area of practice? A: Since 1996.").

[37] Tr. 2399:16—2400:1 (Fay) (". . . Q: Who is Mr. Steven Perles? A: He is my partner on these cases. . . . Q: What case is that? A: That is the case of Deborah Peterson vs. the Islamic Republic of Iran.").

[38] Tr. 2408:7—2409:7 (Fay) ("Q: Did you have any business dealings with RD Legal? A: Yes. Earlier than that -- I guess it was about 2008 in the fall, I had -- one of the other cases we had was a claim against Libya growing out of the attack on the La Belle discotheque just outside of Berlin . . . . Q: . . .[H]ow did the Libya case resolve? A: . . .[W]e worked out an agreement to settle the case.").

[39] Ex. 558 (Fay & Perles Retainer Agreement); Tr. 2399:18—2400:1 (Fay) ("Q: Who is Mr. Steven Perles? A: He is my partner on these cases. . . . Q: What case is that? A: That is the case of Deborah Peterson vs. the Islamic Republic of Iran."). See also Section II.C for a description of the Peterson Matter, as described therein.

[40] Tr. 2414:10—2415:14 (Fay) ("Q: [discussion Ex. 238 at 2-3, 13, 15, 16 (Fay Sch. A-2)] Do you recognize that document? . . . A: Yes, yeah, yes. . . . Q: In addition to signing these agreements with RD Legal, did you sign other schedules or other agreements with RD Legal? A:

24. **Daniel Osborn** is an attorney with his principal office in New York, N.Y.[41] Mr. Osborn practiced through the Beatie & Osborn firm between 1998 and 2008.[42] Following the dissolution of Beatie & Osborn, Mr. Osborn practiced law through Osborn Law, PC.[43]

25. Mr. Osborn litigated class-action cases, as well as multi-district litigation ("MDL") cases representing plaintiffs injured by prescription drugs.[44] Mr. Osborn represented plaintiffs in cases against Merck, Novartis, and Proctor & Gamble related to the "ONJ Cases" as defined infra at ¶ 33.[45]

Yes. Over the years, I did."). Exs. 238 (Fay Assignment and Sale Agreement); 444 at 11 (attachment to email with list of funding schedules between the Funds and the Fay Kaplan firm); 1175-1176 (Fay Sch. A-3 and amendment); 1211-1212 (Fay Sch. A-4 and amendment); 1253 (Fay Sch. A-5); 1341 (Fay Sch. A-6); 1414 (Fay Sch. A-7); 1921 (Fay Sch. A-9); 1968 (Fay Sch. A-10); 2073 (Fay Sch. A-11); 2106 (Fay Sch. A-13).

41 See Complaint in RD Legal Funding Partners, LP v. Powell, No. 2:14-cv-7983 (FSH) (D.E. 1) (D.N.J. Dec. 23, 2014) ("Osborn Compl.") at ¶ 10; Tr. 1242:12-14 (Osborn) ("Q: . . . What do you do for a living? A: I'm an attorney.").

42 Tr. 1242:23—1244:6 (Osborn) ("Q: . . . Would you mind walking me through your legal practice over time. . . . A: In 1998, I left to join a former partner at Brown & Wood . . . . Q: In 1998 when you joined up with somebody else from Brown & Wood, who was the person from Brown & Wood? A: Russell Beatie. Q: Did you form a practice with Mr. Beatie? A: Yes. Q: What was the structure of that practice? A: It was a partnership with Mr. Beatie. . . . Q: Did there come a time when Beatie and Osborn ceased to exist? A: Yes. In more or less the end of 2008.").

43 Tr. 1251:24—1252:3 (Osborn) ("Q: And what did you do after you left--after Beatie and Osborn dissolved? A: I formed Osborn Law, PC. Q: . . . what did Osborn Law, PC do? A: Again, litigation.").

44 Tr. 1242:23—1243:13 (Osborn) ("Q: . . . Would you mind walking me through your legal practice over time. . . . A: . . .In 1998, . . . we started to get into the class action work. . . . And I guess at some point in mid-2005 or so, we ventured into the world of multi-district litigation representing parties injured from pharmaceutical prescription drugs."); Osborn Compl. ¶ 11.

45 Tr. 1247:25—1249:11 (Osborn) ("Q: . . . Are you familiar with a litigation generally known as ONJ litigation? A: Yes. Q: Can you describe what the ONJ litigation? A: What I call the ONJ litigation is a series of cases that came to me beginning in 2005. . . . Q: . . .And these cases were cases against what defendant or defendants? A: . . .I think the defendants in 2005 were Merck and Novartis. . . . Eventually, a third pharmaceutical company got sued, which is Proctor & Gamble. . . . Q: And did you end up working on ONJ cases relating to all those defendants, Merck, Novartis and Proctor & Gamble? A: Over time, yes."); Tr. 1251:24—1252:9 (Osborn) ("Q: Did you continue to have any role in the ONJ cases [following the dissolution of Beatie & Osborn]? A:

26. Mr. Cohen entered into funding transactions with RDLC and the Flagship Funds related to the unsettled ONJ Cases between August 2008 and December 2015.[46]

27. **Barry A. Cohen** is a Florida attorney, the sole shareholder of the law firms known as Cohen, Jayson & Foster, P.A., Barry A. Cohen, P.A., Cohen, Foster & Romine, P.A., and Cohen & Foster, P.A. (the "Cohen Firm").[47] Cohen represents plaintiffs in various types of cases, including criminal and civil matters.[48]

Yes. . . . my office took virtually all of the cases. So my office continued to conduct the litigation of those cases."). See also Section II.A for a description of the ONJ Litigation.

[46] Ex. 5 (list of Osborn ONJ positions in the Funds' portfolio); Tr. 1249:12—1249:23 (Osborn) ("Q: And did you work on any cases with Mr. Dersovitz relating to that ONJ litigation? A: Yes. Similar to what we had done in the past. Q: . . . [D]id Beatie and Osborn . . . enter into any deals with Mr. Dersovitz relating to the ONJ litigation? A: I believe so. Q: And did it do it before there was any settlement in the ONJ litigation? A: I believe so."); 1251:24—1253:1 ("Q: [regarding the funding of the ONJ Litigation at Osborn Law, PC] And how did you fund the litigation of those cases? A: Through whatever capital we could raise from the resolution of non-ONJ cases and any billable matters that we may have had and through the sale of anticipated fees to RD Legal. . . . Q: And when you say the funding from RD Legal, what are you referring to there? A: Again, the sale of anticipated legal fees. Q: Does that include the sale of anticipated legal fees from the ONJ cases? A: It would have included those."); Ex. 477 (schedules to Osborn agreements). See also Decl. of Daniel A. Osborn, Esq., RD Legal Funding Partners, LP v. Powell, No. 14-cv-7983 (D.N.J. 2014) at Docket Entry 1-3.

[47] Complaint in RD Legal Funding Partners, L.P. v. Barry A. Cohen, P.A., No. 2:13-cv-00077 (JLL) (D.E. 1) (Jan. 3, 2013 D.N.J.) at 1 and ¶¶ 6-7 ("Cohen Compl."); Tr. 1390:3—1391:8 (Cohen) ("Q: Okay. And in terms of criminal law, what kind of criminal law do you practice? A: Well, over the years I've practiced all kind of criminal law, state cases, federal cases, white collar cases, blue collar cases. You know, when you start out, you don't have that much of a choice. You start out doing lower-type criminal activity. Then you get into the federal system and white collar stuff, tax fraud and that sort of thing. Q: And how long have you been practicing law? A: About since 1966. Q: And where is your practice located? A: Primarily in Tampa, Florida. We practice out of the state, but my office is in Tampa. Q: And do you practice at a firm? A: A firm? Q: Yes. A: I do practice out of a firm. Q: What is the name of your firm? A: Barry A. Cohen Legal Team. Q: Prior to that, did you practice at firms with different names? A: I did. Q: And Cohen, Jayson & Foster, for example? A: That's one of the firms that we practice under. Q: Okay. And do you recognize the name Cohen, Foster & Romine? A: I do. That's another firm we practiced out of.").

[48] Cohen Compl. ¶ 10.

28. Mr. Cohen represented James J. Licata in a criminal matter in 2007 (the "Licata Matter").[49]

29. Mr. Cohen also represented a relator in civil and criminal cases against WellCare Health Plans arising under the False Claims Act (the "WellCare Matter").[50]

30. Mr. Cohen also represented a plaintiff, Lai Chau, in a premises liability matter from trial through appeal to the Florida Supreme Court.[51]

31. Mr. Cohen entered into funding transactions with RDLC and the Flagship Funds related to the Cohen Cases.[52]

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[49] Tr. 1394:5—1395:6 (Cohen) ("Q: [Referring to Ex. 202 at 29] It refers to in a – 'In the matter of the criminal prosecution of James J. Licata.' A: It does. . . . That was a criminal case. Q: And what was your role in that case? A: To represent him."); Ex. 202 at 29 (referring to "Legal Fee Invoice/Retainer dated July 31, 2007 by and between James J. Licata and Cohen Jayson & foster PA . . . in connection with . . . United States v. James J. Licata, District of Connecticut."). See infra Section II.B.1 for a description of the Licata matter.

[50] Tr. 1407:1-18 (Cohen) ("Q: [Discussing Ex. 202 at 81] . . .the line that says 'The case.' It refers to a case United States of America V. WellCare Health Plans. . . . what was that case? A: That was a qui tam case that my firm represented the relator on. And the government was pursuing that litigation against WellCare. . . ."). See infra Section II.B.3 for a description of the WellCare Matter.

[51] Tr. 1419:4—1420:4 (Cohen) ("Q: Do you recall a Lai Chau case? A: I do. Q: What was that case? A: That was what we call a premise liability case. . . . We got a judgment against the apartment complex for $15 million. Q: And after you obtained the judgment against the apartment complex, was there an appeal? A:Yes. . . . They appealed it to the Second District Court of Appeal. . . . Q: Was that case also appealed to the Florida Supreme Court? A: It was."). See infra Section II.B.2 for a description of the Lai Chau Matter.

[52] Tr. 1420:13—1421:9 (Cohen) ("Q: Did you take a loan from RD Legal secured by your fees in [the Lai Chau Matter]? A: I believe we did. Q: When you took a loan from RD Legal against that case, was that case still pending? . . . A: . . . the answer is yes, it was still pending."); Ex. 202 at 29—80 (funding schedules and documents re: the Licata Matter); Ex. 81 at 135 (funding schedules and documents re: the WellCare Matter).

II. RD Legal's Investments in the Osborn, Cohen, and Peterson Cases

A. The "ONJ" Cases

32. Starting in 2005, Osborn began working as counsel representing certain plaintiffs who alleged to have suffered injuries from using a class of drugs known as bisphosphonates—in particular the drugs "Aredia" and "Zometa" manufactured by Novartis Pharmaceuticals, the drug "Fosamax" manufactured by Merck Sharpe & Dohme, and the drug "Actonel" manufactured by Procter & Gamble ("P&G").[53]

33. Osborn pursued these claims on behalf of his clients as three separate actions or multi-district litigations ("MDL"), (1) a lawsuit against P&G filed in the Southern District of New York; (2) a MDL against Merck filed in the Middle District of Tennessee captioned In re Fosamax Products Liability Litigation, MDL No. 1789; and (3) a MDL against Novartis filed in the Southern District of New York captioned In Re Aredia/Zometa Products Liability Litigation, MDL No. 1760 (collectively the "ONJ Cases").[54]

34. The Flagship Funds started funding B&O and Osborn with respect to the ONJ Cases since at least August of 2008, when they advanced $177,000 to purportedly purchase fees

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[53] Osborn Compl. ¶ 12.

[54] Osborn Compl. ¶ 13; see also Tr. 1248:3—1249:11 (Osborn) ("Q: Can you describe what [is] the ONJ litigation? A: What I call the ONJ litigation is a series of cases that came to me beginning in 2005. A colleague of mine, Mr. Bogart, called one day and said he had a handful of cases that he thought would grow to some larger number of cases in the mode of a class action. And since he knew I had class action experience, he asked if I would be able to assist him if he got more cases than he could handle. Q: And did you assist him at any time? A: Yes. Sometime after the initial call, I can't remember if it was weeks or months, he followed up -- we were friends anyway, so we talked from time to time about other things. But at some point he followed up and said, I'm getting more and more cases, and I would really like your help. Q: And what did you understand that to mean, "your help"? A: That my office would litigate the cases. Q: Okay. And these cases were cases against what defendant or defendants? A: In 2005 -- I think the defendants in 2005 were Merck and Novartis. Q: And did that change after 2005? A Eventually, a third pharmaceutical company got sued, which is Proctor & Gamble. And I think that came later. Q: And did you end up working on ONJ cases relating to all those defendants, Merck, Novartis and Proctor & Gamble? A: Over time, yes.").

that B&O may collect if they earned any fees from representing clients with respect to the litigation against Novartis.[55] On November 24, 2008, the Flagship Funds advanced nearly $400,000 to Osborn with respect to his ONJ Cases against Novartis, and in April of 2009 began advancing funds (the first advance for over $200,000) to purportedly purchase fees that Osborn hoped to earn with respect to his ONJ Cases against Merck.[56]

35. When Dersovitz authorized funding of Osborn receivables in January 2009, he did so "pursuant to the flexibility provisions of the offering documents."[57] In fact, Dersovitz testified that the millions of dollars advanced to Osborn relating to the jaw litigation did not fit within the Funds' strategy.[58] And Barbara Laraia's email to Dersovitz requesting approval for the Osborn

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[55] See Ex. 2 at row 2; see also Osborn Compl. ¶ 30 (indicating that the Onshore Flagship Fund advanced nearly $2 million to B&O with respect to the ONJ Turnover Litigations); Tr. 1252:10—1253:1 (Osborn) ("Q: And how did you fund the litigation of those cases? A: Through whatever capital we could raise from the resolution of non-ONJ cases and any billable matters that we may have had and through the sale of anticipated fees to RD Legal. Q: Was the money that you had from the resolution of non-ONJ cases enough to fund the ONJ cases? A: No. Q: And when you say the funding from RD Legal, what are you referring to there? A: Again, the sale of anticipated legal fees. Q: Does that include the sale of anticipated legal fees from the ONJ cases? A: It would have included those.").

[56] See Ex. 2 at rows 3, 10.

[57] Ex. 721 at 1 (Jan. 30, 2009 email from Dersovitz to Laraia); Tr. 2676:20—2677:9 (Dersovitz) ("Q: Now, a moment ago we looked at the DDQ at Division Exhibit 39-11 where we saw the categories of the 95 percent and the 5 percent. Do you remember that? A: Yes. Q: Of that 100 percent, where did the Osborn litigation fit in 2012, September 2012, when the -- the day of the DDQ? A: We might have considered them -- excuse me. We might have considered them factoring transactions. They might have been -- because they were structured as assignments and sales. ***But they were authorized under other -- not other -- under flexibility***.") (emphasis added).

[58] Tr. 2681:10—2682:1 (Dersovitz) ("Q: But you're not drawing a distinction between -- when you describe a workout situation, you're describing all of the money that you advanced to Mr. Osborn's firms relating to the ONJ litigation; is that correct? A: Yes. Q: Okay. And I believe you said you didn't describe -- you answered a question about why you didn't describe that matter as a workout situation in this document. I have the same question for the due diligence questionnaire. . . . [W]hy didn't you describe the Osborn receivables as a workout situation where the due diligence questionnaire asked for your -- the fund strategy in as much detail as possible? A: Because that's not part of the fund strategy. That was disclosed in the AUP.").

transactions noted Osborn "Schedules A-1, A-2 and A-3 [were] going to be applied to pay-off existing Beatie & Osborn receivables" rather than fund new receivables.[59]

36. Although the repayment periods provided for in the agreements between Osborn and the Onshore Flagship Funds typically contemplated that Mr. Osborn would remit the fees earned within two years, these agreements were routinely extended for additional two year periods as resolution of the ONJ Cases did not occur.[60]

37. By the end of 2015, the Flagship Funds had advanced nearly $12 million to B&O and Osborn to purportedly purchase fees that they may obtain with respect to the ONJ Cases.[61] By the end of December 2015, at least $10.4 million of these advances remained in the Flagship Funds' portfolios, although they were valued at over $17 million, remaining at all times approximately 10% of the Flagship Funds' portfolio measured both by dollars deployed and by their indicated values.[62]

38. When Respondents began advancing Flagship Funds' assets to Osborn to purchase "anticipated legal fees" from the ONJ cases,[63] none of the ONJ Cases had been

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59 Ex. 721 at 1 (Jan. 30, 2009 email from Dersovitz to Laraia).

60 See, e.g., Ex. 477 at 2 (November 24, 2008 Schedule A-1 advancing $398,024.16 to purchase $588,254.99 in legal fees that may be earned from Aredia & Zometa case against Novartis); Ex. 477 at 7 (November 24, 2010 Amendment to Schedule A-1 providing that the Onshore Flagship Fund had "not received the full legal fee in good funds by November 24, 2010, the payment date" of Schedule A-1, and extending repayment until November of 2012, with a per diem interest charge); Ex. 477 at 10 (November 2012 Amendment to Schedule A-1 providing that the Onshore Flagship Fund had "not received the full legal fee in good funds," and extending repayment until November of 2014, with an ongoing per diem charge accruing against Mr. Osborn); Ex. 477 at 13 (November 24, 2014 agreement extending Schedule A-1 repayment date until November of 2016).

61 See Ex. 2 at column C.

62 See Ex. 2 at columns D-G.

63 Tr. 1252:20-23 (Osborn) ("Q: And when you say the funding from RD Legal, what are you referring to there? A: Again, the sale of anticipated legal fees.")

settled.[64] This meant that, because Mr. Osborn was employed on a contingency basis, he had not actually "earned" any fees from his clients, and he would get no fees if he was unsuccessful in the litigation.[65]

39. By November of 2012, two of Mr. Osborn's clients had had "bell weather" trials in the Aredia & Zometa matter against Novartis, and both had received unfavorable verdicts.[66]

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[64] Tr. 1259:4-6 (Osborn) ("Q: Were the ONJ cases settled as of 2009? A: No. As a whole, they were not – they were not settled. I can't remember when [they settled] . . ."); Tr. 1264:20—1265:4 (Osborn) ("Q: Were the cases settled in 2009? A: No. Not as a whole, no. Q: Okay. Were enough of the components of the cases settled that you could have told Mr. Dersovitz that they had settled for $32.5 million in 2009? A: No. Q: Did you ever lie to Mr. Dersovitz about how much cases had already settled for? A: No.); Tr. 1288:9—1289:8 (Osborn) (Q: Okay. And Schedule A-9, you'll see under the case, it says, 'In Re Fosamax products liability litigation.' What's Fosamax products liability litigation, MDL 1789? A: That would have been the cases against Merck, again, for the same ONJ, osteonecrosis of the jaw, condition. Q: Were those settled at the time you signed this schedule A-9? A: I think that's a little early, so I don't think they were. I see that settlement there -- to me that didn't mean they were settled. I don't know if that was just something internal -- nomenclature used by RD Legal. I don't know. Q: So settlement amount there, where it says $5,025,000, do you know how that number ended up in this document? A: I do not. Q: Did you tell anybody at RD Legal in May or before of 2009 that you had settled any Fosamax litigation for at least $5 million? A: Sorry. I'm just looking at the amount. No, I don't believe I would have."); see also Tr. 2910:3-16 (Dersovitz) ("Q: Were you concerned if you told people that you funded a trade before it was passed the point of all appeals, that it might connotate there's some risk to that trade? A: We made it evident or I tried to make it evident in all of my personal presentations, okay. I believe Kat would have done the same, that what we are doing is getting involved accelerating fees at a point in time when they were still an ongoing judicial process. But the settlement had been attained, but required finalization. Q: That wasn't the case in any of those ONJ cases we discussed yesterday, correct? A: No, it was not.").

[65] Tr. 1266:4-22 (Osborn) ("Q: You never told Mr. Dersovitz, though, in 2009 that you had already earned fees in the Novartis litigation, correct? A: I wouldn't have used the phrase 'Earned,' right. Q: And that's because you hadn't yet earned it, correct? A: Correct. I didn't have any money in my pocket yet. Q: And you represented the plaintiffs in those Novartis cases, right? A: Right. Q: As a plaintiff's attorney, do you collect an hourly fee? A: No. These cases were contingent. Q: What does that mean? A: That I get paid if I win. Q: Okay. And what if you lose? A: I get nothing.").

[66] Tr. 1279:13—1280:14 (Osborn) ("Q: And you're still hoping to pay back the money that you owed RD Legal with interest based on case inventory that you had at the time, correct? A: Yes. At this point in time, November 2012, there have been -- I won't have the number exactly right, but certainly a dozen or more trials. About half of them have been successful for the plaintiff, again, in very substantial amounts. So I thought that we would be able to repay RD Legal 100 percent of what was owed. Q: And when you say about a dozen or so trials, are you referring

40. By the end of the 2012 none of the ONJ Cases had settled, as Respondents knew.[67]

41. The litigants in the Fosamax case against Merck entered into a settlement agreement with respect to that matter in March of 2014 (although the last advance to Mr. Osborn with respect to the Fosamax case was in 2009).[68] None of Mr. Osborn's clients whom he represented against Merck settled their cases before this global settlement of March of 2014.[69]

42. The litigants in the Aredia & Zometa case against Novartis entered into a settlement agreement with respect to that matter sometime in early 2015.[70]

43. When the Actonel matter against P&G settled, Osborn and his co-counsel received $593,200 in fees.[71]

44. To date, the amounts received by Respondents from Mr. Osborn and his co-counsel from funds they received as disbursement of ONJ Cases fees has amounted to

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to trials in the Aredia and Zometa cases? A: Yes. Q: Had any of your clients gone to trial? A: Yes. Q: How many? A: Two. Q: How many of those two clients won at trials? A: You know, I was embarrassed to answer this at the deposition, and now I have to do it in front of a whole bunch of people. We lost both trials. One was actually here before Judge Cohen. And two we lost too.").

67 Tr. 2671:3-7 (Dersovitz) ("Q: Okay. And by the end of 2012, the ONJ cases had not yet settled, correct? A: That is correct. Q: And you understood that in 2012, correct? A: Yes.").

68 See Ex. 2064 at 3 (November 21, 2014 letter from D. Osborn); Ex. 5 at row 18.

69 Tr. 1295:25—1296:8 (Osborn) ("Q: And how many of your clients settled individually in advance of the date that we looked at earlier in 2014 in -- in Respondents' Exhibit 2064? A: Are we talking about Merck, or are we talking about Novartis? Q: Merck, Merck. A: We didn't have anybody settle in advance of the global settlement.").

70 Ex. 2064 at 3-4.

71 See Osborn Compl. ¶ 64.

$6,413,256.25,[72] below the total amount of $11,908,704.60 advanced by the Flagship Funds with respect to the ONJ Cases.[73]

45. Respondents have continued to advance Flagship Funds' assets to Mr. Osborn, advancing him $580,000 from January 2015 through December 2016 with respect to potential fees Mr. Osborn hoped to earn with respect to another unsettled, ongoing litigation captioned Ruiz v. Affinity Logistics.[74]

46. Mr. Osborn's other case inventory consists entirely of matters which had not been settled at the time Respondents made advances with respect to the ONJ Cases, some of which have since resulted in unfavorable outcomes to Mr. Osborn's clients and which have

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[72] See Ex. 3117 at 6—7 (total of funds received from "Payments" subtracting amount received with respect to Weitzner case); Tr. 1338:6-17 (Osborn) ("Q: Do you know how much you have collected so far? And by "collected," again, I'm asking before forwarding it to RD Legal, how much you have collected in fees from the ONJ litigation? A: I mean, I should correct you. The money isn't even coming to my office. It goes to the qualified settlement fund and goes from the fund administrator to RD Legal. Q: Okay. A: But the amount -- the amount of fees that I've earned that have been remitted to RD Legal, including expenses, 6 million.").

[73] See Ex. 3117 (totaling all advances with respect to Novartis Pharmaceuticals and In re Fosamax).

[74] Ex. 3117 at 4; Tr. 1320:23—1322:13 (Osborn) ("Q: And if we turn to page 122. I'll ask you -- I'm sure you'll be happy to know -- to look at the last page of this document, and tell me if that is your signature? A: Yes. Q: And this schedule, I believe it is 53, does this also -- to what case does this schedule relate? A: This would be the sale of these – on the Ruiz case, which was the wage and hour class action in California that I was describing a moment ago for the judge. Q: And as of January of 2015, was that case -- had that case settled? A: No, it had not. But we had a very favorable ruling from the Ninth Circuit about six months before that, that we felt was tantamount to settlement. Q: Tantamount to settlement? A: Tantamount. Q: What do you mean by that? A: We had tried the case, and we had been to the Ninth Circuit twice. And on the second decision from the Ninth Circuit we got a judgment basically – a judgment that the drivers to be employees, not independent contractors. So we felt we were 90 percent of the way there with that ruling. Q: And I apologize if you already mentioned this to the Court earlier. Where is that case now? A: That's in the Southern District Court of California with Judge Sammartino. Q: And has it been resolved yet? A: No. We have a mediation in a couple months. Q: Okay. When you say you had something tantamount to settlement, was there any decision that entitled the plaintiffs in that case to any specific amount? A: No."); Ex. 477 at 122 (agreement with respect to Ruiz v. Affinity).

subsequently netted no fees to Mr. Osborn (or the Flagship Funds), and all of which remain unsettled and producing no income to Mr. Osborn as of the date of the hearing in this matter.[75]

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[75] See, e.g., Tr. 1277:10—1278:5 (Osborn) ("Q: And you expected to use the money from ONJ verdicts and settlement, either yours or others, from that fund that you mentioned to cover that debt, correct? A: Oh, and I had several other cases in the office, including a case against the United States Postal Service that I thought was going to be a terrific case that we lost. So, no, I had other inventory. And I still have other inventory pledged to RD Legal for repayment. Q: When you say you lost the U.S. Postal Service case, does that mean that you never reached a settlement? A: No. We tried the case before Judge Salomon in California. It was a bench trial, and he ruled against us. Q: But that is part of the other inventory that you're referring to when you say that you had other inventory backing your debt to RD Legal? A: Correct."); Tr. 1284:12—1287:1 (Osborn) ("Q: Why had you not paid RD Legal back this amount -- the amount referenced in 477, page 13, by September 2014? A: Because I didn't have sufficient money to do that. Q: Hadn't won enough cases in the ONJ litigation? A: The Postal Service case had been resolved unfavorably. I had two other large cases that, in fact, to this day are still pending. Q: And when you say 'pending,' do you mean that you've already won or settled those cases and are awaiting -- there's a pending payment, or is there a pending result? A: The litigation is still ongoing. You know, I had pledged all of my inventory to RD Legal as collateral for the fees that I was selling. I didn't just -- when I saw what I owed in the ONJ cases, it was my expectation that I would be able to pay them back, not just from the ONJ cases, but from one of these other cases. So I wasn't just putting all the eggs in the ONJ basket. I fully expected to generate revenue fees from these other cases as well that were collateralized. JUDGE PATIL: Excuse me. You mentioned two other large pending cases. Could you describe those for me? THE WITNESS: Sure. The first one is pending in federal court in Wilkes-Barre, Pennsylvania. It's what we call a junk fax case brought under the Telephone Consumer Protection -- Protection Act in which it forbids companies from sending out mass facsimile advertisements on an unsolicited basis. Those cases have kind of gone away now, because everybody is using robo calling and texting. But there's still protection under unsolicited faxes. We filed that case in 2005 in state court. In 2011, it got dismissed, but we re-filed it in federal court. And we've been there in front of Judge Caputo now for about five years. Again, we represent the plaintiffs in a claim that the defendant violated the TCP with this mass faxing. They sent 11 million faxes back in 2003-2005 time frame. There's a $500 statutory damages fee -- penalty for doing that. If you do the math, you end up at 5 billion. And it gets tripled if they did it willingly. And we have letters from the state's attorney general asking them not to do that. So on paper that's a huge case. We have oral argument on our motion for class certification on April 18 this year. JUDGE PATIL: And there is another matter? THE WITNESS: There is a class action, wage and hour class action, pending before Judge Sammartino in the Southern District of California. We claim that about 265 truck drivers were misclassified as independent contractors when they should have been -- their employment status should have been as employees."); Tr. 1325:13—1329:2 (Osborn) ("Q: Thank you. Just to close the loop on Ruiz V Affinity, you're in mediation over that case today, correct? A: Yes. Q: Have you received any fees in that case yet? A: No. Q: Vaxserve, can you describe -- is -- that's the junk fax case that you mentioned earlier? A: Correct. Q: And this was a case that you were listing as part of the inventory that Smith Mazure had been asking about; is that fair? A: Yes. Q: Is it fair to say at the time you were confident that

47. Dersovitz testified that although he expected to get repaid on the remaining advances with respect to the ONJ Cases and the other advances to Mr. Osborn, he could not be certain of payment given that the collection still depended on the performances of non-settled, non-final cases.[76]

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you had a good chance at recovering a whole lot of money in Weitzner v. Vaxserve? A: We still have the expectation that the case is pending. Q When did you file that case? A: 2005. Q: When did you first sign that over to RD Legal as part of the case inventory that you understood to be backing your debt to RD Legal? A: I don't remember. It would be early on. It would have been early on. Q: By 2009? A: Whenever the UCC financing statement was filed, that case would have been in it. Q: That case would have -- A: Yes. Q: Okay. And status of that case? It says here the appeal would be fully briefed by December 2014. What's happened since November 2014 in the Vaxserve case? A: I don't want to bore everybody with this, this case history. We went from state court to federal court. Once we got to federal court, the defendant made a bunch of motions to dismiss based on state court rulings and so forth. Those were all denied. The defendant then made a Rule 68 offer of judgment, and that -- Q: Can you stop there and explain what that is, general speaking? A: Under Rule 68, you can offer to settle a case for X dollars. If the plaintiff refuses to accept the offer -- they have 14 days to respond to the offer. If they don't respond, it's deemed rejected. If they reject it, and then the plaintiff recovers less than the amount that was offered by the defendant to settle the case, the defendant can recover all of its costs going forward from the date that they filed the Rule 68 offering. Q: Okay. A: There was a big question about the interpretation of the application of Rule 68. And around the time the Rule 68 issue became -- Rule 68 offer became an issue in our case, it became an issue in a number of circuit courts across the country. And so we lost about seven or eight months, probably more, more like a year, waiting for the Supreme Court to rule on the interpretation or applicability Rule 68 offers. So that's the appeal that's referred in here. Our appeal to the Third Circuit was basically put on hold while the court took a case from the Ninth Circuit. The Martinez case, ultimately ruled in favor of generally the plaintiff's bar, so we got past that hurdle. Again, that's the appeal that's referred to in here. Two years have now passed. We have now fully briefed our motion for class certification. The defendants fully briefed a motion for summary judgment and a motion to strike one of our client's declarations. And we have argument on April 18 before Judge Caputo in Wilkes-Barre. Q: Have you collected a dollar from that case yet? A: No. Q: If Judge Caputo rules against your clients, will you collect a dollar? A: No. But I'd like to think he will rule in our favor and we'll collect lots of dollars."); Tr. 1330:10-12 (Osborn) ("Q: Did you collect any fees regarding the U.S. Postal Service case? A: No.").

[76] Tr. 2683:23—2864:11 (Dersovitz) ("Q: Okay. A: We might have a depressed ROI, but we'll get repaid. Q: Well, which is it? Is it that you hope you'll get repaid, or it is that you know that you'll get repaid? A: Until it happens, I can't guarantee anything. But we have every reason to believe that we should get repaid. Q: And is one of the reasons that you won't know until it happens is because some of Mr. Osborn's cases have not yet reached the point of settlement or final judgment? A: Correct.").

B. The Cohen Cases

1. The Licata Matter

48. On our around March of 2007, the Cohen Firm was retained to represent a criminal defendant, James Licata, in the matter captioned United States v. Licata, No. 3:06-cr-75 (D. Conn.) (the "Licata Case").

49. The Cohen Firm first appeared on behalf of Mr. Licata in the Licata Case in March of 2007,[77] and was hired under a $15 million retainer.[78]

50. In October of 2007, the Onshore Flagship Fund advanced $2,500,000 to purchase $3,256,847.04 purportedly due the Cohen Firm arising out of the Licata Case, at a time when the criminal action was not yet resolved.[79]

51. The Cohen Firm resolved the matter in November or December of 2007—after the funding by Respondents—for probation and house arrest.[80]

See also Ex. 39 at 12 (representing that new capital "[i]s used to facilitate additional fee acceleration" without mentioning Respondents' ongoing use of new capital to fund the Osborn "workout" situation).

[77] See Mot. for Leave to Appear Pro Hac Vice filed by Todd Foster in United States v. Licata, 3:06-cr-75 (D.E. 38) (D. Conn. Mar. 8, 2007).

[78] Tr. 5779:5—5780:1 (Buchmann) ("Q: And can you describe briefly the Licata matter for the court? A: Jim Licata had been indicted. As best I recall, this was 2006 late in the year. He was advised to come see Barry again. Barry -- he engaged Barry to represent him in the criminal matter and we were engaged and we settled that case that year, 2007, with a probation and house arrest. Q: Okay. When Mr. Licata came to Mr. Cohen and engaged him, do you know the terms of the engagement agreement that Mr. Cohen had? A: The same terms in every criminal case. Q: What were the terms? A: The fee is due upon signing of the agreement or whenever you convince Barry that you can pay it. And the fee is earned on the day you sign the agreement. Q: And in Mr. Licata's case, was the fee earned the day he signed the agreement? A: Correct. Q: What was the fee due and owing to Mr. Cohen when he engaged, when he was engaged by Mr. Licata? A: $15 million.").

[79] Cohen Compl. ¶¶ 21, 23; see also Exhibits to Compl. in RD Legal Funding Partners, L.P. v. Barry A. Cohen, P.A., No. 2:13-cv-00077 (JLL) (D.E. 4) ("Cohen Compl. Exhibits") at 29 (Schedule A-1 Dated October 10, 2007 with case "In the Matter of Criminal Prosecution of James J. Licata").

52. In January of 2009, the Onshore Flagship Fund advanced the Cohen Firm an additional $575,000 to purchase legal fees owed the Cohen Firm from the Licata Case.[81]

53. In April of 2009, the Onshore Flagship Fund advanced the Cohen Firm an additional $500,000 with respect to the Licata Case.[82]

54. The advances to Mr. Cohen with respect to the Licata Case did not involve either a settlement or a final non-appealable judgment.[83]

55. From the outset of the representation, Mr. Licata could not pay the Cohen Firm the $15 million he owed under the retainer agreement. Instead, he and his wife assigned to an entity formed by the Cohen Firm called East Coast Investments a mortgage that the Licatas owned, and they also assigned their interest in an apartment building known as "Bel-Air" in New Jersey to

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[80] Tr. 5780:2-5 (Buchmann) ("Q: And then you said the case was settled with the government for probationary sentence? A: That case was settled in Hartford, Connecticut I think in November or December of that year."); see also supra n. 78.

[81] Cohen Compl. ¶ 25; see also Cohen Compl. Exhibits at 42 (Schedule A-3 dated January 26, 2009).

[82] Cohen Compl. ¶¶ 28-29; see also Cohen Compl. Exhibits at 53 & 65 (Schedules A-4 and A-5 dated April 2, 2009).

[83] Tr. 2689:21—2691:21 (Dersovitz) ("Q: There's also a reference on this same page to East Coast Investment, LLC/201 Kennedy Consulting, LLC. Do you see that? A: Yes. Q: Did that relate to an advance that you made to Mr. Cohen's law firms? A: Yes, it did. Q: And by the end of 2012, that investment amounted to approximately 9.41 percent of the offshore funds' net assets, correct? A: Yes, it did. Q: And East Coast Investments/Kennedy Consulting did not relate to any receivables involving a settlement that had been reached, correct? A: No. It related to a legal receivable, a legal fee that arose from a criminal action. Q: And there was no settlement in that criminal action, correct? A: We financed legal receivables. Q: There was no settlement in that litigation, correct? A: Technically, correct. Q: And I want to read from Division Exhibit 214, your deposition testimony at 166 to 167, starting with line 14. ... 'QUESTION: ... Returning to page 6 of Exhibit 265 and the line regarding East Coast Investments, LLC/201 Kennedy Consulting, did all of the cases relating to those receivables involve a settlement that had been reached where the legal fee had been earned? ANSWER: They involved a criminal legal fee that was due and owing to a law firm. And as I've told you, and as I've suggested before, you have to look at the totality of the documents vis-a-vis what is appropriate investment for the funds. QUESTION: Was there any settlement that had been reached for the cases underlying the East Coast/201 Kennedy Consulting line? ANSWER: No.' Did I read that correctly, Mr. Dersovitz? A: Yes. And I believe that matched with my present testimony.").

another entity formed by the Cohen Firm called 201 Kennedy, in satisfaction of that retainer agreement.[84]

56. However, collection on the mortgage promissory notes and foreclosure of the Bel-Air building both required extensive litigation—litigation which took place from 2007 through at least 2014—before true ownership of those assets could be established and the entities formed by

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[84] Tr. 1395:18—1396:21 (Cohen) ("Q: My question is: What were the terms of the retainer signed on July 31, 2007? A: Well, the -- you want to know what the fee was in the case? Q: Sure. A: It was $15 million. Q: And how did you expect to be paid that fee? A: I expected to be paid in cash. Q: Was Mr. Licata able to pay you in cash? A: It turned out, no, he wasn't. Q: And when did it turn out that he was not able to pay you in cash? A: Well, sometime after we entered – you know, this is a long time ago, so I'm having to give my best recollection. I'm not sure whether it was before or after we entered a notice of appearance. Usually I don't issue a notice of appearance until I get paid. But in this case, I may have found out before we filed notice of appearance. But he satisfied me that he had a building in New Jersey called Bel Air building, and he gave me that as security. The building was worth a lot more than a fee. And we were going to use that as collateral and sell the building, get our fee. Q: When you say 'we,' who is 'we?' A: The firm."); Tr. 1435:12-21 (Cohen) ("Q: All right. In fact, that fee was earned under your retainer agreement with Mr. Licata upon the time of the execution of the agreement, correct? A: Right. Q: And you had already received the security interest in the apartment building at that time, correct? A: I believe so. Because I believe that I would -- I would not have gone and filed a notice of appearance without that security."); Tr. 5786:19—5787:9 (Buchmann) ("Q: And the next sentence, 'To further secure payment, CFR also assigned a certain $22 million promissory note of related mortgages which secure the note and which are owned by a company affiliated with CFR by common ownership.' Was that accurate at the time? A: Yes, that was the mortgage that was owned by Cindy Licata, Jim Licata's wife. She assigned it to a company we had called East Coast Investments that was owned by Barry, Chris, Jason, myself and the Licatas. And she put us in charge of collecting it and we used that as collateral. We were allowed to use that note as collateral to firm up the collateral with RD Legal. Q: The next sentence, 'This note and mortgage also secure other advances totaling $3,575,000 by RDLFP'? A: There were further advances that we secured; it was secured by that mortgage."); Tr. 5788:16—5789:13 (Buchmann) ("Q: There is another sentence underneath the one we said that started, 'Further incremental collateral was also provided.' Do you see that? A: Yes. Q: Was that correct? A: Yes, we gave RD the collateral of the building called Bel Air. It was an apartment house over in Newark. Q: So the sentence, 'That represents this Bel Air entity to collateralize the law firm's obligations to RDLFP,' that was a correct sentence at the time? A: Yes. That's an apartment house Licata had given to 201 Kennedy, which was another partnership owned by Barry, Chris, Jason and myself and Todd Foster. He had given us that collateral and we were assigning that as collateral. Q: There's a sentence here that starts, 'Litigation also clouds this asset.' Do you see that? A: There was a lot of litigation around that asset. Q: So it's accurate to describe in this document that litigation also clouds that asset? A: That's correct.").

the Cohen Firm could determine whether they would be able to obtain any proceeds from their assignment to the Cohen Firm entities by the Licatas.[85]

57. Though the foregoing advances that Respondents made to the Cohen Firm were purportedly made in connection with the Licata Case, in reality Respondents didn't lend money on the fee that was due to the Cohen Firm on the criminal case. Instead, Respondents advanced funds because the Cohen Firm needed to expend funds in order to clear title in both the mortgage notes assigned to East Coast Investments and the property interest assigned to 201 Kennedy in order to have any chance at recouping money from those assignments by the Licatas. In other words, the funds were advanced with respect to the ongoing litigation that the Cohen Firm engaged in to clear up other claims to these assets, including claims by lenders, and liens on the building.[86]

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[85] Tr. 5788:24—5789:13 (Buchmann) ("Q: So the sentence, 'That represents this Bel Air entity to collateralize the law firm's obligations to RDLFP,' that was a correct sentence at the time? A: Yes. That's an apartment house Licata had given to 201 Kennedy, which was another partnership owned by Barry, Chris, Jason and myself and Todd Foster. He had given us that collateral and we were assigning that as collateral. Q: There's a sentence here that starts, 'Litigation also clouds this asset.' Do you see that? A: There was a lot of litigation around that asset. Q: So it's accurate to describe in this document that litigation also clouds that asset? A: That's correct.); see also Ex. 1186 at 7 (First Quarter 2011 AUPs describing a "bankruptcy proceeding" to determine ownership of the mortgage note assigned to East Coast Investments and the "[l]itigation [that] clouds" the Bel-Air building).

[86] Tr. 5792:10-18 (Buchmann) ("Q: In that meeting were you asked to examine any transaction records? A: I think I was asked about the Licata transaction and I believe my comment was is that RD Legal really didn't lend money directly to the Licata criminal case; they really lent money trying to -- we were trying to free up the collateral and we were all spending money toward it. And we just used that as additional collateral."); Tr. 5793:16—5794:14 (Buchmann) ("Q: I want to ask you a few questions about some of the matters you discussed with Mr. Willingham. You said a minute ago that Mr. Dersovitz didn't really lend money with respect to the Licata case. Can you explain further what you mean by that, please? A: Well, there was -- he didn't lend money on the fee that was due us for the criminal case. What I -- what we were able to negotiate, we needed to spend a bunch of money to try to clear up the collateral if you will, a lot of legal fees. This -- these transactions had, for lack of a better term, had a lot of hair on them and we had to clean all of that up. We didn't know that initially. We were told, it was Mr. Licata told us they were easy. We found out differently. And Roni agreed to advance some funds to pay -- that we used a law firm that he suggested we use, pardon me, to try to clear that up. Q: Okay. And when you say 'clear that up,' you mean the hair on it? A: Clear up all of the -- there was claims against

58. Respondents did not advance funds that were supposedly for the Licata Case directly to the Cohen Firm—instead, they directly paid bills that the Cohen Firm was incurring to obtain clear title over the assets assigned to it by the Licatas.[87]

59. At the time that Respondents made the first advance to the Cohen Firm that was supposedly for the Licata Case, and at all subsequent times, Respondents knew that Mr. Licata had been unable to pay the Cohen Firm under the $15 million retainer agreement, and that Mr. Licata had instead assigned two assets (the mortgage notes and the Bel-Air building) over which litigation

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the building, there were claims of ownership against the building, claims by lenders, people who said they lent money to him that had issues with the building or article -- sorry, that had liens on the building. So we had to clean all of that up."); Tr. 5794:15—5796:1 (Buchmann) ("Q: Let me make sure I understand, Mr. Licata signed a retainer agreement with Mr. Cohen for the criminal representation; is that correct? A: He introduced us to represent him in the criminal case. Q: The retainer agreement was for $25 million? A: Yes. Q: Mr. Licata was unable to pay any sort of cash on that retainer, correct? A: Yes. Q: So he assigned his interest and his wife's interests in certain mortgages and real estate assets -- I'm going to use the word "you" and then I will clarify -- step by step to you; is that correct? A: He offered that as collateral in -- to help pay for the debt, correct. Q: Okay. And now to clarify, you know, for the record I think it included an entity called -- was it Kennedy Consultants; am I getting that right? A: I formed two LLCs. One LLC was called 201 East Kennedy. I did that because we were going to take the building as -- take the building in our name. I didn't want the building in Cohen, Foster & Romine because it was a regular corporation and it would be difficult to get it out later. So we formed an LLC to take that. We then formed another LLC called East Coast Investments when the Licatas agreed to give us the mortgage and we took over the defense of that mortgage for a share of that mortgage. They were giving up basically 50 percent of that mortgage in an effort to pay us the fee. Mrs. Licata -- this was a mortgage given to Mrs. Licata and she agreed to let Mr. Licata use it to pay his fee. Q: What about Bel Air Holdings? A: Bel Air Holdings was the entity that owned the building called Bel Air. That was assigned to East to 201.").

[87] Tr. 5796:2-14 (Buchmann) ("Q: And I think you -- I think you explained that, to correct me if I'm wrong, but Mr. Dersovitz advanced funds to the Cohen firm in order so that the Cohen firm may obtain the collateral that Mr. Licata had given them free and clear; is that correct? A: He didn't advance the funds to us. He paid bills, he paid legal fees, he paid a bunch of things, I don't recall. He might have, but I don't recall actual funds coming in from the Licata case. Q: I see. A: But I recall him spending a lot of money on legal fees and those things and it was just added to whatever we owed him.").

would be necessary before collection was possible.[88] Indeed, those assets were pledged over by the Cohen Firm to Respondents in connection with the very first financing.[89]

60. The ultimate resolution of the litigation over the Bel-Air building resulted in 201 Kennedy and, consequently, Respondents, losing all ownership interest in the matter and Respondents will not recover any amounts from that assignment.[90]

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[88] Tr. 5796:21—5797:22 (Buchmann) ("Q: The hair you described the collateral had, did you hide any of that from Mr. Dersovitz? A: We told him about all of that. Q: Did you hide any of it from him? A: No. Q: Did you ever lie to him about the existence of issues over the collection of this collateral? A: No. Q: And was it -- was there any sort of understanding that if you were able to obtain, you know, get your hands on this building and this collateral, you would pay him back with the proceeds of that; was that the agreement? A: We would pay him back with the proceeds of that collateral. Q: When Mr. Dersovitz paid the funds in connection with the collateral, he wasn't funding any case; is that correct? A: Well, he was helping fund that collateral, trying to clean up to pay off what we owed him. Q: He wasn't funding the Licata case, correct? A: No. Q: Okay. A: We -- no direct funding of the Licata case. Q: Was funding the collection of the collateral that the firm obtained as a result of the Licata case? A: Correct.").

[89] See Cohen Compl. ¶ 22; Cohen Compl. Exhibits at 34 (letter from B. Cohen to R. Dersovitz dated October 27, 2007 referencing litigation between 201 Kennedy and James Licata).

[90] Tr. 5797:23—5799:7 (Buchmann) ("Q: What happened, by the way, with that building; were you guys able to obtain it? A: No, we weren't. It got to the worse than what we thought it was. Mr. Licata apparently sold it to somebody else after he sold it to us. We found somebody made a claim there was a bankruptcy filing between him and I forget the gentleman's name, but it went on for years. And in the course of that bankruptcy we were trying to buy it out of the bankruptcy. We -- that would have cleaned it up by buying it through the bankruptcy, but we could never get that done and it was just way too many transactions. And apparently the courts found that -- I will remember this forever, what the judge said about this case. And this was the bankruptcy case between Mr. Licata and the gentleman, I can't remember his name. The court found that they didn't believe either one of them, but they believed the other person more than Mr. Licata and that's how they found it. And after that, it was appealed and appealed and appealed and I think the appeal has finally given up. I think it's all done now. Q: It's in New Jersey, right? A: It's in New Jersey, Newark. Q: The building has now been essentially sold or transferred over to this other person? A: Wherever it's going. Q: You and the Cohen firm isn't getting that building, correct? A: Nothing. Q : 201 East Kennedy is not getting any of that building? A: No. Q: Mr. Dersovitz is not getting anything from that building? A: Not from that."); see also Tr. 1400:22—1401:18 (Cohen) ("Q: And you mentioned a litigation to get the interest in the building. When you say 'the building,' you mean the Bel Air building? A: I do. Q: Okay. And how did that litigation result? A: Ultimately we lost that litigation after about four or five years of litigation. We ended up losing the whole thing. Q: Okay. Was RD Legal involved in any way in the Bel Air building litigation? A: I don't remember that they were interested in -- involved in the Bel Air litigation. I think at some point they hired lawyers to pursue that litigation, because they had a serious interest

2. The Chau Turnover Litigation

61. On February 29, 2008, Respondents caused the Onshore Flagship Fund to enter into agreements with the Cohen Firm to advance $5,812,496.77 to purchase legal fees purportedly due to the Cohen Firm with respect to a matter called Chau v. Southstar Equity (the "Chau Case"),[91] a civil matter involving a plaintiff who had been shot in a burglary.[92]

62. When Respondents advanced Cohen funds for the Chau Case in February of 2008 that case had reached judgment in the trial court, but the judgment was not final or non-appealable—to the contrary, an appeal had been entered with respect to that matter before the Florida Supreme Court in May of 2008, and the parties did not reach a settlement until July 2008.[93]

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in preserving that security. And I believe they hired lawyers, but that didn't work out too well. But I think Mr. Dersovitz certainly had an interest in trying to preserve that building, from what I can recall. He had Elliot -- we had a common interest in using that to get our money back, and for him to get his money back.").

[91] Cohen Compl. ¶¶ 33-34.

[92] Tr. 5776:18—5777:3 (Buchmann) ("Q: And did Mr. Cohen settle or get a judgment in that matter? A: We did. MR. TENREIRO: Objection, leading. JUDGE PATIL: Overruled. Go ahead. Q: I believe the answer was 'We did'? A: We did. Q: How was that matter resolved? A: Through trial. Q: With a judgment? A: Yes. Q: In favor of your client or in favor of Mr. Cohen's client? A: In favor of we, yes. Q: And at some point, did you seek funding from Mr. Dersovitz in connection with the Lai Chau matter? A: Yes, we did. Q: When was that? A: As best I remember, it was right after the judgment. It may have been closer to the time of the appeal. The defense appealed the case, but it may have been closer to that. But I thought it was right around that time. But it was after the judgment was entered.").

[93] See Southstar Equity v. Lai Chau, SC08-962 (Fl. 2008) (Docket entry dated May 23, 2008 indicating filing fee of matter; docket entry dated June 9,2008 indicating "Juris Answer Brief" filed by respondent Lai Chau; docket entry dated July 25, 2008 indicating voluntary dismissal by parties); see also Tr. 1419:4—1420:25 (Cohen) ("Q: Do you recall a Lai Chau case? A: I do. Q: What was that case? A: That was what we call a premise liability case. This was a young -- a young Asian girl that was car jacked in an apartment complex and taken out and the bad guys wanted her music box in the car. And they shot her in the head three times. Remarkably, she survived. And I sued the apartment complex on her behalf on inadequate security. And we got a judgment against the apartment complex for $15 million. Q: And after you obtained the judgment against the apartment complex, was there an appeal? A: Yes. The defendants appealed that case. They appealed it to the Second District Court of Appeal. That's the appellate court in our jurisdiction. And that court, after a long period of time, three years or so, issued an opinion, I think

63. The Cohen Firm accurately represented to Respondents that the appeal of the Chau Case was still ongoing at the time they sought and obtained funding from Respondents with respect to that matter.[94]

3. The WellCare Actions

64. The Cohen Firm represented Sean Hellein, a "relator" who in October of 2008 filed an amended complaint in a civil qui tam action against Wellcare Health Plans ("Wellcare") in

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in '08, February of '08, and sustained the jury verdict. Q: Was that case also appealed to the Florida Supreme Court? A: It was. Q: At the time you -- did you sell any of your anticipated fees in that case to RD Legal? A: Say that again, please. Q: Did you sell any of your anticipated fees in your case to RD Legal? A: Did I sell any of my anticipated fees? Q: Correct. A: Not that I'm aware of. Q: Did you take a loan from RD Legal secured by your fees in that case? A: I believe we did. Q: When you took a loan from RD Legal against that case, was that case still pending? A Was the case still pending? Q: Correct. A: I believe the loan -- the answer is yes, it was still pending. We had -- the case had – it had already been affirmed by the Second District Court of Appeal. They had written an opinion. Justice Kennedy, very conservative judge, wrote the opinion."); Tr. 5776:5—5777:3 (Buchmann) ("Q: And did Mr. Cohen settle or get a judgment in that matter? A: We did. MR. TENREIRO: Objection, leading. JUDGE PATIL: Overruled. Go ahead. Q: I believe the answer was 'We did'? A: We did. Q: How was that matter resolved? A: Through trial. Q: With a judgment? A: Yes. Q: In favor of your client or in favor of Mr. Cohen's client? A: In favor of we, yes. Q: And at some point, did you seek funding from Mr. Dersovitz in connection with the Lai Chau matter? A: Yes, we did. Q: When was that? A: As best I remember, it was right after the judgment. It may have been closer to the time of the appeal. The defense appealed the case, but it may have been closer to that. But I thought it was right around that time. But it was after the judgment was entered.").

[94] Tr. 5799:21—5800:22 (Buchmann) ("Q: So the trial, the trial was over is what you are saying? A: The initial trial was over, the appeal was getting ready to go on, and we laid all of that out for Roni. Q: So you didn't -- let me take it step by step: The trial was finished, but the appeal was still ongoing when you sought financing? A: Correct, it was just starting. Q: You did not misrepresent the status of the case to Mr. Dersovitz, did you? A: No. Q: So as far as you know you conveyed to him the appeal is still ongoing, correct? A: Correct. Q: Okay. And do I understand you are not an attorney, right, is that correct? You are not an attorney? A: No. Q: But do you know whether at the time you obtained financing on the Lai Chau case there was a final judgment beyond the point of all appeals? A: I don't remember. I don't recall. Q: Okay. A: If it was -- I thought we had got financing right around the time of the appeal, so I don't see how that would be possible.").

federal court in Florida (the "Wellcare Qui Tam Action," together with the Licata Case the "Cohen Cases").[95]

65. The Wellcare qui tam action was filed under the False Claims Act, 31 U.S.C. § 3729 et seq., for violations of § 3729(a) and invoking the jurisdiction of the court under § 3730(b), as well as several state and local law provisions. See Qui tam Compl. ¶¶ 1-2, 4, 28-101.

66. The False Claims Act gives the United States Government the explicit right to intervene in a civil action filed under that Act, or to decline to intervene, in which case the relator who filed the action shall have the right to pursue the civil action. 31 U.S.C. § 3730(b)(4).

67. The False Claims Act also provides, as relevant here, that "[i]f the Government proceeds with an action brought by a person under [§ 3730](b), such person shall . . . receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim." 31 U.S.C. § 3730(d)(1).

68. On or about June 3, 2009, Respondents advanced the Cohen Firm $3,042,740.84 to purchase fees the Cohen Firm hoped to earn "arising out of a qui tam action (False Claims Act) in which Sean Hellein was a Relator against Wellcare Health Plans." Cohen Compl. ¶ 39.[96]

69. As of that date, the Wellcare Qui Tam Action had not settled, nor had the United States Government even filed a motion to intervene in that action pursuant to the provisions of the False Claims Act—the United States filed a motion to intervene in June of 2010 and the case did not finally settle until February of 2012.[97]

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95 See Fifth Amended Compl. in United States of America ex rel. Sean Hellein v. Wellcare Health Plans ("Wellcare Qui Tam"), No. 8:06-cv-01079 (JSM) (D.E. 6) (M.D. Fl. Oct. 14, 2008) ("Qui tam Compl.").

96 See also Cohen Compl. Exhibits at 81 (Schedule A-6 providing for funding of $3,042.740.84 as of June 3, 2009).

97 See Notice of Election to Intervene by United States of America in Wellcare Qui Tam (D.E. 9) (M.D. Fl. June 24, 2010); Notice of Withdrawal of Objection to Federal Settlement

70. In May of 2009, the United States had filed criminal case against Wellcare Health Plans (the "Wellcare Criminal Action"), together with a deferred prosecution agreement between the United States, the State of Florida, and Wellcare (the "Wellcare Agreement").[98] The criminal case is "separate and apart" from the Qui Tam Action.[99]

71. As Respondents knew, neither the Cohen Firm nor their client Mr. Hellein was ever a party to that deferred agreement; Sean Hellein did not even appear in that matter until July of 2011.[100]

Agreement by Sean J. Hellein in Wellcare Qui Tam (D.E. 97) (M.D. Fl. Feb. 23, 2012); see also Settlement Agreement in Wellcare Qui Tam (D.E. 71) ¶ B (M.D. Fl. Apr. 29, 2011); Tr. 1417:6-8 (Cohen) ("Q: And in terms of the civil case, when did that settle? A: The civil case, that settled in 2011.").

98 See Notice of Filing Deferred Prosecution Agreement in United States v. Wellcare Health Plans, No. 8:09-cr-203 ("US v. Wellcare") (D.E. 3) (M.D. Fla. May 5, 2009).

99 Tr. 1412:11—1413:15 (Cohen) ("Q: Of course, Mr. Cohen. I was asking you to explain to the Court the general flow or process of a qui tam action so that it's -- when you get involved or when your client starts -- becomes involved and then when the DOJ might become involved and then when your client might hope to recover. A: All right. A whistleblower is also called a relator in the qui tam field. And so the whistleblower comes in your office. They say, Hey, the company I am working for is cheating the government in Medicare/Medicaid. And so they discuss it with us. And we file a complaint under seal. And then we will -- the FBI or the U.S. Attorney's Office will read the complaint. And if they want to discuss it with the relator further, then we have a meeting, and they discuss it. And then if they decide to take the case, then they continue the investigation themselves. It's under seal the entire time, because you don't want -- they don't want to put the corporation on notice that they're being investigated. So that's what happens. They investigate it. And now -- in this case, when the investigation was concluded, they indicted WellCare Corporation, and they indicted some of their principals. But that has nothing to do with the -- I say nothing to do with -- it's separate and apart from the civil case."); Tr. 1450:17-25 (Cohen) ("THE WITNESS: I believe it was related to the criminal. I think that they -- the document that they're talking about, I think they – there was a mathematical deducement of the criminal matter, which -- I remember they estimated a 25 percent relator's fee in that document, which was -- I think that's how they got to the $4200. But that had nothing to do with the resolution in the civil case.").

100 See Deferred Prosecution Agreement in US v. Wellcare (D.E. 4) (M.D. Fla. May 5, 2009) ("DPA"); Motion for Misc. Relief in US v. Wellcare (D.E. 16) (M.D. Fla. July 20, 2011); see also Tr. 1408:3-17 (Cohen) ("Q: What were those case -- what case were those caption numbers referring to? A: That was a criminal case, criminal case whereby the United States Attorney's Office for the Middle District of Florida indicted WellCare company and some of the principals of

72. Under the terms of the Wellcare Agreement, Wellcare among other things agreed to pay $80 million to the United States and the State of Florida in the Wellcare Criminal Action, but there was no provision for paying any civil relator in the Wellcare Qui Tam Action under that agreement.[101]

73. When Respondents advanced funds to the Cohen Firm with respect to the Wellcare case, only the Wellcare Criminal Turnover Litigation had settled, whereas the Wellcare Qui Tam Action in which the Cohen Firm had appeared and with respect to which they were representing their client was still ongoing.[102]

WellCare. And that deferred prosecution agreement was a resolution between the WellCare Corporation and the United States of America of a criminal case. Q: And was your client at the time in 2009 a party to that criminal case? A: Was he a party to that criminal case? Q: Correct. A: Not directly. But he had a financial interest in that case."); Tr. 1451:18-22 (Cohen) ("Q: Okay. And, again, 2010, with respect to the DPA, the criminal action, how much had the relator been awarded in that action? A: The relator had not been awarded anything in that action at that time."); Tr. 5806:5—5807:4 (Buchmann) ("Q: Right. As far as you recall, was Mr. Cohen or the Cohen firm a party to this agreement? A: I don't know if we were party to the agreement because this is an agreement that comes from the United States District Court, this comes from the United States. I don't know if we have to be a party to that because this is the decision by them. I was looking at the end, WellCare was represented by I think Greg Kehoe and the United States was represented by Brian Albritton. Q: You are referring to the pages at the back of the exhibit, correct, Division Exhibit 199? A: Right. I don't see where anybody was representing Sean Hellein. Q: No one on this agreement is anyone representing Mr. Hellein; is that correct? A: I don't think they had to sign it. The cost was deciding what they were doing with it. Q: Now, you said you forwarded this agreement to Mr. Dersovitz, correct? A: I believe so. Q: Is it fair to say it was your firm's expectation that Mr. Hellein should recover a percentage of the settlement under this deferred prosecution agreement? A: Certainly.").

101 See DPA at ¶ 6.

102 Tr. 5778:6-14 (Buchmann) ("Q: What is your understanding of the WellCare matter? A: There were two parts to that case, a criminal side and civil side. Qui tam side. The criminal side it didn't decide and funded. And we were waiting for the Judge to enter, to disburse the funds, that's when we went to Roni looking for funding for that case. The civil side was still under -- it was still going on for a while."); Tr. 5800:23—5803:11 (Buchmann) ("Q: Now the WellCare case. Let's start again so the record is clear: You recall the WellCare case, correct? A: Correct. Q: And is it fair to say that the Cohen firm represented a person called Sean Hellein, I think? A: Sean Hellein. Q: And Mr. Hellein filed a civil action under the False Claim Act, correct? A: We filed it for him, correct. Q : Thank you. The Cohen firm filed a civil action under the False Claim Act; is that correct? A: Right. Q: And is it fair to say that under the False Claims Act, the government might

74. When Respondents advanced funds to the Cohen Firm with respect to the Wellcare Qui Tam Action, the Cohen Firm believed that it would be entitled to obtain fees from the monies Wellcare paid under the Wellcare Agreement, but the United States Attorney had, on June 1, 2009, informed the Cohen Firm—and the Cohen Firm had informed Respondents—that it "disagree[d] that a Relator is entitled to recovery of forfeiture proceeds where, as here, the United States intends to intervene in the qui tam suits and obtain a civil recovery" because "the law does not permit the Relator to also share in forfeiture proceeds from a criminal resolution."[103]

75. Respondents understood that they would get paid out of the potential proceeds of the Wellcare Qui Tam Action.[104]

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intervene in the civil case and pursue the action if it so chooses? Are you aware of that? A: Well, the interviewed in the criminal side of it. Q: Well, let me take a step back. There was also a criminal case against WellCare? A: Yes. Q: The criminal case was filed by the United States government, correct? A: That's correct. Q: Did the United States government also intervene in the civil case at some point? A: Well, that's who you file the qui tem with, yes. Q: Now, in your binder please take a look at Division 698. A: 698. Q: It will be on the screen in case the text is small. Mr. Hess, please pull up this part first. A: I have 697. Mine says 697. Q: You can take a look on the screen. I'm blowing up where it says 'U.S. District Court Civil Docket, U.S. District 806CV10719, United States of America versus WellCare Health Plans, Inc.' Was the qui tem action filed on or around 2006, as you recall? A: I don't recall what date it was filed on. Q: Can you please turn to the second page of this document. Toward the top, do you see the name Sean Hellein and Barry Cohen next to it? It's also on the screen, if you want. A: Yes. Q: Sean Hellein was the plaintiff, the realtor. Just to be clear: This case was filed under the False Claims Act, correct? A: Correct. Q: Are you familiar with that statute? A: Familiar with what? Q: The False Claims Act? A: The False Claims statute, a little bit. Q: You are familiar with the fact under that statute, the realtor is entitled to share in an award obtained in the qui tem case, correct? A: Right. Q: Now, when the funding was obtained from Mr. Dersovitz, was this civil qui tem case resolved. A: I believe what was resolved was the criminal case. Q: Had Mr. Cohen entered an appearance in the criminal case?"); see also supra n. 97.

[103] Letter to Barry A. Cohen dated June 1, 2009, US v. Wellcare (D.E. 16-8) (M.D. Fl. July 20, 2011).

[104] Tr. 1426:10-16 (Cohen) ("Q: Mr. Cohen, was there ever a dispute between yourself and RD Legal and counsel as to who you owed money to on what cases? A: Well, there was a dispute between RD Legal and myself regarding RD Legal's belief that they were entitlement -- they were entitled to be paid as a result of the civil qui tam complaint.").

76. At the time Respondents advanced funds to the Cohen Firm with respect to the Wellcare Qui Tam Action, the Cohen Firm had no legal entitlement to any legal fees, it had only its belief that it was entitled to such fees under the Wellcare Agreement, and had to file a motion to intervene in the Wellcare Criminal Action to enforce such perceived right.[105]

77. The District Court rejected the motion, noting that the relator award provision of the False Claims Act cited above, § 3730(d)(1), "expressly refers to a relator's right to a share in settlement proceeds 'of *the* action or settlement of *the* claim . . .,' unambiguous references to the intervened qui tam case, not a companion criminal proceeding." Order, US v. Wellcare (D.E. 25) (Sept. 21, 2011).

4. RD Legal's Suit Against Cohen

78. After the resolution of the Wellcare Qui Tam Action, the Cohen Firm failed to remit to Respondents any amounts it may have received from that action, resulting in a lawsuit by the Onshore Flagship Fund against the Cohen Firm filed in January of 2013.[106]

79. As of that date, the Cohen Firm had not remitted any of the amounts outstanding with respect to advances on the Chau Case, at that time nearly $4 million including interest.[107]

80. As of that date, the Funds had not received any of the amounts outstanding with respect to advances on the Licata Case, at time over $10 million including interest.[108]

81. By June of 2011, Respondents had caused the Flagship Funds to advance $6,617,741 to the Cohen Firm with respect to the Licata and the Wellcare Turnover Litigations

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105 See Relator Sean Hellein's Mot. to Intervene, US v. Wellcare (D.E. 16) (M.D. Fl. July 20, 2011).

106 See Cohen Compl. ¶ 84 ("The Cohen Firm has not paid as much as a single dime to [the Onshore Flagship Fund] on account of legal fees arising out of the WellCare Turnover Litigation").

107 See Cohen Compl. ¶ 38.

108 See Cohen Compl. ¶ 32.

alone, and valued that position at $12,532,704, or approximately 16% of the value of the Flagship Funds' portfolio value.[109] The stated value of these advances continued to increase, including after the filing of the lawsuit against the Cohen Firm in January of 2013 and through to at least September of 2015, reaching as high as $26,377,883 on that date, or 14.91% of the Flagship Funds' portfolio value.[110]

82. As of the end of September 2015, the Funds' $6.6 million advances to the Cohen Firm with respect to the Licata and Wellcare Turnover Litigations were valued at $26.3 million of the Flagship Funds' $176.9 million.[111] In October of 2015, over three years after Cohen had informed Respondents that their "share of the legal fees" collected with respect to the Wellcare case "totaled only $1,765,360.29" and nearly three years after Respondents had sued the Cohen Firm knowing that it would not remit those advances,[112] Respondents finally wrote down that position, to $14.2 million, causing the Funds to immediately lose over $8 million in value, or nearly 8%, in one month alone.[113]

C. The Peterson *Matter*

83. Steve Perles is the owner of The Perles Law Firm, a boutique law firm in Washington that specialized in international claims and reparation matters, particularly pursuing financial compensation against material supporters of terrorist attacks that target United States individuals outside the United States.[114]

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109 See Ex. 2 at cells H-2—K-2.

110 Id. at columns J-K.

111 Ex. 2 at cells C53, H53, J53.

112 Cohen Compl. ¶ 77.

113 Ex. 2 at cells C54, J54.

114 Tr. 1539:6-24 (Perles) ("Q: Who are you employed by? A: I am employed by the Perles Law Firm. Q: What is the Perles Law Firm? A: The Perles Law Firm is a boutique law firm in

84. Mr. Perles has prosecuted several cases against foreign nations that sponsor terrorist (such as Libya), some of which have ended with a settlement agreement with that foreign nation followed by the disbursement of funds to Mr. Perles' clients.[115]

85. The cases Mr. Perles litigates against sovereign sponsors of terrorism typically involve a "merits" or "liability phase" (when the liability of the nation for sponsoring the terrorist act is established), which Mr. Perles describes as his "hunting license," and an "enforcement case,"

Washington, D.C. We focus on primarily international claims and reparation matters. Q: Can you please explain for the Court what international claims and reparations law is? A: Sure. We are generally regarded as the leading experts in the United States on the reconstruction of terrorist attacks; meaning, aircraft hijackings, political kidnapings, bus bombings. We're abroad. That is events that are outside the United States targeting US nationals. And we are not so interested in who perpetrated the event as who the underlying – the words of art are "material supporters." But basically we hunt the financial end of those kinds of attacks.").

[115] Tr. 1541:11—1543:25 (Perles) ("Q: Are you familiar with a case called Simpson vs. Libya? . . . What is that case? A: Sorry. I have a big portfolio. It's one of mine. I believe that's an attack resulting from Muammar Gaddafi's sponsorship of an event at the Rome airport. Q: You said that was a case in your portfolio. What was the outcome of that case? A: It settled. Q: What do you mean by that, that it settled? A: I had a rather large portfolio of Libya cases. The best known of which is Libya's bombing of the La Belle discotheque in Berlin. That's the event that caused President Reagan to bomb Tripoli and Benghazi. And we did -- I don't know, at least three years of direct negotiations with the Libyan government. That involved secret negotiations that were conducted in London, Paris and Tripoli. Eventually those negotiations matriculated into a government-to-government settlement of those claims. Individual cases were processed differently under the terms of that settlement. I can explain in detail if you're interested how the government-to-government settlement unfolded, if you're interested in that. Q: Let me ask you this: Did you ever file any lawsuit on behalf of any clients with respect to the case Simpson vs. Libya? A: I'm sure we did. Q: Okay. And the ultimate outcome is the settlement with the government -- at least involved the governments of Libya? A: It involved the settlement and an act of Congress and then a complex program administering the settlement. Q: Okay. And just ballparking a little bit, when was this settlement reached? A: It's got to be five to eight years ago, I would think. Q: Okay. And if you can disclose what the settlement amount was for? A: The government-to-government settlement involved the final payment for the Lockerbie families, which were not my clients. The discotheque bombing payment, and then a series of smaller attacks, which included Simpson. The government-to-government program in the macro sense ran about $1.5 billion. I suspect that my cases ran maybe 4- to $500 million, maybe 390 to 450 million, in that range. Q: And that includes La Belle and Simpson? A: And a number of other cases as well. Q: And did the Libya government actually pay those amounts? A: To the Department of State, yes. Q: What happened? Did there come a time that any of your clients received payment? A: With the exception of a couple of clients who were disqualified in the U.S. Government's administration of the program, all of my clients received compensation under that program.").

which involves litigating the ability of the injured plaintiffs to recover on their "hunting license" against certain assets.[116]

86. Mr. Perles has also litigated cases against Syria, who in his experience typically appears at the outset of the litigation during the "liability phase," then drop out until the appeal of the default judgment after a trial in absentia, and then do not appear at all in the turnover action that is typically filed after obtaining the default judgment in order to actually recover assets on the judgment.[117]

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[116] E.g., Tr. 1544:1—1545:6 (Perles) ("Q: So just to make sure I have it right, Syria paid the money to the government of the United States, and then there was some sort of administration, and eventually the money found its way to your clients? A: That's correct. Q: What about representations -- I think you mentioned you brought -- am some point you brought claims against the government of Syria? A: That is correct. Q: Can you talk about those cases, please. A: The most mature of those cases is a case that is styled Gates vs. the Syrian Arab Republic. Gates -- there are two plaintiff families in that case, the Gates family and the Armstrong family. Gates and Armstrong were two American civilian engineers who were kidnaped, tortured and executed by beheading live on Al Jazeera television at the behest of a terrorist organization called AQI, which at the time was materially supported by the government of Syria. We brought an action against the Syrian government for a number of reasons. We won the largest wrongful death judgment in the history of the republic for two families. I think the amount of the judgment was around 122, 123 million in compensatory damages, including punitive damages. The award of that judgment is nothing more than a piece of paper. That's what I call the hunting license. Then we went out and hunted for Syrian assets."); Tr. 1548:22—1549:8 (Perles) ("Q: And I think you said earlier that you've also had occasion to bring lawsuits against the government of Iran; is that right? A: That is correct. Q: Okay. Do they have any sort of strategic approach to these cases? A: They do. Q: Can you please describe that to the Court? A: Yes. They decline to participate in any way through the entry of a final default judgment. And then they vigorously defend and frequently collaterally attack during the enforcement phase.").

[117] Tr. 1545:22—1548:2 (Perles) ("Q: And did the Syrian government appear to defend that lawsuit? A: Sorry. I have a number of Syrian cases, so let me -- if you don't mind, can I speak to the broader Syrian defense of its portfolio without having the docket sheet for that particular case in front of me? The Syrian government, as a matter of strategic practice, enters those cases early, defends through motions practice, effectively drops out of the case so that they are not subject to discovery, does not participate in the minitrial. However, under U.S. law, because they're a foreign sovereign, you don't wind up with a default judgment in the classic sense. You have to have the -- clerk of court enters what's called a technical default. And then you hold a trial in absentia. Then you get your default judgment after the trial in absentia. The Syrians, as a strategic matter, tend to reenter the litigation after the default judgment is entered challenging the entry of the judgment at the circuit level. And whatever happens at the circuit level happens there. I don't

87. Mr. Perles has also litigated cases against the Islamic Republic of Iran and in his experience Iran normally "decline[s] to participate in any way through the entry of a final default judgment. And then they vigorously defend[s] and frequently collaterally attack[s] during the enforcement phase."[118]

88. Mr. Perles believes that somewhere between 20 and 50 percent of the work on behalf of a client he represents against the Islamic Republic of Iran is done to obtain the judgment and the rest is associated with finding the asset and enforcing the judgment against it.[119]

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think they've ever been successful in getting a judgment below overturned. Q: Okay. So after you obtained this judgment -- after you obtained this judgment, you said you had a hunting license; is that -- A: That's correct. Q: And I think you said that you then found assets that belonged to Syria; is that right? A: Yes. Q: And I think you said you took the money from them? A: Yes. And we file -- under -- you know, Erie vs. Tompkins, you actually go out under cover of state enforcement rules and enforce your judgment on -- you enforce a federal judgment under cover of state law in federal court and whatever the local District Court is where you found the asset. Q: I think you said this was in Chicago? A: It was in Chicago. Q: Okay. And did the government of Syria appear in that action? A: Government of Syria did not appear at the enforcement proceeding. JPMorgan Chase defended on behalf of its customer. We had a merits proceeding on the turnover action, as I say, in which JPMorgan defended its customer's position. JPMorgan declined to take an appeal after we had lost -- or excuse me, after they had lost. Q: Okay. And so you were -- so you were able to collect on that matter, in other words? A: That's correct.").

[118] Tr. 1549:1-8 (Perles) ("Q: Okay. Do they [Iran] have any sort of strategic approach to these cases? A: They do. Q: Can you please describe that to the Court? A: Yes. They decline to participate in any way through the entry of a final default judgment. And then they vigorously defend and frequently collaterally attack during the enforcement phase."); Tr. 1560:19-24 (Perles) ("A: . . .And you really have command and control of the proceedings. Once you actually go out and seize Iran's assets, they defend very, very vigorously, and with the best lawyers in the country that their money can buy.").

[119] Tr. 1553:6-21 (Perles) ("Q: What does a successful representation of a client entail, you know, to you? A: We're about the movement of money from bad actors who have murdered or maimed U.S. citizens to the families of those citizens. So a successful action to us is about the filing of the complaint, obtaining the judgment, enforcing the judgment and then moving money. And in our work, I would say roughly 20 percent of the work is done through the – through obtaining the judgment. Getting yourself to the point where you have what I refer to as the hunting license. And about 80 percent of the work is associated with going out and finding the asset and enforcing the judgment."); 1560:14-18 (Perles) ("A: . . .But I think Peterson's a really good example of why it's more challenging. The first 20 percent of this case, or half of this case – I don't want to get into, you know, the percentages -- but that's done in a default setting."); see also Ex. 223 at 39-40 (Expert Report of A. Sebok) ("If the reason the default party has defaulted is that

89. Out of the bombing of the Marine barracks in Beirut, Lebanon in 1983, arose a series of interrelated cases against the Islamic Republic of Iran, collectively known as the "Peterson Matter."[120]

90. The Peterson Matter proceeded as two separate legal cases in two separate courts: the liability case or "Reparation Case" in which the liability of the Islamic Republic of Iran for the attack in Lebanon was established and at the conclusion of which a final default judgment worth over $4 billion was obtained on behalf of the various plaintiffs in the various proceedings.[121]

91. The second set of cases, consisted of Mr. Perles "attacking" assets that he believed belonged to Iran in order to obtain satisfaction of those judgments (the "Peterson Turnover Litigations"). Mr. Perles has attacked three such pools of assets with three separate lawsuits. One of the attacks was the subject of a turnover action commenced in 2010 against approximately Iranian securities positions held at Citibank by Clearstream Bank a securities intermediary ("Clearstream"), and was filed under case name Peterson v. Islamic Republic of Iran, No. 10-cv-4518 (KBF) (S.D.N.Y.) and eventually assigned to Judge Katherine B. Forrest of the United States

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they reject jurisdiction or believe that they can avoid enforcement through additional litigation, then the attorney for a party who has secured a default judgment knows that the bulk of the legal services for which they have been retained will occur after the default judgment is obtained.").

120 Tr. 1555:7-16 (Perles) (interrelated cases is about $4.4 billion. And we have subsequently gone out and attacked three, if you would -- I think of them as pools of Iranian assets.).

121 Tr. 1555:15-22 (Perles) ("A: . . .And we basically walked that case -- it's a much larger version of what we did in Gates. We went out and got a judgment on liability. We then built a 30,000-page damages record, obtained a final judgment. And it's actually a series of related cases. But the total number for the four or five interrelated cases is about $4.4 billion."); Tr. 1559:2—22 (Perles) ("Q: What was the outcome of this lawsuit? A: As I say, we bifurcated the proceeding. We first won the liability phase of the proceeding, and then we built this 30,000-page damages record that resulted in the damages awards. Q: And what was the name of the judge that presided over the case? A: Royce Lanberth. Q: Okay. And did Iran or anyone – did anyone appear to defend Iran in this lawsuit? A: They did not. Q: Okay. Did you obtain a final judgment in this lawsuit at some point? A: Yes. We obtained a final judgment that was served under U.S. law on the Iranian Foreign Minister in Teheran. Q: Just approximately ballparking, when was that? A: 2007, maybe. Q: Okay. Was that the end of the case? A: That's the beginning of the case.").

District Court, which Mr. Perles refers to as "Clearstream I" ("Clearstream I").[122] This was the first of the Peterson Turnover Litigations, the one with respect to which Respondents first invested Flagship Funds' assets.

92. The second pool of assets consists of a building located at 650 5th Avenue in Manhattan, the subject of a Peterson Turnover Litigation lawsuit captioned In re 650 Fifth Avenue and Related Properties, No. 08 Civ. 10934 (KBF), commenced by Mr. Perles in 2008 against essentially the same clients as in Clearstream I ("650 Fifth Turnover Litigation").[123] In that lawsuit, Judge Katherine Forrest granted summary judgment to the plaintiffs and ordering

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[122] Tr. 1555:22-25 (Perles) ("A: . . .interrelated cases is about $4.4 billion. And we have subsequently gone out and attacked three, if you would -- I think of them as pools of Iranian assets."); Tr. 1561:10—1562:12 (Perles) ("Q: Okay. So let me -- when did you file this turnover action? A: Ballpark? Q: Yes. Please. A: 2008. Q: And where was that filed? A: U.S. District Court for the Southern District of New York. Q: Okay. That turnover action, what assets were you seeking to turn over? I think you explained briefly. But if you could just reiterate what assets you were seeking to turn over. A: There is a German-owned Luxembourg company called Clearstream. Clearstream is a financial Goliath. It is also -- at the time, it was Iran's primary money launderer in the world. Clearstream had an account at Citibank. And it was using that account to launder Iranian securities positions in the United States. And we were -- we were attacking the Iranian securities positions inside of that Clearstream account at Citibank. Q: Okay. So you had located securities at Citibank in New York; is that right? A: Correct. In Manhattan. Q: Okay. What was the name of that lawsuit? A: It's still styled the same way. It's Peterson vs. The Islamic Republic of Iran."); 1563:20—1564:5 (Perles) ("Q: Okay. I think you mentioned that at some point you filed a turnover action against some assets at JPMorgan? A: That is right. Q: That is correct. Okay. What is the name of that case? A: Again, that's Peterson vs. The Islamic Republic of Iran. Q: Do you distinguish the two somehow? A: I call the first one Clearstream 1 and the second one Clearstream 2.").

[123] Tr. 1556:10-24 (Perles) ("A: . . .We have a second pool of assets. It's actually a building. It's 650 5th Avenue in Manhattan. That's essentially a seizure. Just like -- if Your Honor might read of an aircraft or a ship or an automobile that got seized by the government, it's exactly the same process except the seizure is being done on a joint venture between the government and certain private law offices who represent plaintiffs. Effectively, the government gets full credit for doing the seizures. And the victims of Iran terrorism who are participating in this joint venture will receive 100 percent of the funds from the sale of the building less the government's cost of litigation.").

forfeiture of the building[124] The Second Circuit reversed the District Court's grant of summary judgment,[125] the Supreme Court denied review of that decision,[126] and a trial on that matter was scheduled to take place in May and June of 2017 in the Southern District of New York.[127]

93. The third pool of assets consists of approximately $6.7 billion of funds that Mr. Perles believes were illicitly laundered into JP Morgan Chase by Clearstream. The name of that case, the third Peterson Turnover Litigation, filed in 2013 by Mr. Perles, is also Peterson v. Islamic Republic of Iran, No. 13 Civ. 9195 (KBF) ("Clearstream II"). That action resulted in dismissal of the turnover claims against those assets,[128] and an appeal of the dismissal is pending before the Second Circuit.[129]

94. In May of 2010, Respondents caused the Onshore Flagship Fund to enter into an agreement with Mr. Perles with respect to the Peterson Turnover Litigation, under which the Onshore Flagship Fund agreed to advance Mr. Perles $10 million, via four different schedules each

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124 See In re 650 Fifth Avenue and Related Properties, No. 08 Civ. 10934 (KBF), 2014 WL 1284494 (S.D.N.Y. Mar. 28, 2014). A companion forfeiture action was filed by the United States action against the building, which also led to Judge Forrest granting summary judgment to the government. See In re 650 Fifth Avenue and Related Properties, No. 08 Civ. 10934, 2013 WL 5178677 (S.D.N.Y. Sept. 16, 2013).

125 See Kirschenbaum v. 650 Fifth Ave. and Related Properties, 830 F.3d 107 (2d Cir. 2016).

126 See Alavi Foundation v. Kirschenbaum, 137 S. Ct. 1332 (Mar. 20, 2017).

127 In re 650 Fifth Avenue and Related Properties, No. 08 Civ. 10934 (KBF), 2017 WL 2062983 (May 15, 2017). The Second Circuit also reversed Judge Forrest's grant of summary judgment to the United States. In re 650 Fifth Avenue and Related Properties, 830 F.3d 66 (2d Cir. 2016).

128 Peterson v. Islamic Republic of Iran, No. 13 Civ. 9195 (KBF), 2015 WL 731221 (S.D.N.Y. Feb. 20, 2015).

129 Tr. 1556:25—1557:5 (Perles) ("A: . . .The third pool of funding is approximately $6.7 billion of funds that were illicitly laundered into JPMorgan Chase. We have lost that seizure below in the District Court, and it's now been taken under advisement in the Second Circuit.").

for $2.5 million, to purchase fees he may be entitled to earn from the case Peterson v. Islamic Republic of Iran.[130]

95. The first Flagship Funds assets that Respondents disbursed with respect to the Peterson Turnover Litigation were disbursed in September of 2010, to Mr. Perles, in the amount of $2.5 million.[131]

96. The Flagship Funds then disbursed $500,000 to Mr. Perles on three separate occasions in 2011, and later in 2011 also disbursed $4 million and $2 million to Mr. Perles, completing the $10 million promised in May of 2010.[132]

97. In July and August of 2012, the Flagship Funds disbursed an additional $10 million to Mr. Perles, for a total of $20 million disbursed to him.[133]

98. The Flagship Funds first advanced funds to Mr. Perles co-counsel, Thomas Fay, with respect to the Peterson Turnover Litigation by advancing $500,000 in May of 2011, and

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130 See also Tr. 1593:8—1595:4 ("Q: [discussing Ex. 227 at 23] Do you recognize that, sir? A: It's a schedule addendum to the Master Agreement that I executed with RD Legal. Q: . . . So you had, in fact, executed a Master and Sale Agreement with RD Legal, this is on behalf of the Perles Law Firm; is that correct? A: That is correct. . . . Q: . . . do you recall approximately when . . . the Perles Law Firm first entered into a transaction with RD Legal with respect to the Peterson case? A: I assume it's 28 May 2010."); Ex. 227 at 2 (Master Agreement dated May 28, 2010 between The Perles Law Firm and RD Legal Funding Partners, LP); Ex. 227 at 23-24 (Schedule A-2 to Master Agreement stating purchase price of $2.5 million and executed May of 2010); Ex. 227 at 32-33 (Schedule A-3 for same amount and same execution date); Ex. 227 at 41-42 (Schedule A-4 for same amount and same execution date); Ex. 227 at 50-51 (Schedule A-5 for same amount and execution date).

131 E.g., Tr. 5908:22—5909:1 (Dersovitz) ("Q: I'm going go back to Slide 13 for a moment. We talked about the timeline. Any reason to believe September, 2010 wasn't the first Peterson receivable purchase from Perles? A: I think that's accurate."); Ex. 2 at row 2; Respondents' Opening Slides No. 13.

132 Ex. 6 at rows 3, 4, 6, 7 & 10.

133 Ex. 6 at rows 14, 15; see also Ex. 1172 (Perles Sch. A-6); Ex. 1232 (Perles Sch. A-7); Ex. 1458 (Perles Sch. A-9).

another $4.5 million through the end of 2011, for a total of $5 million. The Flagship Funds then advanced $3.5 million to Mr. Fay in 2012, for a total of $8.5 million advanced.[134]

99. From 2014 through February of 2015, the Flagship Funds advanced an additional $4 million to Mr. Fay,[135] for a total of $12.5 million advanced.[136]

100. Starting in September of 2012, Respondents caused the Flagship Funds to begin advancing funds to purchase portions of individual plaintiffs' awards with respect to the Peterson Turnover Litigation, and by June 30, 2015, had advanced approximately $32,715,833 to purchase such positions.[137]

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134 Ex. 6 at rows 5, 8, 9, 11, 12 & 13; see also Tr. 2413:20-2415:14 (Fay) ("Q: [discussion of Ex. 238 at 2-3, 13, 15, 16 (Fay Sch. A-2)] Do you recognize that document? . . . A: Yes, yeah, yes. . . . Q: In addition to signing these agreements with RD Legal, did you sign other schedules or other agreements with RD Legal? A: Yes. Over the years, I did."); Ex. 238 (Fay Assignment and Sale Agreement); Ex. 444 at 11 (attachment to email with list of funding schedules between the Funds and the Fay Kaplan firm); Ex. 1175-1176 (Fay Sch. A-3 and amendment); Ex. 1211-1212 (Fay Sch. A-4 and amendment); Ex. 1253 (Fay Sch. A-5); Ex. 1341 (Fay Sch. A-6); Ex. 1414 (Fay Sch. A-7); Ex. 1921 (Fay Sch. A-9); Ex. 1968 (Fay Sch. A-10); Ex. 2073 (Fay Sch. A-11); Ex. 2106 (Fay Sch. A-13).

135 Ex. 6 at rows 222, 226, 232 & 241.

136 See Ex. 444 at 11.

137 See Ex. 6 at cells C-16 through C-254, excluding advances to Fay at cells C-222, C-226, C-232 & C-241. Exhibit 6 represents the first time any particular position first appeared in the Flagship Funds' portfolio, see Tr. 536:25—537:6 (Coppola) ("Q: And now Division Exhibit 6, if Mr. Murphy could please scroll a little bit for the Court's convenience. Can you please describe, Ms. Coppola, what this exhibit is? A: It is a list of every case that I categorized at Peterson using the RD Legal monthly valuation reports for the period June 2011 through January 2016."). The particular composition of the Flagship Funds' combined portfolios at any given month end can be found in Exhibit 2, see Tr. 526:2—528:8; 531:1—533:15 (Coppola) ("Q: Now can I please direct your attention to Division Exhibit 2. This is an Excel spreadsheet. Do you recognize this sheet? A: I do. Q: What is this sheet? A: This is a master summary I created using all of the case category subtotals from the RD Legal monthly valuation sheets. Q: So you created this sheet? A: I did. Q: Did anyone else make edits or changes to the sheet? A: No. Q: How did you -- can you explain how you created this sheet? A: Sure. So going exhibit by exhibit, I believe starting at Exhibit 8 A, I labeled the month of the RD Legal monthly valuation report that the line item refers to, such as June 30, 2011, and I extracted the total portfolio purchase price from June 30, 2011, the total indicated portfolio value for June 30, 2011, the total Novartis portfolio purchase price that was indicated in the report dated June 30, 2011. Then what I did was I took a percentage, which is

the total Novartis portfolio purchase price divided by the total portfolio purchase price. Q: What is that? A: Sure. It is -- Q: You want to look at the screen? A: It is Column E divided by Column B. MR. TENREIRO: Let me ask Mr. Murphy to toggle between this sheet and Exhibit 8 A, if you may. Q: Let's start with Division Exhibit 2. Where does the information in cell B-2 come from? A: B-2 comes from Exhibit 8 A. Q: Can you show us where in Exhibit 8 A? A: Sure. Cell G-96. Q: Sorry to reask you to repeat yourself. What is cell G-96? A: It's the total of the total purchase price for the RD Legal monthly valuation report dated June 30th, 2011. Q: Going back to Division Exhibit 2, C-2, where is that from? A: C-2 comes from Exhibit 8 A, and I will tell you the cell in one moment. So 96, which is the sum of Column Q, like 2 through 93. Q: Back to Exhibit 2, Column D-2, where does that come from? A: D-2 also comes from Exhibit 8 A. It comes from cell G-96. Q: Can you look again? A: I'm sorry. G-98. Q: Thank you. Let's go back to Division Exhibit 2. Where does E-2 come from? A: E-2 is D-2 divided by B-2. Q: Ms. Coppola, F- 2, what is that? A: F- 2 -- Q: I'm sorry. What is Column F generally? A: Column F is the total Novartis indicated portfolio value for a given month denoted in Column A. Q: So in F-2, for example, where did you get that information from? A: From Exhibit 8 A, the June 30, 2011 RD Legal monthly valuation sheet. Q: Which cell is that? A: Q-100. Q: Again, how did you derive Q-100? A: Q-100 is the total of all the cases that I marked as Novartis. Q: The total what? A: Indicated portfolio value. Q: And those indicated portfolio values came from where, again? A: The RD Legal monthly valuation sheet for the month ended June 30, 2011. Q: Those were the PDFs? A: The PDFs. Q: Please go back to Exhibit 2. G-2, what is that? A: G-2 is F-2 divided by C-2. Q: Now, if we can scroll a little bit to the right, Columns H, I, J, K. What are those columns generally, just the column? A: The column is H, total Cohen portfolio purchase price, I is the Cohen percentage of total portfolio purchase price, J is total Cohen indicated portfolio value, and K is Cohen percentage of indicated portfolio value. Q: Let's take it one by one. H-2, where does that come from? A: H-2 comes from the PDF of the cases that I marked as Cohen. Q: In Division Exhibit 8 A, where would H-2 be, if you want to look at 8 A? A: Cell G-102. Q: Staying here, cell G-104, is that anywhere in Division Exhibit 2? A: Yes. Q: Where is that, if you go to Division Exhibit 2, please? A: It is in cell J-2. Q: Cell I, can you just explain how you derive that, what the calculation was? A: H-2 divided by, I believe it is, B-2. I can't see it on the screen. MR. TENREIRO: Scroll to the left just to confirm. A: L-2 divided by B-2. Q: What about cell K-2? A Cohen percentage of indicated portfolio value, and I arrived at that number by dividing J-2, I believe, by C-2. Once again, it is not showing up on my screen. MR. TENREIRO: Show her C, please. A: Yes, C-2. Q: Scroll back to the right. Now the next set of four columns L through O, what are those? A: Those are the same thing I did for the Cohen and Novartis cases, but I just used the numbers for the cases that I marked as Peterson. I went through the same exercise.").

Positions appearing in Exhibit 6 could have been participated or sold from the Flagship Funds' portfolios at subsequent dates. See also Ex. 5 (same listing with respect to Flagship Funds' investments in the ONJ Cases); Tr. 536:10-22 (Coppola) ("Q: Ms. Coppola, can I please direct your attention to Exhibit 5. Do you recognize this document? A: Yes. MR. TENREIRO: Mr. Murphy, if you could scroll down. Q: Do you recognize this document? A: Yes. Q: What is this? A: That is a list I compiled of all of the cases that I categorized as Novartis cases. Q: Categorized from where? A: The monthly RD Legal valuation reports for the time period June 2011 through January 2016.").

101. David X. Martin, Respondents' proffered expert, described investments in the plaintiff receivables as "much different and a different type of receivables as opposed to the receivables in RD Legal."[138]

1. The Reparation Case

102. The Reparation Case was first filed in the United States District Court for the District of Columbia in 2001 before Judge Royce C. Lamberth. Peterson v. Islamic Republic of Iran, No. 01 Civ. 2094 (RCL) (D.D.C.) ("Peterson Reparation Case" or "Reparation Case"). The Reparation Case was essentially a tort action seeking to hold Iran responsible for the injuries suffered by the victims of the Marine Barracks bombing in 1983.[139] In September of 2007, Judge Lamberth issued a final, default judgment in the original Peterson Reparation Case consolidated

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[138] Tr. 4192:6-21 (D. Martin) ("Q: So you're not offering any opinion as to anything related to that fund; is that fair to say? A: I'm not offering any opinion. Q: Okay. A: But I will say in my experience that lots of times funds get generated from existing funds. But -- and they're usually very specialized. And that's why they're spun off. I sort of got the sense in just reading the transcripts that that vehicle was primarily housed to -- to create -- to look at the receivables related directly to plaintiffs. And as I had mentioned in my testimony, I thought those were much different and a different type of receivables as opposed to the receivables in RD Legal.").

[139] Tr. 1557:9—1559:1 (Perles) ("Q: . . .So let me take you back to the origin of the litigation. Did there come a time that you filed the litigation on behalf of victims and their families for the Marine barracks bombing? A: Maybe late 2000, early 2001. Q: Where was that filed? A: Again, for the same venue rules, U.S. District Court for the District of Columbia. Q: Okay. And just briefly, what was the basis of the statutory -- statutory or legal basis for the claim? A: The statutory basis of the claim goes back to the Flatow Amendment. It's 28 U.S.C. 1605(a)(2). Q: And you're suing for tort liability? A: It is effectively a giant tort action. It's for wrongful death and personal injury. Q: And I think you said you filed several cases, is that correct, with respect to the Marine barracks bombing? A: There are several cases. This occurred because it was simply difficult to locate all of those families. Not the least of the problem is that privacy act prevents the Department of Defense from giving us the addresses of people. They were difficult to locate. So in one case, you can see, for example, a commandant of the Marine Corps tasked someone on his staff to find some of these people and to explain to them that they were eligible to join litigation. So what you had is a case in chief with a series of follow-on actions of people who had either been noticed either, for example, through the commandant's office or maybe simply through the Marine Corps grapevine who wanted to participate. The original plaintiffs, what we called the leadership committee, didn't want any of these Marine families left behind. So we kept joining people in through filing of related cases. Q: And what was the name -- what was the name of the main case? A: Peterson vs. The Islamic Republic of Iran.").

cases against Iran ordering it to pay $2.6 billion.[140] Liability-phase actions were filed in the District of Columbia against Iran based on the Marine Barracks bombing through at least 2008, with final default damages judgments obtained as late as 2010, leading to over $4 billion in damages arising out of the Marine Barracks bombing alone.[141]

103. Obtaining the default judgments in the Reparation Case was described by the lead attorney for the matter as "the beginning of the case" because there is "significantly more work involved in enforcing the case than there is in winning the judgment."[142]

2. The Turnover Litigations

104. In 2008, the plaintiffs in the Peterson Reparation Case filed writs of attachment to restrain $2 billion in securities entitlements held in the name of the Islamic Republic of Iran by

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[140] See Judgment in Peterson Reparation Case (D.E. 228) (D.D.C. Sept. 7, 2007); see also Ex. 1020.

[141] See, e.g., Valore v. Islamic Republic of Iran, 700 F. Supp. 2d 52 (D.D.C 2010); Tr. 1555:21-22 (Perles) ("A: . . .But the total number for the four or five interrelated cases is about $4.4 billion."); see also Tr. 1777:18—1778:12 (Guy) ("Q: Did that have anything -- do you understand whether that had anything to do with what is called the Peterson litigation? A: No. Peterson Davis -- there's so many different groups out there. At one time, we were called under the Peterson case. Sometimes we were called under the other case. I don't know. Because our names don't officially appear on any of the documents that I've seen other than Judge Lanberth's ruling in 2012. Q: And I think you said earlier that you didn't get added to the case until 2008; is that correct? A: Yeah, not until 2008. Q: Okay. And when you got added, you understood that the title of your group was Davis? A: Yeah, that's correct. Q: Okay. But just so we're clear, that's the Marine barracks case we're all talking about? A: Yes, sir.").

[142] Tr. 1559:13—1560:5 (Perles) ("Q: Okay. Did you obtain a final judgment in this lawsuit at some point? A: Yes. We obtained a final judgment that was served under U.S. law on the Iranian Foreign Minister in Teheran. Q: Just approximately ballparking, when was that? A: 2007, maybe. Q: Okay. Was that the end of the case? A: That's the beginning of the case. Q: Okay. What do you mean by that? A: As I said earlier, the enforcement portions of these cases are quite challenging. And from my perspective, again, it varies a lot from case to case. But if you look across the broad portfolio of cases, there's significantly more work involved in enforcing the case than there is in winning the judgment."); see also Ex. 223 at 40-41 (Expert Report of Dr. Anthony Sebok) (district court noting that an attorney who had represented a client into a default judgment against Iran had high risks of not receiving any proceeds from the case and that the "enforcement of the default judgment required significant additional legal work..." (quoting Jacobson v. Oliver, 555 F. Supp. 2d 72, 84 (D.D.C. 2008))).

Clearstream at an account at Citibank, N.A., in Manhattan.[143] The United States District Court for the Southern District of New York issued a writ of execution as to these assets, which had the effect of restraining them.[144] Following an evidentiary hearing, Judge Koetl of the Southern District of New York lifted the restraints as to $250 million of those securities, which were then sold in the open market.[145]

105. In 2010, a new legal action was filed naming the Islamic Republic of Iran but also Citibank, Clearstream, and others, as defendants, seeking turnover of the approximately $1.75 billion remaining in securities entitlements held at Citibank. This action, referred to as the "Clearstream I," was filed on behalf of the judgment holders arising out the various Reparation Cases relating to the Marine Barracks bombing, as well as on behalf of other victims of Iranian-sponsored terrorism.[146]

106. The plaintiffs in Clearstream I, Mr. Perles' clients, argued that the assets at issue in the matter were "at all times" the property of the Islamic Republic of Iran.[147] They also argued that they were entitled to execute on those assets to enforce their judgments under New York state

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143 Clearstream I, 2013 WL 1155576, *5 (S.D.N.Y. filed Mar. 13, 2013).

144 Id.

145 Id. at *2.

146 See, e.g., Clearstream I, 2013 WL 1155576, at *1 n.1 (listing judgment creditors who filed the Clearstream I, including plaintiffs in Beer v. Islamic Republic of Iran); Beer v. Islamic Republic of Iran, 789 F. Supp. 2d 14 (D.D.C. 2011) (referring to victims of a 2003 suicide bombing of a bus in Jerusalem); see generally Bank Markazi v. Peterson, 136 S. Ct. 1310, 1319-20 (2016) (describing foregoing procedural history of the case).

147 Tr. 1566:12-23 (Perles) ("Q: So just to -- maybe a little -- to make sure I understand. Essentially Clearstream was saying these assets don't belong to Iran, so you can't get them? Is that a fair description? A: That's a fair description. Q: And what was your position with respect to that -- so you or your client's position with respect to that defense? A: That the conveyance from Iran to Ubae was a fraudulent conveyance, and that the assets, in fact, continue at all times to belong to the Islamic Republic of Iran.").

law,[148] and that whatever protections the Federal Sovereign Immunities Act ("FISA") may grant against the enforcement of judgments against the assets of a sovereign did not apply in that matter.[149]

107. On February 5, 2012, President Obama issued Executive Order No. 13,599 (the "Executive Order"), 77 Fed. Reg. 6659, declaring that "all property and interests" of Iran held in the United States were to be considered "blocked" assets.[150] Under certain circumstances, the Terrorism Risk Insurance Act of 2002 ("TRIA"), allows plaintiffs to execute against "blocked assets" of a terrorist party.[151] Under Mr. Perles' view, the existence of the Executive Order makes "easier" any argument seeking turnover of assets under TRIA.[152] Indeed, the existence of TRIA "lessen[ed] enforcement difficulties" against foreign-owned assets that arose given the provisions of the FSIA.[153]

108. On August 10, 2012, the President signed the Iran Threat Reduction and Syria Human Rights Act of 2012, and Section 502 of that Act, codified at 22 U.S.C. § 8772 ("§ 8772"), provided that certain assets belonging to Iran "shall be subject to execution or attachment in aid of execution in order to satisfy any judgment," subject to certain court determinations about the ownership of those assets.[154] This provision was enacted "[t]o place beyond dispute the

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148 See Clearstream I, 2013 WL 1155576, *5 (citing New York Debtor and Creditor Law §§ 276(a), 273-a and N.Y. C.P.L.R. §§ 5225, 5227)

149 See id. (citing 28 U.S.C. § 1611(b)(1)-(3)).

150 See id. at *6.

151 Id. at *7 (citing TRIA § 201(a), Pub. L. No. 107-297, Title II, 116 Stat. 2337 (2002)).

152 Tr. 1572:22-24 (Perles) ("Q: Is it fair to say that the blocking order by President Obama shortens your TRIA argument? A: It certainly makes it easier.").

153 Bank Markazi, 136 S. Ct. at 1318 ("To lessen these enforcement difficulties, Congress enacted [TRIA]").

154 Id. at *10 (citing § 8772).

availability of some . . . assets for satisfaction of judgments rendered in terrorism cases" subject to the District Court making certain factual findings specified in that statute.[155]

109. Given that Iran had entered Clearstream I, there was no factual dispute that Iran owned the assets at issue (though the defendants asserted that as a factual matter other parties had an interest in the assets, making them not subject to execution.[156] Accordingly, what was left for the District Court to determine was "rarefied legal issues" relating to "defendants at law as to whether assets position in a particular way are subject to seizure."[157]

110. The effect of § 8772 was to "simplify" some of the complex legal questions that were at issue in Clearstream I.[158]

111. The outcome of Clearstream I was not dictated by § 8772, however, such that the District Court still had to make factual findings and resolve legal disputes.[159]

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155 Bank Markazi, 136 S. Ct. at 1318-1319.

156 See Clearstream I, 2013 WL 1155576 at *28 (noting that Clearstream and another bank had refused to stipulate that they had no beneficial interest in the assets)).

157 Tr. 1575:6-17 (Perles) ("Q: What do you mean by "swept away certain defenses"? A: Once Markazi -- I'm sorry. Once Markazi entered this proceeding, the issues really become more rarefied. There's no factual dispute that Iran owned these assets. There is simply defenses at law as to whether assets positioned in a particular way are subject to seizure either under New York law or New York law with these additional restrictions that the Foreign Sovereign Immunities Act places on judgment enforcement proceedings.").

158 Tr. 1575:18-21 (Perles) ("A: ...And the effect of 8772 was to greatly simplify our process. It was intended by Congress as a vehicle for sweeping away defenses asserted by Markazi.").

159 See, e.g., Tr. 3408:14-19 (J. Martin) ("A: ...Second, of course, we didn't think that 502 dictated the outcome. It had a provision in it where if there were other constitutionally-held property interests, the assets couldn't be turned over. So there was still a judicial resolution to be had. And in our view, that left the issue open."); Tr. 3464:17—3465:20 (J. Martin) ("Q: Right, because even under 8772, there had to be a determination as to whether someone else had some sort of constitutionally-protected interest in the assets; is that correct? A: That's one of the issues under the statute. And so the question was, could Clearstream assert that. And we said no. And I think they gave it up. I don't think they saw it through the end in appeal. Q: You mentioned earlier this morning that the turnover was not automatic under 8772. Do you recall that? A: Yes. Q: And is that because of the judicial determinations required? A: Yes. Q: So is it fair to say that even after the passage of 8772, there was still some disputes, some legal dispute that was live

112. The defendants in Clearstream I moved to dismiss the case on various grounds including lack of subject matter and personal jurisdiction and sovereign immunity, and moved to vacate the restraints on the assets, but in an opinion of February 2013 the District Court rejected all of their arguments based, in part, on the operation of the Executive Order, TRIA, and § 8772.[160] In her decision, Judge Forrest noted that the Peterson Turnover Litigation had "been vigorously litigated" and that the case involved "legal complexities" given that it involved sovereign interests.[161]

113. The plaintiffs in Clearstream I, meanwhile, cross-moved for partial summary judgment seeking turnover of the $1.75 billion held at Citibank, asserting that execution was proper under New York State Law, under TRIA, and under § 8772.[162] The defendants opposed this motion "fill[ing] the proverbial kitchen sink with arguments," including that § 8772 was unconstitutional for various reasons including because it violated the separation of powers.[163] The

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between the parties, the litigants in the turnover action? A: Yes. The dispute was ongoing, and, yes, we felt that the last section of the act, which dealt with the constitutionally-protected interest, was still in play and needed to be resolved. We, of course, had the opinion that we didn't see any other constitutionally-protected interest and that the plaintiffs would prevail on that issue. But we did believe that was -- the elements of the statute right through that one required judicial resolution on the face of the act."); Tr. 3479:20-23 (J. Martin) ("Q: Would you say that after the passage of 8772, all litigation risk was extinguished from this litigation? A: No."); see also Bank Markazi v. Peterson, 136 S. Ct. 1310, 1325-26 (2016).

160 Id. at *11-28.

161 Id. at *1. See also Tr. 1579:18-22 ("Q: Mr. Perles, did this paragraph – this passage that I read reflect your understanding as to whether this turnover action in Clearstream 1 was, in fact, vigorously litigated? A: It was vigorously litigated, yes.").

162 Tr. 1688:2-15 (Perles) ("Q: ...Now, Mr. Perles, did the Foreign Sovereign Immunities Act provide a basis for the Peterson Plaintiffs to seek turnover of the assets that had been discovered at Citibank? A: It's a combination of the Foreign Sovereign Immunities Act and New York State law. Q: Okay. So without invoking TRIA or without invoking 8772, the Foreign Sovereign Immunities Act could provide a basis for the plaintiffs to have sought turnover of the action -- of the assets? A: Absent 8772 and absent TRIA, there are still enforcement provisions which govern all enforcement actions against foreign sovereigns under the Foreign Sovereign Immunities Act.").

163 Id. at *28-34.

District Court rejected the constitutional arguments, and noted that the remaining arguments were disposed of by operation of § 8772.[164] Accordingly, the District Court granted turnover of the $1.75 billion at Citibank, noting that turnover was proper under § 8772 because there was no triable issue that the assets belonged to Bank Markazi, the Iranian Central Bank.[165]

114. After the opinion in Clearstream I, the assets at Citibank were moved to a Qualified Settlement Fund ("QSF") at an account at UBS, managed by the Honorable Stanley Sporkin as trustee.[166] The name of the QSF was "Peterson Fund."[167] Had the decision in Clearstream I been

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164 Id.

165 Id. at *30.

166 Tr. 1585:12—1586:23 (Perles) ("Q: All right. So I think we talked about at some point the District Court ordered turnover of the assets; is that correct? A: That is correct. Q: What happen to the assets at that point? A: As I mentioned earlier, I had met with the general counsel of Citibank. He really wanted those assets out of his bank as fast as he could get them out of his bank. Citibank represented, and I had no reason to believe otherwise, that they did not know that the funds were being laundered in and out of – that Iranian funds were being laundered out of Clearstream's account at the bank. They came to us, and effectively what happened is they petitioned the District Court judge to discharge those funds to us. They wound up being put into a QSF. And the Department of Treasury Office of Foreign Assets Control issued a license for the transfer of those funds from Clearstream to the QSF, which was maintained under the tutelage of a trustee. It's a retired Federal Court Judge Stanley Sporkin. And that QSF was established at Union Bank of Switzerland's U.S. Headquarters in Stanford, Connecticut. Q: That's UBS? A: That's UBS. Q: What's a QSF? A: It's called a qualified settlement fund. Q: And you said the -- I'm sorry. You said the QSF had an account at UBS? A: That is correct. Q: So the assets were transferred from Citibank to UBS effectively? A: Pursuant to Treasure Department license."); Tr. 1710:9-25 ("Q: Now, you had said once that putting the money in a qualified settlement fund would drive the Iranians mad. Do you recall that? A: I do. Q: And why did you feel that? A: Because the funds were no longer with their money laundering Clearstream. They are in the -- they're in the possession of an independent trustee in the United States. And to be quite candid, the trustee who was appointed was Stanley Sporkin, who had been general counsel of the Central Intelligence Agency, which would have left the Iranians totally befuddled about what the relation was between the agency and the court system. It was kind of like a double entendre.").

167 Agreement for the Peterson § 486B Fund Pursuant to 26 U.S.C. § 468B, Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (KBF) (D.E. 461) (S.D.N.Y. July 9, 2013).

reversed, the assets would have been returned out of the UBS account.[168]

115. On July 9, 2014, the United States Court of Appeals for the Second Circuit affirmed the District Court's judgment in the Peterson Turnover Litigation, holding that turnover was proper under § 8772 and rejecting Iran's claims, including the argument that § 8772 was unconstitutional because it violated the separation of powers.[169]

116. On December 29, 2014, Bank Markazi filed a petition for a writ of certiorari before the United States Supreme Court, and on April 6, 2015, the United States Supreme Court called for the views of the Solicitor General with respect to whether to grant the petition.[170]

117. Although the Solicitor General was of the view that the writ should not be granted,[171] on October 1, 2015, the United States Supreme Court granted Bank Markazi's petition for a writ of certiorari to review the constitutionality of § 8772,[172] and on April 20, 2016, the Supreme Court determined by a vote of 6-2 that § 8772 did not violate the separation of powers doctrine.[173] Justice Ginsburg, writing for the majority, concluded that § 8772 was constitutional because the statute did not make the outcome of the case a foregone conclusion, but rather requiring the District Court to make factual determinations or to apply a new legal standard to

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168 Tr. 1588:8-12 (Perles) ("Q: Okay. I was going to ask: Under what circumstances would UBS have to return the funds? A: Only if she were reversed. And the funds were determined to be the property of Markazi and not executable under the U.S. law.").

169 See Peterson v. Islamic Republic of Iran, 758 F.3d 185, 191 (2d Cir. 2014).

170 See generally Docket in Bank Markazi v. Peterson, No. 14-770 (U.S.) available at https://www.supremecourt.gov/docketfiles/14-770.htm.

171 See Brief Amicus Curiae of United States in Bank Markazi v. Peterson, No. 14-770 at 1 (U.S. Aug. 19, 2015) available at http://www.scotusblog.com/wp-content/uploads/2015/09/14-770-US-invitation-brief.pdf.

172 Bank Markazi v. Peterson, 136 S. Ct. 26 (2015).

173 Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016).

undisputed facts.[174] Chief Justice Roberts and Justice Sotomayor, by contrast, "would [have held] that § 8772 violates the separation of powers."[175]

118. As of the date of the trial "most" of the assets from the QSF had been distributed,[176] including the portions owed to Mr. Perles, which were paid to him between two and four months after September of 2016. On September 21, 2016, using third-party financing, Mr. Perles paid Respondents $62 million on the monies they had advanced to him.[177]

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174 Id. at 1325-1326.

175 Id. at 1330 (Roberts, C.J., dissenting). See also Tr. 1567:24—1568:24 (Perles) ("Q: Did there come a time during this Clearstream 1 action where there was any motion practice? A: There were motions to dismiss, motions for summary judgment. The motion for summary judgment was successful. Sorry. To complete the record, let me back up. At some point, Bank Markazi entered the proceeding -- asserted that the funds belonged to Bank Markazi and attempted to assert the Central Bank defense. Clearstream's defenses and Markazi's defenses collectively were all subjects of motions to dismiss and motions or summary judgment. We prevailed on both of those. Case went up to the Second Circuit. The Second Circuit heard arguments, decided in our favor. Markazi and -- Markazi took – Clearstream settled -- actually, Clearstream settled between the District Court proceedings and the Second Circuit proceedings. We then prevailed against Markazi at the Second Circuit. They filed a successful cert petition at the Supreme Court. The Supreme Court heard the matter, and by a six to two opinion, affirmed the turnover order ending the litigation.").

176 Tr. 1588:18-24 (Perles) ("Q: Okay. And were these assets ever transferred out of the UBS account? A: After a final and unappealable judgment was entered, we began the process -- actually, I don't do the distribution. The trustee does the distribution. But the trustee has distributed most of the funds out of that account.").

177 Ex. 2333 at 1; Tr. 1612:10—1614:22 (Perles) ("Q: By the way, Mr. Perles, I think you mentioned that you paid back RD Legal at some point; is that correct? A: That is correct. Q: Can I direct your attention to Respondents' Exhibit 2333. I think it's in your binder also at the back. A: Yes. Q: Do you recognize this document? A: Honestly, I do not. Q: Do you see where it says in the first page, this second-to-last paragraph, "62 million payoff amount." Do you see that? A: Yes. Q: Okay. How much did you pay back the RD Legal firm, as far as you know? A: I believe it was 62 million. Q: And do you see the date of the document, September 20, 2016? A: Yes. Q: At the time -- I'm sorry. The payoff date September 21, 2016. By September 21, 2016, had you received any distribution of the assets that were formerly held at Citibank that were at issued at Clearstream1? A: The trustee received them earlier. So the appropriate question to ask is whether the trustee had released part of my legal fees to me. Q: And the answer would be? A: The answer was, the trustee -- the answer was, the trustee paid the RD loan back directly. Those funds never went to my office. Q: I thought a minute ago you testified -- I'm sorry. Did there come a time when you refinanced the loan? A: I'm sorry? Q: Did there come a time when you refinanced the

119. Mr. Fay received his distribution from the QSF around December of 2016, but he had been able to repay back Respondents $36,898,260.71 from third-party financing in May after the Supreme Court affirmed Clearstream I.[178]

120. Although most of the funds in the QSF have been distributed, the distribution to some Peterson plaintiffs has not been enough to cover the amounts they owe financing companies, including at least one claim originated by Respondents on behalf of another entity.[179]

RD loan? A: I refinanced the RD loan, yes. Q: Okay. And so when was that? A: I'm sorry. Excuse me. JUDGE PATIL: He's going to explain the relationship. THE WITNESS: I got myself befuddled. Pardon me. BY MR. TENREIRO: Q: Go ahead. A: We refinanced the RD loan in September. And the fiancier paid -- the second legal fiancier paid RD directly. Q: Okay. And at that point, had the trustee released any of the funds to you? A: No, no, no. Q: And did there come a time when the trustee released any of the funds from the qualified settlement fund to you? A: Yes. Q: Okay. Was that after this payoff letter to RD? A: Yes. It was two, three, four months later.").

[178] Tr. 2419:4-25 (Fay) ("Q: ...And have you paid off the -- your debt to RD Legal? A: Yes. Q: And how did you pay that off? A: Went through another outfit that evened it up. And it was -- it was a better deal, let me put it that way. As it turned out, as soon as we received -- I say "we" -- as soon as I received money from the enforcement, which I believe was in December, they were paid off as well. So it was nothing still on it. Q: Okay. And when did you refinance that? Before or after the Supreme Court argument -- or the Supreme Court decision? A: That was after the Supreme Court decision. That was -- it seemed the Supreme Court decision was April 17 or something -- it was around my birthday, which is April 16. And it seemed to me it was late April or early May. I have to check on it, so I can't say that for certain. I think it's approximately correct."); Ex. 2998.

[179] Ex. 499 at 8 (showing Ian Guy sold $292,750 to RD Legal Funding, but only $270,933.17 available for advance, leaving $21,816.83 shortfall); Letter to Judge Forrest, Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (KBF) (D.E. 710) at 5 (S.D.N.Y. Mar. 31, 2017) (noting that in "many cases . . . the amount owed to [an Advance Company, the largest of which are RD Legal Funding, and two entities for which Respondents originated claims—Cedars Funding LLC and Specialty Claim Investments LLC] exceeds the amount of the respective Plaintiff's initial distribution"); Tr. 1781:24—1782:7 (Guy) ("Q: Okay. And down below, there's a negative number, a negative number, a negative $21,816. What do you understand that to be? A: That's how much I still owe RD Legal. Q: What do you mean by "still owe"? A: That I still owe them $21,816 from the $292,750. Because when they did the disbursement of the moneys off of this contract that we're looking at, it was -- 270,000 was going to RDL.").

3. The Risks of the Peterson Turnover Litigation

121. The Supreme Court's ruling affirming the lower courts' judgments in Bank Markazi v. Peterson, 136 S.Ct. 1310 (2016), put an end to the Clearstream I.[180] It was not until after the Supreme Court's mandate following that decision was issued that there was a final, non-appealable judgment permitting distribution of the Citibank funds to victims of Iranian terror.[181]

122. Perles and Fay were able to obtain "significantly lower rate[s]" for the loans than they had been able to obtain from the Flagship Funds before the Supreme Court's affirmance in Clearstream I.[182]

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[180] Tr. 1568:20-24 (Perles) ("A: ...We then prevailed against Markazi at the Second Circuit. They filed a successful cert petition at the Supreme Court. The Supreme Court heard the matter, and by a six to two opinion, affirmed the turnover order ending the litigation.").

[181] Tr. 1589:4-24 (Perles) ("JUDGE PATIL: Excuse me. When was the final non-appealable judgment that enabled that money to flow? THE WITNESS: The final and unappealable judgment would have been entered by the Supreme Court 11, 12, 13 months ago, I would think. And then, of course, procedurally the mandate issues to the Supreme Court to the Circuit. The Circuit issues the mandate down to the District Court. And the District -- once that District Court mandate issues, then the trustee is free to initiate the distribution process. BY MR. TENREIRO: Q: Sometime in 2016, is your best recollection? A: Spring. Q: Spring of -- A: And then the Supreme Court goes out of session in June. And we know they're going to finish this case before they go out of session. So my recollection is it was April, May, maybe.").

[182] Tr. 1220:13—1222:10 (Genovesi) ("Q: Okay. And have you ever invested in anything related to the Peterson matter while at Thrivest? A: We have. Q: Could you explain that investment? A: We advance funds to some of the lead attorneys. And we also did one or two of the plaintiffs. Q: When you say "lead attorneys," who are you referring to? A: Tom Fay. Q: And when did you advance funds to Mr. Fay? A: I don't recall exactly. I think it was May of 2016. Q: Okay. And if you don't recall exactly, do you know when -- are you aware that the Peterson case was heard by the Supreme Court? A: I was, after the Supreme Court decision. Q: So you invested with Mr. Fay after the Supreme Court decision? A: Yes. Q: Do you have any idea how the terms of your deal with Mr. Fay compared to the rate Mr. Fay owed RD Legal? A: It was less expensive for Mr. Fay. Q: Do you have any understanding as to why? JUDGE PATIL: Excuse me? Which was less expensive? THE WITNESS: My firm's offer to him was less expensive. So it saved him some money, which is why he wanted to move. BY MR. BIRNBAUM: Q: Were you involved in the negotiations with Mr. Fay? A: Yes. Q: Were you involved in determining the effective rate of interest Mr. Fay would owe you? A: I was involved in the discount we applied to our purchase of his -- Q: Did the fact that the Supreme Court had already ruled have any bearing on the discount you arrived at? A: Yeah. Q: Why is that? A: There was no perceived risk in the trade at that time."); Tr. 1599:25—1600:21 (Perles) ("Q: All right. Mr. Perles, do you still owe RD Legal this

123. Before the Supreme Court's ruling affirming the District Court's ruling in Clearstream I, Mr. Perles at times felt unsure of the ultimate outcome. For example, he "was troubled by the fact that [the United States Supreme Court] solicited the views of the United States," because it is "not a good sign."[183]

124. In November of 2013, the United States and Iran, among others, signed a "Joint Plan of Action" (JPOA) relating to Iran's nuclear program and sanctions against Iran.[184] Given the JPOA, Perles was unsure if the Obama administration would continue to defend the constitutionality of § 8772.[185]

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amount? A: I do not. Q: Okay. And how -- when did you pay them? A: At the -- sometime after the conclusion of the Supreme Court case, I refinanced the loan transaction with another litigation funder at a significantly lower rate. Q: I'm sorry? A: At a lower rate. Q: Okay. What was that rate? A: 18 percent. Q: All right. Why did you refinance the loan? A: Because I could -- at that point, I could -- I knew that the distribution process was going to be lengthy, and I was able to save money by refinancing. Q: Okay. Do you have any understanding as to why you were able to get a lower rate? A: Because all of the attendant risk of litigation was gone from the process."); Tr. 2419:7-14 (Fay) ("Q: And how did you pay that off? A: Went through another outfit that evened it up. And it was -- it was a better deal, let me put it that way. As it turned out, as soon as we received -- I say "we" -- as soon as I received money from the enforcement, which I believe was in December, they were paid off as well. So it was nothing still on it.").

[183] Tr. 1617:21—1618:24 (Perles) ("Q: Okay. Do you know if the Supreme Court called for the views of the Solicitor General at any time? A: My recollection is that they did. Q: Okay. Did you have any reaction to that at the time? A: I was troubled by the fact that they solicited the views of the United States. Q: Why? A: Because -- Q: I'm sorry? A: -- if you're a Supreme Court watcher, you understand that that's not a good sign. What you want to happen -- if you have filed documents in opposition to a cert position -- you know, I think there are probably 7,000 petitions a year that are filed with the Supreme Court, and the Court typically takes 80 to 85 petitions. So what you really want is this thing to be ground out with a one line, you know, petition for certiorari denied on Monday morning at 9:30 a.m. You know, you wind up scanning the Supreme Court website every Monday at 9:30. The last thing you want is for the Supreme Court to call on the views of the United States, because that's an indication that a sufficient number of judges are concerned about the disposition of a proceeding that they want to hear the views of the United States.").

[184] Iran Nuclear Agreement Review Act of 2015, Pub. L. 114-17 (H.R. 1191), § 2 (May 22, 2015) (amending The Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.).

[185] Tr. 1618:25—1619:25 (Perles) ("Q: Okay. Did you have any idea what the views of the United States might be when the reviews were solicited? A: I did not. Q: Okay. A: No, I -- well,

125. Mr. Perles' own certainty that the plaintiffs in Clearstream I would succeed was shaken when the Supreme Court granted certiorari to review the case.[186]

126. Mr. Perles and Mr. Fay in 2014 entered into a financing agreement in which they acknowledged that the "Collection Risks are substantial" with respect to enforcing the damages awards they obtained in the Reparation Case.[187]

127. Certain developments in the Peterson Turnover Litigation had the effect of "simplifying" some of the arguments—such as the passage of § 8772—implying that some of the arguments were less simple before those developments.[188]

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let me clarify that. The United States had represented to the Senate Foreign Relations Committee that the statute was constitutional. Therefore, in the ordinary course, that should have been affirmed at the time that the Solicitor General filed the statement of interest. However, a lot of geopolitical events had taken place. And the JPOA was being put in place. And the President of the United States had a different view of Iran at that point, and we just didn't know where the Solicitor General was going to come out. He came out at the right place. He came out consistent with the representations that the Justice Department had made to the Senate Foreign Relations Committee when that was passed. Q: I'm sorry. In your last answer, you mentioned the JPOA? A: The Joint Plan of Action. This is the nuclear deal.").

186 Tr. 1685:11-20 (Perles) ("Q: In fact, you always had an unyielding view that the plaintiffs were going to win? A: Up until the time that the Supreme Court granted cert. Q: Okay. You were disappointed or concerned with the Supreme Court granted cert, because it suggested that it wasn't going to be just a quick blast out, cert denied? A: Yes. Well, it could not be a blast out cert denied, because cert was granted.").

187 Ex. 516 at 2 § 1(c).

188 See supra ¶ 110; see also Tr. 3453:7—3454:15 (J. Martin) (describing availability of arguments for turnover such as TRIA and § 8772 that became available years after filing of Clearstream I) ("Q: But the plaintiffs were seeking turnover based on the three potential avenues, right? The FSIA/state law, TRIA/the executive order and 8772, right? A: And recognizing, as I know you know, that when the litigation started in 2010, 8772 wouldn't have been part of the analysis because it came a bit later. Q: Right. And isn't it also true that TRIA was not part of the analysis when the litigation began because the executive order didn't come until February of 2012? A: Yeah. I can't speak to that specifically. But I do know that we evaluated the TRIA argument based on the blocking order and after that. You could be right. I don't remember. Q: You don't remember the date of the blocking order; is that what you're saying? A: Yeah, I don't. Q: The memo page 1455 -- A: If you want to point me to a page, what do you remember, that I need to recall. Q: 1455. A: I don't mean to be glib. Q: That's fine. Do you see where it says 'February 12 while the parties were briefing' -- A: Very good. I see that. Q: It's fair to say, isn't it, that

128. James Martin, the appellate lawyer from Reed Smith who wrote certain memos about the merits of Clearstream I, did not think that the appeal of the result in Clearstream I would be a "sure thing,"[189] and testified more generally that there is "no such thing as a sure bet" in litigation such as Clearstream I given "the number of issues . . . the nature of the defenses, perhaps the complexity of it."[190]

129. James Martin was "less enthralled" with the FSIA argument for turnover that had been the basis of the original complaint in Clearstream I, but thought that § 8772 "was going to strengthen the plaintiffs' position."[191]

TRIA comes into play when the executive order blocks the assets; is that fair? A: Well, as far as our evaluation was concerned, we thought the blocking order was important to the TRIA argument and was very significant in supporting the merits of it. Again, what other people thought was fair or not fair had to say about that, I'm not sure.").

[189] Tr. 3416:11-16 (J. Martin) ("Q: And did you think the results of that appeal were a sure thing? A: No. A sure thing would be a lock. I've been doing appeals for 38 years. With apologies to Your Honor, I've seen a lot of rough justice. So I don't consider any appeal to be a sure thing.").

[190] Tr. 3458:23—3459:9. (J. Martin) ("Q: ...You mentioned earlier today that you can't be 100 percent sure of the outcome of these cases. Do you recall saying something like that? A: I do. Q: What did you mean by that? A: I think I'll stick by my prior explanation. There is, in my view, in most litigation no such thing as a sure bet. And certainly in a case where you have the number of issues that were present in this case, the nature of the defenses, perhaps the complexity of it, you're not going to take a look at litigation like this and say it's a sure bet in my view.").

[191] Tr. 3455:3-21 (J. Martin) ("A: There's a lot packed into that question. So let me unpack it and say it the way I think. If we had to rank the arguments when we got into it, we thought the TRIA argument was a very strong argument. And so not only -- and let me just say, had 8772 not been there and had TRIA been the lead piece of it, we probably would have come out the same way, that is that this plaintiffs' litigation had merit. We were less enthralled with the FSIA argument. But we understood it. And based on the analysis in New York Law that was behind it and also understanding that we didn't think that the holding of the assets by Clearstream was a government activity or whatever the buzzwords were, the FSIA argument was pretty good. When 8772 came, of course, as I said earlier, we couldn't fully predict how it was going to be argued. But the way that we saw the case, that was a definite enhancement, that it was going to be -- it was going to strengthen the plaintiffs' position, yes.").

130. Respondents' employees told Peterson Turnover Litigation plaintiffs to whom they offered funding in connection with Clearstream I and the 650 Fifth Avenue Turnover Litigation that there was "no guarantee" that they would be successful in collecting on their judgments.[192]

131. The District Court ruled against the plaintiffs in Clearstream II, blocking them from executing their judgment against those assets.

132. The Second Circuit reversed the District Court's grant of summary judgment in the 650 Fifth Avenue Turnover Litigation, forcing a trial on the question of to whom the assets belong.

133. The Division's expert Anthony Sebok was of the opinion that the completion risk in obtaining enforcement of the default judgment was, from 2010 through 2016, as high as it was in other cases litigated against Iran.[193]

134. The Respondents' proffered expert David Martin was of the opinion that the assets at issue in Clearstream I were "subject to litigation" before they were put in the QSF,[194] that there

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192 Tr. 1770:20—1771:23 (Guy) ("A: No, sir, I did not do a review. Q: So when you spoke with Mr. Genovesi, what was the purpose -- I think you said some kind of funding. What did you discuss with Mr. Genovesi about that funding? A: When I first spoke to Mr. Genovesi -- sorry if I say his name wrong -- it was in reference to receiving advances on money that was forthcoming if the lawsuit settled. My stake in it was 1.25 million. And same for my brothers and my sister. But my oldest brother, who was the fallen Marine -- I shouldn't say fallen. He is fine -- but was injured, his -- for that portion of it was 5.5 million, if I'm not mistaken. So when we spoke about receiving money, the lawyers had sent out RD and RDL pamphlet, and -- they sent it out. And one of the discussions on the thread of the Victims of Terrorism Website sent by the law firm was that there were so many people who were dying from the case, and they weren't living to see any of the funds. So the lawyers sent out that pamphlet to all of us, if I'm not mistaken, saying, Hey, here's a way to receive some moneys in advance. So my family and I, we discussed it, and I ended up -- just so happenstance, I got a phone call, and it was Mr. Genovesi -- am I saying his name right?"); Ex. 284A at 2 (edits by R. Dersovitz to letter to Peterson plaintiffs allowing for possibility that assets at issue in Clearstream could be returned to Iran).

193 Ex. 223 at 41-43.

194 Tr. 4069:15—4070:1 (D. Martin) ("Q: Who was the obligor on the Fay and Perles receivables? A: I would say after they were put in the trust and after the Supreme Court had ruled on it and confirmed it, I would say that the obligor was the trustee of the trust. That is who was responsible to make those payments. Q: What about before they were put in the trust? A: Before

was "risk that the Peterson receivables could not collect because of the outcome" of Clearstream I,[195] and that certain developments in the Clearstream I litigation and in the political world made the outcome of Clearstream I less risky.[196]

135. Analysis of the issues presented in the Clearstream I case was "very complicated and complex" and involved a variety of legal issues such as questions of separation of powers and bill of attainder over the constitutionality of § 8772, questions about the applicability of TRIA, questions about jurisdiction and sovereign immunity, and questions about property ownership under the UCC and New York State Law.[197]

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they were put in the trust, they were subject to litigation, right? So it was going through the court system.").

[195] Tr. 4095:21-24 (D. Martin) ("Q: Was there any risk that the Peterson receivables could not collect because of the outcome of some of the court procedures you've described? A: Yeah. Sure.").

[196] Tr. 4099:2-23 (D. Martin) ("Q: Is it your testimony that from your perspective, not as a lawyer, but as someone who is looking at these processes before Judge Forrest orders a turnover in February 2013, there's more risk than after? A: Yes. I would say that's true. Q: It is your testimony, not as a lawyer, but as a person looking at it from an investment perspective that before 8772 was passed, there is more risk than there is after? A: Yeah. Q: Okay. A: But the question you're asking me really is -- running a hedge fund, was that a reasonable risk that they had to undertake? I would unequivocally say that it was. Q: Okay. And is it your testimony, not as a lawyer but as an investor, that before the freezing of the funds by President Obama, there's more risk than there is after he freezes the funds? A: Well, yeah. Every step along the way the risk changes. So I would agree with that.").

[197] Tr. 3398:23—3399:10 (D. Martin) ("Q: And what was the scope of your engagement with respect to the Peterson turnover litigation? A: It evolved. But in the beginning, there were four principal tasks, I think. This is a while ago. One was to evaluate the merits of the Peterson litigation as filed and as it was preceding in the New York federal courts. We also were asked to analyze what then was called Section 502, later became a codified U.S. code section which was a piece of legislation, Iran reduction. And the question related to constitutionality of that statute. And then, of course, would it be impactful in Peterson. And that was a fairly recent development as of this time as I recall."); 3400:9-15 (D. Martin) ("Q: And prior to preparing this memo, could you describe the work that you and your team at Reed Smith did to prepare for drafting the memo? A: Yes. So this was obviously a very complicated or complex piece of underlying litigation and then its intersection with other federal statutes and then the constitutional issue."); 3404:15—3405:13 (D. Martin) ("[A:] ...But in terms of the research specifically, if you look at the number of issues that are raised in the memo, I think it's pretty evident that there was a lot of ground to cover. And

136. Mr. James Martin, whom Respondents hired to conduct an analysis of the "merits" of Clearstream I, provided no opinion was to the predictability of the outcome of the case, and was not asked to opine about litigation risk.[198]

137. Other lawyers at Reed Smith Dersovitz hired to evaluate the investments in the Peterson Turnover Litigations told Dersovitz, in a memorandum dated August 21, 2012, that collection on the Reparation Case judgment was subject to litigation and uncertain, stating:

a. "[a]n Assignor's [defined as injured service members on behalf of whom claims were made in the Reparation Case] obligation to repay the money that RD has advanced is contingent on the Assignor's ability to collect on the Judgment [defined as the original default judgment entered in favor of

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if you're going to go look at things like separation of powers and bill of attainder and TRIA, you're going to generate lots of cases. And you're going to sort through that and try to get to the ones that are going to matter and then put them in some comprehensible way, so that RD Legal could understand the substance of the evaluation, yeah. Q: Turning back to the initial memo, Exhibit 1455 that was dated August 17th, 2012, do you recall what the procedural posture of the turnover litigation was at that point in time? A: Well, you know, I do from the review quickly. But at that point, my recollection is that there were a number of motions that were filed by the various parties that had yet to be decided. There were jurisdictional issues that were raised by several of the parties. There were immunity sort of issues that were raised by at least one of the parties. There was a summary judgment filed by the Petersons that was seeking to have the assets turned over. And those were all in play when we did our first evaluation.").

[198] Tr. 3473:13-25 (J. Martin) ("Q: In terms of the ability to predict the outcome of the turnover litigation, I think I've heard you said a couple of times that nothing's 100 percent certain in terms of predicting an outcome in this context; is that correct? A: You can't predict the outcome with 100 percent certainty. And I don't think our memos reflect that we drew that conclusion. Q: Right. Did you ever advise Mr. Dersovitz anything contrary to what's in your memos in terms of your view of the predictability of the outcome of the case? A: No."); Tr. 3479:24—3480:7 (J. Martin) ("Q: Did you ever advise RD Legal that after the passage of 8772, litigation risk was extinguished from this case? A: I don't recall saying that. And I'm not sure that we would have given the other evaluations that we made. I will also say that nobody was asking us about litigation risk, just to make that clear. We were being asked about the merits of arguments, likely outcomes, timeline, that kind of thing.").

the Assignors in September of 2007 for $2.65 billion in the Reparation Case], which is the subject of litigation and therefore uncertain";[199]

b. "at the time the purchase transactions are made, the Assignors will be far from 'certain to recover some damages'" because "[a]lthough . . . a judgment (including damage awards to the individual Assignors) as already been entered, there is no certainty that any Assignor will be able to collect on that judgment. Presently, the only money in the U.S. that has been identified to date as possibly belonging to Iran is in the Citibank account belonging to Clearstream. The ability of Assignors to levy on that account is the subject of the Turnover Litigation. If that litigation should be decided in favor of Clearstream, there is a very real possibility that Assignors will be unable to recover any part of their Awards;"[200]

c. that with respect to the transactions, as Prof. Sebok concluded, "the risk that RD assumes is not a 'credit risk,' but rather a legal risk (i.e., that Clearstream will prevail on the legal arguments it presents in the Turnover Litigation);"[201]

d. "RD's right to recovery is contingent on its ability to access the funds in the Citibank account that is the subject of the Turnover Litigation (and other eventualities);"[202]

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199 Ex. 714 at 51, 66-67 (Aug. 21, 2012 memo from R. Jaworski to R. Dersovitz).

200 Ex. 714 at 68 (citation omitted).

201 Ex. 714 at 69.

202 Ex. 714 at 72.

e. In the case of investments in the Peterson Turnover Litigation, "Judgment has been entered in favor of the Assignors, but the outcome of the Turnover Litigation is uncertain and RD may receive nothing if the court rules that the funds should not be turned over;"[203]

f. "RD's collection of funds as a result of a transaction under the Program is contingent upon a successful outcome in the Turnover Litigation . . . [and] if the Turnover Litigation results in no money, or less money than the Assignor is entitled under the Judgment, RD will receive no payments or smaller than anticipated payments from the Assignor's attorney;"[204]

g. "despite that all of the transactions made under the Program will be entered into only after entry of the Judgment establishing liability and the amount of each Assignor's award, RD's recovery will still depend upon a successful outcome in the Turnover Litigation. If that outcome of that proceeding is unfavorable, there will be no readily available source of funds to satisfy the Judgment;"[205]

h. "Under the Program, RD will purchase the right to receive payment of a portion of an Assignor's Judgment Award, and in doing so will agree to look solely to Iran, or the funds in accounts under Iran's control or attributed to it, for repayment;"[206] and

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203 Ex. 714 at 78.

204 Ex. 714 at 86-87.

205 Ex. 714 at 87.

206 Ex. 714 at 93.

i. "while the (default) Judgment was entered in favor of the Assignors, the outcome of the Turnover Litigation remains uncertain."[207]

138. Reed Smith was of the opinion that it would be "extremely unlikely that the Supreme Court would grant" certiorari to review the Second Circuit's decision in the Peterson Turnover Litigation, and Dersovitz shared that view,[208] but the Supreme Court granted certiorari.

139. Reed Smith was of the opinion that the rulings in the 650 5th Avenue Turnover Litigation matters "likely would be affirmed on appeal,"[209] but the Second Circuit reversed that decision, and the lawyers involved in these matters have told their clients that the outcome is uncertain.[210]

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207 Ex. 714 at 100.

208 Tr. 5938:8-19 (Dersovitz) ("Q: At some point, did you ask Reed Smith for an analysis of whether the Supreme Court would take up the appeal of the Peterson case? A: Yes. Q: What was their conclusion, what was their initial analysis before this report actually did take up the case? A: They found it extremely -- they felt that it would be extremely unlikely that the Supreme Court would grant, sir. Q: Did you agree with that at the time? A: Yes.").

209 Ex. 1977 at 1.

210 Tr. 1773:19—1774:14 (Guy) ("Q: And then you mentioned that Mr. Genovesi told you that you don't have to pay the money back if it turns out this case doesn't settle? A: If it doesn't settle, yes, sir. Q: Did that matter to you in determining whether to enter into a deal? A: Yeah. I mean, it was a win-win for my family, I thought. You know, the lawyer – the lawyers weren't saying that it was going to settle. It was still ongoing. And it kept going back and forth between court and court and court. They tried to keep us updated as much as possible through the website, but it wasn't looking promising. And when I talked to Mr. Genovesi, he sort of convinced me, just by our conversation, not saying, Ian, you must do this, but just the dialogue we had back and forth about the case might not settle. So it compelled me to go ahead and do some advances with them."); Tr. 1784:24—1785:9 (Guy) ("Q: Now, you mentioned a qualified settlement fund before. Do you have any understanding as to whether there is any other source of money, other than that qualified settlement fund, that might be available at recovery? A: No money is available now. I know that the lawyers were going to go a building in -- somewhere here in New York. But they basically said, Don't hold your breath so -- something like that.").

140. Dersovitz testified that the Reed Smith memos did not affect his view of the Peterson Turnover Litigation in any way.[211]

141. RD Legal Funding's underwriting documents describe the Peterson Turnover Litigation as a "struggle between Luxembourg, Clearstream Banking SA, holder of the Citibank accounts, and the families of the hundreds of U.S. Marines injured or killed in the 1983 terrorist attack" and describes the obligor for these assets as "the Islamic Republic of Iran."[212]

142. Prospective investors, upon learning of the Peterson Turnover Litigation, persistently understood that it was not a "settled case" given the ongoing dispute regarding the release of the funds at Citibank, and had a higher risk profile than the Flagship Funds' investments, including because of litigation risk and political risk.[213]

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211 Tr. 5939:2-21 (Dersovitz) ("Q: Did you seek advice from Reed Smith on the likelihood of improvements to the United States relations with Iran and whether it would affect the chance of recovery in Peterson? A: Yes, I did. Q: And before you sought that advice, did you have a view of that likelihood? A: I expressed it here moments ago. Yes, I did. Q: What was the view you had before you sought this advice? A: This money was never going back legally and practically. Q: And what was Reed Smith's analysis that was shared with you in connection with the likelihood? A: They felt it was unlikely. If not impossible. Q: And you agreed with that as well? A: Yes. Q: Did the Reed Smith memos affect your view of the turnover litigation in any way? A: No.").

212 Ex. 607 at 13-14.

213 E.g., Tr. 877:18—878:15 (Wils) ("Q: And were you interested in investing or potentially investing in the separate entity? A: No. I was not interested in investing in that. Q: Why not? A: A few reasons. First of all, the claim was -- the event was 30 years prior. And I -- and I just thought that's a long time. Also, there was political risk. I think having a claim against a country like Iran is extremely risky. I understood they had assets in the United States, but I just thought it was a long stretch from having a claim to settling a claim. And also, frankly, the idea -- and this is where -- I think we're getting a little bit ahead of ourselves, because there is a second conversation. But I'll answer your question. That the idea of profiting on someone else's misfortune and -- wasn't something that didn't feel right to me. [sic] It's not my nature. And it's something that I wasn't – I really wasn't interested in."); 923:1-5 (Wils) ("Q: The only reason I asked you a moment ago, Mr. Wils, about whether you did some risk analysis is that you said that you thought the Peterson cases had a higher risk. A: I do. I still do."); Tr. 1043:13-21 (Condon) ("Q: And you understood, for your meeting, that Mr. Dersovitz was very confident in the outcome of the Iran cases? A: He seemed pretty confident, but I understood it wasn't a settled case. Q: It was a different type of opportunity, this one special purpose vehicle that would be in the domestic fund in which you were invested, right? A: Right.");

Tr. 1083:19—1084:3 (Schaffer) ("Why did you think it [the Peterson opportunity] was substantially different? A: Well, it wasn't well understood at the time. I understand it more now because I've followed it, you know, from the -- since it all came out. But my understanding is that there was more legal risk involved and that there -- I think I said another, they could appeal. And it sounded to me, you know, a bit more uncertain or it's requiring a bit more of a legal opinion as to the certainty of it."); Tr. 1162:19—1163:19 (Schaffer) ("Q: Okay. Now, I think when we spoke earlier, you mentioned that you viewed the Peterson case as different, fundamentally different than the strategy of the traditional strategy. Is that correct, sir? A: That's correct. Q: Okay. I understand you're not an attorney, but do you view, you know, why -- you knew it was a non-appealable judgment, how is it different then? Can you explain that? A: Well, looking now with hindsight, I think that what's happened over the past 18 months is -- informs my opinion as to why I knew it was different. And I don't know if it's been discussed at all in the case before me, but the saga about whether we were going to get the money and whether the supreme court was going to take the case or not, and when they did, I thought the judgment was going to be -- I'm sorry, I'm going fast. All of this together has been, you know, I think, in my mind, confirmation of why it's fundamentally different. I was, at one point, very worried about whether they were going to get their money back at all. What happens if the supreme court ruled against our position. So that, to me, was a stressful time where I was basically, fingers crossed, waiting for news. So that's unlike any other case, I believe, in the portfolio.");

See, infra, n. 825 (Ashcraft testimony);

Tr. 2031:21—2034:22 (Furgatch) ("Q: I think you said you were having a healthy debate about the Peterson case at that lunch. Could you describe or elaborate what you mean by 'a debate,' what you said about the Peterson case? I'll withdraw and ask a better question. What risks at that time did you believe there to be related to the Peterson case? A: Well, it's almost like: Where do I start? So there's two big risk areas. One is litigation risk, and I suppose everyone here is sophisticated on litigation, so I don't have to run through the bullet points of the things that could go wrong. I don't know if that's the right term. Let me say, the unpredictability of outcomes associated with litigation. Not to mention the enormous time involved. So there was litigation risk for one, meaning uncertainty of outcome. Number two, in this particular case, dealing with Iran, and where Roni and I spent most of our time -- actually, Roni would argue the legal points, and I would retort with the political points. And the political points I make, which is the second risk area, is that I sit on the national board for the trade association of my industry. And as a result, one of the functions that we do is we do a lot of lobbying down in Washington. I have been part of this process for over 20 years. And I sit on various industry committees. I testified in front of Congress. I've sat with important Congress people and various legislation in the working staffs and so on and so forth. In summation, I've had just enough exposure to what happens inside the Beltway to know that anything goes. And it's almost impossible to predict outcomes. And so, so much of this case, in my view, related to -- or risk factor was international relations between the U.S. and Iran. And ironically, I remember saying to Roni that, in theory, the hostile relationship between those two countries could change. You never know. And I never thought in a million years I'd see that in my lifetime, and then a few months later President Obama, as we all saw in the headlines, actually moved in the direction of lifting sanctions against Iran. And for me it just kind of validated that even if you're an insider in Washington, it's hard to predict what's going to happen. So that was the second risk area was political. The third was time. You have to remember, I mentioned earlier that the time to recovery in a lending operation is very critical. The sooner you collect, the more

143. Various of Respondents' employees understood the Peterson Turnover Litigation in ways that contradicted Respondents' own view of the case, as Respondents knew, including:

a. Mike Davis, a member of the Offshore Flagship Fund investment committee, who viewed the cash at issue as belonging to Iran;[214]

b. Ms. Markovic, the head of investor relations since September of 2012, who at various times understood there to be litigation risk in the Peterson

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likely you are to collect. The longer it takes to collect, the greater risk you have in collecting as a whole. In this particular Iran case, it was my view that Roni was choosing to trade places with a bunch of unfortunate victims who had already been waiting decades and decades for a potential recovery. And even in -- even though we know the wheels of justice turn slowly, that's not within the normal realm. That unto itself just tells you that the likelihood of recovery is greatly at risk. For all I knew, that would take decades longer. So I mean, those are three major risk areas: the timing, the political and the litigation. Just off the top of my head. And then, of course, you have the concentration risk. You're betting the entire fund on the outcome from one judge or jury? Forgive me, but I just think that's absurd from an investment point of view.");

Tr. 3312:8-20 (Sinensky) ("Q: What was your decision? A: I chose not to invest in that. Q: Why not? A: Because I thought it had a level of risk that was beyond my parameters and my investment appetite, mainly because it involved Iran. Q: And what about it involving Iran made it a risk beyond your appetite? A: Well, it struck me that there was a level of geopolitical risk, meaning that this was a country that we don't have diplomatic relations with. And it was a level that the outcome could not be as well predicted as the basic premise of the fund.");

Tr. 3624:6-23 (Gumins) ("Q: Let me ask the question, though. Would you have made this additional investment had you known that your fund was already investing in the Peterson case at this time? A: No, sir. Q: Why not? A: Because that was headline risk. It morally was indefensible to me. And it was a very risky investment, extremely risky. Q: Why was it risky to you? A: I'm a history student. How long we've been suing Cuba for the sugar, for the expropriation in 1959 and '60. How about Mexico in 1948. I can go on and on. 1938 with the expiration of oil. It just doesn't work out the way you think. I can give you so many cases: Libya, Saudi Arabia. It goes against the brain of what happens in an international. It just doesn't come out the way you think when a government does something.").

[214] Ex. 234 at 1 (Jan. 26, 2011 email from M. Davis to P. Larochelle); Ex. 259 at 1; Tr. 5949:20—5950:6 (Dersovitz) ("Q: Mr. Davis goes on to write, 'If we do that, in this case Iran would receive a low rating and the exposures would be limited. If any, the difference here is that there's a substantial asset of the obligor being looked at as the payment source continuing on the next page. Certainly cash is the best asset you can have and everything thus far, the court would indicate at some point this Iranian cash would be used to settle this and other judgments. But that is yet to be fully judged upon.' Did you agree at the time with Mr. Davis' statement that this was Iranian cash? A: No, it was wrong.").

Turnover Litigation, and who did not know the concentration of the Peterson Turnover Litigation in the Flagship Funds' portfolio until after March 2014.[215]

4. The Peterson Matter and the Offering Documents

144. At various times, Respondents have offered differing explanations as to what point in time it would have been "proper" under the Flagship Funds' Offering Documents to invest in the Peterson Turnover Litigation, including:

a. stating that the business of the Flagship Funds is to buy settlements or judgments where a "corpus of money" has been "identified";[216]

b. stating that the business of the Flagship Funds is to buy settlements or judgments were a "corpus of money" has been "restrained,"[217] and that it would have been "premature" to invest in the Peterson Turnover Litigation in 2009 because the assets hadn't been restrained,[218] even though, in fact, the restraints against the assets held by Citibank were filed in 2008;[219]

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215 See infra n. 1255.

216 Tr. 5449:19-5450:2 (Dersovitz) (Discussing Respondents' Opening Slides No. 1) ("MR. WILLINGHAM: I'm going to ask Mr. Puls to put up opening slide 2. BY MR. WILLINGHAM: Q: You've seen this before? A: Yes. Q: Okay. This is a depiction of what we described as RDLF core investment strategies; is that right? A: Yes.").

217 Tr. 2914:15-21 (Dersovitz) ("Q: You thought a settled case is different from a judgment, correct? A: A judgment without having monies restrained in my mind is different than a typical settlement. And understand that I'm not talking about settlements between the two neighbors. I'm talking about a settlement where one of the counterparties is a large institution.").

218 Tr. 5879:22—5880:12 (Dersovitz) ("Q: And can you just describe for the court the chronology of what you discussed with Mr. Perles about the Peterson case at that time? A: He would have given me a brief description of the matter. At that point in time it would have been premature, but -- for me to do anything with -- under my operating documents. But he then began to speak of getting letters of derogatory for an Italian deposition. I just don't remember the exact timing. Q: When you say 'premature' when you first learned about it, why would it be premature to invest in Peterson at that point, roughly in 2009? A: Because at that point in time there had been

c. stating that after the Department of the Treasury informed Mr. Perles that it believed that the Citibank assets had been laundered into the United States in April of 2010, the case was a "perfect fit" for the Flagship Funds;[220]

d. stating that it was when the Peterson Turnover Litigation was filed (in June of 2010) that the case "fits into [their] paradigm" and that is when it was "game over;"[221]

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no proof indicia that the fund alleged to belong to Iran did in fact belong to Iran. So, it was -- it wouldn't have been appropriate until after the funds were restrained.").

[219] Ex. 46 at 1; Tr. 5896:1-3 (Dersovitz) ("JUDGE PATIL: When were the funds restrained? THE WITNESS: In 2008, so it was two years post.").

[220] Ex. 3109; Tr. 5885:25—5886:22 (Dersovitz) ("Q: Mr. Dersovitz, Mr. Perles writes that he spoke with the general counsel of OFAC, Office of Foreign Asset Control, O-F-A-C. He verified the findings found in attachment B. Do you see that? A: Yes. Q: And he also writes, 'We are extremely far from posture with OFAC. They are giving us materials and we have agreed to reciprocate by turning over anything we collect in Italy.' Do you see that? A: Yes, I see that. Q: You see he has transcripts of -- he is turning over transcripts of UBAE now? A: Yes. Q: How did the statement form your ability to collect on the Citibank assets that were restrained as a course of the Peterson case? A: The two confirmed for me under the State of the law that once the turnover proceeding was commenced, it was merely a seal of conclusion under the current state of laws. You could have determined that in advance and it was a perfect fit for what I do, discount at the time value of money during the pendency of intervening court proceeding.").

[221] Tr. 5894:3—5895:18 (Dersovitz) ("Q: When the Citibank assets were initially frozen as a result of the work done by Mr. Perles that he testified about, did you immediately engage in funding the litigation? A: No, I actually waited until the turnover action begun because that was when it fits into my paradigm. So the law -- the underlying judgment was unappealable, it was final -- excuse me, that's the term of art. The turnover action is the second proceedings to have that we direct the sheriff to turn the money over from those proceedings. Once the funds were frozen, the standard for freezing funds, restraining funds is significantly higher then that was very probative and that it was game over. Q: And essentially further confirmed by the Italian deposition confirming the monies were laundered illegally into the United States? MR. BIRNBAUM: Objection, leading. JUDGE PATIL: Sustained. You used some language to the effect of game over or something like that. So what I'm trying to understand when that was in your mind. Just re-explain that. I think I was almost there, but not quite. THE WITNESS: There's an arrow in your analysis, but I will get to that in a moment. But I am -- so game over means when you restrain assets, well, it's over. It's done, it's just a matter of waiting out the judicial process. It's no different than anything else I do. You understand the law, you know -- if you understand the law and are a rare sole like I, I will put it that way that trusts the legal system, you know where it's going to wind up. So with understanding the burden of proof that you have to restrain funds in the

e. stating that "accelerating legal fees on settlements and judgments that are collectible" is what the Funds' do;[222]

f. stating that "identifying funds . . . in a bankruptcy remote vehicle" was sufficient;[223] and

g. stating that they viewed the Peterson Turnover Litigation as having "zero" litigation risk since 2011;[224]

145. Dersovitz subsequently questioned how any lawyer would ever describe anything as having "zero risk."[225]

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first quarter having seen the evidence myself, understanding the reliability of the evidence, understanding the fact that the monies were laundered, put aside President Obama's blocking order which occurred much later, 8772. On that simple basis of law -- on that simple basis of law under New York State law it was game over. It was only meaning the plaintiffs weren't going to be successful.").

See also Tr. 6627:5-25 (Dersovitz) ("Q: So let's focus on this memo at page 67 to 68. I want to call your attention to the bottom. Paragraph beginning, 'Since.' You see it reads -- and I'll carry over to the next page: 'Since an assignor's obligation to repay the money that RD has advanced is contingent on the assignor's ability to collect on the judgment, which is the subject of litigation and, therefore, uncertain, it would appear that the proposed transactions would not create debt and, hence, would not be covered by TILA and Regulation Z. Similarly, as previously discussed in Sections 2A2 and 2A3, the proposed assignments would also not appear to be treated as extension of credits covered by ECOA or FCRA.' Now, by the time you received this memo in August of 2012, you believed that the Peterson case was game over, as you described it last week, correct? A: Yes.").

222 Tr. 6169:19—6170:10 (Dersovitz) ("Q: Mr. Dersovitz, you said a moment ago you were interrupted and you mentioned judgments -- A: Yes, I did. Q: -- on this call? How did you refer to judgment, do you recall? A: Now, however, we also do judgments, if I recall correctly. Those were the words that I used. Q: Take a look at the transcript. We don't need to pay the clip. It's short. Page 15, lines 16 to 17, 'Now we accelerate legal fees on settlements and judgments that are collectible.' Do you see that? A: Yes. Q: Is that what you were referring to? A: Yes.").

223 Tr. 5453:10-19 (Dersovitz) ("A: . . .So identifying funds -- now imagine a slightly different situation. You've got a corpus of money in a bankruptcy remote vehicle. I've taken my bankruptcy risk out of the equation. It doesn't exist anymore. Does that answer your question? Q: More or less. When you say 'identified funds,' do you mean the existence of funds that could be used to satisfy a judgment? A: Yeah. Assuming they're restraining, yes.").

224 Tr. 5953:4-7 (Dersovitz) ("Q: What was your view, if any, of the risk associated with that litigation process you describe here in 2011 at the time? A: Zero.").

146. Dersovitz acknowledges that one cannot accurately refer to an investment in the Peterson Turnover Litigation as an investment in a "settlement."[226]

D. The BP Oil Spill Litigation

147. With respect to the British Petroleum (BP) oil spill (the "BP Case"), the Flagship Funds advanced funds to non-attorney entities such as claims processors, claim administrators, and accounting firms.[227]

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225 Tr. at 6639:18—6640:5 (Dersovitz) ("Q: And the fact that that turnover action had more than zero risk, correct? In Reed Smith's opinion at least? A: The turnover action is litigation. With that said, I engaged Reed Smith to assess for me on the merits what the likelihood of success was. And as I explained before, there were numerous bases to get to the end result. Q: But they didn't think there was zero risk or they couldn't have said these deals were enforceable, correct? A: Have you ever seen or heard of a lawyer saying there was zero risk in anything? I haven't.").

226 Tr. 2916:5—2917:7 (Dersovitz) ("Q: You see across the top it reads 'Investment Opportunity and Settled Legal Claims' and describes certain things relating to the 83 Beirut bombing beneath that, do you see that? A: Correct. Q: The first bullet reads under 'Opportunity': 'Secured investment in settled case advances to plaintiffs in the 1983 Beirut bombing case and their attorneys.' Did that accurately describe to you the RD legal investment in the Peterson case? A: I have nothing to do with organizationally. I had nothing to do with the creation of this document. . . . Q: First bullet, my question is whether you believe that accurately reflects RD Legal's investments in the Peterson case? A: No. Q: Why not? A: Because it's not settled. It was always a judgment with a corpus of money restrained. Q: You testified a moment ago a judgment with a corpus of money restrained is the same thing to you as a settlement, correct? A: Effectively, yes."); see also Ex. 288 at 1 (June 21, 2012 email from R. Dersovitz to A. Clark); Ex. 289 at 1.

227 See Exs. 410—415 (schedules to Master Assignment and Sale Agreement between Onshore Flagship Fund and Claims Strategies Group); Ex. 8ZL rows 208-227 (investments with Gary Wittock CPA, Clay C. Schuett & First Financial of Baton Rouge); Tr. 1213:5—1214:25 (Genovesi) ("Q: I want to place before you Division Exhibit 411. . . . Do you recognize what this document is? A: I understand what it is. I'm not really familiar with it. I don't recall it. But I do know what it is. Q: Generally speaking, what is it? A: This was our master agreement for one of the deals we did. Q: Okay. And it's actually a schedule to that master agreement, correct? A: Yes. Q: And when you say "one of the deals that we did," what deal are you referring to? A: This one looks to be related to the BP Oil spill. Q: And what was that deal? When you say "one of the deals that we did," what do you mean by that? A: So we accelerated fees due on that settlement. Q: And I believe earlier you said you understood the business of RD Legal to be accelerating fees to attorneys; is that correct? A: Yes. Q: As part of the deal RD Legal did relating to the BP claims, was that limited to attorneys? A: No. In that case, we did some claims to other firms, like account administrators or claim administrators -- Q: Do you have any role -- A: -- claims processor. Q: I'm sorry? A: Claims processor, I think would be more correct. Q: Do you know

148. Dersovitz gave approval for the Flagship Funds to disburse monies to non-attorneys in connection with the BP Case.[228]

149. Between June 2012 and July 2015, the Flagship Funds deployed over $8 million, as high as 7.82% of the total funds deployed by the Funds, with respect to the BP Case.[229]

150. The BP Oil Spill did not fit into the categories described in the DDQ as financing "legal fee receivables" on "settlements" or as line of credits, as Respondents believed they were permitted under the Offering Documents' "flexibility clause."[230]

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who Claims Strategy Group, LLC is? A: The name is very familiar. I forget exactly the names of the partners. Oh, yeah, Henry Sienema. Q: Do you know if that is a law firm? A: They are not.").

228 Tr. 1215:23—1217:2 (Genovesi) ("Q: And at some point, I believe it's your testimony, that you realized that there were some companies that were able to participate or have a role in the BP deal that were not law firms; is that right? A: Yes. Q: And somebody made a decision that RD Legal could, in fact -- or would, in fact, pursue deals with those non-law firms; is that correct? A: Yes. Q: And what I would like to know is how you came to -- well, let's start with how you came to learn that it was okay that somebody at RD Legal had approved doing deals with non-law firms. A: I don't recall the details. You know, I -- it must have been internal discussion that was brought to Roni's attention that this was something that existed, and he had to approve saying, Yes, we can proceed with this. Q: Why do you say you believe Mr. Dersovitz would have had to approve that you could proceed with this? A: Because no one else had the authority to make those kind of decisions other than Ron. Q: What do you mean by 'those kinds of decisions'? A: Deploying capital. No one could say, Let's wire money to that guy, without Roni approving it.").

229 Ex. 2 at cells P11—P51 and cell Q-50.

230 Tr. 2665:11—2667:17 (Dersovitz) ("Q: At any point in time. I'm just trying to get an understanding -- when you say there are things in the offering memorandum listed as investments other than the 95 and 5 percent that are listed in the DDQ -- you mentioned flexibility as one example. My question to you is: What is an investment in flexibility? A: I think a workout would have to be considered a -- be part of flexibility. I could appreciate an argument that BP might be a part of flexibility, consider it a factored transaction. Q: And -- A: Perhaps the original to Perles, the original to Fay and -- Fay and Perles transactions might have been authorized under flexibility as well as factoring transactions, because they were structured a little differently than most assignment and sales in our book. Q: It is your testimony that the categories you just described fall outside of the 95 and 5 percent strategies described in the DDQ? MR. WILLINGHAM: Objection. Misstates his testimony. JUDGE PATIL: Overruled. THE WITNESS: I'm just – I'm merely responding to, there are multiple bases that are allowed -- allowed under the offering documents. The fee acceleration defined here refers to settlements. It doesn't happen to include the word "judgments." There are workouts. And then there are other transactions that are much later in

E. The Flagship Funds' Concentration in Non-Settled Cases

151. Together, the investments in the ONJ Cases, the Licata Case, the Wellcare Qui Tam Action, and the Peterson Turnover Litigation (together, the "Non-Settled Cases"), and the BP Case constituted the salient positions in the Flagship Funds, as follows:

a. By June 30, 2011:

i. 10.57% of the value of the Flagship Funds and 9.59% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases;

ii. 16.39% of the value of the Flagship Funds and 11.37% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action; and

iii. 17.56% of the value of the Flagship Funds and 16.33% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation (with only advances made to attorneys at that point in time), for a total of 44.52% of the value of the Flagship Funds and 37.29% of the dollars deployed by the Flagship Funds tied to Non-Settled Cases;[231]

b. By December 31, 2011:

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time, such as BP, which you could authorize under flexibility. JUDGE PATIL: Excuse me. When you're saying BP, describe what you're referring to, please. THE WITNESS: British Petroleum. British Petroleum, the accident. And when that case was settled, it has a very unusual feature to it. So you had a traditional settlement, but you had a lot of business owners that were permitted to recover funds for lost income to their businesses. So rather than have lawyers be the ones who traditionally submit the claims, that settlement was unique in that it allowed for accountants to do the same thing. But the accountants had to work through -- because who naturally follows and records the income of a business? An accountant. But the accountants would have to work with attorney portals, because they couldn't get the cash directly. They'd have to draw the cash, as I understand the way the distributions work, through attorneys and through attorney portals. So that might be an amalgamation.").

[231] See Ex. 2 row 2.

i. 12.20% of the value of the Flagship Funds and 10.82% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases;

ii. 17.25% of the value of the Flagship Funds and 11.17% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action; and

iii. 27.89% of the value of the Flagship Funds and 25.33% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation (with only advances made to attorneys at that point in time); for a total of 57.34% of the value of the Flagship Funds and 47.32% of the dollars deployed by the Flagship Funds tied into Non-Settled Cases;[232]

c. By August 31, 2012:

i. 10.46% of the value of the Flagship Funds and 9.57% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases;

ii. 12.47% of the value of the Flagship Funds and 7.92% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action;

iii. 37.47% of the value of the Flagship Funds and 34.10% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation (with only advances made to attorneys at that point in time, a total of $28.5 million advanced to those two attorneys from a total of $83,567.385 advanced by the Funds); and

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232 See Ex. 2 row 8.

iv. 0.68% of the value of the Flagship Funds and 0.90% of the dollars deployed by the Flagship Funds were tied to the BP Case, for a total of 61.08% of the value of the Flagship Funds and 52.49% of the dollars deployed by the Flagship Funds tied into Non-Settled Cases and the BP Case;[233]

d. By December 31, 2012:

i. 10.44% of the value of the Flagship Funds and 10.08% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases;

ii. 11.69% of the value of the Flagship Funds and 7.13% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action;

iii. 46.86% of the value of the Flagship Funds and 45.57% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation (with advances having commenced to plaintiffs in September of 2012[234]); and

iv. 0.45% of the value of the Flagship Funds and 0.81% of the dollars deployed by the Flagship Funds were tied to the BP Case, for a total of 69.44% of the value of the Flagship Funds and 63.51% of the dollars deployed by the Flagship Funds tied into Non-Settled Cases and the BP Case;[235]

e. By December 31, 2013:

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233 See Ex. 2 row 16.

234 See Ex. 6.

235 See Ex. 2 row 20.

i. 11.09% of the value of the Flagship Funds and 10.91% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases;

ii. 12.20% of the value of the Flagship Funds and 6.69% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action;

iii. 62.19% of the value of the Flagship Funds and 55.15% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation; and

iv. 0.97% of the value of the Flagship Funds and 2.67% of the dollars deployed by the Flagship Funds were tied to the BP Case, for a total of 86.45% of the value of the Flagship Funds and 75.42% of the dollars deployed by the Flagship Funds tied into Non-Settled Cases and the BP Case;[236]

f. By December 31, 2014:

i. 8.68% of the value of the Flagship Funds and 10.02% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases, with respect to which Dersovitz had advanced over $11 million of the Flagship Funds' money by June 2014;

ii. 13.05% of the value of the Flagship Funds and 6.55% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action;

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236 See Ex. 2 row 32.

iii. 66.41% of the value of the Flagship Funds and 51.68% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation; and

iv. 2.68% of the value of the Flagship Funds and 7.04% of the dollars deployed by the Flagship Funds were tied to the BP Case, for a total of 90.82% of the value of the Flagship Funds and 75.29% of the dollars deployed by the Flagship Funds tied into Non-Settled Cases and the BP Case;[237]

g. By December 31, 2015:

i. 9.69% of the value of the Flagship Funds and 10.32% of the dollars deployed by the Flagship Funds were tied to the ONJ Cases;

ii. 8.99% of the value of the Flagship Funds and 6.85% of the dollars deployed by the Flagship Funds were tied to the Licata Case and the Wellcare Qui Tam action;

iii. 71.72% of the value of the Flagship Funds and 57.69% of the dollars deployed by the Flagship Funds were tied to the Peterson Turnover Litigation, such that at its peak in absolute dollars, approximately $59 million of a total of $107 million deployed by the Flagship Funds had been deployed into the Peterson Turnover Litigation; and

iv. 1.41% of the value of the Flagship Funds and 7.50% of the dollars deployed by the Flagship Funds were tied to the BP Case, for a total of 91.81% of the value of the Flagship Funds and 82.36% of the

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237 See Ex. 2 Cell G38 and row 44.

dollars deployed by the Flagship Funds tied into Non-Settled Cases and the BP Case.[238]

152. Dersovitz recognized that the Flagship Funds' portfolio were heavily concentrated from the outset.[239]

III. Respondents' Misrepresentations in Marketing and Offering Documents

A. Marketing and Offering Documents

153. Dersovitz knew that the Funds' marketing materials were used to communicate with potential investors.[240]

154. Dersovitz testified that "no one document in itself would give a clear picture of the funds."[241]

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238 See Ex. 2 cell B-36, L-36, and row 56.

239 Tr. 6584:23—6585:11 (Dersovitz) ("Q: You include Mr. Slifka in the group that had selective amnesia? A: For someone to come and say on day one I had a disproportionate share of my fund, when 20 percent is not a disproportionate share, and I've historically been very concentrated, for you all of a sudden to say -- for these people to say, Oh, I didn't know, and then for Slifka to say, I had a 20 percent position -- Q: You don't believe 20 percent could be a disproportionate amount? A: Not for us. You have to understand the nature of our concentrations. We were -- we were heavily concentrated from day one.").

240 See, e.g., Tr. 2662:20-24 (Dersovitz) ("Q: And did you understand at the time the DDQ was used with investors that potential investors in the RD Legal funds wanted to know about the RD Legal funds' strategy? A: Of course."); Tr. 5836:8-19 ("Q: The date of this document was January, 2013; is that right? A: Correct. Q: What, if any, is your understanding of or your recollection of whether or not this [Ex. 42, FAQ] was handed out during the Tiger 21 investor meetings? A: This document was always -- almost always on the accidentally omitted included into a slip on the back of the alpha generation locking mechanism we use and handed out to investors. Q: That was the standard practice at that time? A: Yes, it was."); Ex. 340 at 2 (Apr. 17, 2013 email from Dersovitz instructing Meesha Chandarana to share FAQ with potential investors).

241 Tr. 2693:10-16 (Dersovitz) ("Q: The financial -- the annual financial statements wouldn't give a clear explanation, correct? A: No one document in itself would give a clear picture of the funds, every asset that it was in, potential workouts, things that we were considering and so on and so on.").

1. Overviews and Summaries

155. A one-page document describing the Funds' "Opportunity and Strategy" explained "RD Legal purchases legal fee receivables from law firms once cases have settled."[242] Investor Jeffrey Burrow explained that he understood that language to mean Respondents' "fee acceleration strategy itself works because they can count on the money coming back to the investors since they're only purchasing the receivables on settled cases."[243]

156. Another document entitled "Executive Summary" explained that RDLF "is a specialty finance company that provides capital to law firms with contingency based law practices by purchasing at a discount, legal fees due to them **only** from cases that are settled," and that the Funds' "portfolio is principally comprised of purchased legal fees associated with settled litigation and stated also that "The legal fees which result only from settled litigation are past the point of any potential appeals or other disputes" and that "fees are generally payable by bond rated entities such as Municipalities, Insurers and public corporations with aggregate portfolio exposures limited based upon the creditworthiness of the relevant Payor."[244]

157. Another document Respondents used to describe the Funds to potential investors, titled "Overview," reiterated: "RD Legal purchases legal fee receivables from law firms once cases

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242 Ex. 267 (reflecting Jan. 2012 portfolio); Ex. 282 at 2, 3 (reflecting March 2012 portfolio); Ex. 293 at 44 (reflecting June 2012 portfolio); Ex. 35 (reflecting July 2012 portfolio); see also Ex. 260 (Nov. 18, 2011 email reflecting Dersovitz editorial comments on "One pager").

243 Tr. 138:25—139:11 (Burrow) ("Q: Okay. Where it says on page 290-4, opportunity and strategy, do you see that? . . . Do you see where it says, 'RD Legal purchases legal fee receivables from law firms once cases have settled'? A: Yes. Q: Okay. What did that mean to you? A: That meant that the fee acceleration strategy itself works because they can count on the money coming back to the investors since they're only purchasing the receivables on settled cases.").

244 Ex. 252 at 58 (Nov. 2011 email to J. Burrow attaching Executive Summary); Ex. 240 at 2 (same); Ex. 591 (Sep. 2011 email to B. Torres of Athens Capital); see also Ex. 225 at 2 (Executive Summary to A. Ishimaru); 523 (Executive Summary to W. Levenbaum).

have settled."[245] Investors understood that statement to reaffirm what the Opportunity and Strategy document stated.[246]

158. The Overview further explained, in listing the Funds' "key characteristics," that the "legal fees which arise from settled litigation are past the point of any potential appeals or other disputes. Therefore the dollar value of the minimum legal fee can be accurately determined."[247]

159. The Overview also stated: "Fees are generally payable by bond rated entities such as Municipalities, Insurers and public Corporations with aggregate portfolio exposures strictly controlled based upon the credit worthiness of the Payor."[248] Investor Alan Mantell explained this provided him with another indication of "heightened safety" of the Funds' investments.[249]

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245 Ex. 41 (version reflecting returns through year end 2012); see also Ex. 491 (reflecting returns through year and 2013) ("RD Legal factors legal fee receivables from US-based law firms once cases have settled.).

246 Tr. 143:6—144:2 (Burrow) ("[discussing Ex. 1592] Q: What is this? A: This is the, as I call it, the 'fact sheet.' I think they call it the 'investor sheet.' But it's supposed to be a very brief synopsis of all the most important information on how the strategy works and how much money is invested in it and the returns. Q: Okay. And do you see where it says in the first full paragraph -- sorry -- the second paragraph, 'RD Legal purchases legal fee receivables from law firms once cases have settled'? Do you see that? A: I do see that. Q: Did that mean anything to you? A: Sure. I mean, it didn't mean exactly the same thing. It gives you confidence that this how the strategy works, and I'll just -- if you would look right below that under the portfolio, the first line item says, 'Legal fees are derived from settled litigation past potential appeals or other disputes.' So again, this is again the linchpin of this entire strategy, that if these had appealable potential, then we wouldn't have put the clients' money there. So, yeah, this means a lot to me.").

247 Exs. 41, 491.

248 Ex. 41.

249 Tr. 614:11—615:2 (Mantell) ("Q: If you look at the next paragraph labeled 3 [of the Overview], please. A: Yeah. That's restating exactly what I was trying to say that Roni said which is – I didn't remember the exact phrasing of what he said in the written documents versus in the -- in the presentation, what he highlighted, but this is, in essence, what he said. They're very, very excellent payors. We're not taking a lot of credit risk in this -- in this situation. And I think that was true on the whole. Q: Did you have a -- withdrawn. Did that matter to your investment decision? A: Absolutely. Q: Why? A: Heightened safety.").

2. Marketing Deck

160. A December 19, 2011 RD Legal marketing presentation described fee acceleration as for "Settled Cases Only."[250]

161. Respondents also utilized a document titled "Alpha Generation and Process" in marketing the Flagship Funds to potential investors.[251] Iterations of the Alpha Generation document represented the following: "The Fund portfolio is principally comprised of purchased legal fees associated with settled litigation."[252]

162. By November 2013, the Alpha presentations distinguished the primary strategy of the Flagship Funds from the other funds Respondents offered.[253]

163. The Alpha document explained further: The "legal fees which arise from settled litigation are past the point of any potential appeals or other disputes and therefore the dollar value of the minimum legal fee can be accurately determined."[254]

a. Investors understood that language as clearly indicating that the Funds invested in settled cases with no risk as to the judgment.[255]

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250 Ex. 31 at 11; see also Ex. 31 at 12 (explaining strategy as purchasing "attorney fees only on settled cases"); Ex. 28 at 11-12 (December 31, 2010 version with same language).

251 See, e.g., Ex. 293 at 19 (Aug. 2, 2012 email to Cobblestone attaching Alpha presentation); Ex. 336 at 6 (Mar. 29, 2013 email from Markovic to Sinensky, et al. attaching Alpha presentation).

252 Ex. 269 at 3 (undated Alpha; includes returns through year-end 2011); Ex. 38 at 4 (Aug. 15, 2012 Alpha); Ex. 40 at 4 (Dec. 2012 Alpha); Ex. 43 at 4 (July 2013 Alpha); see also Ex. 47 at 4 (Nov. 2013 Alpha) ("The primary strategy of the Funds ... is to factor Legal Fee receivables associated with settled litigation from US based attorneys"); Ex. 50 at 4 (July 2014 Alpha) (same).

253 Ex. 47-4 (describing the strategy of RD Funds "with the exception of" the special opportunities funds); Ex. 384 (same, as sent to D. Ashcraft).

254 Ex. 38 at 4; Ex. 40 at 4 (same); Ex. 43 at 4 ("In general, the legal fees which arise from settled litigation are past the point of any potential appeals or other disputes...").

255 Tr. 616:8—617:3 (Mantell) ("[discussing Ex. 336 at 9] Q: Looking at the top bullet point here, what did you understand from that sentence? A: The same thing I was reporting before; that the business was all about - in summary, taking interest in legal fees receivable, financing them,

164. The Alpha document highlighted three risks relating to "Fee Acceleration": (1) "Seller and Obligor Default," which Respondents explained was mitigated by several factors, including that "Defendant(s) have no incentive to settle if they cannot make payment [so] the settlement validates financial capacity," (2) "Portfolio Concentration," a risk purportedly mitigated by "exposure limits on Obligors," and (3) the "Time Value of Money," as risk mitigated by RD Legal's "[e]xpertise of knowing the typical tenure of payment for ... various settlements."[256] The November 2013 version of the Alpha presentation replaced "Portfolio Concentration" with "Attorney Theft" as one of three risks identified (with their respective mitigants).[257]

165. Ms. Markovic, in drafting a version of the marketing presentation, that the description of the portfolio as "principally comprised of purchased legal fees associated with settled litigation" was distinguishing between the "resolved cases" and the lines of credit.[258]

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getting paid when very creditworthy payors pay. I'm saying 'creditworthy,' because I saw the second paragraph of the third which was a restatement of what we were just looking at a minute ago -- settled. No risk of -- not to concern yourself with what was going to happen in the judgment. You had it.").

256 Ex. 38 at 12; Ex. 40 at 12; Ex. 43 at 12.

257 Ex. 47 at 10; Ex. 50 at 10 (July 2014 Alpha); see also Ex. 44 at 3-4 (July 2013 FAQ) (identifying "main risks" as control of cash, obligor risk, and duration related risk); Ex. 49 at 3 (2014 FAQ) (same).

258 Ex. 210 at 80:4—81:15 (Apr. 21, 2016 Testimony of Markovic) ("Q: Okay, sorry. So if you turn to page four of the -- of this Exhibit 107, do you see the highlights there, it says the fund portfolio was 'principally comprised of purchased legal fees associated with settled litigation,' do you see that? . . . And what do you understand that to mean? . . . A: That says to me that the assets are associated with settled litigations, but that's not all that's in the portfolio. Q: . . . where do you get that from, that that's not all? A: The beginning. Q: The 'principally comprised'? A: Correct. Q: So in other words, if this had said that's all that's in the portfolio, would that have been accurate as far as you know? A: No. Q: Why not? A: **Because at this time, I knew that there were, lines of credit also, small portion of the fund.** Q: What else was there in the portfolio? A: Various resolved cases. Q: Was -- were there -- at this point, were there any cases in the portfolio that were not associated with settled litigation, other than lines of credit? A: I -- you know, I'm not sure if I knew enough at this stage to answer that question. Q: Well, sitting here today, though, do you know? A: Sitting here today, I know that there are cases in the portfolio that are resolved cases, whether they're settlements or judgments, I don't know that that's -- that's really important for the

3. Due Diligence Questionnaire

166. Respondents also routinely shared a Due Diligence Questionnaire with investors.[259] Versions of the DDQ shared with investors stated, in a section calling for Respondents to describe their "strategy (in as much detail as possible)," that RD Legal's "portfolio consists of two investment products": "Fee Acceleration (Factoring)" and "Line[s] of Credit."[260] The DDQ represented that fee acceleration, or factoring, is the Funds' "primary investment product and represents approximately ninety-five (95) percent of assets under management," and explained that "[a] fee acceleration investment is the purchase of a legal fee at a discount from a law firm once a settlement has been reached and the legal fee is earned."[261]

167. As late as June 2014, Respondents made representations in their DDQ, explaining that what makes their strategy "unique" is that they had "not identified any other registered entities

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purpose of these receivables, so I guess, in my mind, they're the same."); Ex. 210 at 161:24—162:21 ("Q: Okay. And turning back to page 4, I'm trying to get a -- make sure I understand when you say . . . the document says, 'The fund portfolio was principally comprised of purchased legal fees associated with settled litigation.' We talk about that earlier. Do you recall? A: Yes. Q: Okay. And I think we discussed that the reason it says 'principally' is because the fund also does, you said, lines of credit? A: I think we said 'principally' because not all of it is in this. Q: Right, so the part that's not in this -- And by 'this,' you mean settled litigation? A: Yes. Q: Okay, the parts -- the part that is not in settled litigation, what is it in, and what -- you know, what was your understanding at the time as to what it was in? A: In December 2012? Q: Yes. A: I understood there to be resolved cases and lines of credit.").

259 See, e.g., Ex. 244 (June 30, 2011 email to J. Burrow attaching Dec. 2010 DDQ at 9); Ex. 262 (Dec. 2011 DDQ given to T. Condon); Ex. 533 (Feb. 14, 2011 email to W. Levenbaum attaching Dec. 2012 DDQ).

260 Ex. 39 at 11 (Sept. 2012 DDQ); see also Ex. 262 at 11 (Dec. 2011 DDQ) (same); Ex. 48 at 9 (June 2014 DDQ) ("The primary strategy employed is one in which receivables arising from settled law suits are purchased at a discount ... The primary focus is on purchasing the aforementioned receivables of settled cases or non-appealable judgments.").

261 Ex. 39 at 11; see also Ex. 262 at 11 (same); Ex. 244 at 18-19 (Dec. 2010 DDQ) (substantially identical description).

that traffic solely in post-settlement legal fee receivables. There are entities that lend money to contingency fee attorneys, but they take litigation risk, which we don't."[262]

168. Respondents further stated that "most firms that are involved in the [litigation funding] space are lenders issuing credit lines to individuals rather than taking the risk of an obligor," a distinction Respondents described as "a major difference, as we are not taking 'individual' counterparty risk."[263]

169. The DDQ stated that lines of credit constituted "approximately five (5) percent of" assets under management, and described the Funds' line of credit product as different from factoring because, inter alia, the credit risk relating to the lines of credit depends "on the financial stability of the law firm who is the borrower."[264]

170. Respondents' proffered expert witness, Leon Metzger, opined: "If I see 95 and less than 5, I would not ask if I were an investor – a reasonable investor" "how much of an asset that doesn't fall into these two categories they have."[265] And when Mr. Metzger testified at his deposition—after submitting his report—he believed the Funds' investments in Peterson receivables did not fit into either of the two categories of investments described in the DDQs.[266]

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262 Ex. 48 at 9 (June 2014 DDQ).

263 Ex. 42 at 3; Ex. 44 at 2; Ex. 49 at 2; see also Ex. 39 at 12 (DDQ) (Answering "What makes your strategy unique" by stating there "are few hedge funds that focus solely on this type of strategy").

264 Ex. 39 at 11.

265 Tr. 5254:23—5255:13 (Metzger, concerning prior sworn testimony) ("Q: Okay. And at line 16 you'll see: 'QUESTION: Would you expect an investor to ask anybody at the fund just how much of an asset that doesn't fall into these two categories they have? 'ANSWER: If I see 95 and less than 5, I would not ask if I were an investor -- a reasonable investor. 'QUESTION: Why is that? 'ANSWER: Because, let's say, that it's 95 and 1, and it's 4 percent. If -- does not strike me as being material, necessarily, in terms of my making an investment decision to invest in the fund given everything else.' Did I read that correctly? A: Yes.").

266 Tr. 5260:1-11 (Metzger) ("Q: So at the time of your deposition, you believe the Peterson law firm receivables fit into some category other than the two described in the 'Describe your

171. Many of the DDQ's representations were important parts of the total mix of information investors considered in arriving at investment decisions about the Flagship Funds. For example, the first line of investor Tom Condon's due diligence notes reflect the representation in the DDQ provided to him that "factoring" comprised 95% of the Funds' accounts receivable.[267] Similarly, investor Asami Ishimaru recalled, in a January 2013 email, that what led her (and others) to get "comfortable with RD Legal originally was that Roni was only (95%) lending against resolved cases."[268]

172. Dersovitz testified that, although the DDQ described the Funds' portfolio as consisting of 95% factoring and 5% line of credit, he understood that there were investments that did not fit into either of those categories and investors would need to look at other documents to ascertain that fact.[269]

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strategy' section of the September 2012 DDQ, correct? A: Correct. Q: Okay. And that's because the Peterson case involved what you understood to be default judgments, correct? A: Because Peterson related to judgments, yes.").

267 Ex. 263 at 1.

268 Ex. 318 (Jan. 25, 2013 email from A. Ishimaru to P. Craig, copying S. Gumins).

269 Tr. 2668:16—2670:5 (Dersovitz) ("Q: When you say 95 is an accurate number, is 95 an accurate number of what the DDQ was communicating to investors was invested in fee acceleration or factoring product? A: I'm sure as of September of 2012, that was our understanding collectively. Q: What was your understanding? A: That 95 percent was a factoring product. Q: And that 5 percent was in the line of credit? A: I would have to say yes. Q: And sitting here today, you believe that there were other investments that were made that didn't -- that didn't fit into the line of credit or the fee acceleration categories; is that correct? A: I would have to think so, yes. Q: Do you think an investor, having read that 95 percent was in one product and 5 percent was in another product, would have to think that there must be more percents left? [objection overruled] THE WITNESS: And we -- this would only be one piece of documentation that an investor would look at. We would provide them with numerous materials once requested. This isn't the only thing that an investor looks at in due diligence. . . . Q: So, Mr. Dersovitz, if an investor did look at the fee acceleration and line of credit categories here, are you -- is it your testimony that they would need to look at other documents to figure out that there were investments other than fee acceleration and lines of credit in the flagship funds' portfolio? A: Yes. Naturally, they -- yes.").

173. Other of Respondents' marketing materials also made representations about what percentage of the Funds' portfolios were in fee acceleration investments and lines of credit. For example, Respondents' December 19, 2011 marketing document represented that 94.99% of the Funds' portfolios were in "Fee Acceleration balances" as of August 31, 2011 and 5.01% in "LOC balances" as of the same date.[270]

174. Dersovitz knew the Osborn ONJ Cases did not fit into either category—fee acceleration or lines of credit—but instead tried to pass it off as a "workout situation" without explaining which of the two categories those fit into.[271]

175. The DDQ described "the defendants who are obligated to pay the legal fee[s]" under such factoring agreements as "corporate and commercial investment grade firms."[272]

176. Investors found the DDQs' description of the Funds' "strategy" to be an important part of the mix of information they considered in making investment decisions about the Flagship Funds.[273] Mr. Condon, for example, described the DDQ as "an even further deeper dive into the guts of the investment in the firm."[274]

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270 Ex. 31 at 12, 14.

271 Tr. 2677:10—2678:12 (Dersovitz, regarding prior sworn testimony) ("Q: Mr. Dersovitz, if you could please turn to the Division Exhibit 214, your deposition testimony at line page 135, line 7. QUESTION: As of September 2012, did you understand the jaw cases to be cases in which a settlement had been reached? ANSWER: No, I did not. QUESTION: Did you understand the jaw cases to be cases in which a fee had been earned? ANSWER: No, I did not. QUESTION: Did you understand the jaw cases to be cases where a corpus of money had been identified? ANSWER: No, I did not. QUESTION: Did the jaw cases fit into the fee acceleration part of RD's business, the credit line facility part of RD's business, or something different? ANSWER: Something different. QUESTION: So you consider it neither fee acceleration nor the credit line. Is that fair? ANSWER: Correct. There isn't a finance business that doesn't have workout situations in place.' [sic] Were you asked those questions, and did you give those answers? A: Yes, I do. And I don't think I really said something different now.").

272 Ex. 39 at 11.

273 Tr. 420:14-23 (Garlock) ("[discussing Ex. 293 at 14] Q: . . . Do you see the section on the left that says describe your strategy in as much detail as possible? A: I do. Q: Is that something

177. The DDQ represented to investors that they "would be notified of any major change to the methodology used to manage the portfolio, any new investment idea, or any major negative event."[275] As Mr. Burrow explained, that representation gave investors confidence that RD Legal would continue implementing its investment strategy after investors entrusted their money to RD Legal, and Respondents would notify investors if they changed the Funds' investment strategy.[276]

178. The DDQ represented that the Funds' "portfolio is constructed with diversification in mind, and as such is made-up of many litigants, many law firms, and a variety of different claims."[277]

179. The DDQ also explained that "Monthly Investor Statements," "Investor Performance Sheets," a "Policy and Procedures Report," and "Year-end audited financial

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you would have read when you received this document? A: Definitely. Q: Why is that? A: Understanding the strategy better is extremely important, that part of the due diligence process.").

274 Tr. 957:7-17 (Condon) ("Q: And what do you understand the due diligence questionnaire to be? A: So a DDQ is an even further deeper dive into the guts of the investment in the firm. Q: Is that something you would read before investing? A: Yes. Q: Why is that? A: I always ask for a DDQ. Most firms have it. I want to know -- I want to learn everything I possibly can before I make a decision on whether to investor not.").

275 See, e.g., Ex. 39 at 14; Ex. 48 at 11 (June 2014 DDQ).

276 Tr. 108:19—109:11 (Burrow) ("Q: Thank you. And directing your attention to page DIVX 244-22 . . . 'Investors would be notified of any major change to the methodology used to manage the portfolio, any new investment idea or any negative event.' . . . What did that mean to you? A: It meant that I could allow myself to remain confident that the strategy would take place even after I had decided to put investors' money there, and if something changed to the strategy, they would notify me."); see also Tr. 137:7-22 (Burrow) ("Q. Okay. And now I'm directing your attention to page 126 of this document, where it says, 'Are investors notified if' -- let me make sure I have the right one. 125, sorry. Thank you. 'Are investors informed when minor/major changes are made to the trading, money management, or risk control methods?' Did you see that part, sir? A: Yes. Q: And what did that mean to you? A: It meant that I could trust that the strategy the way I understood it and the way it was described to me by RD Legal would be in place and being used. Unless something changed, I didn't have to worry about the strategy having any differences from my initial understanding.").

277 Ex. 39 at 11.

statements" are distributed to investors in the Funds and that all but the monthly investor statements are posted on an investor website.[278]

[278] Ex. 39 at 14.

4. Frequently Asked Questions Document

180. Respondents also shared versions of a "Frequently Asked Questions" ("FAQ") document with investors seeking to learn about the Flagship Funds.[279]

181. The FAQ described the "basic strategy" employed by RDLC as "one in which receivables arising from settled law suits are purchased at a discount" and explained that the "primary focus is on purchasing the aforementioned receivables of settled cases, or non-appealable judgments."[280] Investors understood this language to be consistent with other materials received from Respondents.[281]

182. In the FAQ, among the investment criteria listed for such purchases was "Proof of Settlement."[282]

183. The FAQ represented that the Funds' investment strategy is different from those of "competitors that execute legal fee strategies" in several ways. RD Legal stated it was "the only significant sized, SEC registered entity that we are aware of with a 'post settlement' strategy. There are many groups doing pre-settlement funding to various degrees of success."[283]

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279 See, e.g., Ex. 1592 at 25-30.

280 Ex. 42 (Jan. 2013 FAQ) at 1; Ex. 44 (July 2013 FAQ) at 1; Ex. 49 (July 2014 FAQ) at 1.

281 See, e.g., Tr. 147:18—148:4 (Burrow) ("Q: And I want to start with the first page [of the FAQ, at Ex. 1592 at 25] where it says, 'No. 2: The primary focus is on purchasing the aforementioned receivable from settled cases or non-appealable judgments.' Do you see that? A: Yes. Q: Did that mean anything to you? A: It meant that the strategy was one I understood, that this matched up with previous documents and conversations I already had that was sent to me by RD Legal and the answers to the questions I asked them about the risks."); Tr. 1114:8-19 (Schaffer) ("Q: Okay. Let me start with asking Mr. Murphy to blow this part [of Ex. 1902 at 1] up, please. What is the basic strategy that RD Legal Capital employs. Okay. So I'll read into the record again: 'The primary strategy employed is one in which receivables arising from settled lawsuits are purchased at a discount.' ... Was that consistent with the understanding of the strategy that had been provided to you? A: Yes.").

282 Ex. 42 at 1; Ex. 44 at 1; Ex. 49 at 1.

283 Ex. 42 at 3; Ex. 44 at 2; Ex. 49 at 2 (same, but omitting reference to "SEC registered" entities).

184. By January 2013, the FAQ explained that RDLC was the investment manager of four "private investment funds organized as pooled investment vehicles": the two Flagship Funds, the Offshore SPV, and RD Legal Offshore Unit Trust (Japan).[284]

185. The FAQ stated that while there are billions of dollars in contingency cases settled annually in the United States, RDLC participates in only "a small percentage of this total which has a 'post settlement payment delay' associated with the payment of the settlement."[285] Respondents represented that the "post settlement payment delays" that gave rise to RD Legal's business opportunities "range[d] from nine months to upwards of 2 years and can be caused by a number of factors such as additional court procedures that need to be completed before a settlement can be disbursed, lack of staffing in courts, insurance company policies and, State by State statutes, etc."[286]

186. According to FAQs dated as late as July 2014, Respondents "rarely purchased" receivables relating to mass torts and multi-district litigation because the duration of such matters—48 months historically—created a "duration mismatch" the Funds sought to avoid.[287]

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284 Ex. 42 at 1; see also id. at 5 (identifying same four funds as answer to "What products are offered to investors."); Ex. 44 at 5 (same).

285 Ex. 42 at 3; Ex. 44 at 3; Ex. 49 at 3; see also Ex. 43 (July 2013 Alpha) at 5 (RD Legal "focuses on a subset of settlements that have post-payment settlement delays"); Ex. 47 at 5.

286 Ex. 42 at 2; Ex. 44 at 2; Ex. 49 at 2.

287 Ex. 42 at 4; Ex. 44 at 4; Ex. 49 at 4; see also Ex. 1198 (July 11, 2011 email from J. Genovesi to A. Hirsch, et al.) (explaining the 9/11 First Responders opportunity "cannot be expressed in our current funds because of the liquidity mismatch"); Tr. 1205:20—1206:4 (Genovesi) ("Q: And what did you mean [in Ex. 1198] by the liquidity mismatch? A: The RD's fund offers its investors certain liquidity. And this opportunity had a time horizon that did not match that liquidity. Q: Because it was shorter? longer? or what? A: Longer, I believe. Q: Okay. A: It wouldn't have been a mismatch if it was shorter.").

a. As early as September 2012, however, Dersovitz acknowledged that duration had "increased over the years" as the Funds shifted from personal injury cases to more "class action cases and multi-district cases."[288]

187. The FAQs likewise indicated that it was "unusual for any change to be made" once a settlement had been reached by two parties and suggested any such change would likely result in a higher, not lower, settlement amount.[289] This representation mattered to investors making decisions about investments in the Flagship Funds.[290]

188. The FAQ stated the "greatest overall risk in [the Funds'] strategy is duration and its effect on risk/reward."[291]

189. The FAQ also mentioned risks relating to the Funds not having "complete control of cash," the "related risk ... [of] attorney theft," and obligor-related risk.[292]

190. The FAQs similarly noted that annual audited financials and documents called "Agreed Upon Procedure" reports were "posted on the Firm website."[293]

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288 Ex. 297A (Dersovitz revisions to draft response to "Eric") at 1.

289 Ex. 42 at 5; Ex. 44 at 4; Ex. 49 at 4.

290 See, e.g., Tr. 151:9—152-3 (Burrow) ("[discussing Ex. 1592 at 29] Q: And did that mean anything to you when you read it? A: It did. I was looking for something that was contrary to what I understood, but what they're saying here is, 'Yeah, there are some things that could slow the process down and might be able to change the settlement, but don't worry because if the settlement is changed, it's probably going to go higher.' So to me, that does not increase the risk. If anything, it increases the opportunity, but again, our clients are supposed to get a flat rate of return, so not much opportunity for me, but it does not make any higher risk at all. Q: Would you have wanted to know if the settlement could change in a way that would not go higher? A: Absolutely. Q: Why is that? A: Because again, that increases the risk I was willing to take and that my clients understood by way of me describing it to them.").

291 Ex. 42 at 4.

292 Ex. 42 at 4.

293 Ex. 42 at 3; Ex. 48 (June 2014 DDQ) at 11 (providing similar list of documents posted on website).

5. Offering Memoranda

191. Respondents provided potential investors in the Flagship Funds with offering memoranda. Examples of Onshore and Offshore Fund offering memoranda include:

- **Onshore Fund**
  - October 2008 (Ex. 57)
  - February 2011 (Ex. 60)
  - December 2011 (Ex. 63)
  - April 2012 (Ex. 64)
  - June 2013 (Ex. 66)
- **Offshore Fund**
  - August 2009 (Ex. 58)
  - February 2011 (Ex. 59)
  - August 2011 (Ex. 61)
  - December 2011 (Ex. 62)
  - February 2013 (Ex. 65)
  - June 2013 (Ex. 67)

192. The offering memoranda purported to provide potential investors with additional information about, among other things, the Funds' investment strategy. For example, the February 2011 Onshore OM explained, under a heading "Investment Program" and sub-heading "Investment Objective and Strategy," as follows:

> The [Fund] Intends to: (i) purchase from law firms and attorneys (collectively, the "Law Firms") certain of their accounts receivable representing legal fees derived by the Law Firms from litigation, judgments and settlements ("Legal Fee Receivables"). The [Fund] will enter into factoring contracts with respect to the Legal Fee Receivables ("Factoring Contracts").... [and] (ii) provide loans to

such Law Firms through the use of secured line of credit facilities ("Lines of Credit")...[294]

193. The February 2011 Onshore OM provided additional language describing the Funds' legal fee factoring strategy on the pages immediately following the text defining "Legal Fee Receivables" and "Factoring Contracts"—under the heading "Investment Strategy" and sub-heading "Legal Fee Factoring." The OM, like the other iterations of the Flagship Funds' OMs, explained that "All of the Legal Fee Receivables purchased by the Partnership arise out of litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached."[295] Respondents eventually edited that language to read: "All of the receivables purchased by the Partnership arise out of litigation in which a settlement agreement or memorandum of understanding among the parties has been reached, or a judgment has been entered against a judgment debtor."[296]

194. Potential investors in the Flagship Funds, including Mr. Burrow, read the Offering Memoranda's language to mean a binding settlement agreement had been reached in the cases relating to the receivables purchased by the Funds.[297]

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294 Ex. 60 at 11.

295 See, e.g., Ex. 60 at 13.

296 Ex. 66 at 13.

297 Tr. 122:8—123:7 (Burrow, referring to Ex. 252-105) ("Q: Okay. Do you see where it says, 'All of the legal fee receivables purchased by the partnership arrive at litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached.' Do you see that, sir? A: I do. Q: And what did that mean to you? A: Again, not being in the legal profession, that meant to me that the binding settlement agreement is one that cannot be anything other than that a promise that has to be paid. And again, that's an important part of that strategy, the most important part. Q: Okay. And was that part of the your consideration in advising your clients as to whether to invest in RD Legal? A: Yes, it was. Q: Okay. Why? A: Again, to mitigate all the risks that are out there. This risk was not one I was willing to take of the obligor not paying the binding settlement agreement. So if they didn't pay it because of their credit and they went bankrupt, that's something that was a very small probability, but everything else needed to be binding, so that was an important factor."); Tr. 633:7—634:3 (Mantell) ("Q: . . . At the bottom of

195. Respondents repeated that same language later in the OMs—"All of the Legal Fee Receivables purchased by the Partnership arise out of litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached or a judgment has been entered against a judgment debtor"—under a heading "Certain Risks" and sub-heading "Counterparty and Credit Risk."[298]

a. Mr. Metzger testified that he could not reconcile that language with other language in the offering memoranda, calling the language "internally inconsistent with other sentences in the [memoranda]."[299] Mr. Metzger acknowledged, however, that the language beginning "All of the Legal Fee

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page 10 [Ex. 342 at 43], the paragraph that begins, 'All of the receivables in which the fund has a participation interest arise out of litigation in which a settlement agreement or memorandum of understanding among the parties had been reached or a judgment has been entered against the judgment debtor.' . . . What did you understand from that? A: Exactly the same thing that I've been repeating. The nature of the investment – that there would never be litigation risk, by which I mean risk that a judgment had not been obtained, or that there was a time to appeal that remained that you had to worry about. The same phrasing is -- Roni was saying in everything that he was saying. You're not going to have to worry about the judgment or the time or that the judgment could be appealed. You have to worry about whether the payor will pay. Saying the same thing over and over again.").

298 See, e.g., Ex. 60 at 17; Ex. 66 at 18 (adding "or a judgment has been entered against a judgment debtor").

299 Tr. 5267:7—5268:1 (Metzger) ("Q: And it reads [at Ex. 63 at 17], 'All of the legal fee receivables purchased by the fund arise out of litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached.' Is that something you would look at in trying to understand what a DDQ meant when it referred to legal fee receivables? A: I would look at this in the context of not just the DDQ but the PPM itself. Q: Okay. And do you believe that that description as of the date of the September '12 -- September 2012 DDQ would have informed an investor that Peterson was covered, the Peterson law firm receivables was covered? A: I think that this sentence is internally inconsistent with other sentences in the document. Q: Other sentences in the offering memorandum? A: Yes.").

Receivables..." suggested to him "that everything is coming out of [a] binding settlement."[300]

b. After repeating the language, the OMs further explained that because of the kinds of receivables the Funds purchased, "one form of credit risk to the [Fund] is dependent primarily upon the financial capacity of the defendants in the settled lawsuit to pay the stipulated settlement amount," but explained that such "credit risk is low" because "the defendants in these lawsuits are either large corporations or due to the defendant having been insured, an insurance company, the defendant generally has significant financial resources[.]"[301]

196. Respondents' description of legal fee receivables and, eventually, judgment receivables, as stated in the Offering Memorandum, reaffirmed for investors that the Fund was not investing in cases that presented litigation risk.[302] Investor Warren Levenbaum explained this language in the offering memorandum confirmed for him that there existed binding settlement

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300 Tr. 5269:5—5270:10 (Metzger) ("THE WITNESS: So I look at the language here, and it says, 'All of the legal fee receivables purchased by the fund arise out of litigation,' as you have read. So it suggests that everything is coming out of the binding settlement. And, yet, when I look at page 7, that would be Division Exhibit 63-11 -- when I read the -- 'The partnership intends to purchase from law firms and attorneys, collectively the law firms, certain of their accounts receivable, purchasing legal fees derived by the law firms from litigation, judgments and settlements, legal fee receivables,' so here it's telling me that it's come -- it's coming from litigation, judgments and settlements. ... Clearly, there is an inconsistency in here. ...").

301 See, e.g., Ex. 60 at 13.

302 See, e.g., Tr. 2875:25--2876:16 (Hutchinson) ("Q: You stated in response to one of Mr. Birnbaum's question, you understood the strategy to be making investments in delay of payment; is that correct? A: We were making investments in post-settled cases, so that had some reason for delaying payment. Q: And how did you come to learn that? A: Reading the documents. ... Q: What type of matter did RD Legal invest where there was a delay of payment? A: In looking at the operating memorandum I believe it specifies there was settled cases, cases where there's a judgment in place or memorandum of understanding.").

agreements and the Funds were simply awaiting payment. "The litigation for all intents and purposes is done and concluded, awaiting payment, period.[303]

197. As Mr. Mantell testified, even after Respondents included a reference to "judgments" in the offering memoranda, the memoranda still conveyed that whether receivables related to settlements or judgments, they were past the point of any litigation risk:

> But when you look at page 10 [of the Offering Memorandum, Ex. 342 at 43] and then you see, again, these receivables are ones where the opportunity to appeal has passed down ... I would say that that would be a business like the one that Ron did when he financed the -- when he took an interest in the Iran claim. ***But completely different than the Iran claim, because of the next sentence which would have never covered it -- right? -- where he is talking about the credit risk and the nature of the credit risk, and there is an insanely different credit risk in the Iran claim than the risk in the things that he was describing.***[304]

198. In explaining the category of possible Fund investments titled "Other Advances to Law Firms[,]" the Offering Memoranda disclosed that the Funds "may provide capital to client Law Firms based upon the specific needs associated with the credit request but subject to [certain] parameters[,]" including that the "[r]epayment source is realistic within twelve months or less."[305]

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303 Tr. 3090:7--3091:23 (Levenbaum) ("Q: I think in the prior paragraph we saw there was a defined term, 'Legal fee receivables.' And here [at 235-13] you see 'All of the legal fee receivables purchased by the partnership arise out of litigation in which a binding settlement agreement or memorandum of understanding among the parties had been reached.' Do you see that, sir? A: Yes, I do. Q: So what does that tell you? A: It arises out of litigation. Okay. We knew that. All right? And there's a binding settlement agreement. Q: Does that tell you the stage of the litigation? A: Yeah. That's concluded. They're just awaiting payment. Q: Okay. And what about Division Exhibit 235 -- one second -- dash 17. Let's go there. ... under 'Certain risks,' sir. Do you see that? A: Yes. Q: Then it says, 'All of the legal fee receivables purchased by the fund arise out of litigation in which a binding settlement agreement or memorandum of understanding among the parties has been reached.' ... Q: What does it tell you here? A: Again, all the cases are right out of litigation in which a binding settlement agreement has been reached. The litigation for all intents and purposes is done and concluded, awaiting payment, period.").

304 Tr. 640:2—640:15 (Mantell) (emphasis added).

305 E.g., Ex. 60 at 14-15.

199. The Funds' Offering Memoranda described risks including "credit risk of the counterparty and the risk of settlement default." The Offering Memoranda did not mention litigation risk.[306]

200. Respondents did not disclose that the Funds' had and would continue to finance or fund situations in which there had been a delinquency, default, or foreclosed investment even though such information mattered to investors.[307]

B. Respondents' Misrepresentations Concerning Concentration

201. Respondents' written and oral representations convinced potential investors the Flagship Funds were diversified.[308]

a. The Funds' quarterly portfolio statistics reports, for example, appeared to show a diverse portfolio because it omitted information to show that 85.48% of the Funds' portfolio value was attributable to the Non-Settled Cases.[309]

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306 See, e.g., Ex. 60 at 17.

307 Tr. 861:12—862:15 (Mantell) ("Q: Okay. If you can turn back to Exhibit 342. And if you go to page dash 52 in that document, please. . . . At the bottom of that page, do you see the heading 'Delinquency default or foreclosed investments' there? . . . Does that paragraph state anything about RD Legal or the fund continuing to lend into situations that resulted in delinquencies, defaults or foreclosed investments? A: Let me read it. . . . Could you repeat your question. Q: Sure. Does that paragraph say anything about RD Legal continuing to lend into situations that had resulted in delinquency -- A: You mean, in situations like the Osborn Law firm where they followed on with the investment? Is that what you're talking about? Does this say anything about that? Q: Correct, Mr. Mantell. A: No, it does not. Q: Would that have mattered to you? A: Absolutely.").

308 Tr. 890:21-25 (Wils). ("Q: And did you have an impression . . . as to whether the fund was diversified? A: I got the impression that the fund was well diversified, yes.").

309 Ex. 488 (4Q2013 Portfolio Statistics); Tr. 1121:20—1123:1 (Shaffer) ("Q: What is that? A: This is one example of a regular quarterly portfolio statistics exhibit that RD Legal produces which shows the underlying book of business. Q: Did you receive these? A: I did. Q: Okay. And do you see where it says: 'Number of positions, 416; number of law firm plaintiffs, 200'? . . . What does that say to you? A: That tells me, as I've said earlier, that that's describing in the

202. Respondents' December 19, 2011 marketing presentation made the following "Commitment to Investors": "Portfolio obligor investment matrix is designed to create a diversified portfolio in investment positions."[310]

203. The DDQ represented that the Funds have "payor concentration limits based on the 3 year unsecured bond rating of the payor" and stated such "concentration limits protect [the Funds'] investors from having a heavily weighted exposure to any one payor default."[311] The DDQ went on to explain: "diversification is managed by limiting the level of portfolio exposure based on the obligor's ... credit worthiness."[312] That meant investors could feel "confident that what [Respondents] were saying is essentially what the strategy entailed: That the diversification was done by limiting no one particular lawsuit to be ... a large part of the particular fund... ."[313]

204. Respondents stated that the line of credit portion of the Funds' strategy was approximately 5% of assets under management and was not expected to be a substantial part of the Funds' business going forward.[314]

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underlying book of business. That tells me that they have done 416 different slices or transactions with 200 different law firms with plaintiffs. . . . Q: What does it say -- do you see where it says 'Number of cases by settlement type'? A: Yes. Q: What does that mean to you? A: Well, there are 68 cases in total, and they're describing what type of legal action the attorney was involved with. Q: Okay. Does the fact that, you know, 'settlement type,' those words -- are those words consistent with what you understood the traditional funds to be doing? A: Yes."). Cf. Ex. 2 at Cells G-32 (Osborn ONJ percentage is 11.09%), K-32 (Cohen percentage is 12.20%), O-32 (Peterson percentage is 62.19%).

310 Ex. 31 at 6.

311 Ex. 39 at 11.

312 Ex. 39 at 13.

313 Tr. 107:25—108:5 (Burrow) (discussing Ex. 244 at 20) ("Q: Did that mean anything to you when you read it? A: It did. It made me feel confident that what they were saying is essentially what the strategy entailed: That the diversification was done by limiting no one particular lawsuit to be, you know, a large part of the particular fund, large exposure in the fund.").

314 Ex. 39 at 12.

205. The Funds' offering memoranda similarly explained that credit risk relating to the Funds' factored legal receivables "is low" in part because the Funds "will link exposures to [obligors] based on their long term bond rating ... in order to limit credit exposures based upon the obligor's credit worthiness."[315]

206. The Funds' Alpha generation presentations similarly explained the Funds' advances "are capped [by obligor] based upon long term bond ratings to lower event risk."[316] Respondents continued to use similar language regarding concentration limits, even in their internal communications, for years, for example, Philip Larochelle emailed Barbara Laraia (copying Dersovitz, among others) to note "Level I obligors are currently capped at $13,164,425.93," determined by taking the greater of "15% of the Portfolio Balance" and $6 million.[317] Larochelle updated those limits in an email copying Dersovitz in July 2015, again noting numbers at which certain obligors were "capped."[318]

207. The Funds' FAQ distinguished the Flagship Funds from the Special Opportunities Vehicle by describing the former as offering "a diversified approach to the standard legal fee receivable strategy" and the Special Opportunities Fund as a "concentrated fund that invests in a single opportunity."[319]

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315 See, e.g., Ex. 60 at 13, 17.

316 Ex. 38 at 15; Ex. 40 at 15; Ex. 43 at 15.

317 Ex. 659 at 1.

318 Ex. 661 (July 7, 2015 email from Larochelle to J. Robinson, copying Dersovitz, et al.) at 2.

319 Exs. 42 at 5; 44 (July 2013 FAQ) at 5.

208. The Funds' Offering Memoranda disclosed that the Funds would be potentially be concentrated in certain kinds of investments—namely, "Legal Fee Receivables, Lines of Credit or Other Advances to Law Firms"—but made no mention of concentration in specific receivables.[320]

a. According to Mr. Mantell, the language in the offering memoranda is revealing a "concentration in certain types of investments. It's saying the fund may be concentrated in receivables or lines of credit or other advances. It's not saying the fund may be concentrated in one -- one position, that is could be the whole fund or 60 or 70 percent of the fund. You might make a disclosure like that, but that's not what this is doing." Tr. 784:4-12.[321] Respondents' proffered expert Mr. Metzger agreed, testifying that his opinion regarding disclosure of concentration risks related to concentration in "asset class," "not in any particular case or settlement."[322]

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320 See, e.g., Ex. 60 at 19.

321 See also Tr. 2148:14—2149:21 (Furgatch) ("Q: ...What do you understand the risk that is disclosed here [Ex. 402 at 43] to be? A: Well, this is fairly standard disclosure you see in most funds, at least ones that are non-index funds. And what this one is clearly pertaining to is the ultimate paragraph, which is concentrations in what we call in the investment side -- we call them asset classes. So here in this first sentence they're referring to receivables, lines of credit, and other advances to law firms. So certainly we knew that the entire fund was concentrated in that asset class. But that's the exact exposure we wanted. We wanted 2 percent of our portfolio exposed to that asset class. Q: Now, as an asset -- is an asset class the same thing as a particular legal matter? A: Well, again, investment parlance, we use the term security. I understand under securities laws maybe these are not securities. So I'll use the term 'issues,' if I may. No, we invest all the time in particular asset classes. You think of stocks or bonds or real estate or what have you, you invest in a real estate fund, you expect all of your money to be deployed in real estate. By you still want to be diversified among the issues in that asset class. That's very important.").

322 Tr. 5330:12-21 (Metzger) ("Q: For the record, we're at [Exhibit] 2396-0034. Now, in that paragraph, you discuss that the funds -- that is the flagship funds – disclose that they may be concentrated in a particular asset class, correct? A: Yes. Q: And by 'asset class,' you mean something like litigation receivables; not in any particular case or settlement, right? A: Correct.").

209. Dersovitz testified that the "flagship funds [had] certain concentration limits," but that Respondents used them as "guidelines."[323] Dersovitz subsequently testified that the concentration limits were more accurately described as "thresholds."[324] Dersovitz then testified that to fully understand the concentration limits, one would need to look at them in the context of any waivers, including "all of the available documents."[325]

210. Starting in at least 2014, when Respondents sent a list of Flagship Funds portfolio positions to inquiring investors, they often sent them a list that did not name the cases and that made it seem as if the portfolios were broadly diversified because they did not easily identify which advances were in fact with respect to the same litigation.[326]

211. According to an email sent to Dersovitz on November 23, 2011, concentration limits for "Level II" assets permitted investments in receivables relating to the same obligor up to the "Greater of (i) 10% of the Portfolio Balance at such time and (ii) $4,000,000."[327] Rating Level

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323 Tr. 3519:18-20 (Dersovitz) ("Q: Did the flagship funds have concentration limits? A: Yes. And we used them as guidelines.").

324 Tr. 3543:6-25 (Dersovitz) ("Q: Do you believe it was also a poor choice of words to use the word 'limiting' in this section [of the DDQ, Ex. 262 at 13] when referring to how the company would limit the level of portfolio exposure? A: No. It was ultimately changed later on. We were describing it as limits here. In reiterations to come, we changed it to threshold. Q: Is that because you think threshold more accurately conveyed the nature of what RD Legal had in place than the word 'limits'? A: It was more consistent with what -- how we had been operating with increasing the thresholds from time to time, yes. Q: Does that mean it was more consistent with what was happening when you ultimately changed the language or it was more consistent with what was going on the whole time? ... A: The whole time.").

325 Tr. 3556:15—3558:1 (Dersovitz) ("Q: Let me just ask you to clarify. Is it your testimony that in order to fully understand the limits, you have to look at them in the context of the waivers? A: And what we did. Q: You mean what the funds actually invested in? A: And what we did. And what I mean is you have to look at the totality of the documents available to an investor. ... Q: When you say 'the totality,' are you saying that investors who looked at all of those documents would still need to look at more documents to figure out what the fund meant by concentration limits? A: The totality means all of the available documents.").

326 See, e.g., Ex. 450A; Ex. 469; infra nn. 579 & 933.

327 Ex. 261A (tab "Concentration Limiters" at Cell M-4).

I permitted up to the greater of 15% of the Funds' portfolio balance and $6,000,000."[328] Joseph Genevesi had sent Dersovitz, among others, a similar email in June 2011, attaching a draft letter "intended to inform investors of the obligor limit breach currently in our portfolio concerning Citibank... ."[329]

212. As stated in Philip Larochelle's November 23, 2011 email to Dersovitz, among others, even if Respondents treated the Peterson obligor as Citibank and used a Level I limiter, the Funds' investment in Peterson had already, by that date, exceeded the amount permitted by the Funds' "Concentration Limiters" by nearly $7 million.[330]

a. Mr. Larochelle determined the obligor ratings based on the lowest rating issued by the three large ratings agencies.[331]

213. Respondents shared their concentration limit matrix with numerous potential investors in different contexts. For example, Respondents included a version of the concentration limit matrix with potential investors in "participation agreements" which Dersovitz stated would

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328 Ex. 261A (tab "Concentration Limiters" at Cell M-3).

329 Ex. 1194.

330 Ex. 261 (email attaching spreadsheets and other documents) at 1; Ex. 261A (attached spreadsheet at tab "Fay & Perles" at Cell F20); see also Ex. 651 at 1-2, listing limits for Level I obligors as of June 2012 and referring to Investment Manager's approval of a limit increase for Peterson).

331 Tr. 2222:8—2223:3 (Larochelle) ("Q: Okay. Do you have any role in coming up with these obligor ratings? A: Yes. Q: What is your role? A: I create them. Q: Based on what? A: Based on a procedure that was given to me by my predecessor Robin Dillon. Q: Can you please describe that procedure? A: Well, I go -- when underwriting sends me an email listing out the payor for a certain receivable, I search on Moody's, S&P and Fitch to see what their public senior unsecured bond ratings are. And then of the three, if they are present, then I take the lowest of them. And there is a conversion table that converts the rating to a number, 1 through 6. So, for example, a Moody's AAA rating would be a Level 1, versus a junk bond CA rating would be a Level 6.").

"mimic [RD Legal's] fund structure ... with the same investment parameters that we use for the funds."[332]

214. Respondents also communicated, in a document titled "STEPS INVOLVED IN THE PROCESS OF FUNDING ATTY LEGAL FEES ON SETTLED CASES," that "Different internal rating levels (Level I through VI) have corresponding caps on allowable advance amounts in addition to taking into consideration concentration levels, etc."[333]

215. Respondents also routinely mentioned the existence of credit limits. For example, a November 2012 email from Dersovitz to Markovic states that the "dollar limiters that we employ are dollars out the door" and explains that it is dollars deployed (rather than asset values) that "trigger[] our limiters."[334] In fact, according to Respondents in late 2008, investors were "no doubt aware of" "portfolio concentration limits" "from [investors' initial fund diligence."[335]

216. Respondents described concentration limiters to Mr. Geraci both by email and in an oral presentation to him. In May 2012, Respondents emailed Mr. Geraci to explain the existence of "concentration limiters on [their] portfolio that dictate how much exposure [they] can take to any single obligor."[336] Mr. Geraci testified that he had an understanding of the concentration limits

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332 Ex. 305 (Oct. 11, 2012 email from Dersovitz to Markovic) (quoted language at 1, credit limit matrix at 30); see also Ex. 306 (Oct. 11, 2012 email from Dersovitz to P. Craig) at 1 ("Here's a participation agreement that counsel has just revised that I believe mimics our fund structure for each investment) (attaching matrix at 30).

333 Ex. 439.

334 Ex. 308 (Nov. 3, 2012 email from Dersovitz to Markovic) at 3.

335 Ex. 633 (Dec. 15, 2008 email from Robin Dillon) at 2 (describing revisions to "portfolio concentration limits").

336 Ex. 283 (May 18, 2012 email from K. Mallon to S. Geraci) at 1.

based on a presentation Respondents had made, during which he was shown a version of the concentration limits document Mr. Furgatch identified as receiving from Respondents.[337]

217. Even as Respondents were adding additional Peterson exposure, Dersovitz claimed the Funds were "making significant inroads into granulizing the portfolio."[338]

218. In September 2012, Dersovitz understood his own valuation agent was concerned that the Peterson receivables constituted "style drift."[339]

C. Other Documents and Materials

1. Agreed Upon Procedures Reports

219. Three times of year starting in around 2009, a document called "Independent Accountant's Report on Applying Agreed-Upon Procedures" (AUPs) with respect to Respondent RD Legal Capital LLC was created by Wiss Consultants to detail their findings upon implement certain procedures outlined in the Flagship Funds' Offering Memoranda.[340]

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337 Tr. 2793:14—2794:12 (Geraci) ("Q: Did you have an understanding what the concentration limiters were for the RD Funds? A: As part of the presentation, I don't remember whether it was part of the informal presentation or formal documents we looked at. There were factors that aren't, my understanding, RD Legal applied in trying to limit the amount of concentration risk by various factors like the credit quality, nature of the obligor. ... So it was our understanding there was a matrix that was applied. ... Q: Let's take a look at 228, please. I believe you said as part of the presentation you were shown something on the concentration limits; is that right? A: Yes. It's hard to say. Q: My question is: Eventually does this look like what you were shown regarding concentration limits? A: Yes.").

338 Ex. 278 at 5.

339 Ex. 297A (Dersovitz revisions to draft response to "Eric") at 1; Tr. 3836:8-20 (Dersovitz) ("MR. BIRNBAUM: Sure. Let's go to 297A. A: Thank you. Do I have that in one of these books? Q: You do not. So the Eric you just mentioned at Pluris, what Eric is that? A: Eric is, I believe -- I don't know his exact title. But he's responsible for our account and his response -- I think his -- his responsibility -- he's responsible for our account and the calculation of the monthly fair value numbers. Q: Do you know if it's Eric Liu, L-I-U? A: Yes. I believe that's who it is."); but see Ex. 298 (Sept. 12, 2012 email from K. Markovic to Eric Blanc-Garin at Puzzle-capital including similar language as revised by Dersovitz in Ex. 297A).

340 See, e.g., Ex. 1431 at 3 (describing results of Second Quarter 2012 AUP).

220. The AUPs were not routinely sent to prospective Flagship Funds investors.[341]

221. The AUPs typically began by stating that "Wiss judgmentally selected the following sample" of receivables in the Flagship Funds' portfolios ("AUP Receivables Sample"), and then later stated that Wiss conducted certain "tests" over those cases, including verifying whether the documents for the case associated with each receivable "did reflect valid settlements" and verifying evidence that "the case has been settled."[342]

222. Every time an AUP listed in the AUP Receivables Sample any investment schedule relating to "Osborn Law, PC," to "Novartis," or otherwise to the "ONJ Cases," as defined infra at ¶ 33, that AUP concluded that the receivables represented a settled litigation, and said upfront that "[B]ased upon review by the law firm of Smith Mazure, it was determined that in each of [those] cases, the documents did reflect valid settlements for which the Assignment and Sale ("A&S") agreement was made" and also that the Smith Mazure confirmed that with "no exceptions" the Funds followed their due diligence procedures by "Verify[ing] there is proof the case has been settled."[343] In other words, the AUPs falsely listed ONJ Cases-related scheduled as "settled" at least six times.

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341 See, e.g., Tr. 5038:22—5039:12 (Franiak) ("One of the things Mr. Roth walked you through were the emails about the AUPs. Do you recall that? A: Yes. . . . Q: Woodfield sent those to current investors, correct? A: Correct. Q: Okay. And audited financial statements, those too went to the current investors, right? A: That is correct. Q: Okay. You didn't send those to prospective investors? A: I don't think so.); see also, infra, n. 363.

342 E.g., Ex. 1431 at 3-4.

343 See, e.g., Ex. 1064 at 4-6 (First Quarter 2009 AUP listing "Novartis Schedule A-1" and "Novartis Schedule A-2" as "settled"); Ex. 1074 at 4-6 (Second Quarter 2009 AUP listing "In re Fosamax Schedule A-8" as "settled"); Ex. 1103 at 4-6 (First Quarter 2010 AUP referring to "In re Aredia & Zometa" Schedule as "settled"); Ex. 1132 at 4-6 (Third Quarter 2010 AUP referring to "Novartis Schedule A-5" as "settled"); Ex. 1186 at 3-5 (First Quarter 2011 AUP referring to "Novartis Schedule A-28" as "settled"); Ex. 2018A at 2-4 (First Quarter 2014 AUP referring to "Aredia and Zometa Schedule A-47" as "settled").

223. Investors reading this language in the AUPs concluded that the Osborn advances related to settled cases.[344]

224. In contrast to the straightforward representation in AUPs that the "Osborn Law, PC – Novartis" schedule constituted a valid settlement, starting in late 2009 AUPs also made other statements about the Osborn Law relationship within several paragraphs of text further into the document, stating first that "over $7MM of settlements and their corresponding legal fees have been purchased and successfully collected" from the predecessor to the Osborn Law firm, and that it was Smith Mazure's opinion that the legal fees generated by the firm's "portfolio, including the unsettled ONJ case inventory . . . would in all likelihood significantly exceed what is owed RDLFP."[345]

a. In other words, the paragraph does not clearly disclose that the Funds *are in fact currently* making advances *with respect to the unsettled ONJ case inventory* or with respect to other ongoing litigations of the Osborn Law

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344 E.g., Tr. 399:25-400:10 (Ishimaru) ("Q: Page 4 at the top, where it says, 'Based upon review by the law firm of Smith Mazure, it was determined that in each of the three cases, the documents did reflect valid settlements from which the assignment and sale agreement was made.' Do you see that? A: Yes. Q: What does that mean to you? A: Beyond the fact that it says there was a valid -- oh, there was a valid settlement, and that RD Legal and the law firm had entered into an assignment and sale of the -- so the factoring agreement was in place."); Tr. 3087:9—3088:10 (Levenbaum) ("Q: Do you see there's a reference -- there's some bullet points and some space. And it says, for example, Gutierrez vs. Wells Fargo. . . . And Novartis schedule A-5, et cetera. Do you see that? A: Yes. Q: And if you see at the very bottom of this page where it says . . . , 'Based upon review by the law firm of Smith Mazure, it was determined in each of the cases the documents did reflect valid settlements for which the assignment and sale agreement was made.' Do you see that? A: Yes. Q: What does that say to you? A: RD did its own due diligence, investigated and had his auditor or investigator, call it what you want, make sure that the documents in the attorneys' file were as represented. Q: So did they tell you that they concluded -- that they saw valid settlements for these cases? A: Yes. Q: Was that comforting to you? A: Yes.).

345 E.g., Ex. 1186 at 5-6 (First Quarter 2011 AUPs).

firm such as the Ruiz matter. It simply mentioned "interim advances" that "*may* be made."[346]

225. Investors reading even the foregoing language did not always understand it to tell them that the Flagship Funds were advancing *additional funds* on *additional ongoing* litigation.[347]

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346 Ex. 1186 at 6.

347 See e.g., Tr. 3102:8—3107:12 (Levenbaum) ("Q: And then you were shown some -- you were asked a couple of questions with regard to the numbers in the audited financials. . . . And you said before you invested in RD Legal, you believed you had no idea that RD Legal was investing in some ongoing litigation. . . . Do you recall saying that? A: Correct. Q: So it's your testimony, sir, that you had no idea, you had no information before you that RD Legal invested in ongoing litigation? A: Correct. Q: Is that right? A: Correct. Yes. Q: Okay. I want you to take a look at another page in this very same exhibit that you were asked about in terms of the Wiss report at. . . page 23. And I believe you were asked in one of the things that was pointed out, if you take a look at the top note here. One of the things that Wiss said it had done was verify that there was proof that the case had been settled. Do you recall? A: Yes. Q: You reviewed this entire AUP before you invested, right? A: I can't tell you the detail, if any, yes, yes. . . . Yes. Yes, it was there. Q: And you reviewed it? A: Yes. Q: And, in fact, if you take a look at page 25 . . . this very same exhibit, this AUP, page 25, if you go off to the left of the document that's not on the screen, there's notes, right? A: My notes. Q: Your notes . . . right? You reviewed this AUP before you ever invested, right, sir? A: Yes. Q: Okay. Let's take a look at page 24. The page right before 25 in this exhibit, this is the same AUP, the bottom paragraph. Make that big for you. And portions of this -- you hadn't invested yet, right, sir? A: Not this -- Q: Not this. So portions of this appear to have been redacted in the version that you had received? A: Yes. Q: Specifically which law firm had been advanced payment? And I specifically want to go through this with you. It talks about a law firm that broke apart in 2009; is that correct? A: Yeah. Q: And it is noted that 'Since inception of the relationship, over 7 million of settlements have been purchased and collected with no difficulty.' Do you see that? A: Yes. Q: And this is -- they're describing some of the problem cases in the portfolio, right? A: Yes. Q: And you got this before you invested, right? A: Correct. Q: And here it says, 'The Smith Mazure law firm was engaged to examine the unsettled current case inventory.' Do you see that? A: Yes. Q: You got this information before you invested, sir? A: Yes. Q: And then it goes on to say -- describe a little bit about that unsettled case inventory. And then talks about who the obligor is, RDLS Concentration Lending for the Novartis Pharmaceuticals Company. Do you see that? A: Yes. Q: So it specifically represents to you that this unsettled case inventory is a Novartis Pharmaceutical Company cases, right? A: Yes. Q: Okay. And it goes on to describe various stages of the litigation? Right? Take a look. A: Okay. Yeah. Q: Is that accurate? A: Yes. Q: The ongoing litigation, right? So you were told about ongoing litigation with regard to Novartis at the time you invested? A: No. This was -- I interpreted this – RD went in, took a security interest in as much cases as they could handled by the firm within the perimeters of allowance to secure payment, even litigated cases, even though they were advancing on settled cases. That was such to my interpretation. Q: Okay. So when it said that 'The firm was engaged to examine the unsettled current' and there's a blank 'case inventory to

226. Starting in late 2009, AUPs made references to the problems the Flagship Funds were having in collecting on the Cohen Cases, as defined supra at ¶ 30, but none of the AUPs describes that the Cohen Cases were unsettled at the moment Respondents' advanced Flagship Funds assets to them, see infra at ¶¶ 48-76, stating simply what the then-existing collection problems were.[348] To the contrary, whenever an AUP Receivables Sample included a Cohen Case,

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estimate their prospective settlement value,' what did you understand that to mean at the time? A: It was enough money for RD to feel comfortable with the firm's entire inventory, including unsettled cases, to secure loans on settled cases. Q: In fact, it says, 'RDLF's management stated that it was Smith Mazure's opinion that the legal fees generated would in all likelihood exceed what is owed to RDLF.' Do you see that? A: Yes. Q: And that's basically what you're saying; the new legal fees on those ongoing cases would satisfy the debt that was owed to RD Legal, right? A: On the fees that were advanced for settled cases. Sort of a secondary security, yes."); see also Tr. 3763:14—3765:13 (Young) (discussing language at Ex. 1431-5); infra at n. 992.

[348] See, e.g., Ex. 1431 at 7 ("A review of the Cohen Foster & Romine, PA ('CFR') file found that the $1,500,000 advanced on the Chau Lai case in March 2008 was not remitted to RDLFP as required in the A&S agreement. In response to this, RDLFP negotiated an agreement with CFR and Counsel Financial, a secured lender to CFR, to secure the Chau Lai advance through the assignment of part of the Wellcare settlement legal fees of $4,200,000. RDLFP has purchased $4,000,000 of the Wellcare legal fees for consideration of $2,799,000. To further secure payment, CFR also assigned a certain $22,000,000 promissory note and related mortgages which secure the note and which are owned by a company affiliated with CFR by common ownership. This note and mortgages also secure other advances by RDLFP totaling $3,575,000. The principal of CFR has also provided a personal unconditional guarantee of repayment of all obligations of CFR owing to RDLFP. With regards to the Wellcare matter, there has been substantial activity over the past few months and the court approval hearing was finally recently had on April 30, 2012. Now that the court has approved the settlement, it is anticipated that the settlement will begin to distribute within 90 days. What is uncertain at this point in time is whether the legal fees will be disbursed over time, just like the settlement. What is known, however, is that RDLFP will receive approximately $2MM over the next 90 days. As previously reported, the counterparty to the Wellcare intercreditor has sued RDLFP over the agreement. Management and outside counsel continue to believe that the litigation has no merit and note that while the action is still pending, the plaintiff is not currently prosecuting the matter. East Coast, which is the owner of the note that was assigned by CFR (as collateral to RDLFP) has entered into Chapter 11 and in the context of this matter, this is a positive development since it will expedite the collection of this receivable. The bankruptcy proceeding will facilitate the resolution of the ownership of the subject note that is now part of RDLFP's collateral package. With regard to the note, both East Coast and as such, RDLFP, have a Chicago Title Insurance Policy in place for the subject mortgage leading the Investment Manager to be confident that its position (exposure) is totally protected in the event of an adverse ruling by the Bankruptcy Court. Further incremental collateral was also provided by another affiliated CFR entity (Bel-Aire) to

it stated that the case underlying the receivable was a settled case, doing so falsely at least three times.[349]

227. No AUP ever listed an investment in a plaintiff receivable in the Peterson Turnover Litigation in the AUP Receivables Sample, but some AUPs listed investments in the law firms' receivables in that case and, on those occasions, always stated that those receivables represented advances on valid settlements,[350] even though even Dersovitz agrees that calling an investment in the Peterson Turnover Litigation an investment in a settlement is not correct.[351]

228. None of the AUPs issued in 2010, 2013 or 2014 make any mention of the Peterson Case—either the attorney or plaintiff fundings—as among the schedules that were "selected" for review,[352] even though in 2013 and 2014 those positions amounts to around or over 50% of the Flagship Funds'[353] (and the AUP from 2011 and the AUP from 2012 that mention Peterson do not use the word Iran).[354]

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collateralize the law firm's obligations to RDLFP. The primary asset of this other entity is a property referred to as Bel-Aire. Litigation also clouds this asset, but after a full review of the underlying litigation as well as the full collateral exposure provided by RDLFP's attorney client, the Investment Manager feels the only risk on this entire exposure is that of time which is precisely the risk that RDLFP assumes from its clients.").

349 See, e.g., Ex. 1064 at 4-6 (First Quarter 2009 AUP listing "Bel Air Holdings Schedule A-3" as "settled"); Ex. 1074 at 4-6 (Second Quarter 2009 AUPs listing "Bel Air Holdings – Licata Schedule A-4" as "settled"); Ex. 1083 at 4-6 (Third Quarter 2009 AUPs listing "USA v. Wellcare Health Plans; Schedule A-6" as "settled").

350 Ex. 1246 at 3-5 (Second Quarter 2011 AUP referring to "Peterson, D., et al Schedule A-3" as "settled"); Ex. 1490 at 3-5 (Second Quarter 2012 AUP referring to "Peterson, D., et al Schedule A-7" as "settled").

351 See infra n. 226.

352 See Ex. 1796 (Second Quarter 2013 AUP); Ex. 1892 (Third Quarter 2013 AUP); Ex. 2018A (First Quarter AUP); Ex. 2092A (Third Quarter 2014 AUP).

353 Ex. 2 at O20 to O44.

354 See Ex. 1246 at 3-5; Ex. 1490 at 3-5.

2. Audited Financial Statements

229. The Flagship Funds drafted and, after an audit, released yearly financial statements ("Financial Statements") which, among other things, contained a "Condensed Schedule of Investments" listing the top five obligors associated with each of the Funds' investments.[355] For the years-end 2011 through 2015, Marcum LLP audited the Financial Statements, which were the responsibility of the Flagship Funds' management.[356]

230. The Financial Statements were issued:

a. For year-end 2010, on November 10, 2011;[357]

b. For year-end 2011, on April 27, 2012;[358]

c. For year-end 2012, on April 15, 2013;[359]

d. For year-end 2013, on March 12, 2014;[360]

e. For year-end 2014, on April 15, 2015;[361]

f. For year-end 2015, on November 18, 2016;[362]

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355 E.g., Ex. 1141 at 9 (Offshore Flagship Fund Financial Statements for Year End 2010).

356 Tr. 3179:23—3180:11 (Schall) ("Q: Okay. And this paragraph that says, 'The financial statements and the financial highlights are the responsibility of the partnership's management, and our audit of the financial statement does not relieve management or those charged with governance of such responsibility,' what does that mean, sir? A: That means that the financial statements that we are auditing are the partnership's financial statements, and management is responsible for those financial statements. Q: They're not Marcum's financial statements, correct? A: Correct.").

357 E.g., Ex. 9 at 21.

358 E.g., Ex. 12 at 3.

359 E.g., Ex. 14 at 4.

360 E.g., Ex. 4 at 12

361 E.g., Ex. 18 at 4.

362 Ex. 2262 at 4.

231. The Financial Statements were not documents affirmatively handed to potential investors as part of the set of documents that RD Legal sent to investors.[363]

232. The Financial Statements ordinarily were not given to potential investors unless they were requested and potential investor had signed a non-disclosure agreement.[364]

233. The Condensed Schedule of Investments refers to two categories of investments—that for "Legal Fee Receivables" and that for "Lines of Credit," and lists the "Payor" for each "Legal Fee Receivables."

Legal Fees Receivable, at fair value				
United States				
Payor				
Merck Sharp & Dohme Corp (fka Merck & Co., Inc.)	$ 19,350,502	$ 17,176,351	$ 12,147,353	31 %
AstraZeneca PLC	6,645,740	7,737,401	6,304,610	16
East Coast Investments, LLC / 201 Kennedy Consulting, LLC	6,336,916	6,499,889	5,249,536	14
U.S. Government	5,490,021	5,403,518	3,561,532	9
Purdue Pharma, L.P.	3,450,696	3,099,662	2,484,119	6
Other	27,185,564	22,735,255	7,427,758	19
Total Legal Fees Receivable, at fair value (cost $60,361,837 and $35,727,747 respectively)		$ 62,652,076	$ 37,174,908	95 %
	Principal Amount			
Revolving Credit Loans Receivable, at fair value				
United States				
Law Firm				
Other (cost $2,703,718 and $2,250,932 respectively)	$ 2,703,718	$ 2,703,718	$ 2,250,932	6 %

Ex. 1141 at 9 (Offshore Flagship Fund Financial Statements for Year End 2010).

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363 See, e.g., Ex. 225 (fund documents to investor A. Ishimaru); Ex 252 (fund documents to investment manager J. Burrow); Ex. 531 (fund documents to investor W. Levenbaum); Ex. 1266 (fund documents to investment manager J. Riley); Ex. 591 (fund documents to S. Gumins's entity, Athens Capital); Ex. 342 (fund documents to A. Mantell); Ex. 718 (list of Tiger 21 investors who received Flagship Funds' financials); Tr. 858:25-859:5 (Mantell) ("Q: And you also testified that you reviewed these offering documents here in Exhibit 342? A: I did. Q: Okay. Did RD Legal send you the prior year financials before you invested? A: No."); see also Tr. 5039:7-12 (Franiak) ("Q: Okay. And audited financial statements, those too went to the current investors, right? A: That is correct. Q: Okay. You didn't send those to prospective investors? A: I don't think so.").

364 Tr. 6740:21-25 (Markovic) (as transcribed) ("MR. BIRNBAUM: And were these audited financials part of what you gave to investors? THE WITNESS: No. Once again, I told you that's only if it's requested and they've signed an NDA.").

234. As the auditors for the Financial Statements understood it, the "payor" purports to tell the reader who is obligated to pay the Flagship Funds with respect to the particular investment/receivable listed in the schedule.[365]

235. Respondents provided the names of the "payors" listed in the Condensed Schedule of Investments for each of the Flagship Funds' Financial Statements.[366] Dersovitz also had control and exercised control over the name of the "payor" or "obligor" for each receivable in the Flagship Funs' portfolio for purposes of internal data management documents and files, and exercised that control to use the terms "Citibank," "U.S. Government," and "Funds under control of the U.S. Government" and "Qualified Settlement Trust" to describe exposures to the Peterson Turnover Litigation.[367]

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365 Tr. 3187:1-15 (Schall) ("[Discussing Exhibit 12 at 5, Onshore Flagship Funds Schedule of Investments] Q: All right. If you don't see a law firm here at Novartis, what does that tell you? A: That would tell me that Novartis is the ultimate obligor. Q: It's telling you that Novartis has sort of a legal obligation to pay -- A: Yes. Q: -- is that correct? If somebody is reading the financial statement, that's what they're understanding from that; is that correct? A: I can't speak for a reader, but, yes. Q: Okay. I mean, is that what you read, I guess? A: Yes.").

366 Tr. 3185:16-22 (Schall) ("Q: Where it says 'obligor' then, what does that mean? A: That's the obligor. That's who's responsible for paying -- has to pay them. Q: And you got this information from RD Legal; is that fair? A: Yes."); Tr. 3222:14-17 (Schall) ("Q: And the name 'Funds under the control of the U.S. Government' was provided by RD Legal, correct? A: Yes."); Tr. 3225:11-16 (Schall) ("Now, it says, 'Qualified settlement trust.' Do you see that? A: Yes. Q: That was provided by RD Legal, correct? A: Yes.").

367 Tr. 2295:13—2296:2 (Larochelle) ("Q: Yeah, Mr. Larochelle, in terms of these obligors, the names of these obligors, did you receive those from management or from underwriting? A: Primarily from underwriting. But if management needed to look into it, they would. Q: Okay. And were there any particular circumstances in which you got any of these names from management? A: I believe only the funds under control of the U.S. Government, in particular. Q: Okay. What about -- are you familiar with an obligor listed as 'Qualified settlement trust'? A: Yes. Q: Where did you get that one from? A: Management."); Tr. 2296:8-11 (Larochelle) ("Q: All right. So for funds under the control of the U.S. Government and qualified settlement trust, that was management? A: Yes."); Tr. 6869:17-23 (Zatta) ("QUESTION: And the description is funds under control of the U.S. government. Who determined that description? ANSWER: I think that was a discussion between myself, Mr. Dersovitz and a partner at Markham to come up with what was believed to be the appropriate caption.").

236. For the Financial Statements for year-end 2010, the Flagship Funds' investments in the Peterson Turnover Litigation are described as an exposure where the payor is "Citibank,"[368] even though Citibank had no obligation to pay on those receivables.[369]

237. The 2011 Offshore Flagship Funds' Condensed Schedule of Investments lists two separate exposures where the "payor" is "U.S. Government."[370]

238. The phrases "Citibank" and "U.S. Government" appearing in the Financial Statements for year end 2010 and 2011 respectively do not tell investors that this relates to the Peterson Turnover Litigation.[371]

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368 Ex. 10 at 8.

369 Tr. 3184:17—3185:12 (Schall) ("Q: All right. And do you see where it says 'Citibank NA.' And then there's some numbers there? A: Yes. Q: All right. So what is that? A: From my understanding, to the best of my recollection, the assets were found in Citibank and were seized by the federal government, so that on the financial statements, what is said to be U.S. Government as the payor, in fact, the assets were held at Citibank. But they were held by – they were frozen by the U.S. Government. Q: Now, was it your understanding that the U.S. Government was actually paying these assets? A: At this point, my recollection is that we knew that they were seized. We saw documentation that they were seized, so we were fine with the disclosure of U.S. Government and not Citibank in that it wasn't Citibank corporate that was -- had the money. They were just holding it in one of their deposit accounts.").

370 Ex. 11 at 6.

371 E.g., Ex. 1142 at 8 (2010 financials listing "Citibank"); Ex. 12 at 5 (2011 financials listing "U.S. Government"); Tr. 3029:4-23 (Levenbaum) ([discussing Ex. 549] "[A:] Paragraph 5, he [Dersovitz] mentioned the Iranian claims. And he says, 'That the position was disclosed under the condensed schedule of investments in our year-end financial statement since 2011.' And I was somewhat amused by this, because I think he made reference it was disclosed. And I looked at it. And if anything was disclosed, it wasn't the Iranian. It was on the -- under the 'Other' category, like an after-thought in small print. So to me, nothing was disclosed specifically about the Peterson case or the Iranian bombing case or anything related thereto. . . . A: So I thought that amusing. Q: Did he answer your question about the percentage of the fund invested in this claim? A: No."); Tr. 3210:5—3212:7 (Schall) ("Q: Now, can we please turn to Division Exhibit 11, which is the offshore fund documents. A: Yes. Q: These are -- you recognize these as the 2011 financials for the offshore fund, correct? A: Yes. Q: And, sir, could you please take a look at page 6. . . . Do you see the condensed schedule of investments there? A: Yes. Q: Okay. And these were provided to – these were drafted by RD Legal, correct? A: Yes. Q: And as far as you know, sitting here today, for the 2011 through 2014 audited financials for the legacy funds -- or flagship funds, this schedule of investment was drafted by RD Legal, correct? A: Yes. Q: And the names under payor were

239. The phrase "fund under control of the U.S. Government" appearing in the Financial Statements for year end 2012 for the Flagship Funds do not tell investors that this relates to the Peterson Turnover Litigation.[372]

240. For the Financial Statements for years-end 2013 and 2014, the Peterson positions are described as an exposure where the payor is "Qualified Settlement Trust."[373]

a. The phrase "Qualified Settlement Trust" does not tell investors that this relates to the Peterson Turnover Litigation.[374]

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provided to Marcum by RD Legal, correct? A: Yes. Q: Okay. Do you see here there's two lines for U.S. Government? . . . Why is that? A: I don't recall. Q: Well, there's two different exposures here. Is that -- is that correct? A: I don't want to speculate, but my guess is they're related to different cases. Q: Okay. Which one of those -- one of them is 14 percent, the other is 14.73 percent. Do you see that? A: Yes. Q: Which one is the Peterson case? A: I believe the first one that has the total gross legal fee receivable purchased of $40,072,497 related to the Peterson case. Q: How do you know that? A: Because 15 minutes ago we looked at the schedule that tied that number out. And this number is on both the onshore and the offshore number. And I remember that number. I just looked at it 10 minutes ago. Q: That Excel spreadsheet? A: Yes. Q: Without looking at that Excel sheet, would you be able to tell? A: I'm not sure. Q: Would you be able to tell which of these relates to a case against the Republic of Iran? A: No."); see generally infra nn. 633& 636 (Ishimaru testimony).

372 E.g., Tr. 805:5-806:3 (Mantell) ("Q: If you had reviewed this document before you made your investment, would the concentration of the three positions we discussed a moment ago have been an issue that you would have wanted to examine further? A: Could I see the page with the concentration -- . . . Yeah, there you go. My answer is maybe/maybe not. Only because if I'd looked at that and I saw SmithKline and Novartis, I probably would have said okay, it is what it is. If I understood the phrase 'funds under control of the U.S. Government' to be what I inferred now it is, which is the -- the Peterson segregated funds as opposed to an obligation of the U.S. Government, then I might have wanted to investigate it. I might not have. I might have looked at this and thought it was the U.S. Government and been misled. But that's my only caveat to that."); see generally Tr. 2207:18—2208:5 (Demby) (Q: It looks on this email, sir, that on June 24, 2014, which is a response to your question with regard to the percentages, Mr. Dersovitz responds to you and a number of other individuals and says, 'I should have mentioned during the call that the year-end numbers, position sizes, total fund size for each size appear on the year-end financials, which you all should have.' Any reason to doubt that Mr. Dersovitz wrote that to you on that day? A: I'm sure he wrote it. But I never saw anything on year-end financials where Iranian settlement was specified.").

373 Ex. 15 at 8; Ex. 16 at 6; Ex. 18 at 6; Ex. 19 at 6.

241. The Financial Statements' auditor, Dennis Schall, testified that in his view it would also be reasonable to list "Bank of Iran" as the "payor" in the Condensed Schedule of

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[374] E.g., Tr. 248:24—250:9 (Burrow) ("Q. Now, take a moment to look at the entirety of the financial statements, or having looked at the final statements, do they indicate anywhere whether funds under the control of the United States government refers to the Peterson litigation? A. No. Q. . . . Let's take a look, please, at the Respondents' Exhibit 1878, the 2013 financial statements. Do you recall a moment ago, sir, Mr. Healy showed you those? A. Yes. Q. Okay. Did you receive those documents before your last client invested in RD Legal? A. No. Q. Okay. And just looking at these financial statements, I think on page 6 also, Mr. Healy referenced the line 'qualified settlement trust'? A. Yes, I recall. Q. Okay. And you see that's under 'Legal Fees and Judgment Receivables, United States, Payor, Qualified Settlement Trust.' Do you see that? A. I do. Q. What does it tell that that line is under 'legal fees and judgment receivables'? A. What does it tell me? Q. Yeah. A. Nothing. I mean it doesn't tell me enough. Q. Okay. And does 'qualified settlement trust' indicate to you what legal matter this refers to? A. No, not the legal matter. Q. Does anything in these financial statements tell you what legal matter 'qualified settlement trust' refers to? A. No.); Tr. 1165:9-17 (Schaffer) ("Q: And can I please direct your attention to Respondent's Exhibit 2921. . . . Q: Directing your attention to page, I think it's 8, of the document, page 8 of the PDF. A: Yes. Q: Do you remember just talking about that a minute ago? A: This is the 2013 financials, yes."); Tr. 1166:15-25 (Schaffer) ("Q: Yes. Just let me know if you see anywhere in this document that explains what this qualified settlement trust is. A: On the page or in the document? Q: Anywhere. Well, let me do it this way. I think you mentioned you read it at some point in time. A: I did review three years, including this year. Q: Okay. For this year, do you recall seeing anywhere in the document, an explanation for what a qualified settlement trust is? A: No.").

See also Tr. 3097:25-3098:14 (Levenbaum) ("[discussing language in 2015 financials from Ex. 22] Q: Do you see that footnote that reads, 'The qualified settlement trust includes the legal fees and judgment receivables arising from multiple civil actions against the Islamic Republic of Iran relating to the bombing of the US Marine Corps barracks in Beirut'? . . . Did you see anything like that in the financial statements for previous years? A: Nothing even close, no. Q: Would you have wanted to see something like that? A: Very important, yes. My whole mindset, posture would have changed had I seen that earlier."); Tr. 3651:20—3652:5 (Gumins) ("[discussing Ex. 3077] Q: You say -- on top of that, you say, 'Looks like he may have 75 percent of his money in Iran. But he's not saying that in the audit.' What do you mean by that, he's not saying that in the audit? A: I'm not good at this. But I figured I looked at this audit and just figured it out. 75 percent of this isn't noted. That means it's in the Iran case. And he's hiding it. And I rarely bother looking at audits any more than I look at the details of the – in fact, I almost look at none of the audits. Brian does. This one, I had to look at because I was curious."); Tr. 3652:25—3653:8 (Gumins) ("[discussing 2014 financials] Q: So when you say 'looks like he may have 75 percent of his money in Iran but he's not saying that in the audit,' what were you referring to? A: The qualified settlement, obviously. But I do not know this. Again, I'm thinking this because he's telling me something completely different. Q: So you do not know if this is the Iran case, is what you're saying? A: No, sir.").

Investments[375] or, for the 2013 and 2014 year-end Financial Statements to list "Peterson Fund" as the "payor," given that the assets at issue in the Peterson Turnover Litigation had been moved to a Qualified Settlement Fund called the "Peterson Fund."[376]

242. Dersovitz believed that the funds at issue were "Iranian money" at least until "the money was restrained, once the turnover occurred and the QSF was formed."[377] Respondents'

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375 Tr. 3193:25—3195:23 (Schall) ("Q: And my question is: Would it be reasonable to you if I came to you and said, Well, I'd like to describe this as obligor, Bank Markazi, Central Bank of Iran? A: I would have to look into the facts of the details if that makes sense. And it very well may be reasonable. Q: And if the -- if the assets are – I understand the assets might be seized, but if the position is that the assets, in fact, belong to Iran, would that fact be relevant to your determination of reasonableness in terms of how to describe this asset? A: It depends. Q: On what? A: On what the facts are. . . . I don't -- I'm getting, you know, hypothetical facts. I like to have the whole facts and look at what was presented to us. Q: Okay. So what was presented to you -- A: What was presented is that the money was actually in Citibank, and the Federal Reserve froze those assets. And that those assets was to be used to pay the bombing of the -- victims of the -- families of the victims of the 1983 Marine barracks bombing. Q: Now, we talked a minute ago about how Citibank -- Citibank did not actually have an obligation -- a legal obligation to turn over its own assets to pay these claims; is that correct? A: That is my understanding. Q: And when we looked at the Novartis Pharmaceuticals, your understanding was that it said Novartis, because Novartis did have an obligation to pay on these assets; is that correct? A: Yes. Q: And you did not understand that the government of the United States was going to take money from the Treasury, the FISC, to pay these claims; is that fair? A: Yes. Q: So given those facts, and if we assume that these assets belonged to the Bank of Iran, would it be reasonable to describe it also as bank -- the obligor Bank Markazi? A: If you're going to assume that it belongs to the Bank of Iran and that is your assumption, then, yes, that would be reasonable.").

376 Tr. 3226:6—3228:16 (Schall) (discussing Agreement for the Peterson § 486B Fund Pursuant to 26 U.S.C. § 468B, Peterson v. Islamic Republic of Iran, No. 10 Civ. 4158 (KBF) (D.E. 461) (S.D.N.Y. July 19, 2013)) ("Q: Right, right. Let me ask you to take a look at Division Exhibit -- it's not exhibit number. It's the very last page of your binder. It won't be on the screen. We've seen it before. It's a publicly filed court document in Peterson vs. Republic of Iran. The agreement for the Peterson fund. Have you seen this document before, sir? A: I'm not sure. Q: . . . This is document No. 461, and docket No. 10-CIV 4518 Southern District of New York. . . . You're not sure if you've seen this document before? . . . THE WITNESS: No. . . . Q: . . . And you're saying you're not sure if you saw this document before? A: Correct. Q: You see it says 'Deborah Peterson vs. Islamic Republic of Iran.' And the name of the case. And then it says, 'This fund shall be known as the Peterson fund.' . . . And you say -- below it says, 'The purpose of the fund is to create a vehicle pursuant to 28 U.S.C. Section 468B that will receive and hold funds transferred by Citibank, the blocked assets and subject to the continuing jurisdiction of the United States District Court,' et cetera, 'the approval of which is required for the distribution of the blocks assets.' . . . And that refers then to the Peterson case and the funds from Citibank, correct? A: Yes. Q: . . . Would it have been reasonable to call the exposure in 2013 the Peterson fund? A: Yes.").

expert, David Martin, believed that before the assets were transferred to the QSF, the Bank of Iran was the obligor over those receivables.[378]

243. The Condensed Schedule of Investments in the Financial Statements give no indication how many positions or different cases may be associated with each particular obligor,[379]

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[377] Tr. 3891:5—3893:24 (Dersovitz) ("Q: Sitting here today, do you have any idea why so many investors have a different recollection? A: Fear. JUDGE PATIL: Fear of what? THE WITNESS: People got frightened. People got nervous and frightened when the Wall Street Journal came out and began trashing me. **And when President Obama reached out to President Rouhani, everyone started getting extremely concerned that the moneys that had been restrained here could be the subject of a bargaining chip, vis-a-vis normalization of relations with Iran.** Once the money was restrained, once the turnover occurred and the QSF was formed, it was no longer Iranian money. The plaintiffs -- had President Obama done that, he would have bill of attainder issues. And those plaintiffs would have been able to commence another lawsuit as against the government for a takings. This case was locked up. But people -- even many of the smartest people don't always think rationally." (emphasis added)).

[378] Tr. 4072:2-12 (D. Martin) ("Q: So I'll ask you, before the settlement trust was established, who was the obligor for the Fay and Perles receivables? A: I think it was -- I think it was part of the court system. I mean, if you want me -- I don't think the government ever ran -- you know, the bank of -- the Bank of Iran -- at some -- you know, after they -- at one point, you know, one could have said way back when in the early days that it was the obligor. But later on I don't think you could have said that.").

[379] E.g., Tr. 248:16-23 (Burrow) ("Q. Okay. And in terms of the line 'funds under the control of the United States,' does that line tell you how many cases are referenced there? A. No. Q. What about the line that says 'Novartis Pharmaceuticals Corp.,' does that tell you how many legal matters are referenced there? A. No."); Tr. 860:19-861:1 (Mantell) ("Q: And looking at the line that says 'Funds under the control of the U.S. Government.' Do you see that line? A: I do. Q: Is there any indication here as to how many different positions there might be there, how many different cases? A: No."); Tr. 1167:1-7 (Schaffer) ("Q: Do you recall whether this document explains that this fund is investing in the Peterson litigation? A: I don't recall. Q: Do you know whether this, you know, refers to -- how many cases it refers to? A: I don't. I assume it's totaled by -- sum by payor, but I don't know how many are in that line."); see also Tr. 6869:5-16 (Zatta) ("QUESTION: If you look under Legal Fees and Judgments. Receivables, there's United States and then Payor. Do you see that? ANSWER: Yes. QUESTION: And the first time under payor is funds under control at the U.S. government. Do you see that? ANSWER: Yes. QUESTION: What are those? ANSWER: These are likely Iran claims, but I don't recall if there's anything else in there or not.").

and, in some instances, a single entry for an obligor indeed referred to multiple, different legal cases.[380]

a. In the case of the exposure to "Merck," for example, this was particularly problematic, given that some of the exposure was actually with respect to Merck to the extent Merck had agreed to settle the Vioxx case, but was not actually an exposure to Merck to the extent the line item represented advances made with respect to ONJ Cases for which Merck had not yet obligated itself to pay.[381]

b. The same as true with respect to the reference to a case for which "Novartis" was the Obligor, the Financial Statements lumped that case in with other actually settled matters. Dersovitz himself was unable to tell from the Financial Statements whether items for which Novartis was referred to as payor was only Osborn deals or included other Novartis-related advances as well.[382]

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380 E.g., Ex. 12 at 5 (as of December 31, 2011 listing one line for "Merck Sharp & Dohme" under "Payor" at 8.26% for the Domestic Fund); Ex. 2869 at 8-9 (2011 portfolio position listing to Tom Condon, showing Merck Sharp & Dohme payor associated with two cases—the Vioxx case as well as In the Fosamax, one of the ONJ cases); Tr. 3049:21—3050:4 (Levenbaum) ("Q: If you take a look at the top line, which is the Merck & Company -- A: Yes. Q: -- legal fees purchased? Do you know what that case was about? A: I don't know if it's -- no. I don't know if it's one case or the class action suit, multiple cases against Merck for various drugs and the like, no.").

381 See supra n. 380.

382 E.g., Ex. 12 at 5 (Onshore Flagship Fund Financial Statements for Year End 2011); Ex. 13 at 8 (Offshore Flagship Fund Financial Statements for Year End 2012); Ex. 16 at 6 (Onshore Flagship Fund Financial Statements for Year End 2013); Ex. 18 at 6 (Offshore Flagship Fund Financial Statements for Year End 2014); Tr. 3901:14—3902:1 (Dersovitz) (discussing Ex. 13) ("Q: I want to ask you about the line item for Novartis Pharmaceuticals. What is your understanding as to whether or not the business that RD Legal engaged in with regard to that line item for Novartis Pharmaceuticals fell into the core business for RD Legal? A: Absolutely, would have to. Q: And with regard to -- that's the Osborn case, right? A: That's the Osborn case. Q:

244. The Condensed Schedule of Investments in the Financial Statements also give no indication that any of the cases therein included arise out of non-settled or non-final matters,[383] and, to the contrary, lump all cases in into the "Legal Fee Receivables" category, a term which the Offering Documents uses in stating that "All of the Legal Fee Receivables purchased by the Fund arise out of litigation in which a settlement agreement or memorandum of understanding among the parties has been reached."

245. The Financial Statements contained references to "payors" "Novartis Pharmaceuticals" and "Merck Sharp & Dohme" from at least November 18, 2011 (when the 2010 Financial Statements were issued),[384] through at least April 15, 2015 (when the 2014 Financial Statements were issued),[385] even though at those times neither Novartis nor Merck had an obligation to pay the plaintiffs in the ONJ Cases, the attorneys in the ONJ Cases, or the Flagship Funds, because those cases were not settled.[386]

There may be some other strain of pharmaceutical deals. But primarily, the Osborn case? A: Correct.").

383 E.g., Tr. 861:2-11 (Mantell) ("Q: Okay. With respect to the line Novartis Pharmaceutical Corps -- Novartis Pharmaceuticals Corp., do you see that? . . . Any indication there that that case isn't settled? A: No. Q: Would it matter to you if it was not settled? A: Absolutely.").

384 Ex. 9 at 9; Ex. 10 at 8.

385 Ex. 19 at 6; Ex. 18 at 6.

386 See infra at ¶¶ 38-43. See also Tr. 2671:17-24 (Dersovitz) ("Q: By the end of 2012, Novartis did not have any obligation to pay Mr. Osborn or his clients any sum of money for the ONJ cases; is that correct? A: That is correct. Q: . . . Same with Merck? A: That is correct. Q: Same with Procter & Gamble? A: Yes."); Ex. 16 at 6.

a. Nevertheless, Respondents told their auditors that Novartis had an obligation to pay the Flagship Funds with respect to those receivables listed under "Novartis."[387]

246. The Condensed Schedule of Investments did not tell investors what percentage of the Flagship Funds' assets were invested in the ONJ Cases, because they were listed under separate obligors—Novartis and Merck.[388]

247. Because the Condensed Schedule of Investments use of the word "payor" tells the reader who is obligated to pay on a receivable, and because it lists "Legal Fee Receivables,"

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387 Tr. 3186:6-10 (Schall) ("Q: Okay. And did RD Legal tell you whether there was, in fact -- Novartis, in fact, had an obligation to pay RD Legal on these assets at this time? A: To the best of my recollection, yes.").

388 E.g., Ex. 13 at 8 (2012 Offshore Flagship Fund financials); Tr. 2685:1—2687:10 (Dersovitz) ("Q: It's page 13-8. It's 6 of the financial . . . Do you see where there's a headline that says, 'Participations in legal fees and judgment receivables at fair value' with an asterisk there? A: Yes. Yes, I do. Q: Okay. And under that, it lists a number of payors, correct? A: Yes. Q: And the third payor is Novartis, right? A: Yes. Q: Does the Novartis line pertain to the ONJ cases with Mr. Osborn we've been discussing? A: One aspect of them, yes. Q: When you say one aspect of them, do you mean that there are other ONJ cases or there are other Novartis cases? A: Well, you have Novartis, you have Merck, and you have Actonel. So I -- and those – those positions were separated out at one point in time. Q: Okay. But where we see Novartis in the financials, does that refer to some portion of the Osborn ONJ cases? A: Yes. Q: Okay. Does it refer to any other Novartis cases that are unrelated to Mr. Osborn? A: I don't believe so. Q: Well, can you tell by looking at the financials? A: No. I would have to look at the data back then for receivables. I don't think there were any other obligors that were due to us at that time, that were Novartis, but I'm not 100 percent certain. Q: How about for Merck? Do you know whether at least some portion of the Merck assets refer to the Osborn ONJ Merck cases? A: Yes. . . . Some portion. Q: And when you say 'some portion,' do you know whether it's all? A: . . . Let me clarify for you on both. It's probably all. I just wouldn't say it with 100 percent certainty. Q: And by looking at the financials, you can't tell whether the Merck line refers to just the ONJ cases or other cases as well; is that correct? A: You'd have to do a little more diligence and ask our CFO. Q: Diligence beyond the financials? A: Yeah, of course. Q: And diligence beyond the marketing materials? A: You would have to speak with the CFO to get a breakdown of the various positions that give rise to the top -- that's the top five concentrations? No. To that list.").

investors reading the Financial Statements and running across an exposure to "Novartis" were persistently misled into thinking it referred to a settled case.[389]

248. Accordingly, investors reading the Financial Statements and running across the percentages related to each "Obligor" did not understand that the Flagship Funds were concentrated with respect to any particular *lawsuit*.[390]

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[389] E.g., Tr. 1053:4—1054:1 (Condon) ("[Q:] If we can please pull up . . . Exhibit 1142 that you just looked at, and I believe you looked at Page 8 of the document. There is a No. 6 in the bottom right corner? A: Um-hum. Q: It's the 2010 financial statements. You see the reference to Novartis there? . . . We're on page 8 of the document, but 6 of the . . . Did you have an understanding as to what kind of receivable that Novartis matter related to? A: Some kind of pharmaceutical issues, some problem with the drug or medical device was my assumption, but, no, I didn't dig into the details. Q: Did you know at what station of litigation it was; that is, if it related to a settled case or something other? A: I assumed a settled case. Q: And why did you assume it was a settled case? A: Because I was told by RD Legal that all the legal factoring was invested in settled cases."); Ex. 1142 at 8; Tr. 2866:14—2867:12 (Hutchinson) ("Q: How about were you aware of -- let's take a look at Exhibit 14, please. Do you recognize that as RD funding's financial statements for 2012? A: Yes. Q: And if you could turn to -- I believe it's 14-8 -- sorry, 14-6. You believe you reviewed the companies financials; is that right? A: Yes, we reviewed the financial statements. Q: And under 'Legal Fees and Judgment Receivables,' do you see that? . . . When you see Novartis there, was it your assumption that related to some Novartis matters where there was post-settlement delay? A: Yes. . . . Q: Would you want to know if the Novartis line refers not to settled matters, but to unsettled matters where RD Legal was funding the lawyer who was in pursuit of the result? A: I think so."); Tr. 3185:23—3186:5; 3187:1-15 (Schall) ("Q: So where it says 'Novartis Pharmaceuticals,' you got that information from RD Legal? A: Yes. Q: And that's telling you that Novartis is responsible for paying -- eventually paying on these assets; is that right? A: Yes."); Tr. 3187:1-15 (Schall) ("Q: All right. If you don't see a law firm here at Novartis, what does that tell you? A: That would tell me that Novartis is the ultimate obligor. Q: It's telling you that Novartis has sort of a legal obligation to pay -- A: Yes. Q: -- is that correct? If somebody is reading the financial statement, that's what they're understanding from that; is that correct? A: I can't speak for a reader, but, yes. Q: Okay. I mean, is that what you read, I guess? A: Yes."); Tr. 302:25—303:12 (Ishimaru) ("Q. Okay. When you received this document – do you see where it says 'Novartis Pharmaceuticals Corp.'? A. Yes. Q. When you received this document, did you know what that referred to? A. I just assumed that it was a lawsuit that Novartis lost against some people who took their medication. Q. What was your assumption based on that Novartis had lost this lawsuit? A. Because they – the fund was taking the credit risk of Novartis, who was supposed to pay the law firms that the fund had lent money to. Q. Okay. Did you have any.").

[390] E.g., Tr. 1136:17-24 (Schaffer) ("Q: Okay. Did you, Mr. Schaffer, before investing in the fund, in the traditional strategy, look over any financials, audited financials? A: I did. Q: Okay. In reviewing those financials, did you come across anything that changed your understanding of the nature of the strategy, the traditional strategy? A: No.").

249. Even with access to the Financial Statements, investors did not known the concentration of a particular case within the Flagship Funds at any given moment in time—other than the snapshot provided in the Financial Statements at year end.[391]

250. The Condensed Schedule of Investments in the Financial Statements also contained the top 5 positions in each particular Flagship Fund, listing the percentage of partners' capital allocated to each "payor." That percentage does not represent the amount of a portfolios' investments are allocated to a particular case, as the existence of, for example, cash in the portfolio could alter the total concentration as a portion of "partners' capital" in the Financial Statements.[392]

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391 E.g., Tr. 984:7—985:9 (Condon) ("Q: If we can go back to your email at the bottom of 391, please. You also wrote, 'Can you please tell me the current percentage in total dollars, that the Iran case represents to the fund.' . . . Why did you want to know that? A: So, the line of the sentence previous is, 'You mentioned being optimistic about a third party taking a big chunk of the Iran case from the fund.' So what I'm asking is, are we making progress on that. I don't recall what the percentage was before this, what it was initially when I learned about it, but I was hoping to hear that the percentage was fallen. Q: Now, from the time you invested – first invested in RD Legal Fund to your March 18, 2014 e-mail, you received certain documents and had access to certain documents regarding the funds' investments, correct? A: Regarding the funds investments? Q: Did you ever get a financial statement? A: Yeah, I mean, my person capital account. I don't know if that's what you are referring to. Q: . . . why did you ask Mr. Dersovitz for how much the fund had in the Iran exposure? A: Because it's not something that is shared as a matter of course. I -- I don't know the portfolio concentration for any case from -- from one moment to the next."); Tr. 2798:20-24 (Geraci) ("Q: At this time, the time of the e-mail, it's correct the documents you had didn't provide an easy answer for you? A: At least we didn't find any of that in the previously provided documents.").

392 Tr. 3198:10—3199:24 (Schall) ("Q: So if I'm a reader and I want to know what percentage of your investments of your legal fee receivables is invested in this line; U.S. Government, I'd have to do a separate calculation, correct? A: Yes. Q: Okay. And how would I do it? A: You want to know what the percentage is of total investments? Q: Yeah. I'm an investor. I want to know what percentage of the fund -- of the fund's investments are invested in one of these. A: You take the 14.3 million and divide it by 27.2. Q: That's the total legal fee receivables? A: Yes. Q: Okay. But just to be clear, these numbers here don't actually tell you those percentages? Is there something else? A: That tells you -- those percentages are disclosed that are required under the AICPA guide for investment companies disclosure. That's what that is. Q: I understand that. So those percentages that are required by the literature are not purporting to tell you what percentage of the funds' legal fee receivables are invested in any particular receivable, correct? A: Correct. Q: So, for example, there was a lot of cash sitting in the partnership, this number would just go down? A: Depends. Q: On what? A: Did they have a loan? There's liabilities as well. Q: I mean,

251. Starting on for year-end 2013, Respondents also prepared and, after an audit, issued financial statements for the Iran SPV, as defined supra at ¶ 18 (the "SPV Financial Statements").[393] The SPV Financial Statements all defined "Reparation Case" as the civil actions against Iran arising out of the Marine barracks bombing on 1983, and stated, among other things that the Iran SPV "accepts the risk the Reparation Case may be unsuccessful, in whole or in part, and the likelihood that any portion of a purchase Receivable not satisfied out of the Reparation Case proceeds will not be paid by Iran or out of Iranian assets other than the Block Assets . . . Although multiple non-appealable judgments have been reached in the Reparation Case, the Reparation Case is pending and related cases with potential precedential value to the Reparation Case remain on appeal in federal courts."[394] The SPV Financial Statements also noted that "Normalization of relations between the U.S. federal government and Iran could positively or negatively impact the Fund depending on how relations are normalized."[395]

252. At the time the Offshore SPV Financial Statements contained the foregoing disclosure, the percentage of partners' capital invested in the Peterson Turnover Litigation was 91.40%.[396] At that same time, 74.16% of the partners' capital in the Offshore Flagship Fund was invested in that same case,[397] but the Financial Statements for that Fund did not contain that disclosure.

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everything else being equal. Just a large infusion of cash, the percentage of partners' capital, in fact, would go down, correct? A: Yes.").

393 See Ex. 17 (financial statements for year-end 2013 for onshore Peterson SPV); Ex. 20 (financial statements for year-end 2014 for offshore Peterson SPV); Ex. 21 (financial statements for year-end 2014 for onshore Peterson SPV).

394 Ex. 20 at 21 (offshore Peterson SPV Financial Statement for year-end 2014).

395 Ex. 20 at 21 (offshore Peterson SPV Financial Statement for year-end 2014).

396 Ex. 20 at 6.

397 Ex. 18 at 6.

253. None of the Financial Statements for the Flagship Funds contained the foregoing Peterson-related disclosures.[398]

254. Respondents provided the auditors the disclosure language described in paragraph 251 for the Peterson SPV's Financial Statements, but did not provide the auditors with any such disclosure language for the Flagship Funds' Financial Statements.[399]

255. Some of the Financial Statements for the Flagship Funds state, starting with the Statements for year-end 2011, that the "total exposure within the portfolio for any single payor is limited based upon the lowest of the long term unsecured bond ratings" and that "portfolio exposure limitation ranges from 15% to 30%" to the highest rated obligors.[400] The Financial

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398 See generally Exs. 9—22.

399 Tr. 3234:11—3237:7 (Schall) ("Q: And it says, . . . 'The fund will also purchase from certain plaintiffs in the Reparation Case certain accounts receivable representing a portion of each selling reparation plaintiff's final judgment award proceeds from the Reparation Case. Given the concentration of the fund's investments, the value of an investment of the fund is primarily dependent on the outcome of the Reparation Case and the risks associated with such legal proceedings, and may be subject to greater volatility, and may be more susceptible to a single economic political or regulatory occurrence than would be the case if the fund's investments were more diversified.' . . . And Marcum agreed this was a reasonable representation of the concentration risks in this fund? A: Yes. Q: And below that, it talks about risk associated with investments. And it says, 'By purchasing receivables, the fund accepts the risk of the Reparation Case may be unsuccessful in whole or in part, and the likelihood that any portion of a purchased receivable not satisfied out of the Reparation Case proceeds will not be paid by Iran or out of any Iranian assets other than the blocked assets, which are securities entitlements and cash held by UBS Management Americas in New York as further described in the fund's offering memorandum.' . . . And Marcum agreed that this was a reasonable description of some of the risks associated with investing in this fund? A: Yes. Q: And RD Legal provided this language, correct? A: I believe so, yes. Q: RD Legal did not write this language in the risk disclosures for the flagship funds for this year, correct? A: I believe that is correct. Q: And that was at a time when over 70 percent of that fund's assets were exposed to this exact same Reparation Case, correct? RD Legal did not write that for that fund? A: Correct. . . . Q: There's a part about U.S. relations with Iran. 'Normalization of relations' . . . We saw it earlier for the 2015 financials. But is it fair to say that RD Legal provided this information with respect to the risks associated with investing in the Peterson SPV, correct? A: Yes. Q: And Marcum agrees that these are reasonable representations of those risks, correct? A: Yes. Q: But RD Legal did not provide this language with respect to a fund that was invested over 70 percent in the same assets, correct? A: Yeah.").

400 Ex. 12 at 21.

Statements for years-end 2012 and 2013 add that Respondent RD Legal Capital "may make exceptions increasing the portfolio exposure above the above limits on a case by case basis."[401] None of the Financial Statements indicate that an exception already had been made.

3. Lotus Notes

256. RD Legal Funding's underwriting department uses Lotus Notes as a virtual filing system for documentation relating to transactions.[402]

257. There are different libraries within Lotus Notes, including a "RDLF Document Library" and a "RDLF Demo Library."[403]

258. The files within the Lotus Notes libraries were organized alphabetically by the name of the entity with which a contemplated or actual transaction would originate.[404]

259. The files within the Lotus Notes libraries related to all of the fundings originated by RDLF—not just the Flagship Funds—and were not organized according to which particular litigation a funding related.[405]

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401 Ex. 14 at 25 (emphasis added); see also Ex. 16 at 25.

402 Tr. at 4760:11-17 (Haider) ("Q: And, now . . . what, if any, document management system does RD Legal use? A: So we use Lotus Notes, which is our virtual filing system. All documents relating to transactions are housed there. They're all filed there.").

403 Tr. 4392:24—4393:2 (Hakim) ("Q: . . .So my question is: First, is it fair to say that RD Legal Funding had several Lotus libraries in its Lotus directory? A: That's correct."); Tr. 4760:18-22 (Haider) ("Q: Are there different libraries within Lotus Notes? A: I reuse RDLF document library for all of our needs at underwriting. And we have an archive document library also."); Ex. 650 at 1 (Oct. 4, 2012 email from Chandarana to Garlock offering "access to the demo library").

404 Tr. 4865:25—4866:7 (Haider) ("Q: Yeah. So Lotus right now as we see – if you go back to Lotus, please. If you just go back to the document library. The organization is alphabetical by, quote/unquote, attorney, or whatever the name is of the entity. A: It's by entity name. And if it's an individual or a sole proprietor, it's by last name first.").

405 Tr. 4871:19-25 (Haider) ("Q: Okay. And if an investor comes with the financials and says, you know, 'Here's an obligor Merck, I want to see which cases Merck is an obligor for, can you help me'? A: So the document library is not organized that way. It's organized by entity name. Or if it's an individual, by last name.").

260. The Lotus Notes system contains a search function that searches the title of folders or the title of documents, but not the contents of a document.[406]

261. The RDLF Document Library analyzed at the trial was created on February 23, 2015.[407]

262. The RDLF Demo Library analyzed at the trial was created on May 21, 2010.[408]

263. The RDLF Demo Library did not contain every position the Flagship Funds held, but instead contained "an example of some of the cases,"[409] relating specifically to only six entities.[410]

264. The RDLF Demo Library did not contain any documents relating in any way to the Peterson Matter, the Cohen Cases, or the ONJ Cases.[411]

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406 Tr. 4910:14—4911:22 (Haider) ("Q: ...And I just want you to recall that the title of this document does not have the word 'certiorari' in it? Do you see that? A: Yes. Q: And the level up does not have certiorari. And the document title does not have certiorari. Do you see that? A: Yes. Q: Okay. Now, let's go to RDLF document library. A: (Witness complies.) . . . Q: Yes, please, open the 'Info re 650 5th Avenue' document again. A: (Witness complies.) Q: Just leave this Lotus document open. Now go back to the RDLF document library, please. And do a search there for the word 'certiorari.' . . . Click 'Search.' So you get 22 documents, right? A: Yes. Q: Okay. Is this document, 'Info re 650 5th Avenue,' did that document pop up as one of the results? A: Not on this list.").

407 Ex. 664 (Word document showing capture of access log history for RDLF Document Library); Tr. 4914:3-23; 4915:16- 21 (Haider) ("Q: Okay. And when was this library created? A: The RD Legal – Q: I'm sorry. A: Sorry. Q: This one that we've been working on all day, when was this created? A: I wouldn't know. Q: Okay. . . . Do you see there's a -- it says 'Database,' and there's some tabs. And it says, 'Server RD Citrix2, RD Legal Funding, file name, RD doc database.NSF.' Do you see that? A: Yes . . . Q: Okay. Why don't we click on the 'i' button, the 'i' tab in the -- that little thing. A: (Witness complies.) Q: Do you see where it says, 'Created February 23, 2015'? A: Yes.").

408 Ex. 665 (Word document showing capture of access log history for RDLF Demo Library); Tr. 4938:10-20 (Haider) ("Q: Do you see there's a database information there that says 'Server, RD Citrix2 legal funding, file name RDLF demo library.NSF'? Do you see that? A: Yes. Q: Please click on the info tab for this one. So it's the 'i.' All right. Do you see there it says, 'Created May 21, 2010, modified April 17, 2017.' Do you see that? A: Yes.").

409 Ex. 650 at 1.

410 Ex. 711 (screenshot of RDLF Demo Library).

265. From 2009 through October of 2013, certain of the Marketing Materials for the Flagship Funds offered investors access to the Lotus Notes database,[412] but do not specify whether *prospective* investors are offered access or whether that offer is limited to actual investors.[413]

266. Remote access to the Lotus Notes libraries was withdrawn from the Flagship Fund investors sometime around September of 2013.[414]

267. Although Respondents have stated that remote access was withdrawn from Lotus Notes because of concerns regarding the proprietary nature of the investment in the claims of the plaintiffs in the Peterson Turnover Litigation, they have also stated that they were not concerned with any such competition after the plaintiffs steering committee in the Peterson Turnover

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411 Ex. 711 (showing six folders in the RDLF Demo Library, one for David A. Branch and Associates, one for the Driscoll Firm, one for Edmond & Lindsay, LLP, one for Kelly, Grossman & Flanagan, LLP, one for McCuneWright, LLP, and one for M.A. Gould & Associates); Tr. 4962:3—4963:19 (Haider) ("Q: And now please go back to the RDLF demo library. All right. Do you recognize those cases? A: I know the names. Q: All right. A: I've seen the names. Q: All right. Are any of those the Novartis cases or the Osborn cases? A: I wouldn't know. Q: Are any of those the Peterson cases? A: No. Q: Are any of those Cohen cases, Licata or Wellcare? A: I wouldn't know. Q: How would you find out? A: I would look into the folder. Q: Well, why don't we do a search. Let's start there. A: You want me to search for Novartis? Q: Sure. Let's start with Novartis. A: (Witness complies.) Q: There's no hits for that, right? A: Yeah. Q: Okay. Let's clear it. And let's do Licata. A: (Witness complies.) Q: You have to clear the search also. I'm sorry. A: There are no hits. Q: Okay. Let's clear that, and search 'Wellcare.' A: (Witness complies.) Q: No hits for that one, right? A: Yes. Q: Let's search for 'Peterson.' A: (Witness complies.) Q: No hits for that one? A: Yes. Q: Okay. Let's search 'Iran.' A: (Witness complies.) Q: No search for that one either, correct? A: Yes.").

412 E.g., Ex. 29 at 4 (Dec. 31, 2010 Presentation offering "Full Investor Transparency to Portfolio Positions"); Ex. 39 at 15 (Dec. 2012 DDQ stating that "Investors are given access to our main database, Lotus Notes once a confidentiality agreement is signed.").

413 E.g., Ex. 42 at 3 (Jan. 2013 FAQ stating that "Each investor may request login access that allows for complete transparency to all of the documentation for each position in the fund" and immediately thereafter stating "[i]n addition, each investor receives: Monthly performance update from RDLC . . . Monthly NAV statement . . . Quarterly 'Agreed Upon Procedure' . . . Annual audited financials....").

414 E.g., Tr. 6012:16-18 (Dersovitz) ("A: In late 2013, we had simply stopped the practice of issuing libraries -- IDs for the Lotus Notes document library for security concerns.").

Litigation decided that Respondents could present the funding opportunity to the Peterson plaintiffs.[415]

268. Respondents at other times have told investors that they reason they withdrew remote access to Lotus Notes from some investors was because of the sensitive information contained in the database, a statement Dersovitz has himself disclaimed as untrue,[416] though he

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[415] See Tr. 5841:8-15 (Dersovitz) ("Q: Do you see any reference to access to the Lotus database there? A: No, we intentionally removed that at that point in time. Q: Why? A: Because of fear that our form documents end or our trades would become public knowledge and these were all proprietary."); Tr. 5842:12—5843:2 (Dersovitz) ("JUDGE PATIL: Before you go on, I understand that you are saying you took away access, remote access to Lotus and stopped putting in notification to Lotus because all of that information was proprietary? THE WITNESS: Yes. JUDGE PATIL: I mean, from my perspective that information would always have been proprietary. What brought about the realization or what was the event that made you think we have got to change this, because it seems like it was always valuable information the whole time? THE WITNESS: I -- there were more competitors in the space that popped up post-financial crisis. I was one of the earliest players in the space. And with all of that competition, I didn't want people mimicking my trades or stealing my customers. Simple as that."); Tr. 5925:9-21 (Dersovitz) (Q: And was it in -- I'm wondering whether or not it was important to you, this steering committee approval to engage in that process? A: Absolutely, because I became less concerned it was in losing the trade. Q: To whom? A: To anyone on the street. Q: You mean competition? A: Yes. Q: You were less worried about competition at that point of the Peterson case? A: I'm always worried about competition, but I was less concerned.").

[416] See Ex. 724 at 1 (Feb. 12, 2014 email from K. Markovic to Gary stating "we are no longer able to provide login access to our Lotus Notes server . . . [due to] privacy laws."); Tr. 1478:6-20 (Ashcraft) ("Q: Prior to your investment, did you go on a website for RD Legal? A: Yeah. Actually -- maybe it was just general information on it. One of the things that was presented -- one of -- I'm not going to call it strong due diligence, but inquire about, there was a discussion that there was a website to go out and view cases. I did try to do that. I called, and it kind of made sense, they weren't -- they had to stop doing that because of the sensitivity of the cases. So they said, if you want to see the cases, do any due diligence, you had to come to the office. In my case, I was in Dayton. I chose not to do that."); Tr. 6278:10-23 (Dersovitz) ("Q: Now, Mr. Dersovitz, you believe the reason why RD Legal no longer allowed remote access to Lotus Notes -- certain Lotus Notes databases was because of the proprietary or competitive information that RD Legal wanted to protect; is that correct? A: My organization has the same belief. Q: It was not because of certain private information that was on the Lotus Notes, correct? A: We are able to block private -- we are able to prohibit, through the -- through Lotus Notes, investors from seeing confidential information. That has no bearing on the decision to change our policy regarding Lotus Notes.").

was unable to explain at trial why these statements were made.[417]

269. Starting with their September 2013 versions going forward, the Flagship Funds' marketing materials stopped referring to investor access to the Lotus Notes database.[418]

270. Existing investors in the Flagship Funds were not notified that remote access to the Lotus Notes database was being removed.[419]

271. Certain other investors in RD Legal investment products continued to be given remote access to the Lotus Notes libraries after remote access was removed for Flagship Fund investors in 2013.[420]

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417 Tr. 6279:13-21 (Dersovitz) ("Q: So you don't think Ms. Markovic is saying you can't look at the files remotely, because we have private information on that? You don't read it that way? A: Sir, I know what the policy was. Q: That wasn't my question. A: I read it exactly as it says. It speaks for itself. The last sentence, if you had any confusion, sir, read the last sentence.").

418 See Ex. 719 at 5 (hand markup of September 2013 Alpha Presentation by Amy Hirsch crossing out reference to "Full investor transparency to portfolio positions"); Ex. 1900 at 11 (January 2014 DDQ: offering "quarterly portfolio statistics" to investors in response to question "What portfolio data do you provide electronically?").

419 Ex. 472 at 1 (Jan. 2016 email from Katarina Markovic to investor witness Warren Levenbaum asking why Mr. Levenbaum "didn't . . . receive notification" about the access being eliminated); Tr. 3034:5-11 (Levenbaum) ("Q: Did you receive notification that they eliminated this access? A: Excuse me? Q: Did you receive any notification that they eliminated -- A: No. This was the first time. I was somewhat frustrated and shocked.").

420 E.g., Ex. 645 (Nov. 2014 email discussing setting up remote Lotus Notes access to SilverPoint); Ex. 654 (March 2016 email discussing remote Lotus Notes access for Patric Wisard of CCY); Tr. 6284:12-18 (Dersovitz) ("Q: You weren't worried about CCY logging on to Lotus Notes remotely and taking away your competitive advantage; is that right? A: Yes, that is correct. Because this is particularly relevant to the big boy reps and warrants that they have. And what makes it non-recourse."); Tr. 6287:1-25 (Dersovitz) ("Q: Is that that specialty claims investing in the email here? A: Yes. They were given access, and I don't know if they ultimately did use it. I think we wound up emailing them. They were not a competitor. We had no competitive issues. We were -- we were serving as an origination platform for them. So – Q: When you say -- you're not sure if they availed themselves of it, but they were given access. You mean remote access? A: They were given remote access to RD Legal -- RD Marine database. They were not a competitor. We were originating for them. The only thing that it would house would be transactions that we originated specifically for them. They are not an -- they are not an investor. We earned a -- we would theoretically earn a service -- earn a servicing fee. We were originating on their behalf. Q: Is Mr. Levenbaum a competitor? A: Mr. Levenbaum was offered a Lotus ID until he wasn't, if

272. Certain prospective investors in the Flagship Funds who requested remote access to the Lotus Notes libraries before they invested were given access to the RDLF Demo Library that did not contain any documents relating to the Peterson Matter, the ONJ Cases, or the Cohen Cases.[421]

273. Prospective investors in the Flagship Funds who requested remote access to the Lotus Notes libraries before they invested were required to sign an NDA before being given access.[422]

274. Respondents would not show current transactions in the Flagship Funds to prospective investors to whom they were demonstrating the Lotus Notes system, they would show historical transactions that were closed instead and their ordinary practice was to not give potential investors in the Flagship Funds full transparency into the RDLF Document Library.[423]

275. Of the investors who testified at the hearing, Tom Condon, Mr. Garlock's Cobblestone, and Mr. Shaffer's Ballentine Partners requested access to the Lotus Notes database

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you recall. There was an email from Katarina or Meesha or someone saying that we had changed our policy.").

421 Exs. 758-773 (series of emails with prospective investors attaching "demo.id" files and instructions to RDLF Demo Library or RDLF Demo Participant Library); see also infra n. 422.

422 E.g., Ex. 766 (February 2013 email to Ballentine's Austin Poirier referring to the NDA and giving access to "demo3.id"); Ex. 758 (April 2013 email attaching "demo12.id" and referring to "the executed NDA"); Ex. 769 (March 2011 email attaching "demo9.id" and referring to "the signed confidentiality agreement" received).

423 Tr. 6265:4-9 (Dersovitz) ("Q: Was it the company's practice ordinarily to give potential investors in the flagship funds full transparency into the full Lotus Notes database? A: No. Because there was -- no, of course, not."); see also Tr. 6290:21—6291:7 ("Q: And you were at the office of Hughes, Hubbard & Reed when we saw the examples that were in the demo library, the nonparticipant library, but the actual demo library the other day, correct? A: Yes. Q: And that didn't have the kind of representation of the typical investments in the flagship funds at any given time, did it? A: Of course not. We wouldn't show someone that we were just demonstrating current transactions. We would show them historical transactions that were closed.").

while they were conducting due diligence on the Flagship Funds, and all three were given access to the RDLF Demo Library.[424]

276. Dersovitz testified that certain prospective investors were also given remote access to the RDLF Document Library, but all were institutional investors and none testified at the hearing.[425]

277. During the period in which remote access to the Lotus Notes database was offered, a person who became an actual investor in the Flagship Funds was not given automatic remote access to the Lotus Notes database, even if such person had previously requested remote access to the Lotus Notes database before they became an investor, because there was no automatic

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[424] Ex. 648 at 1 (December 2011 email to Tom Condon attaching "demo7.id" and referring him to the RDLF Demo Library"); Ex. 649 at 1 (October 2012 email to Cobblestone's Jason Garlock attaching "demo3.id"); Ex. 650 at 1 (October 2012 email to Cobblestone's Jason Garlock offering "access to the demo library" which "has an example of some of the cases"); Ex. 711 at 1-3 (access control list for RDLF Demo Library showing access granted to "demo3/Legalfunding," to "demo11/Legalfunding-Ballentine" and to "demo7/Legalfunding Tom Condon"); Ex. 766 (February 2013 email to Ballentine's Austin Poirier attaching "demo3.id").

[425] E.g., Tr. 6019:4-22 (Dersovitz) ("Q: They were given access to the document library? A: Yes, they were. Q: Who is Consulta 1? A: They're a fund to funds. I really don't have much of a recollection as to who they were, but they were given access to the document library as well. Q: Were they actual investors? A: No. They never invested. Q: So they were prospective? A: Prospective, yes. Q: I'm going to ask you to turn to page 2. Can you identify any other prospective investors? A: Certainly. Eden Rock 1 and 2 are -- is a fund to funds located in Mayfair, London. I had visited with them on several occasions between 2010 and 2012. They were prospective investors. They never invested."); Tr. 6020:8-17 (Dersovitz) ("Q: If you turn to page 3, do you see any other prospective investors? A: Golden Sun and Gottex are also prospective investors. I don't recall that much about Golden Sun. Gottex 1 and Gottex 2, I had met with Amy Lau in New York. They are a Swiss-based fund to funds that were considering making investments in us for a long period of time. And they were given access to the document library as well."); Tr. 6025:9-16 (Dersovitz) ("Q: Take a look at page 9. Who is New Finance, and then North Water? A: New Finance and North Water were fund to funds. No general recollection about who they are. But they, obviously, had access to the document library as well. Q: Were they investors or prospects? A: Prospects.").

conversion from the Demo Library to the RDLF Document Library—an investor would have to request remote access to the full library at that time,[426] and sign a confidentiality agreement.[427]

278. As of 2015, the RDLF Document Library contained 175,486 documents.[428]

279. The RDLF Document Library does not contain a listing of the individual investments in each of the Funds' portfolios.[429]

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426 Tr. 5511:17-19 (Dersovitz) ("Q: Were investors automatically given access to Lotus Notes? A: No. They would have to request it."); Tr. 5832:25—5833:3 (Dersovitz) ("Q: Did investors in RD Legal automatically get login access to Lotus Notes upon investing? A: No, they would have had to have been willing to sign an NDA first and then we provide it to them."); see also Ex. 686 & 687 (welcome emails from Flagship Funds' administrators attaching only a welcome letter and a fully executed subscription document to an investor).

427 Tr. 6034:3-8 (Dersovitz) ("Q: Do you know whether or not there was any automatic conversion? A: There was no automatic conversion from the demo library to the document library. You would have to request it. Everything was by request for this type of information."); see also Ex. 3207 (Email from Pace Kessenich asking "Now that we are investors, what else should be receiving? How do we access the lotus notes database" and September 24, 2010 response from Robin Dillon stating "Please find attached a new Lotus Notes ID file and instruction for swapping the demo3.id file previously provided to you" and attaching "Instructions for switching Lotus Notes user ID Files (Demo database to RDLF Document Library").

428 Tr. 4848:4-14 (Haider) ("Q: Okay. How many documents are in this library? A: I don't know. Q: Can you figure it out somehow? Is there any way to figure it out? A: I don't know. Q: Why don't you start by clicking 'More' by the search button. A: (Witness complies.) Q: Do you see any clues there? A: This one, 175,486 document.").

429 Tr. 4851:2-13 (Haider) ("Q: Okay. Now, if I'm – let's say I'm an investor or a potential investor, and I want to know, you know, what are the investments in the onshore fund that I'm going to invest in, can you please show us where that is in Lotus Notes. A: I wouldn't know. That's not what we use Lotus for, so I wouldn't know that. Q: What do you mean by that? A: Lotus Notes is our virtual filing system. It has documentation relating to the transactions that we do as far as underwriting is concerned, which is what I am part of. So that's what I know."); Tr. 4851:18—4853:15, 4855:4-7 ("Q: Okay. So given your experience with Lotus Notes, if I say to you -- you know, I come to the office and I say, you know, Ms. Haider, I want to know what assets the fund I'm looking at is investing in, can you please do a search; can you try something? A: That would be too vague. I wouldn't know. I can find out -- if I know the attorney name, I can find out documents, or the plaintiff name. I wouldn't know which funds invested where. That's not part of underwriting. Q: Okay. So if I'm an investor and I want a list of the investments in my fund, I cannot do that through Lotus Notes; is that correct? A: As far as it relates to me and what I do in Lotus Notes, I wouldn't be able to find it. Q: Okay. Do you -- do you know of anyone who might be able to reproduce that list from using Lotus Notes? A: I don't know. Q: Okay. Can you think of any search, sitting here today, that might reproduce that list? You know, investments in onshore

280. The RDLF Document Library does not contain a listing of the top five positions in the Funds' portfolios.[430]

281. The RDLF Document Library does not contain a list of investments in the Funds' portfolios that may relate to unsettled or non-final cases, and running a search for "ongoing litigation" or "appeal pending" does not result in such a list or direct the user to any of the Non-Settled Cases.[431]

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fund. A: I don't know. Q: Do you want to try that, 'investments in onshore fund' on the search? A: You said 'investments in offshore fund'? Q: Sure. A: (Witness complies.) Q: So let's clear that. Zero results, just for the record? JUDGE PATIL: Why don't we just use the word 'offshore.' MR. TENREIRO: Sure. 'Offshore.' THE WITNESS: (Witness complies.) MR. TENREIRO: I'm sorry. I think the Court – 'offshore,' is that what you want to use, Your Honor, or 'investments in offshore'? JUDGE PATIL: I used the term 'offshore.' MR. TENREIRO: Offshore. Okay. JUDGE PATIL: I was interested to see what would come up. THE WITNESS: (Witness complies.) BY MR. TENREIRO: Q: Okay. So the search I think revealed 31 documents, is that correct, Ms. Haider? It also says it at the top, 31 documents in view. A: Yes. . . . Q: Okay. So do you see -- I mean, just scroll through it. Do you see a list of investments in the offshore fund here? A: No.").

[430] Tr. 4776:20—4777:7 (Haider) ("Q: And if an investor – let's say that you were put in a position where you were asked to assist an investor. If an investor asked you to use the RDLF document library to pull up documents for the top five positions in the RD Legal funds, what would you do? A: I wouldn't know the top five positions. Q: Okay. So how would you find out that information? A: I would have to refer back to accounting, I would assume. But I've never done that. I wouldn't know.").

[431] Tr. 4874:6—4878:14 (Haider) ("Q: Okay. So if an investor is doing due diligence on the funds and wants to find out which of your cases are not settled cases or judgments, could you help me out? A: I wouldn't know. I mean, I guess the search function, but I wouldn't know. Q: Okay. Let's try that. Let's close out of that. A: (Witness complies.) Q: Why don't we search -- well, let's clear the results first. Why don't we search 'Unsettled.' A: I'm sorry. Excuse me. What do I search? Q: 'Unsettled.' I mean, if you have a better idea, I'm happy to listen. But let's start with 'Unsettled.' A: (Witness complies.) Q: We get eight documents there – A: Yes. Q: -- do you see that? Just take a look at these. Do you know what these relate to? A: I don't know. Q: Okay. The first one says, 'Court Document 2015/01/06, order re setting up settlement conferences for unsettled cases.' Can you please click on that one. A: Yes. Q: And the level up there is 'Kugel Mesh Patch.' Do you see that? A: Yes. . . . Q: Okay. Let's just close that one. Do you see the -- any of the Osborn cases here in this search result list? A: I can't tell from the title. . . . JUDGE PATIL: In filing this document or characterizing it or writing summaries, do you have a term or terms or phrase that you use to describe a case that isn't settled? THE WITNESS: No. Other than like I showed, the case summary where it talks about the status of settlement. JUDGE PATIL: Okay. What's the phrase that you would use on status of settlement if the case isn't settled? THE

WITNESS: I haven't done it, but from what I did this morning, ongoing litigation was in the case summary. JUDGE PATIL: Okay. And what other – so what other terms, other than ongoing litigation, do you use to describe a case that is not yet settled or subject to a final judgment? THE WITNESS: It would be pending. It depends on the status of the case exactly. JUDGE PATIL: Okay. So ongoing litigation, appeal pending. What other phrases or terms can you think of now that you use to describe cases which are not either settled or subject to a final judgment? THE WITNESS: Subject to a final judgment, I don't know other than that. I don't recall. . . ."); Tr. 4881:16—4887:18 (Haider) ("Q: Okay. And now can we please clear these results. And search 'Appeal pending.' A: (Witness complies.) Q: So you get 294 documents. Do you see that? A: Yes. Q: And, again, how can you tell which, if any, of the transactions these relate to? A: For some of them, the title might suggest. But I don't know looking at -- at, like, this. Q: You can't -- I'm sorry. You don't know looking at it like this what the case relates to or what the transaction is? Is that what you mean? A: Do you want me to look at one document? Do you want me to look at the whole list? I don't understand. Q: So let's walk through it. Let's -- let's -- I searched for 'appeal pending,' right? A: Right. Q: And I get this. And now I want to know which of the transactions in the portfolio do these documents relate to. How would I do that now that I have this search list result? A: I don't understand the question. Q: So you understand that the portfolios have invested in certain assets? A: Right. Q: Okay. So which of these assets do these relate to? How can you figure that out? A: I would have to open the document and see. Q: So you would have to open them one by one? A: I've never tried this. I could try. I've never done this. Q: I won't make you open 294, but let's try one. A: The first one? Q: Yeah. Let's try the first one. A: (Witness complies.) Q: So there it says, 'Title, 2016/06/20, Siskiyou County Superior Court case summary indicating status of litigation, appeal pending.' That's a search you made, right, 'Appeal pending'? A: Yes. Q: And then it says, 'Schedule A-01, Clapp, Michael, fee being appealed.' Do you see that? A: Yes. Q: Can you please click on the document. A: (Witness complies.) Q: Okay. And those highlights in yellow, do you know who put them in there? A: I wouldn't know. Q: Okay. So what is this case? A: I don't understand what do you mean by 'What is this case?' Q: Yeah. What transaction does this document relate to? What transaction in the funds does this document relate to? A: I would have to read the document. I don't know looking at it like this. Q: Okay. Where in the document would you find out, I guess? A: (Witness complies.) . . . Q: Okay. So now how can I figure out what the transaction is from here? A: Since Lotus is organized alphabetically, you can go to the letter S and find 'Scheibli, A. Michael, attorney at law.' And then look at Schedule A-1. Q: Okay. Let's do that. A: (Witness complies.) Q: I just want to note for the record you cleared the search results. A: Yes, I cleared the search results. And I'm going to the S now for Scheibli, Michael, which is this folder. And underneath it is an archive folder titled 'Archive, Schedule A-1, Clapp, Michael A. fee being appealed.' Q: Okay. Can you click there. A: (Witness complies.) Q: Is there an assignment and sale agreement there? A: No. Q: What does that indicate to you? A: That would show that we -- again, there's an email in there also. If you look at '2016/07/29' showing 'Closure of file due to failure to provide further response.' Q: Okay. A: This was archived. Q: And what does that indicate to you; that it was 'Closure of file due to failure to provide further response'? A: As the title suggests, we didn't get a response, so we closed the file. There's nothing further on it. Q: Okay. So there was no -- as far as you can tell from here, there was no transaction between any RD Legal entity and Michael Scheibli, correct? A: Yes. Q: So let's run 'Appeal pending,' again, that search, please. A: So I'm clicking the search. Q: Yes. Please. So I have 294 again. I already clicked on the first one. And I went

282. Running a search function on the RDLF Document Library using the words "Qualified Settlement Trust" does not yield any results related to the Peterson Matter.[432]

283. As of 2015, the RDLF Document Library contained documentation related to all of the assets that RDLF originated including assets for third party investors and assets participated to entities such as CCY, and not just those that were purchased by the Funds.[433]

284. The RDLF Document Library also contained documentation related to assets that RDLF considered originating, but ultimately did not originate.[434]

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through various clicks, is that fair to say, to get to that point, that there was no transaction related to that one? A: Right. Q: So I would have to do that for each of these in order to figure out which are transactions that RD Legal entered into, for example? A: I mean, you could just confirm from the accounting or investor side the transactions exactly involved -- Q: Got it. A: -- in that financial statement, I guess. Q: Okay. Let's clear the results. A: (Witness complies.) Q: And let's do 'ongoing litigation.' A: (Witness complies.) Q: So there we get 5,000 hits. Do you see that? A: Yes. Q: And, again, does this tell you -- can you tell from looking at these what transactions, if any, these documents relate to? A: Not by looking at the document. I can click the document and see – Q: Okay. A: -- what information it has.").

[432] Tr. 4841:3-25 (Haider) ("JUDGE PATIL: Before you go on, can I have the witness add 'trust' to the phrase 'qualified settlement' and see how that changes the result, if at all? THE WITNESS: (Witness complies.) JUDGE PATIL: Go ahead and search. THE WITNESS: (Witness complies.) JUDGE PATIL: Can you read the title of the first document there. THE WITNESS: 'Court document, Exhibit C-1, re common benefit qualified settlement fund/trust plus 12/05/2011 motion 4328, motion obtained via web research.' JUDGE PATIL: Can you open that document? THE WITNESS: Yes. JUDGE PATIL: Can you read what the level up file title is. THE WITNESS: 'In re genetically modified rice Schedule A-16.' JUDGE PATIL: And can you read the two document titles in the document field. THE WITNESS: 'Exhibit C-1 common benefit fund.PDF, motion 4328 CF agreement.PDF.'").

[433] Tr. 4857:23—4858:10 (Haider) ("Q: So if CCY -- I'm just hypothetically speaking. CCY has purchased a receivable associated with Matthew Funks & Associates. Matthews, Funks & Associates remains in Lotus Notes, correct? A: Yes. Q: It doesn't get pulled out to a CCY library, for example? A: No. Q: So this library is for essentially the whole firm -- right? -- all of the funds that the firm manages and all of the originations that the firm does; is that correct? A: Yes.").

[434] Tr. 4315:17-19 (Laraia) ("Q: Right. Okay. So there's some cases in the files that you didn't fund? A: Yes."); Tr. 4886:3-8 (Haider) ("Q: And what does that indicate to you; that it was 'Closure of file due to failure to provide further response'? A: As the title suggests, we didn't get a response, so we closed the file. There's nothing further on it.").

285. The RDLF Document Library also contained documentation unrelated to the origination of assets by RDLF.[435]

286. Of the persons that the record reflects as having received remote access to the RDLF Document Library, all either are not investors in the Flagship Funds or, if they did invest in the Flagship Funds, received such access *after* they became investors.[436]

287. In addition to remote access, some investors obtained access to the Lotus Notes database while physically present at an RD Legal office via a tour of the system offered by an RD Legal employee as part of their due diligence on RD Legal's underwriting process.[437]

288. Investors who were given a tour of such database during a visit to the RD Legal Offices were shown examples pertaining only to settled cases.[438]

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435 Tr. 4861:16-20, 4862:21—4863:3 (Haider) ("Q: Do you see where it says, 'Mallon, Kevin A: Yes. Q: Who is that? A: I believe it is an ex-employee. I know the name.... Q: Can you tell from looking at those if there's some sort of transaction with Mr. Mallon? A: I don't see an assignment and sale agreement in there, so I'm guessing there's no assignment and sale agreement with him. Q: Okay. So why -- why -- so why is he in this Lotus Notes database? A: I don't know.").

436 See, e.g., Ex. 3205 (Apr. 6, 2011 email attaching MMorrison and DWeaver.id and Document Library instructions); Ex. 3206 at 1-2 (Nov. 17, 2010 email to investor witness Asami Ishimaru with instructions on how to install Lotus Notes and Jan. 25, 2011 email attaching "AIshimaru.id" and "RDLF Document Library" instructions); Ex. 464A at tab "RD Legal Funding Partners, LP" (row 55 showing investor Mark Morrison invested in the fund in March of 2011); Ex. 168 at 2 (showing that investor Asami Ishimaru invested on March 1, 2010); see generally Exs. 3198-3204 & 3208-3210 (other emails attaching Lotus ID files to certain persons).

437 Tr. 4264:20—4265:4 (Laraia) ("Q: Okay. And when you walked those investors who would come in through the underwriting process, would Lotus Notes be involved with that? A: Yes. Q: In what way? A: That's basically what I would do is I would have Lotus Notes open on our large monitor in the conference room, and I would walk them through one or multiple cases and show them the basic documents that are listed here."); see also infra nn. 438 & 440.

438 Tr. 994:1-19 (Condon) ("Q: Now do you recall, at the time you were conducting due diligence, being given log-in credentials to an investor website? A: Yeah, I -- I do remember being given something around Lotus Notes, if I wanted to go -- I can't remember, look at the specific case, I think -- I'm only remembering now that when I went to RD Legal's offices as part of my due diligence, they showed me kind of their repository of all the legal documents and all the operational steps they went through. And it seems like that may have been in Lotus Notes. There

289. Obtaining remote access to the Lotus Notes databases required an investor to go through over a dozen of pages of instructions and over 30 installation steps.[439]

290. Investors were more interested in the existence of the Lotus Notes database to obtain comfort that the Funds' positions were real, than in going through a "complicated system" and the thousands of documents that may be contained in it, and to the extent they spent time in the database, nothing changed their belief as to what assets the Flagship Funds were invested in.[440]

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was a big screen, like that over there, and they showed me, like, how they kept documents in a vault and how they access them, et cetera. Q: Did they demonstrate to you how they underwrite the different assets they acquire on behalf of the funds? A: Yeah. They focused on one or two cases. They said, Let's take case for example. Here's how we do it and these are the steps we do at various levels."); Tr. 3602:25—3603:13, 3611:17-19, 3653:21-24 (Gumins) ("Q: Did you meet him on or around September 11, 2011? A: Somewhere around there, I went to his offices with Paul Craig and spent about four hours there. Q: Where were those? A: In New Jersey. Q: Did he tell you anything about the opportunity? A: Yes, he did. He explained it extremely well and had a lot of documentation to back it up. So we went through documentation for about four hours on cases. Q: And what did he explain about the strategy? A: That he only invested in settled court cases, period. . . . and everything he had—everything he showed me, 100 percent convinced me we were doing settled, completely done cases . . . You sat there for four hours. You may not think you're smart. But you're pretty darn smart. He completely fooled you. He showed you all these cases and settled cases.").

439 E.g., Ex. 641 at 3-15; Tr. 4392:14-16 (Hakim) ("Q: How many steps were there to these instructions, I guess? A: 29, is it? Oh, 31.").

440 See Tr. 212:1-12 (Burrow) ("Q: And is that degree of transparency, in your experience, more, less, average, than what you would find with other funds? A: This fund is so unique. That's the whole definition of a private alternative fund, is that they're all very unique, and so trying to categorize them as far as transparency goes, the opportunity to look at the positions or at least a website that would show you those positions, that gave me confidence that if I wanted to look at it, I could. But again, anytime I asked for information, they sent it to me, including offering memorandum."); Tr. 271:24—272:13 (Ishimaru) ("Q. And what did you see on the site? A: A lot of cases that related to the loans that RD Legal had made. Q. Okay. And were you able to understand what those cases were? A. Not really. I didn't really try to either. I just wanted to confirm that they were there. Q. What do you mean by 'confirm that they were there'? A. That there were a lot of cases. I didn't spend a whole lot of time looking at it and analyzing. Q. Why not? A. Because I didn't think I would really glean anything to make my understanding of the fund any better."); Tr. 384:21—385:3 (Ishimaru) ("Q: And I believe you testified that you absolutely went through the database a bit? A: I did. Q: And there were a number of documents that were made available to you on the database, right? A: I saw a lot of things on there, but I don't specifically recall, and it wasn't like I went into details of all the positions."); Tr. 1057:15-1058:6 (Condon) ("Q: . . . I think Mr. Healy asked you about Lotus Notes, and I think you said you

291. Both of Respondents' experts Leon Metzger and David X. Martin were at various times confused about the difference between the Lotus Notes database and RD Legal's website, as well as about the contents thereof.[441]

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might have seen something that may or may not have been Lotus Notes at one of RD Legal's offices; is that generally correct? A: Right, yeah. They pulled up a database of the cases, and my recollection is all of the documents associated with it, all the due diligence they did on the attorneys, through which they made investments. Q: Did you ever access Lotus Notes other than the experience you just referred to? A: No. Q: Why not? A: I, it seemed very complicated to try to download this software system, and then I also knew that I wouldn't necessarily know what to look for and what it would tell me, so I endeavored to cover that when I went to visit the firm"); Tr. 1110:2-14 (Schaffer) ("Q: Okay. Were you ever given, like, credentials for the website or Lotus Notes? A: I don't think so, I did another on site at one point. Maybe at -- I did -- they have another office in Cresskill, New Jersey, and I did an on site there to meet some of the other people, and I don't see my notes from that meeting, but I remember at that meeting requesting a demo and having them work through, and we did some spot checking, showed me a list of different transactions. And I picked some and drilled down. And I did enough that I got credibility that this wasn't, you know, there was substance behind a lot of these deals and that the database was pretty good."); Tr. 1481:14-20 (Ashcraft) ("Q: So to be clear, you yourself were not able to sign on to look at the case files? A: Right. I actually called to see, because I was curious about seeing the cases. I figured that they would -- blank out anything that's sensitive. But -- for me it was more to just get an insight on how many cases were out there."); Tr. 3004:22—3005:19 (Levenbaum) ("Q: Now, Mr. Levenbaum, are you familiar with a -- are you familiar with a Lotus Notes program with respect to RD Legal? A: I know the term. You know, I'm from the old school, yeah. I used the paper approach. Q: Okay. A: My assistant is more familiar than I am. Q: Did you ever access the Lotus Notes files? A: She would have on my behalf. Q: Okay. So you never accessed them? A: No. Q: Okay. All right. Do you know if she accessed them? A: I think in the beginning she did, yes. Q: Okay. And do you know what she saw there? A: Nothing hit her in the face. Q: Okay. A: When she accessed -- I believe there was -- consistent with the transparency, some transactions were set out. Q: Okay. A: I didn't bother to get into details. The fact that they were there was important.").

See also Tr. 5194:25-5195:6 (Metzger) ("Q: And do you think the investor -- it would require a lot of work by that investor to figure out the positions in Lotus Notes? A: If you have many, many positions, whether it's on Lotus Notes or whenever it is, if there's lots of positions, there's a lot of work that's involved.").

441 Tr. 4243:5-10 (D. Martin) ("Q: But was there a list of all the positions on the website? A: I think you could see every position on the website. Q: Where was that? A: On the website."); Tr. 5194:1-17 (Metzger) ("Q: Before submitting your initial report, you didn't fully understand there was a difference between the Lotus Notes and the company's website, correct? A: Correct. Q: You wrote that report without fully understanding what was on Lotus Notes, correct? A: I thought that things that were, like, on the investor website were on Lotus Notes. I thought that Lotus Notes was the repository for not just the underwriting documents but for all the other papers. Q: And what is it you learned between submitting your initial report and your – and amending your report

292. In the opinion of Respondents' expert Leon Metzger, the Flagship Funds offered full investor transparency because they provided access to the Lotus Notes database, not because the Funds provided any list of positions to investors.[442]

a. But, Respondents' expert Leon Metzger also testified that full investor transparency to positions is not achieved by directing investors to a database that only contains six positions that a fund holds, but requires the funds to make available a listing of *all* positions in its portfolio.[443] Dersovitz agreed stating that "Transparency would have no relevance if you weren't talking about the document library."[444]

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on that topic? A: That documents that I thought were on the Lotus Notes -- Lotus Notes website were actually on the investor website.").

[442] Tr. 5181:13-25 (Metzger) ("Q: . . . And part of the reason you believe the funds offered total position transparency is you believe investors were given lists of investments, including the names of those positions, correct? A: No. I don't recall that they were given lists of investments. I thought that they had access to the Lotus Notes database. But . . . I know that some investors were given redacted Pluris reports. But in terms of total position transparency, I thought that was available on the Lotus Notes database, but not that they got lists. I thought they could see it.").

[443] Tr. 5184:3-5185:8 (Metzger) ("Q: What if investors were sent access to a demo library that included, say, six different positions but didn't include the other positions in the funds? Would that support your idea that the investors got total positional transparency into the funds? A: And if they asked, they would be able to see -- or if they asked, I want to see the other positions, and they were not allowed to see the other positions, I would say they were not allowed total positional transparency. But if they asked, Are there more positions or can I see the other positions? and they were shown the other positions, I would say they have total positional transparency. Q: So in that circumstance, do you think it would be incumbent upon the fund to explain there are more positions than the ones that are being first offered to you as an investor to look at? A: So given the context of the -- of what the investor requests, the investor request would be, I want to see all the positions, it's pretty clear that the fund would have to show all the positions. If the investor said, I would like to see a sampling of the positions, that would still be positional transparency in my view. If the investor was led to believe – the investor thinks they are seeing all the positions, but the investor -- but deliberately, deliberately the investor is not allowed to see all the positions, that is not what my opinion is.").

[444] Tr. 6264:22—6265:3 (Dersovitz) ("Q: It doesn't mean that Lotus Notes is your main database? A: That's our transactions. Transparency would have no relevance if you weren't

293. Respondents' expert Leon Metzger testified that in his experience he would not look at the contents of a database such as Lotus Notes.[445]

294. Respondents' COO and Co-Chief Investment Officer Amy Hirsch testified that Lotus Notes contained inaccurate information about the Peterson Matter.[446]

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talking about transparency -- excuse me. Transparency would have no relevance if you weren't talking about the document library.").

[445] Tr. 5197:25-5199:15 (Metzger) ("Q: Okay. But when an investment manager describes to investors what's in a portfolio, do you believe that investor should then go check to see what is actually in the portfolio . . .And what if you were investing your own money? Do you have a different view today than you did as expressed in your deposition? A: Ultimately you're really investing with the manager. You're -- and so, again, my own money, I don't know that I would look. Again, my experience was not to look. If someone hired me, I would definitely look.").

[446] See Ex. 607 at 13-14; Tr. 4580:19-4583:23 (Hirsch) ("Q: What is that document? A: This is a case summary that is provided by the underwriting department, which is Barbara's department. . . . These are also, by the way, Your Honor, found in Lotus Notes. These are samples of everything that would be in Lotus Notes. And this gives a summary of the case itself and all of the -- all of the checklists that they go through, page by page, and notification. Did they have an irrevocable power of attorney? Et cetera, et cetera. And then at the end, there is a review sheet for the offshore investment committee member that is looking at it to sign. . . . Q: And if you turn to Division Exhibit 607-13. A: Yes. Q: You'll see here, if we blow up this (d) section, it says, 'Describe pending appeals or proceedings in case and status of same.' Do you see that? A: I do. Q: And it says that the pending appeal or proceeding is the struggle between Luxembourg, Clearstream Banking SA, holder of the Citibank accounts, and the families of the hundreds of U.S. Marines injured or killed in the 1983 terrorist attack. Do you see that? A: I do. Q: Is that description accurate? A: I would not have worded it that way, no. Q: Okay. A: I don't think there was a struggle going on. I think there was money that was laundered in the United States that was never going back to Iran, and it was going to go to the victims. So I would not have written it that way, but that's how Barbara's group categorized it. Q: Okay. And I think you mentioned earlier in discussing the alpha dec document. Do you recall that? There was a slide there that talks about how things are beyond the point of appeals or other disputes? A: That was in the alpha presentation, yes. Q: And you believe that was accurate? A: I do. Q: And you believe it's accurate despite this? A: Yes. Q: And how did you come to that belief? A: Well, because I don't think this is accurate. And I believe that the statement that was in the alpha deck was a precise explanation of what the firm does. Q: Okay. So the firm's underwriting documents were not accurate? A: I don't think this particular sentence right here is the way that I would have written it, no. Q: Okay. And this was on Lotus Notes, correct? A: Yes. Q: And if you go to . . . page 607-14, and you'll see under (d) again where it says 'Name and address of payor that will fund settlement to pay purchased receivable.' And then in parens, quote, Obligor. And it describes the obligor as the Islamic Republic of Iran, dash, and then references the accounts at Citibank. Do you see that? A: Yes, I do. Q: Okay. And you take that to mean that the obligor, at least to underwriting, was the Islamic Republic of Iran? A: No. I think they wrote this the wrong way.").

4. Other Documents

295. Internally, Respondents circulated a "Monthly Book" presenting senior RD Legal personnel with specific portfolio information accompanying marketing materials such as the FAQ, DDQ and Alpha Generation presentation,[447] but certain of those documents were not ordinarily sent to potential investors unless specifically requested, if at all.[448] For example, Exhibit 341-I is a spreadsheet with a tab titled "Iran Snapshot," which begins with a header in large font that reads: "Snapshot of Iran Deals – Schedule Listing.[449] There is no evidence in the record of Respondents sharing this document with potential investors, or distributing Exhibit 341-D— a "DDQ Breakdown"—and Exhibit 341-E—a "DDQ Variance Report."

296. The "Portfolio Statistics" documents Respondents did share with investors described cases by "settlement type" regardless of whether they were settled cases or not, and did not mention Iran.[450]

297. Some investors received files listing position that either did not distinguish between the ONJ Turnover Litigations and other actually settled cases, or that explicitly referred to the ONJ Turnover Litigations as settled cases.[451]

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447 See, e.g., Ex. 341 (Apr. 26, 2013 email from Larochelle to Dersovitz, Markovic, Hirsch and Zatta, copying Chandarana) (attaching "Marketing Binder – March 2013.zip" file).

448 See Exs. 341A-341I.

449 Ex. 341 (at "Iran Snapshot" tab).

450 See, e.g., Ex. 545 (Jan. 22, 2013 email from M. Chandarana to W. Levenbaum); see also Ex. 352 at 2 (July 25, 2013 email to investors attaching "2Q2013 RDLC Portfolio Statistics").

451 See, e.g., Ex. 1319 (A. Ishimaru & P. Craig); Ex. 2689 at 9 (attachment to Tom Condon including line items with "Novartis Pharmaceutical Corp." as the "Obligor" and listing "MDL" under "Settlement Type); Tr. 964:20-965:7 (Condon) ("And . . . did you have any understanding at that time as to whether -- where Merck stood in terms of the order of concentration within the fund? A: It was the large -- it seemed to be the largest. It certainly was -- each case was separately listed or -- I don't know if each case was, but each receivable it had purchased was separately listed and the Merck case was there over and over and over again. So that caught my attention. And then just looking across and seeing the dollar -- the dollar amount and adding that up, I realized, wow,

298. Respondent RDLC also had a website where it deposited certain information.[452] The website was password protected,[453] and RD Legal would provide a password upon request to new investors or prospective investors who signed a NDA.[454]

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this is a big chunk out of the fund."); Tr. 1054:8—1055:21 (Condon) ("Q: Mr. Condon, can you read what it says next to case name, what the next column is? A: Settlement type. Q: What did you understand to be listed under settlement type? A: Well, I don't know what all these refer to, but -- Q: Is it fair to say different types of settlements? A: Does that say class actions? Q: Yeah. A: Yeah, different -- you know, I've heard – you know, I know what a class action case is, broadly speaking. I don't know what the terms mean. Q: And if we can just expand the screen to show a line link to a Novartis matter. So I'd like to have, for example, Novartis Pharmaceutical Corporation and then have listed the settlement type. Did that indicate to you whether Novartis matters referred to a settled matter? A: These are all types, I -- you know, did I focus on this column, no, I did not. But if I look at settlement type, I'm thinking these are all settlements, and they're different types of settlements that were settled. Q: You wanted to know if the cases referred to here as Novartis were actually cases that were ongoing litigation, unsettled? A: Yeah, I mean, through other documents we've gone over, I was very clear to ask that point. I wasn't going to rely on a spreadsheet like this to be able to understand it. It's got acronyms and terminology which I'm not familiar with. So I, again, went to the point and I want to be real clear there's no risk of the litigation going back into court, being appealed, et cetera. Right? So I can't tell you that I looked at this document and said, settlement type, hum, I wonder if some of these aren't settled. I made the assumption that they all were."). See also ¶ 365.

452 E.g., Tr. 5837:13-22 (Dersovitz) ("Q: If you take a look at the page 3, what level of transparency does RDLC offer investors? What understanding, if any, do you have about their document conveying or asking telling investors about the firm's website? A: We were encouraging people to use it and gather information for that purpose. Q: Specifically with regard to what documents? A: The audit financials, the quarterly AUPs, and whatever else was housed on the website at that time.").

453 Tr. 4360:12-18 (Hakim) ("Q: Thank you, Mr. Hakim. From late 2009 until April 19, 2015, was the website for RD Legal available to anyone who had access to the website through a password and login? A: You said from 2009 to when? To the time we took it down? Q: Yes. A: Yes, sir.").

454 Ex. 244 at 2 (June 22, 2011 email from Chandarana) ("When you sign and return the NDA, I will set you up with access to our website . . ."); Tr. 6473:19—6474:8 (Dersovitz) ("[Q:] So my question to the witness is whether the witness understands why Ms. Spadafora searched all of Meesha's emails, Kat's emails and her own emails and ACT for information pertaining to the website access. THE WITNESS: Because you would check their emails to see if somebody actually made a request to be provided with a user name. That's all. . . . And if someone had requested to have access to a website or to Lotus, it was -- it was -- the information was tallied and recorded here. That's all.").

299. For example, the website contained copies of the AUPs and Financial Statements that were in any event emailed to existing fund investors. The DDQ also explained that "Monthly Investor Statements," "Investor Performance Sheets," a "Policy and Procedures Report," and "Year-end audited financial statements" are distributed to investors in the Funds and that all but the monthly investor statements are posted on the investor web site.[455] The FAQs similarly noted that the annual audited Financial Statements, Agreed Upon Procedure reports were "posted on the Firm website."[456]

300. The website did not contain a list of the Flagship Funds' investments or individual positions.[457]

301. Some investors were told that visiting the website was optional because it was simply a repository of information they were emailed anyway.[458]

302. Other investors, such as some of Respondents' investor witnesses, did not visit the website or even know of its existence.[459]

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455 Ex. 39 at 14.

456 Ex. 42 at 3 (FAQ); see also Ex. 48 at 11 (June 2014 DDQ providing similar list of documents posted on website).

457 See, e.g., Tr. 424:5-24 (Garlock) ("Q: Did you ever get information so you could log onto the website? A: If I recall correctly, we did, yes. Q: If we move the chain of emails, do you see the one on the top of 302, page 2, provides you log-in information? A: I do. Q: If we could go to page 1, bottom email, do you see an email where you wrote 'Meesha, I took a look at the site. Is there a list of portfolio holdings available through that site, or do I need to get that from somewhere else?' Is that what you wrote? A: I did. Q: Why did you write that? A: We were concerned about the holdings in the strategy. Q: Is that something you found you were unable to figure out just by looking at the website? A: I was."); Ex. 302 at 1 (October 4, 2012 email from J. Garlock to M. Chandarana requesting list of positions after looking at website and response from M. Chandarana indicating that list of portfolio holdings was not on website).

458 See, e.g., supra n. 565.

459 See, e.g., Tr. 2743:1-11 (Geraci) ("Q: Did you ultimately access the website? A: I personally did not, but my partner did. Q: Which partner is that? A: That's the witness that will be appearing after me. Travis Hutchinson. Q: Did you direct Mr. Hutchinson to look at the website? A: No, I think that was part of our due diligence. We work as a team. We have -- we don't

303. Respondents' expert Leon Metzger, for example, did not think the website would be a repository of helpful information (despite having access to the Funds' marketing documents and Offering Memoranda) until after directed by counsel to do so.[460]

304. And yet, according to Mr. Metzger's testimony, for any witness who fails to conduct "full due diligence"—which he defined to include everything including reviewing RD

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individually do due diligence with respect to clients or investments we do it from a firm perspective."); Tr. 2785:20-25 (Geraci) ("Q: And I believe you were asked about RD Legal's website earlier; is that right? A: Yes. Q: Your testimony was that you never looked at the RD Legal website? A: I did not. I'm not much of a technical person.); Tr. 2825:18-22 (Hutchinson) ("Q: Do you recall whether there was an investor website at RD Legal? A: Yes, I do. Q: Did you ever access the investor website? A: I don't believe I did."); Tr. 3745:18-20 (Young) ("Q: Do you know whether RD Legal maintained an investor website? A: That's a great question. So the answer's no."); see also Tr. 5204:3-11 (Metzger) ("Q: So investors would focus more on a financial statement and some less? Is that fair? A: Some might do that. I think some, unfortunately, will focus more on the track record than operational due diligence. People do things differently. Q: Some might log onto a company website, some might not? A: Correct."); Ex. 718 (list showing that none of investors Mantell, Demby, Ashcraft, Wils, or Sinensky visited the website).

460 Tr. 5204: 12—5206:1 (Metzger) ("Q: In fact, before you wrote your report, it never occurred to you that it might be helpful to look at RD's -- RD Legal's website, correct? A: Before I wrote the first report, it was an uncertainty -- an uncertainty. It was a misunderstanding on my part. Q: It is fair to say that it didn't occur to you that it would be a good thing to log onto that website before you wrote your initial report? A: Once I realized that it was -- that it had different information, it definitely was something worthwhile logging onto. But I don't believe I saw -- I don't recall seeing any document on the website that I had not previously seen. In other words, I logged on, and the documents I saw were documents that I previously read. Q: And was it your understanding that whatever documents were on the website were documents that were otherwise sent to investors? A: No, not necessarily. I don't – because some documents -- for example, the audited financial statements would have been sent to investors who were investors. Prospective investors who did not receive the audited financial statements but logged onto the website would have seen -- but they would not have received those documents. So when you say investors received the documents, investors at a specific time might have received the -- a physical copy of the document, but other people who were -- became investors after the fact may have not received the document, but could have seen it? Q: So in all of the time leading up to the preparation of your initial report, did anybody ever tell you that there were things that were only on the website that were important? A: I don't recall hearing that.").

Legal's password protected website before investing—investments are caveat emptor, or "buyer beware."[461]

305. Respondents' expert David X. Martin mistakenly believed he could "see the [portfolio] positions" after "pull[ing] up the website."[462]

306. Other investors received access to only a portion of the website, that that had subscription documents but nothing else.[463]

307. Respondents allege that a memo was posted on the website sometime in 2012 regarding the "Citibank Exposure," but, as detailed further in Section III.D.1, that memo did not disclose to investors either the existence of the Peterson Turnover Litigation or its concentration in

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461 5325:2-18 (Metzger) ("Q ... I believe earlier today you spoke a bit about caveat emptor, and we discussed your view on somebody who did the kind of due diligence Mr. Sinensky did. Do you remember that? A Yes. Q Would you also take that same caveat emptor approach for an investor who did not log on to RD Legal's website, investor website before investing in the fund? A Yes, I think -- I think so... .").

462 Tr. 4246:3-5 (D. Martin) ("Q: What were you able to see when you were – A: I was able to see the positions. I pulled up the website. I took a look at it. I kicked the tires. And I thought it was good.").

See also Tr. 4241:9-20 (D. Martin) ("JUDGE PATIL: I think I know what you're talking about. But what specific thing did RD Legal have that you're talking about? What things? THE WITNESS: They had a website – they had a website that you could go ahead and access the data. JUDGE PATIL: Did you go to the website and access the data? THE WITNESS: I went to the website and took a look at it. You know, it was there. There's a lot of information there. There's a lot that you can get."); Tr. 4242:13-20 (D. Martin) ("Q: Are all of the positions in the portfolio on the website that you looked? A: The ones that I looked at were there. Q: I'm sorry. Which ones? A: I don't remember now exactly what positions I looked at months ago. What I did – I mean, I do remember looking at the portfolio – you know, the website."); Tr. 4243:5-10 (D. Martin) (Q: But was there a list of all the positions on the website? A: I think you could see every position on the website. Q: Where was that? A: On the website.").

463 See, e.g., Tr. 3004:10-14 (Levenbaum) ("Q: Yeah. So do you have recollection of having a password that lets you see the subscription agreement and the cover letter but not necessarily the rest of the website? A: Yes."); Ex. 541 at 1 (May 6, 2011 email from W. Levenbaum to M. Chandarana).

the Flagship Funds, and did not disclose that the Flagship Funds were purchasing claims directly from Peterson Plaintiffs.[464]

D. The Peterson *Special Purpose Vehicles*

1. The SPV Offering Memoranda

308. Respondents' employed confidential explanatory memoranda in marketing their Iran SPV (the "SPV Offering Memoranda").[465] RDLC was the general partner of the Onshore SPV and Investment Manager of the Offshore SPV.[466] In the "Summary of Terms" introducing the Onshore SPV, the Memorandum included the following "Risk Factors" relevant to investments in Peterson-related receivables:

a. "Although the selling Law Firms have earned the underlying fees as a result of success in the Reparation Case, collection of such fees depends on the success of the Turnover Litigation (as defined below), collection of distributions as a result of potential future actions against other Iranian assets and/or the successful enforcement of such Law Firms' performance guarantees."

b. "Although the Judgment Receivables were awarded in the Reparation Case, the payment of the judgment proceeds to a subset of the Reparation Plaintiffs (the 'Peterson Plaintiffs') is the subject of continuing litigation (the 'Turnover Litigation') regarding the turnover of assets of the Iranian central bank... it is not, however, predictable whether any [of the Peterson

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464 See infra at Section III.D.

465 Ex. 69 (September 2013 Memorandum for Onshore SPV); Ex. 70 (May 2014 Memorandum for Offshore SPV).

466 Ex. 69 at 16; Ex. 70 at 2.

Plaintiffs'] claims will be successful or how long the Turnover Litigation will continue before its final conclusion."

c. "[E]ven if the Turnover Litigation is successful... there can be no assurance that any amounts distributed out of the Blocked Assets will be sufficient to pay in full the Receivables purchased."[467]

309. The Risk Factor section concluded by referring readers to Sections 4 and 5 "for a more complete discussion of investment risk.[468] In Section 4 of the September 2013 SPV Offering Memorandum, Respondents reiterated that it was not predictable whether the Peterson Plaintiffs' "claims will be successful or how long the Turnover Litigation will continue before its final conclusion."[469] The Memorandum disclosed further that the Iran SPV's "principal investment risks ... include delay of the legal proceedings involved in the Turnover Litigation and failure, in whole or in part, of the Turnover Litigation to result in release of proceeds in full satisfaction of the Judgment Receivables."[470]

310. As late as May 2014, Respondents represented that the investment manager "plans to allow for a seven-year duration" for the Peterson investments.[471]

311. In Section 5 of the September 2013 Iran SPV Offering Memorandum, titled "Risks Associated with Investments," Respondents again noted the "risk the Turnover Litigation may be unsuccessful, in whole or part, and ... that any portion of a purchased Receivable not satisfied out of the Turnover Litigation proceeds will not be paid by Iran or out of any Iranian assets other than

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467 Ex. 69 at 20.

468 Ex. 69 at 11.

469 Ex. 69 at 10-11.

470 Ex. 69 at 17; see also Ex. 70 at 23.

471 Ex. 70 at 23.

the Blocked assets."[472] Investments in Peterson receivables, the Iran SPV Offering Memorandum explained, "are dependent on successful outcomes to ongoing legal proceedings and, potentially, legal or political negotiations."[473] These risks existed, Respondents explained, even though "final non-appealable judgments have been reached in the Reparation Case."[474]

312. The Iran SPV Offering Memorandum then disclosed, in greater detail, risks relating to the Peterson receivables ranging from "Constitutionality" to "U.S. Relations with Iran."[475] Such risks were not disclosed to potential investors in the Flagship Funds.[476]

313. Respondents did not identify the foregoing risks in their Flagship Fund documents, including marketing materials and offering memoranda.[477]

2. The Citibank Memorandum

314. On February 27, 2012, Mr. Larochelle circulated to Dersovitz and Mr. Zatta the "first draft of the Citibank exposure exception memo."[478] Dersovitz exchanged a "slight re-write"

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472 Ex. 69 at 18.

473 Ex. 69 at 18.

474 Ex. 69 at 19.

475 Ex. 69 at 20.

476 See, e.g., Tr. 2146:24—2147:23 (Furgatch) ("Q: And if we move to page 25 [of Ex. 1778, the SPV Offering Memorandum] under that section -- 25 of the exhibit, you'll see the description of 'Risks related to constitutionality.' Do you see that? A: Yes. Q: Were those the risks described under constitutionality ever disclosed to you as risks relating to the flagship funds that you invested in? A: No. Q: How about right beneath there, you'll see another risk, the U.S. relations with Iran. Did anybody at RD Legal ever disclose to you before you invested in the flagship fund that that fund had a risk related to U.S. relations with Iran? A: No. Q: Would you have wanted to know if the flagship funds were exposed to risks relating to constitutionality or a risk related to U.S. relations with Iran? A: You'll have to forgive me. I read this, and it's like, I don't know who would invest after reading this. I mean, of course I would be interested to know. I mean, if -- I would never invest in this.").

477 See generally Section III.A (describing contents of Respondents' marketing materials and offering documents).

478 Ex. 272 at 2 (Feb. 27, 2012 email from Larochelle).

on February 29, 2012.[479] Mr. Larochelle responded by sending a "more polished" version of the draft "corrected by Leo" for Dersovitz to review and advise.[480] Dersovitz circulated a further draft with his changes.[481]

a. The version of the memorandum circulate by Dersovitz states: "Due to a large increase in the amount of advances for Citibank, N.A., we now have a need to increase its concentration limitations." The memo notes that "As of January 31st, we have advanced $15 million solely on this litigation to two law firms, exceeding the 10% limit imposed by its level 2 rating." The document describes the Peterson litigation in Clearstream I:

> This exposure stems from a Consolidated Actions litigation with the sovereign nation of Iran which involves a $2 billion battle between Luxembourg's Clearstream Banking, S.A. and the families of U.S. marines killed or injured in a 1983 terrorist attack on a Marine barracks in Beirut, Lebanon. These funds have now been fully segregated by Citibank and removed from the Clearstream account by virtue of President Obama's February 6, 2012 Executive Order. . . . Furthermore, now that the assets are blocked, they are subject to Section 201 of the Terrorism Risk Insurance Act of 2001 ("TRIA") . . . . In short, the primary risk of the transaction is the time it will take to complete the remaining legal steps in the Federal District Court of NY, before the monies can be turned over to the lawyers for distribution. Not much different from the standard risk of time that we take **(albeit admittedly this is longer)**. The readers attention is pointed to the fact that the effect of TRIA on the funds leaves the collection of the blocked assets a certainty.[482]

b. The draft memorandum continued:

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479 Ex. 272 at 2 (Feb. 29, 2012 email from Dersovitz).

480 Ex. 272 at 1 (Feb. 29, 2012 email from Larochelle).

481 Ex. 272 at 2 (Feb. 29, 2012 email from Dersovitz).

482 Ex. 272A (emphasis added).

> This matter has manifested itself as a new opportunity for our portfolio. We believe that the payment default risk of this institution is very low over the 2-3 year time period that we expect this matter to remain outstanding. . . . This financial risk is that of Citibank alone. . . . Going forward, we will be enacting a 30% limitation for Citibank exposure. . . . however with the low expected risk, we may be increasing our exposure with Citibank. This limitation along with inflows should keep our exposure at a steady balance until the settlement pays fully and we are able to draw down our receivables.[483]

315. The final version of the Citibank Memorandum, which twice describes Peterson as a "settlement," was dated February 28, 2012,[484] and posted on the RD Legal investor website on March 12, 2012.[485] Dersovitz testified that the Citibank Memorandum was intended to "connect the dots" for investors "that the Citibank exposure that they saw on the financials related to a position involving Iran, Clearstream, restraining funds and so on."[486]

316. In February of 2012, as individuals at RDLC were drafting a memo tying the "Citibank" exposure to the Peterson Turnover Litigation, individuals at RD Legal were also telling investors that such exposure "i[s] actually not Citicorp. It's money that's held at Citicorp. It's money that was frozen by the U.S. government that the Iranian government owns."[487]

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483 Ex. 272A.

484 Ex. 1324.

485 Ex. 3096 at 7, Row 193 (showing 02.28.12_Citibank_Temporary_Limit_Increase.pdf).

486 Tr. 5586:11-21 (Dersovitz) ("Q: Was it placed on the website on or around the time that it was drafted in 2012? A: Yeah. Q: Why was it placed on the website? A: Because I wanted to connect the dots for all of our investors. Put aside the fact that even at this point you couldn't shut me up about this trade. I wanted to connect the dots for all investors that the Citibank exposure that they saw on the financials related to a position involving Iran, Clearstream, restraining funds and so on.").

487 Tr. 332:8—333:3 (Ishimaru) ("Q: I think you testified yesterday that you had spoken at some point to Mr. Rowella about the concentration; is that correct? A: Yes. Q: What did he tell you, again, about what it was? A: So I believe Mr. Craig was also on the phone with me, and we said, What is this Citicorp? And Mr. Rowella said, Well, it's actually not Citicorp. It's money that's held at Citicorp. It's money that was frozen by the U.S. government that the

317. Dersovitz believed that the Executive Order of February 5, 2012, made it such that the "obligor" for the investment was no longer Citibank, but the U.S. Government.[488]

318. The Citibank Memo[489] further obfuscated the presence of the Peterson positions in the Flagship Funds' portfolio and the nature of the ultimate obligor.

a. The Citibank Memo was not emailed or otherwise sent to investors or prospective investors,[490] even though at the hearing Respondents' counsel

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Iranian government owns. Q: Was that before or after this email? A: I don't recall. Q: Okay. A: Actually, I think -- yeah. It must be before this email, because we spoke to Mr. Rowella right after we received this email with this Excel spreadsheet with the top obligors stating that Citibank had like 28 percent. Q: Is that the spreadsheet you saw yesterday? A: Yes."); see also Ex. 1319 (February 17, 2012 from R. Rowella to A. Ishimaru and P. Craig with top 5 obligor exposures); Tr. 304:10-25 (Ishimaru) ("Q: Ms. Ishimaru, I think you mentioned that you were shocked by this information. Did you do anything after you received this e-mail? A: Yes, I contacted Mr. Rowella and asked him what this exposure was. Q: What did he say? A: He said that, in fact, it was not Citibank, but it was money that was held at Citibank that was frozen by the U.S. government that was the Iranian government's assets, and it was money that could be used to pay to the families of the victims of this Iranian terrorist attack. Q: Okay. And was this the first time you heard of this fund of Iranian assets? A: Yes.").

488 Tr. 6038:4—6039:1 (Dersovitz) ("JUDGE PATIL: I'm sorry. Excuse me. Here you're making a distinction between two different U.S. Treasury categories as different obligors. What's the distinction between how you break it down here and how you break it down in your annual audited financial statements? THE WITNESS: Okay. If you go to 11 -- Can you flip back to the earlier one? Would it be possible? To that earlier email. It was the timing of the year. There was a subsequent -- so at the beginning of March – if you recall, February of -- February 28, President Obama issued the blocking order. So with the blocking order, it was now under the control of the U.S. Government. So our -- we're talking about March. Our auditors would have had a subsequent event, at the year-end '11, that would have required them to change the classification going from '11 to '12 because of the blocking order. The blocking order now changes it. It was no longer Citibank. It's now under the control of the government."); see also infra ¶ 107.

489 Ex. 1324.

490 Tr. 3551:16—3552:7 (Dersovitz) ("Q: And was the purpose of the Citibank exposure memo to increase the concentration limits for exposure to the Iran case? A: As well as to notify people of the fact that Citibank was tied to the Iran case. It served multiple functions. Q: So did you send this Citibank exposure memo by mail to investors? A: It was posted on our website. Q: But did you send it by mail? A: No. Q: Was it sent to potential or actual investors by e-mail? A: No. Q: Was it shared in any way other than posting on the website? A: Not to my knowledge.").

tried to suggest to an investor that it had been in fact sent to him.[491] Other documents were routinely emailed to investors and prospective investors.[492]

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[491] Tr. 224:9-18 (Burrow) ("Q: So as of February 28, 2012, investors in the RD Legal fund were provided indication that the fund was already invested in the Iran case, right? A: If this letter is something that I received, I don't recall receiving it. Q: Okay. A: Did you say it was a letter that was sent out, or where did this come from? Q: Yes, to investors. A: Okay").

[492] See, e.g., Ex. 633 (Dec. 15, 2008 email from R. Dillon re "RDLF Policy & Procedure Changes"); Ex. 261 at 2 (Dec. 3, 2009 email from R. Dillon re: "RDLF Concentration Limit Changes"); Ex. 548 (July 11, 2014 email stating "Dear Investor" and attaching a report that RDLC "intends to file to withdraw its U.S. registration as an investment adviser"); Ex. 451 (May 29, 2015 letter to investors regarding freeze of Offshore Fund); Tr. 1136:25—1137:7 (Schaffer) (explaining that Ex. 451 was received by him) ("Q: Let me ask you to turn to Division Exhibit 451, please. Do you recognize this document? A: I do. Q: What is this? A: This is a letter that RD Legal sent to their investors. Q: Okay. Have you seen it before? A: I have."); Ex. 486 (July 16, 2016 letter to investors regarding filing of OIP); Tr. 1138:19-23 (Schaffer) (explaining that Ex. 486 was received by him) ("Q: What about Division Exhibit 486? A: Yes. This is another letter that investors received. Q: Did you receive this? A: I did receive this one, yes.").

See also Tr. 5588:17—5590:14 (Dersovitz) ("JUDGE PATIL: . . . If you wanted people to know about this, why didn't you just email all of the investors? THE WITNESS: Because then tomorrow investors wouldn't have access to it and wouldn't remember. This -- think about law office failure or office failure. The reason everything is compiled in one place is that I no longer have to worry that someone failing to send something to somebody. It's all in one place. The biggest issue -- the biggest problem people have is human failure. This takes human failure out of equation. By posting it on the website, everything is there. There is a whole field in engineering called human factors engineering where you're designing products in such a way that you prevent foreseeable injuries. And it's the same thing with running a firm. You know that mistakes happen. By keeping a central repository of information, I am no longer dependent on an investor asking the right questions or my own staff communicating the right information. I've taken that paradigm off the table. JUDGE PATIL: Okay. I'm following you. But I guess my question is a little different than that. I see it is on the website. I see how that takes out the element of human error. But what is the difference between this document and all the other documents on the website which were emailed to investors and put on the website? What was different about this that led you not to send it out, whereas you sent all the other things out or had Woodfield send them out? THE WITNESS: The decision was made to post it there. At that point in time, I don't know that we were sending every single thing out. So this is two, three years after we launched the sites. The procedure's developed over time. At that point in time, February of -- we had only made attorney advances. And there was . . . a normal fee factoring -- legal fee factoring transaction. I just wanted to make sure that -- and I did this personally. I wanted to make sure that everyone knew. And there was -- I thought posting it was my safest way of dissemination.").

b. The express admission that the Peterson concentration's anticipated duration is "longer" than the "standard risk of time" in the Funds was removed prior to the posting of the final draft.[493]

c. The Citibank Memo noted that Respondents must "increase its concentration limits" because advances of $15 million to two law firms exceed the "10% limit imposed by [Citibank's] level 2 rating."

d. The Peterson exposure had exceeded the "10% limit" since at least June 2011.[494] Nothing in the Citibank Memo discloses the then-current concentration level of the Peterson position.

e. The memo briefly describes the Peterson Turnover Litigation, before stating that "Due to the confidential nature of this case, we are unable to give full details on its standing."[495] This sentence does not appear in the earlier draft.[496]

f. The Citibank Memo represents at various points that: (i) Citibank, N.A., is "the institution responsible for the payment of, in this case, a single litigation[;]" and that "we may be increasing our exposure with Citibank[;]" (ii) "Iran must pay $2.7 billion to the victims of these attacks[,]" and that

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493 Cf. Ex. 272A ("Not much different from the standard risk of time that we take (albeit admittedly this is longer).") with Ex. 1324 (quoted language is deleted).

494 Ex. 2 at Cell O-2 (Peterson positions were 17.56% of the Funds' portfolio).

495 Ex. 1324.

496 Ex. 272A.

"[t]hese funds are Iranian[;]" and (iii) the "obligor affected by the litigation is Clearstream with the funds segregated out at Citibank."[497]

g. The concluding paragraph of the Citibank Memo states that

> Going forward, we will be enacting a 30% limitation for Citibank exposure. For the future, we are expecting plenty of new capital inflows; however with the low expected risk, we may be increasing our exposure with Citibank. This new limitation along with our inflows should keep our exposure at a steady balance until the settlement pays fully and we are able to draw down our receivables.[498]

h. The Citibank Memo does not explain which find is investing in the Peterson case.[499]

319. In fact, Dersovitz was already contemplating engaging in transactions with the Peterson plaintiffs.[500]

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497 Ex. 1324, cf. Ex. 12 at 5 (2011 Onshore Fund Financial Statements dated April 27, 2012 noting that obligor is "U.S. Government").

498 Ex. 1324.

499 See Ex. 1324; see also Tr. 257:15—259:8 (Burrow) ("MR. TENREIRO: Okay. Let me ask Mr. Murphy to please pull up Respondents' Exhibit 1324. . . . Q. Did anyone e-mail you this document? A: I don't recall. Is there a date? Q: Well, there's a date on the document that says February 28, 2012, but do you recall if anyone e-mailed you or otherwise sent you this document at any time? A: No. . . . Q: Would you remember receiving this document if you had received it? A: Absolutely. Q: And reading this document sitting here today, does this document tell you -- let me take a step back. Is it fair to say that RD Legal Capital managed more than one fund? A: Yes. Q: Okay. Can you tell me which of the RD Legal entities is invested in the case referenced in this document? A: No.").

500 Tr. 5908:5-18 (Dersovitz) ("Q: Mr. Dersovitz, in early 2012 right around the time you got this e-mail [Ex. 1312 (Feb. 7, 2012 email from Perles)], did you have -- what was your intent with regard to the size of the Peterson investment that you were intending to get into at the time? A: A light bulb went off, that's the only way to put it. This is one of the most fascinating opportunities I had ever seen. Shortly after this, I don't remember the exact time frame, but certainly midyear point I became aware of Section 502 in the draft legislation or 503 that later turned into Section 8772 of the Iran Sanctions Act. **And we internally had already begun thinking about how to market and grow this opportunity because it was -- the opportunity set was a billion 6.**" (emphasis added)); Tr. 5905:7—5906:3 (Dersovitz) ("Q: Take a look at Exhibit 1312. It's an e-mail from you to members of your staff forwarding another e-mail from Mr. Perles on February 7, 2012. . . . And it says here 'Is TRIA it is the bridge between the blocking action and the

320. Between June 2012 and July 2012, the Peterson position exceeded the "30% limitation for Citibank exposure."[501] Respondents did not publish or send investors or prospective investors a new exposure limitation memo,[502] despite the representation that Respondents would do so prior to increasing the Peterson exposure.[503]

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distribution of funds?' Do you know what -- do you have an understanding what Mr. Perles was referring to in terms of the bridge being the blocking action and the distribution in TRIA? A: Just another nail in the coffin. So when President Obama locked all assets in America in February of 2012, the blocking order invokes the Terrorist Risk Insurance Act and that mandates that the blocked funds get distributed to plaintiffs. Q: And you describe that as another nail in the coffin. Was the blocking order necessary, in your mind, to achieve a recovery of those restrained assets? A: No, but I was already thinking about the next trade. Q: What trade? A: The plaintiffs.").

[501] Ex. 2 at Cells O-14 and O-15 (showing increase of Peterson concentration from 29.63% to 34.59%).

[502] Tr. 3815:19—3816:7 (Dersovitz) ("Q: And my question is whether you, in fact, did increase, after the February 28th, 2012 memo, the limits for Peterson. A: If I recall correctly, the memo said that we would probably increase it later on. And by the way, those were self-imposed thresholds, not hard and fast requirements of the offering documents. Q: So after stating an intention to raise what you're describing as thresholds, did RD Legal take any action after February 28th, 2012 to raise those limits or thresholds for the Peterson exposure in the flagship funds? A: Nothing that I recall other than the February 28th, 2012 memo."); Tr. 3817:7—3818:14 (Dersovitz) ("Q: And at line 12, it reads: 'QUESTION: Okay. And I believe you've explained where one might find concentration limits. I want to get back to my question before of: Were the concentration limits for any of Peterson related obligor ever raised above 30 percent? ANSWER: Certainly. QUESTION: Were you involved in that raising? ANSWER: I was part of a collaborative process that was involved in taking on more exposure.' Q: Did you give those answers to those questions? A: Yes. Q: And when you were referring to the concentration limits, certainly being raised for a Peterson related obligor above 30 percent, were you referring then to the February 28th, 2012 memo? A: Well, initially, I would respond by saying the fact that we would or could increase it was discussed in the memo. And then I would add to that that there were ongoing, constant discussions amongst the group of managers about whether -- what we should do, vis-à-vis Peterson, increasing the concentration and so son. Q: When you say 'among the group of managers,' do you mean managers at RD Legal? A: Yes, sir. Q: And is the decision to raise Peterson-related obligor limits recorded anywhere in RD's documents other than the way you believe it's described in the February 2012 memo? A: Other than the fact that we had the right to do so in the offering materials and the memo itself of February 28th, there are no written -- as I recall, there are no other written memos regarding the increase.").

[503] Ex. 1324; Tr. 3820:1-6 (Dersovitz) ("Q: After February 28th, 2012, you informed investors that if you were going to raise the Peterson exposure, you would consult with them before doing so, correct? A: I believe that's what the memo said. I'm not 100 percent certain."). See also ¶¶ 422-425.

a. The Flagship Funds' fund administrator, Woodfield, receives subscription documents from each investor in which the investor selects in what manner (email or mail) and to what address they would like to receive documents from the Flagship Funds.[504]

321. In the Funds' 2011 audited Financial Statements, circulated one or about April 27, 2012, Peterson positions are listed in the Condensed Schedule of Investments as "U.S. Government" instead of as "Citibank" and there is no note or other indication in the Financial Statements to indicate to a reader that the "U.S. Government" exposure is in fact an obligation of the Islamic Republic of Iran or the Citibank exposure referred to in the Citibank Memo.[505]

322. Despite a section on finance concentrations noting the concentration limits, nothing in the 2011 financials indicates that an exception to such limits has been made by the Respondents.[506]

323. When Dersovitz was able to close deals with non-Fund investors to invest in the Peterson-related assets, he did not dilute the Peterson concentration in the Flagship Funds, but rather executed them in the names of separate investment vehicles.[507]

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504 Tr. 5008:10-20 (Franiak) ("Q: So one of the services you described that Woodfield provides is sending communications and documents to investors; is that correct? A: Yes. Q: And how does Woodfield know where to send those documents? A: From the subscription documents that they fill out. They would provide us with their address, email address, and I believe -- typically they would indicate on the document how they want to receive a document.").

505 See ¶¶ 237-238. See also Tr. 6456:12-24 (Dersovitz) ("Q: And did you come to learn at some point that the financial statements now said something about U.S. Government rather than Citibank? A: Yes. I would have -- yes. Q: And because you wanted to connect the dots for investors regarding Peterson, did you post another memo explaining that the U.S. Government reference in the -- in the financials referred to the Peterson case? A: Not to my knowledge. Q: Did you send out any mass email clarifying that for investors? A: Not to my knowledge.").

506 See ¶ 255.

507 Tr. 5944:25—5946:1 (Dersovitz) ("Q: And as part of that, did you set up any phone calls between the folks at Reed Smith and Silver Point? A: And their counsel, several calls. Q: And

3. The Peterson Timeline Marketing Document

324. Respondents used two marketing documents to market the Iran SPV; the "Summary of Investment Opportunity" document (the "Peterson Timeline")[508] and the "Memorandum of Terms for Private Placement" of the Iran SPV ("Iran SPV Termsheet").[509]

a. When Respondents presented prospective investors with these documents, Respondents described the Iran SPV as a "new strategy," and investors understood the strategy to be separate, i.e., "very unique, very different than the" Flagship Funds.[510]

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that was part of the marketing process that you discussed? A: That was part of the initial education process and part of -- part of their due diligence on this trade. Q: Was that in around late 2013 or '14? A: Yes. Q: Did that deal go through? A: Yes, we closed that transaction. Q: What about an entity called Davidson Kempner? A: We closed the transaction with them as well. Q: When you say 'we closed the transaction,' that was something in connection with the Peterson opportunity? A: Yes. Q: And who was Davidson Kempner? A: They are another large fund, approximately 25 to 40 billion in size, that has a special situations group as well. Q: And for these transactions was Silver Point and Davidson Kempner, were those in the main fund or something different? A: They were in SPD, special purpose vehicles that were owned, SPV. Owned by them, so we originated the trades in the name of those two respected entities.").

508 Ex. 36 (August 2012 Peterson Timeline); Ex. 36 (August 2013 Peterson Timeline).

509 Ex. 45 (August 2013 Iran SPV Termsheet).

510 Tr. 152:4—153:6 (Burrow) ("Q: Thank you. Now we can set that aside and can I direct your attention to Division Exhibit 372. . . . What is this document? A: This is a document that I sent to one of my clients who I have been doing business with for 15 years and he likes unique strategies. He was the person that made the first investment in the RD Legal of all of my clients. This e-mail was an e-mail I sent to him after I had a phone call with Roni and Katarina with regard to a brand-new strategy that I believe they had termed the Special Opportunities Fund, and the reason the phone call was set up is **that they reached out to me and said, 'We have a new strategy. We want you to hear about this and see if your clients have an interest.'** So I took the call. We set it up. **The strategy as described was very unique, very different than the RD Legal fund that we had already invested in,** and I didn't commit at all to putting money in there. I knew of all my clients there would only be one guy, and this particular client may have an interest. So I was very transparent in saying, 'Hey, I'm not backing this. I'm just letting you know this type of thing exists.' I called it a 'flyer,' quote unquote, which is -- you know, sort of refers to the idea of it being way out there and not the same type of strategy that we're used to." (emphasis added)).

325. The 2012 Peterson Timeline sets forth the background of the Peterson litigation, including the 2007 judgment against Iran, the 2008 registration of the judgment, filing of the 2010 complaint against Citibank, Clearstream, Bank Markazi, and Iran, and the 2012 Executive Order 13599.[511]

a. There are discussions of "Key Factors" analyzing the merits of the Turnover Litigation.[512]

b. The "Timeline to Resolution" section notes that it "likely will take until at least July 2013 to resolve all of the issues raised **in the consolidated litigation and obtain a favorable judgment. Appeal of a favorable judgment likely would follow** and be concluded sixteen to eighteen months later, around December 2014."[513]

c. In the "Investment Steps, Funding and Settlement Procedures" section, the 2012 Peterson Timeline notes that "RD Legal has been working in concert with" the Peterson and communicating with plaintiffs about the potential for cash advances.[514] It also notes that "RD Legal has deployed $25 million to the Peterson Plaintiffs' attorneys to be repaid on turnover of the Citibank account."[515] It further states that "RD Legal will purchase future cash flows from the Peterson Plaintiffs at a discount."[516]

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511 Ex. 36 (August 2012 Peterson Timeline).

512 Ex. 36 (August 2012 Peterson Timeline).

513 Ex. 36 at 2 (August 2012 Peterson Timeline) (emphasis added).

514 Ex. 36 at 2 (August 2012 Peterson Timeline).

515 Ex. 36 at 2 (August 2012 Peterson Timeline).

516 Ex. 36 at 2 (August 2012 Peterson Timeline).

d. Italicized single-spaced disclosures at the end of the document refer to RD Legal Capital, LLC; RD Legal Special Opportunity Fund L.P.; RD Legal Special Opportunity Fund, Ltd.; and RD Legal Funding LLC.[517]

e. Although at the time, the Iran SPV had not been formed as a legal entity,[518] there is no indication in the 2012 Peterson Timeline about the current status of the Iran SPV.

326. The 2012 Peterson Timeline makes no reference to the Flagship Funds.[519]

327. Respondents would provide the 2012 Peterson Timeline to prospective investors even without a non-disclosure agreement ("NDA").[520]

328. The 2012 Peterson Timeline was sent to at least one prospective investor, Carter Pottash in January 2013 without an NDA.[521]

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517 Ex. 36 at 2 (August 2012 Peterson Timeline) ("RD Legal Capital, LLC is an investment adviser . . . . [not a solicitation for] RD Legal Special Opportunity Fund L.P., or RD Legal Special Opportunity Fund, Ltd. . . . [RDLC and] RD Legal Funding LLC . . . disclaim any and all liability relating to this information. . . .").

518 Tr. 5530:14-19 (Dersovitz) ("Q: By August 15 of 2012, had a special purpose vehicle for the Iranian investment opportunity been formed? A: No. Q: So this was early marketing? A: This was -- correct.").

519 Ex. 36 (August 2012 Peterson Timeline).

520 Tr. 6520:23—6522:8 (Dersovitz) ("Q: Do you know if the Pottashes signed a nondisclosure agreement before they got those agreements? A: We wouldn't require an NDA for that two-page flyer. Q: Even though it disclosed the existence of the Iran opportunity? A: No. That's not quite my testimony. Q: Well, did the fact that -- did you believe the two-page flyer, as you call it, disclosed the existence of an Iran opportunity? A: Yes, it did. But -- yes, it did. Q: And that fact didn't stop you from sharing the two-page flyer without requiring a nondisclosure agreement, correct? A: And you're not recalling my testimony. Q: Would you like to answer the question, Mr. Dersovitz? A: Your question? Q: The fact that the two-pager, special opportunity document, disclosed the existence of the Iran opportunity did not stop you from sharing that two-pager with potential investors without them signing an NDA; is that correct? A: That is correct. Q: If you look at 36, you recognize this document as something that you've testified about previously? A: Yes, I do. Q: That's the -- at least the 2012 version of the two-pager? A: I take your word for it. Q: I'll show you on the bottom of . . . page 2, so you don't have to. It says August 15, 2012, right? A: Yes.").

a. Ms. Markovic sent Mr. Pottash the 2012 Peterson Timeline with materials for the Flagship Funds stating: "As a brief background, our primary strategy is factoring legal fee receivables associated with settled litigation."[522]

b. Ms. Markovic also notes that: "In addition to our fund offerings, we are also in the process of raising an SPV which will invest in one large opportunity:" i.e., the Peterson litigation.[523]

c. At the time, the concentration of the Peterson positions in the Flagship Funds was 47.1%.[524]

d. Despite reviewing the Flagship Funds' materials side-by-side with the 2012 Peterson Timeline, Mr. Pottash was confused about whether the Peterson receivables were in the Iran SPV, the Flagship Funds, or both.[525]

329. The 2013 Peterson Timeline is similar to the 2012 Peterson Timeline in format, beginning with a slightly expanded timeline incorporating events in 2013, including the grant of partial summary judgment in the Turnover Action and the transfer of the blocked assets to a trust.[526]

a. The 2013 Peterson Timeline continues with a section "The Investment Opportunity and Timeline to Resolution" noting that RDLC "is seeking

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521 Ex. 321 at 27-28 (2012 Peterson Timeline attached to Jan. 27, 2013 Email from Markovic).

522 Ex. 321 at 1 (Jan. 27, 2013 Email from Markovic).

523 Ex. 321 at 1 (Jan. 27, 2013 Email from Markovic).

524 Ex. 2 at Cell 21-O.

525 Ex. 1598 (Jan. 30, 2013 email from Pottash to Slifka).

See also Tr. 6500:21—6501:1 (Dersovitz) ("[discussing Ex. 1598] Q: Do you recognize that to be the same email address that we just looked at? A: Yes, I do. Q: So do you understand that to be the Pottash's email? A: Yes, I do.").

526 Ex. 46 (August 2013 Peterson Timeline).

investors to participate in a special business opportunity—financing the litigation receivables of the Peterson Plaintiffs' judgment."[527]

b. The 2013 Peterson Timeline analyses the merits of the Turnover Action and states that the "pending appeals will likely take eighteen months to resolve, concluding sometime in 2015."[528]

c. The "Investment Steps, Funding and Settlement Procedures" is largely identical to the 2012 Peterson Timeline, except the express reference to "RD Legal has deployed $25 million" in the 2012 Peterson Timeline is replaced by a general "RD Legal has deployed moneys to the Peterson Plaintiffs' attorneys[.]"[529] The 2013 Peterson Timeline notes that "RD Legal has purchased and will continue to purchase future cash flows from the Peterson Plaintiffs at a discount."[530]

    i. Investors, had they seen this language, would not have interpreted this language to mean that the Flagship Fund had invested in Peterson-related positions.[531]

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527 Ex. 46 (August 2013 Peterson Timeline).

528 Ex. 46 at 2 (August 2013 Peterson Timeline).

529 Cf. Ex. 46 at 2 (August 2013 Peterson Timeline) with Ex. 36 at 2 (August 2012 Peterson Timeline).

530 Ex. 46 at 2 (August 2013 Peterson Timeline). Cf. Ex. 36 at 2 (August 2012 Peterson Timeline) ("RD Legal will purchase future cash flows from the Peterson Plaintiffs at a discount.").

531 Tr. 1515:13—1516:5 (Ashcraft) ([regarding Ex. 2942 at 6] "Q: The bottom of this exhibit where it says, 'Investment steps.' If you had reviewed this at the time, would you have seen that RD Legal had already purchased and will continue to purchase future cash flows from the Peterson Plaintiffs at the discount? [objection overruled] THE WITNESS: Had I read this, which I did not, I would have taken the context of this separate fund, because it would have been a generic name as RD Legal; not as the RD Legal LF of whatever the acronyms he used for the general fund.").

d. Italicized single-spaced disclosures at the end of the document refer to RD Legal Capital, LLC; RD Legal Special Opportunity Fund L.P.; RD Legal Special Opportunity Fund, Ltd.; and RD Legal Funding LLC.[532]

330. There is no indication in the 2013 Peterson Timeline about the current status of the Iran SPV.[533]

331. The 2013 Peterson Timeline makes no reference to the Flagship Funds.

a. Even Respondents' own chief compliance office did not understand that the Peterson-related trades were not limited to the Iran SPV.[534]

332. The Peterson Timeline was posted to the RD Legal website under the "Special Opportunities Fund" tab—not the "Flagship Funds" tab.[535]

4. The SPV Summary of Terms from April 2012

333. The Iran SPV Termsheet described the general structure and opportunity of the Iran SPV.

334. It stated that the manager was RDLC, that the structure was an SPV with a duration of 2-3 years, with a 0% management fee and 20% performance fee, with closing dates in

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532 Ex. 46 at 2 (August 2013 Peterson Timeline) ("RD Legal Capital, LLC is an investment adviser . . . . [not a solicitation for] RD Legal Special Opportunity Fund L.P., or RD Legal Special Opportunity Fund, Ltd. . . . [RDLC and] RD Legal Funding LLC . . . disclaim any and all liability relating to this information. . . .").

533 Ex. 46 (2013 Peterson Timeline).

534 Tr. 6403:8-20 (Gottlieb) ("Q: We were discussing earlier today the Marine barracks or Peterson case? A: Yes. Q: And am I correct in understanding your testimony to mean that at some point you came to understand that RD Legal was doing something relating to those cases? A: Yes. Q: Did you have any understanding as to which, if any, RD Legal funds were investing in those cases? A: I believe they were the special opportunity funds. Q: Okay.").

535 Ex. 712 (screenshot of Special Opportunities Fund tab).

September and October 2013.[536] The April 2012 version noted that the closing date for investments was April 30, 2012.[537]

335. The Iran SPV Termsheet stated that RDLC was "seeking investors in a special business opportunity – financing litigation receivables of a judgment against Iran in the 983 Marine Corps barracks bombing in Beirut."[538]

336. The termsheet describes the background of RDLC and RD Legal Funding, LLC[539] but makes no reference to the Flagship Funds.

a. After describing the investment opportunity in funding attorneys and plaintiffs in the Peterson Turnover Litigation, the Iran SPV Termsheet discusses three risks in a "Potential Risks" section.[540]

b. The first is that the U.S. "normalizes relations with Iran[.]"[541]

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536 Ex. 45 (Iran SPV termsheet). See also Ex. 360 at 4 (Sept. 11, 2013 email from Markovic to Sinensky); Ex. 361 (Sept. 11, 2013 email from Markovic to Wils); Ex. 362 (Sept. 11, 2013 email from Markovic to Mantell); Ex. 367 (Sept. 19, 2013 email from Markovic to Ashcraft).

537 See ¶ 167.

538 Ex. 45 (Iran SPV termsheet).

539 Ex. 45 at 1 (Iran SPV termsheet) ("RD Legal Capital, LLC Background" and "RD Legal Funding, LLC Background").

540 Ex. 45 at 2 (Iran SPV termsheet).

541 Ex. 45 at 2 (Iran SPV termsheet). See also Tr. 657:4-24 (Mantell) ("[Q:] And if we turn to Exhibit 362-4. If we can highlight the section marked 'potential risks.' . . . At the time you received this email, Mr. Mantell, did you review that? A: Yeah, I got that far. **Q: Okay. And from the first bullet point there, what do you understand that bullet point to be discussing? A: Exactly sort of what I was talking about a minute ago, the kind of risk that might get you involved with worrying about the politics of U.S.-Iran relations as affecting the ability to collect. It's just another version of what I was talking about with Obama. Q: And was that risk disclosed to you prior to -- as existing in the fund that you had invested in? A: No, of course not.**" (emphasis added)); Tr. 1475:20—1476:15 (Ashcraft) ("Q: And with respect to the first bullet here about the United States normalizing relations with Iran, do you see that bullet? . . . Is that what you were discussing a moment ago when you were discussing meetings with Iran? A: Meetings with Iran, yeah. But we didn't cover this, obviously, in 2013. But it was a concern of dealing with Iran that was part -- partly we -- after the presentations, we usually discuss every

c. The second is that additional claimants might also have a claim to the assets.[542]

d. The risk section concludes: "In our estimation, the risk that the judgment could be overturned is deminimus (details provided upon request)."[543]

337. The Iran SPV Termsheet also purported to create a confidentiality obligation.[544]

338. While the Iran SPV Termsheet referenced RDLC, RD Legal Funding LLC, and the Iran SPV, there is no reference to the Flagship Funds or the presence of Peterson positions in the Flagship Funds.

IV. Respondents' Oral and Other Misrepresentations

A. Oral and Other Written Misstatements to Investors

339. Respondents would typically tell investors that reasons for delays in payments of settlements had to do with "court procedures" and "court cutbacks in many jurisdictions following the financial crisis."[545]

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presenter. And there was many -- I don't know many, but about 45 minutes' discussion around this, and what are the possibilities of things that could go awry, let alone -- besides benefitting -- them benefitting from that money. This one was one of those scenarios that was discussed on who knows -- in our government -- when you're dealing with the government, you just don't know.").

542 Ex. 45 at 2 (Iran SPV termsheet) ("Under New York State law the first to seize and asset has a first priority lien on the asset. So while there are other victims of terrorism with valid judgments, an agreement has already been reached whereby the Marine families will receive 82% of the ~$2B that has been seized (blocked).").

See also Tr. 657:25—658:12 (Mantell) ("Q: And with bullet No. 2, what do you understand that bullet to be discussing? A: Oh, risks about what share you might have in seized assets, as a means of getting -- and now New York State law might bear upon it. **That's another kind of risk, you know, that of course we never had any thought about. Q: And why didn't you have any thought about that risk, sir? A: It was never mentioned as something being relevant to anything that was being done.** When I started reading this, I thought, I don't want any of these risks, so I stopped reading it." (emphasis added)).

543 Ex. 45 at 2 (Iran SPV termsheet).

544 Ex. 45 at 3 (Iran SPV termsheet) ("Confidentiality").

340. Respondents, if they discussed "appellate risks" of an investment with investors, consistently told investors that such risk could only lead to a settlement "reconstitut[ing] itself generally for a larger sum of money."[546]

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[545] Tr. 5823:1-12 (Dersovitz) ("Q: What was your understanding at the time of what RD Legal explained to investors about delays in payments? A: Well, they were -- this was post-financial crisis of the discussion on. That point would have changed a little bit. The normal discussion involves the intervening court procedure. The additional discussion point would have been that there were court cutbacks in many jurisdictions following the financial crisis that impacted how long cases would take. Q: So things like court procedures and court cutbacks? A: Correct."). See also infra n. 546.

[546] Tr. 2904:22—2907:4 (Dersovitz) ("Q: You began that answer by saying 'when I speak like that.' Were you referring to the kinds of representations made to investors asked about in the last question specifically, did you speak to investors and sometimes tell them that you only invested in cases that had no appellate rights left? A: Yes. But when speaking in those terms, I was dealing with the practical effect of an appeal and the practical effect of the -- of an appeal in the space that we fund in is that the settlement gets paid. If it fails, it reconstitutes itself generally for a larger sum of money. No one ever complains about getting too much money, only too -- only not enough. And the same with judgments when a corpus of money has been restrained. It's the period of time between when someone can edit into settlement or judgment where a corpus of money has been restrained and when you can collect it. That's the -- that's what we bridge. Q: So when you said past the point of any appeal to investors. You meant except in the cases where an appeal might make it a better recovery? A: We always spoke -- I always -- I can comfortably say that in virtually every presentation or I should say many presentations under discussing the intervening court procedure. I would go through and go through an example. And that example is you go to a fairness hearing. Someone in the audience raises their hand and says I have an objection. The judge, pardon me, Your Honor, buys into that objection and decides to have a bench conference with counsel. The judge then tells defense counsel I need you to go home to your client, convene a board meeting and get me X dollars more. That lawyer then goes back to the board and starts the meeting as follows: I have good news for you and bad news; the good news is that I settled your case on the chief, you should definitely consider hiring us again; the bad news is that you are going to have to pony up some more dollars. After a couple of people yell and scream because no one likes getting held up, they realize that the liability exposure on their balance sheet was $20 million for instance, they settled it for 7 and paying 10 is still a great deal. And by the way, when they announce the initial settlement if my example is 7 million and the -- and the following day their stock price probably went up, what do you think the board is going to decide to do? They are going to pony up the incremental money, come back to court and report to the judge that they now settled the matter for the higher sum. So I typically always discuss this particular aspect of appellate -- what I call appellate risk, breakdown risk, and so on. It's just part of the strategy if I get involved at an MOU stage. And if you understand how class actions work, you understand that sometimes people file objections, post-entry of order. And if they do it in that instance, you are going up on appeal".).

341. Respondents would not typically discuss the ONJ Cases during oral pitches to investors.[547]

342. Ms. Katarina Markovic, Respondents' director of marketing starting in September of 2012, would only discuss two risks related to the Funds with potential investors—duration (which included default risk) and risk of attorney theft.[548]

343. Ms. Markovic repeated the pitch to investors that she heard Dersovitz say,[549] and also derived her oral pitches to investors from what she read in the Funds' marketing documents, including the FAQ.[550] She heard him tell investors, as she had during the Cobblestone call, see infra ¶ 466, that "a settlement, is a settlement, is a settlement," on other occasions.[551]

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547 Tr. 3503:24—3504:2 (Dersovitz) ("Q: Mr. Dersovitz, when you pitched the flagship funds to investors, did you ordinarily discuss what we described as the Jaw cases? A: No.").

548 Tr. 6701:22—6702:4 (Markovic, as transcribed) ("QUESTION: The two prime-- the two primary risks, what were those? I think we've talked about them, but you might repeat yourself, please. ANSWER: Duration and, control of cash. QUESTION: Does -- does attorney theft come into that in some way. ANSWER: That's a control of cash, that's covered under control of cash.").

549 Tr. 6704:6-12 (Markovic, as transcribed) ("QUESTION: You said -- I think you said earlier you were -- in your pitches, you parroted Mr. Dersovitz; is that correct. ANSWER: Yes. QUESTION: So you repeated what you heard him say to other people, in other words. ANSWER: Yes.").

550 Tr. 6717:24—6718:18 (Markovic, as transcribed) ("ANSWER: This is the Frequently Asked Questions. QUESTION: Is this what -- who prepared this document. ANSWER: Amy Hirsch. QUESTION: Is this the vers-- the first version of the document, in January -- do you see the January 2013 date. ANSWER: I do. QUESTION: Okay. Was that the first time that the FAQ came into existence as far as you know. ANSWER: I don't remember -- QUESTION: Okay. ANSWER: -- when -- the first one. QUESTION: And did you use this as part of your initial pitch to investors at any time. ANSWER: In what way do you mean. QUESTION: In any way. ANSWER: My initial pitch was drawn from these various documents.").

551 Tr. 6780:12-23 (Markovic, as transcribed) ("QUESTION: And did -- this pitch, did you hear Mr. Dersovitz make it at other times other than here, something along these lines. ANSWER: I believe so. QUESTION: Did you hear him say, 'A settlement, is a settlement, is a settlement' on other occasions. ANSWER: Yes. QUESTION: And where he says, 'At some point during the litigation process, Party A agrees to pay Party B'. ANSWER: Yes.").

344. Dersovitz at times testified under oath in these proceedings, and then at the hearing in this matter that "absolutely every single time" he made oral presentations to potential Flagship Funds investors he mentioned that Flagship Funds were invested in the Peterson Turnover Litigation.[552]

345. Of the investors who testified that invested between 2009 and January of 2012, none testified that they knew about the existence of the Peterson Turnover Litigation investments in the Flagship Funds before their investments.[553] Dersovitz couldn't "tell you right as [he sat at the hearing] that [he] told every single person" in 2010 or 2011 about that investment in the Flagship Funds.[554]

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552 Tr. 3888:19—3889:24 (Dersovitz) ("Q: We're all good. Take as much time as you need for context. But I want to refer you to 448, line 18 and read through 449, line 11. QUESTION: And as part of this presentation that you would make, would you specify or would you specify that you've made the Iran trade in the flagship funds? ANSWER: It was in the marketing materials. So in the two-page flier. If you look at page 2, it will say that money was deployed and that the -- and to your earlier point, it was for -- the special opportunities. The thought process was to deploy excess capacity into that to make it a single-trade vehicle. QUESTION: As part of -- as part of your oral presentation when you're going through all these things that you just described for me, did you explain, Iran is -- we've already done the Iran trade in the flagship funds? ANSWER: Yes. Of course. QUESTION: Okay. ANSWER: Absolutely. Every single one. Q: Were you asked those questions and did you give those answers? A:Yes. Q: And sitting here today, is it your belief that you did, in fact, absolutely every single time, you made an oral presentation to potential flagship fund investors that you mentioned that Iran was in the flagship funds? A: I believe so.").

553 See, e.g., nn. 575; 593; 610; 634; 679.

554 Tr. 2898:6—2899:8 (Dersovitz) ("Q: Can you answer my question, sir? A: I can't tell you right as I sit here today that I told every single person that I ever spoke to. I wouldn't make that statement. In my mind it was a normal trade at that point in time, going back to 2011 or so. Q: Did there come a time when you can confidently say you always told investors the flagship funds were invested in the Peterson case? A: I started getting more and more excited about it as circumstances changed. Q: Did there come a time, Mr. Dersovitz, you did always tell investors the flagship funds were investing in the Peterson case? A: Certainly by 2011, if not sooner when the -- when we listened to the tape. Q: And so certainly by at least by 2011 whenever you spoke -- whatever potential investors in the flagship funds you spoke with, it's your testimony you always told them that the flagship funds were investing in the Peterson case? I just want to make sure I understand your testimony correctly. A: What I'm saying is I got more excited over time as circumstances political and otherwise changed and I kept on speaking about it. Will I sit here today and tell you

346. Ms. Markovic did not always present the Iran SPV as an opportunity to investors, sometimes speaking only about the Flagship Funds, and did not always include documents relating to the Iran SPV in the written materials she handed investors.[555]

347. After turnover of the assets at Citibank related to the Peterson Turnover Litigation was granted (in February of 2013, see infra ¶ 112), Ms. Markovic found that "demand dried up" so she "stopped talking" about the opportunity to potential investors.[556]

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that early 2010 or 2011 I said it every single instance when in my own mind it was a normal trade at that point in time, I wouldn't make that statement. But I do know I disclosed it in numerous places."); see also Tr. 3884:8-18 (Dersovitz) ("Q: I would just ask you to clarify your testimony. When you said earlier that every disclosure had that, was the 'that' you were referring to the fact that there was Peterson exposure in the flagship funds? A: With respect to the documents that I mentioned, yes. We tried to communicate as best as we can. And I did it frequently. I don't want to say every single time. I couldn't stop talking about it. And we thought we were being as transparent as humanly possible.").

555 Tr. 6728:6-10 (Markovic) (as transcribed) ("QUESTION: Okay. Did you at times -- after you knew of the concept of the Special Opportunity fund, did you at any time market to investors only the flagship funds. ANSWER: I think I said yes."); Tr. 6730:2-5 (Markovic, as transcribed) ("QUESTION: Sure. So is it fair to say then that you did not always attach a summary of the Peterson case to investors. ANSWER: Correct."); Tr. 6776:17—6777:18 (Markovic, as transcribed) ("QUESTION: Okay. Going back to this one, the one that's marked as -- that was formally marked -- previously marked as 58. You mentioned a minute ago, this was sent out to prospective investors that were interested in the Special Opportunities Vehicle, as well as to existing investors. ANSWER: Well, in August I don't know who received it. QUESTION: You -- you mentioned a minute ago that this -- a document of this sort was given to -- to who -- to whom was it given. ANSWER: It was given to prospective and existing investors. QUESTION: Okay. And for what purpose. ANSWER: To ex -- I would imagine to explain these -- the summary of the -- the case, and announce that a Special Purpose Vehicle was in the works. QUESTION: When you -- in -- in giving your -- to the extent that you might have gone say, to a conference with your marketing materials, was this part of what you included. ANSWER: Sometimes. QUESTION: Okay. And why sometimes – so not every time. ANSWER: No.").

556 Tr. 6777:19—6778:2 (Markovic, as transcribed) ("QUESTION: Okay. Why -- how would you determine, or why yes, or why no. ANSWER: Early in my tenure, Roni wanted me to mention it to gauge interest. QUESTION: Uh-huh. ANSWER: Later on, we were trying to raise money for it, and as I mentioned earlier, when the turnover was granted demand dried up, so I stopped talking. There was nothing to buy.").

1. Jeffrey Burrow and Valley Wealth

348. Jeffrey Burrow is an investment advisor who, in the late spring of 2011 was working for Valley Wealth, an investment advisory firm that managed clients' investments and made investment recommendations to clients.[557]

349. In the late spring of 2011, Meesha Chandarana, a business development individual from RD Legal, contacted Mr. Burrow to propose an investment in the Flagship Funds.[558]

350. In late June 2011, before Mr. Burrow first recommended that a client invest in the Flagship Funds, Ms. Chandarana described the Funds' investments to Mr. Burrow consistent with what he had read in the documents he had reviewed by stating:

> that RD Legal was an alternative investment strategy that focused on legal fee acceleration, and . . . that RD Legal approached law firms . . . that had a lawsuit that had already been completed and settled, but had still not been paid that settlement. And so for purposes of operating, they had already spent much time and money and their resources had been depleted, and so it was an opportunity for RD Legal to come in to them, and for every dollar they would do as a settlement, they will offer $0.70 to $0.80 on that dollar, and then in the future at some point that settlement would be paid. That full settlement was then written in a note to be due 100 percent to RD Legal and its investors when that settlement came.[559]

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557 Tr. 93:2-6 (Burrow) ("Q: Okay. What is Valley Wealth? A: Valley Wealth was also an investment advisory firm, and we work with clients with their personal investment matters in putting together investment recommendations for them.").

558 Tr. 94:11—95:2 (Burrow) ("Q: Have you heard of a company called RD Legal Capital? A: Yes, I have. Q: When did you first hear of them? A: I believe it was spring, late spring 2011. I was part of an alternative investment service where I got basically a newsletter every month that previewed different investment ideas that registered investment advisors could take a look out, and I heard about them first in an e-mail, and then there was an outreach to me where they contacted me directly. Q: Who contacted you? A: Meesha Chandarana, I think is the pronunciation of her last name, and my understanding is she was a business development person for RD Legal. Q: Did you speak to her? A: I did.").

559 Tr. 95:4-21 (Burrow); see also Ex. 244 at 2 (M. Chandarana e-mail to J. Burrow on June 22, 2011, describing existence of conversation on that day).

351. Before Mr. Burrow first recommended that a client invest in the Flagship Funds, Ms. Chandarana also gave Mr. Burrow examples of the types of cases that the Flagship Funds were factoring and of the payors in those cases, stating that:

> it was focused on class action lawsuits of large, well-known companies, and she gave some examples, Pfizer, Eli Lilly, pharmaceutical companies that were often involved in litigation, but they have the credit worthiness to pay it. And when a large law firm that would be involved in that particular arena, trying to get a settlement from a company like that, you know, would have success once they got the settlement I would say stamped and approved but they still had to wait for the money. So it seemed to make sense. These weren't small, you know. These were large and certainly creditworthy, you know, people or companies that were obligated to pay . . . It was not entirely pharmaceutical companies. They mentioned -- I think they said some insurance companies, municipalities. My understanding was the payees -- or payors, I should say, were all large entities and they were able to sort of identify who they were in their credit rating.[560]

352. Before Mr. Burrow first recommended that a client invest in the Flagship Funds, Ms. Chandarana told Mr. Burrow that the risk involved in the investments of the Flagship Funds was "mainly the timing of the settlement payments" and spoke about diversification in the strategy by explaining that "there had to be many different notes that were due to the fund and they were written with an estimation of time, but not exactly when they were going to be paid, so various obligations to pay, but at the same time, different time frames."[561]

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560 Tr. 95:24—96:20 (Burrow).

561 Tr. 96:21—97:4 (Burrow) ("Q. Did she speak about diversification of the strategy? A. She did. She said the risk was mainly the timing of the settlement payments, so mitigating the risk meant there had to be many different notes that were due to the fund and they were written with an estimation of time, but not exactly when they were going to be paid, so various obligations to pay, but at the same time, different time frames.").

353. Before Mr. Burrow first recommended that a client invest in the Flagship Funds, he was not told of any exceptions to the strategy that may have at the time existed in the portfolios, including advancing funds on cases were disputes were still ongoing.[562]

354. Mr. Burrow's first client invested in the Flagship Funds in September of 2011.[563]

355. In addition to speaking to individuals at RD Legal, prior to first recommending an investment in the Flagship Funds and as part of his diligence process, Mr. Burrow visited RD Legal's office, he spoke to the Flagship Funds' administrator Woodfield, he reviewed all the documents he had received from RD Legal, and he reviewed the Flagship Funds' Financial Statements for the year ending in 2010.[564]

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562 Tr. 100:4-6 (Burrow) ("Q: Did she mention any exceptions to the strategy that might have existed in the portfolios? A: No."); Tr. 125:11-18 (Burrow) ("Q: Okay. Now, at any time between your first contact with RD Legal and this first investment, did anyone at RD Legal mention that RD Legal was advancing funds to law firms on non-settled cases? A: No. Q: Did anyone mention that they were advancing funds on cases where disputes were still ongoing? A: No.").

563 Tr. 126:3-9 (Burrow) ("Q: What happened after the first investment around September 2011? Did there come a time when your clients made subsequent investments? A: There was. Our first investment was around that time in September of 2011, and I believe we had 5 or 6 different positions that were invested, I believe about 18 months after the first investment.").

564 Tr. 101:10—102:7 (Burrow) ("Q: Did Ms. Chandarana tell you anything about the website that is referenced in this e-mail? [Ex. 244] A: My understanding was the website was something with specific reference to the NDA, meaning nondisclosure agreement, that if you wanted information, they could either send it to you directly or you could go to the website, but without signing that nondisclosure agreement, you wouldn't have access to either opportunity. . . . It was something I thought of as a convenience. That's sort of the way they described it, and so as long as the documents directly were what I needed to do business, I wouldn't visit the website."); Tr. 140:8-13 (Burrow) ("It was described to me by Meesha as a repository of all the documents, so if I ever needed something, I could go back and get it. So it was something that I would spend a lot of time on because they were e-mailing them to me anyway."); Tr. 190:19—191:3 (Burrow) ("Q: Mr. Burrow, I think my last question to you was: Do you recall when you were on the investor website that there were prior communications to investor that were included on the website? A: I don't recall that, but one of the things that I looked for was the same information that was sent to me because I didn't know if we needed to go to the website, and Meesha described it as a repository where all the documents that are sent to you are kept if you need an extra copy of it.").

356. Mr. Burrow was told by RD Legal employees that the RD Legal website was merely a "convenience" for investors that contained a repository of information that was also being sent to investors and therefore it was not something that he would need to spend a lot of time on.[565]

357. Mr. Burrow met with Dersovitz at the St. Regis Hotel in San Francisco in November of 2011, before Mr. Burrow made additional recommendations to clients that they invest in the Flagship Funds.[566]

a. At the meeting, Dersovitz orally conveyed to Mr. Burrow information consistent with what he had read in the Flagship Funds' marketing and offering documents, including the Alpha presentation, and what he had been told by Ms. Chandarana, including that the Flagship Funds invested only in settled cases, that the risks of the investments were attorney theft and the timing of collection of the settlement, that payors for the settlements were

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565 Tr. 101:10-102:9 & 140:1-13 (Burrow) ("Q: Did Ms. Chandarana tell you anything about the website that is referenced in this e-mail? [Ex. 244] A. My understanding was the website was something with specific reference to the NDA, meaning nondisclosure agreement, that if you wanted information, they could either send it to you directly or you could go to the website, but without signing that nondisclosure agreement, you wouldn't have access to either opportunity. . . . It was something I thought of as a convenience. That's sort of the way they described it, and so as long as the documents directly were what I needed to do business, I wouldn't visit the website. . . . It was described to me by Meesha as a repository of all the documents, so if I ever needed something, I could go back and get it. So it was something that I would spend a lot of time on because they were e-mailing them to me anyway."); Tr. 190:19-191:3 (Burrow) ("Q. Mr. Burrow, I think my last question to you was: Do you recall when you were on the investor website that there were prior communications to investor that were included on the website? A. I don't recall that, but one of the things that I looked for was the same information that was sent to me because I didn't know if we needed to go to the website, and Meesha described it as a repository where all the documents that are sent to you are kept if you need an extra copy of it.").

566 Ex. 258 at 2 (describing upcoming meeting).

pharmaceutical companies, insurers, or municipalities, and that the time for collection on these matters was 9 to 18 months.[567]

b. During the meeting, Dersovitz told Mr. Burrow that the Flagship Funds he was offering were unique because, according to Dersovitz, "[w]hat he did didn't exist anywhere else."[568]

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[567] Tr. 106:7—107:6 (Burrow) ("Q: All right. What did that mean to you in terms of the RD Legal strategy? A: This means -- it meant to me then, but it also coincided with what Roni told me personally from his experiences. I believe he said as a personal injury attorney, that a lot of times there's effort to get a lawsuit settled, completed, and done, but then you have to wait for the money to come in. You know, the three to five years time frame is a long time. Of course, the fund the way they've described it is that they're going to wait 90 days to 18 months. . . Q: You mentioned Mr. Dersovitz described this factor to you; is that correct? A: Right. Q: When did he describe that to you? A: I met him, I think it was in November of 2011, in San Francisco. He was there for some meetings, so we met at the St. Regis Hotel, and one of the questions -- and, of course, I just wanted to make sure that the answers he gave me was the same that I heard from Meesha and also the material, and, of course, they were."); Tr. 116:14—117:1 (Burrow) ([discussing Ex. 252 at 71] "Q: Okay. Do you see where it says, 'Solution 1, Fee Acceleration. Fee Acceleration, a form of factoring, purchased attorney fees only on settled cases'? A: Yes. Q: Did that mean anything to you when you read it? A: It did. Q: What did it mean? A: It meant that this particular strategy was one in which I knew where the money -- what it was going to be paying for: Settled cases. So it confirmed the answer I heard when I had asked the question, 'Tell me about the risks.'"); Tr. 118:1-14 (Burrow) ("Q: Okay. And then in that same, I guess, bucket it says, 'Selling attorney is our fiduciary, so conversion risk is mitigated bit resulting license forfeiture.' Do you see that? A: I do. Q: What did that mean to you? A: This matched up with what Roni had said. It wasn't on top of my mind of risks, but he reminded me of it, and it says it here, that there's a very small chance that the attorney could take the money and not pay it to the RD Legal fund, but in doing that, there's a lot for that attorney to lose, and so that risk is mitigated by the loss of his career."); Tr. 130:12-16 (Burrow) ("A: . . . he had described those to me in the same way as I understood them: It was about timing of the settlements, of when they could come in. Q: Did you discuss the nature of the lawsuits at issue with Mr. Dersovitz? A: I did. He had described -- I think he even gave me the same pharmaceutical examples of the types lawsuits. He had said that they were all from entities that were either well known or easy to be understood financially."); Tr. 131:10-17 (Burrow) ("Q: And did he give examples of the potential obligors to these cases? A: He mentioned pharmaceutical companies. He mentioned the word 'class action.' He had said they need to be large enough so there can be a great opportunity set to find these firms throughout the United States, so not small suits, but large ones with, you know, well-known obligors.").

[568] Tr. 129:16-18 (Burrow) ("A: Roni confirmed essentially nearly everything I had already read and heard from Meesha. What he did didn't exist anywhere else.").

c. During that meeting, Mr. Burrow asked Dersovitz if the cases were non-appealable and Dersovitz said "absolutely."[569]

d. During that meeting, Dersovitz did not mention any workout situation.[570]

e. During that meeting, Dersovitz told Mr. Burrow that the timing of payments on the settlements the Flagship Funds invested in was staggered so as to achieve diversification.[571]

358. Respondents told Mr. Burrow that there would be a delay between the reaching of a settlement and payment thereof for "procedural: reasons and no one at RD Legal told him that the delay could be caused because of an ongoing dispute or any other issue that was not merely procedural in nature.[572]

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569 Tr. 130:19—131:1 (Burrow) ("Q: And did you discuss the possibilities of appeals of these cases that had been financed? A: We did. I brought that up. I said, so these are settled? We can't go back on them? They're non-appealable? He said, 'Absolutely.' So once they're stamped, and again administratively, from a law perspective, I don't understand that, but in my opinion the question was are these ever going to be appeals, and he said no.").

570 Tr. 132:8-9 (Burrow) ("Q: Did he mention any workout situations? A: No.").

571 Tr. 132:10-21 (Burrow) ("Q: And in the conversation with Mr. Dersovitz, did he discuss diversification of the funds? A: Yes. Q: With did he say? A: He said many of the same things that I already understood, that the timing of the settlements was staggered over many different cases, and so it was a ladder of sorts. We just didn't know how many rungs on the ladder or how far the rungs on the ladder were apart from each other, but the idea that he had it laddered out into the future was a great way to mitigate that risk.").

572 Tr. 149:7-22 ("Q: Okay. And did you gain any understanding as to why there would be this nine months to two-year delay in the payment of a settlement? A: Again, not being in the legal profession, but understanding it from the outside looking in, there's a lot of procedure, and so going through that procedure takes time, and nobody knows how much, but that's the estimate of the time frame before the procedure is complete. Q: Did anyone at RD Legal tell you that the delay might be caused by something that was not procedural in nature? A: No. Q: Did anyone at RD Legal tell you that the delay might be caused by ongoing disputes? A: No."); Tr. 200:3-13 (Burrow) ("Q: There was some legal process that had to happen during which RD Legal could provide financing to these law firms or attorneys, correct? A: I don't know the legal process. My understanding was it was the money needed to be found or needed to be planned for by the obligor and that was my understanding of what the time was for: That they were required to pay it, but they

359. Overall, Mr. Burrow heard from Dersovitz the same things he had read about the Flagship Funds' investments in the marketing and offering documents.[573]

360. Mr. Burrow's other clients' investments occurred between November 2011 and March of 2013, for a total of $2.6 million invested into the Flagship Funds.[574]

361. Mr. Burrow was never told about the existence of the Peterson Turnover Litigation or of the investment in the Peterson Matter by the Flagship Funds by anyone at RD Legal at any time before the investment of his last client in the Funds, in March of 2013.[575]

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weren't required to pay it in an immediate time frame, and so they needed to gather the cash and find a way to do that. That's what the waiting was for.").

573 E.g., Tr. 118:7-8 (Burrow) ([Discussing marketing deck at Ex. 252-75] "Q: What did that mean to you? A: This matched up with what Roni had said."); Tr. 146:1-10 (Burrow) ([Discussing investor fact sheet at Ex. 1592-7] "Q: And on the next page, where it says opportunities, the fourth bullet point that says, 'Settled court cases do not immediately lag 9 to 18 months.' A: Yes. Q: Did that mean anything to you? A: It did. It matched up with the way I understood it and how Roni described it."); Tr. 148:19-24 (Burrow) ([Discussing FAQ at Ex. 1592-25] "Q: Okay. Did that mean anything to you? A: It did. It matched up exactly with the conversation I had with Roni that you know these firms, the opportunity was simply that the firms themselves were not able to operate because they didn't have enough money."); see generally supra n. 567.

574 Tr. 141:11-15 (Burrow) ("Q: Did there come a time around January of 2013 where additional of your clients invested money with RD Legal? A: There was. I think we had our final investment in early 2013, if I recall."); see also Ex. 464A Tab "RD Legal Funding Partners, LP" (rows 28, 53, 54, showing investments in September and December of 2011, and January of 2012); id. at Tab "RD Legal Funding Partners, LP" (row 56 showing investment in March of 2013); see also Tr. 241:1-25 ("Q: Mr. Burrow, the first investor we'll call Investor No. 1; do you see that? A: I do. Q: And that investor invested $2 million in September of 2011 into RD Legal, correct? A: Correct. . . . Q: Okay. What we'll call Investor No. 2 invested $500,000 in the RD Legal domestic fund in January of 2012; is that correct? A: Yes. . . . Q: Now, skip ahead to investor No. 4. Investor No. 4 invested $200,000 in March of 2013, and as of September of 2016 had redeemed $277,470; is that correct? A: Correct. Q: Investor No. 5 invested $400,000 in March of 2013, and as of September -- sorry -- as of December of 2016 had redeemed $504,911; is that correct? A: Correct.").

575 Tr. 152:20—157:19 (Burrow) ([Discussing Ex. 372] "A: . . .The strategy as described [for the SPV] was very unique, very different than the RD Legal fund that we had already invested in, and I didn't commit at all to putting money in there. . . but it was definitely something very different than the obligors that we understood in the RD Legal fund.").

362. Mr. Burrow was never told about the existence in the investments in the Flagship Funds of the risks related to the Iran SPV—such as the risk of the statutes relating to collection being struck down as unconstitutional or of normalization of United States relations with Iran—at any time before the investment of his last client in the Funds, in March of 2013.[576]

363. In September of 2013, Dersovitz and Ms. Markovic pitched Mr. Burrow an opportunity to invest in the Iran SPV, but the opportunity was pitched to him as "separate" from the Flagship Funds and neither Dersovitz nor Ms. Markovic told Mr. Burrow that the Flagship Funds had already invested funds into the Peterson Turnover Litigation.[577]

364. The first time Mr. Burrow was told that the Flagship Funds were invested in the Peterson Turnover Litigation was during a conversation in 2015 with Ms. Markovic after the

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[576] Tr. 160:5-13 (Burrow) ([Discussing Iran SPV term sheet at Ex. 372-4] "Q: These risks described here, did you have any understanding as to whether the funds your clients were invested in were exposed to these risks? A: I would absolutely want to know if these risks surrounded the RD Legal funds if one of my clients was invested. Q: Did anyone tell you that the funds your clients had money in were exposed in any way to these risks? A: Not at this time, no."); Tr. 166:14—169:13 (Burrow) ([Discussing the SPV Offering Documents at Ex. 373-24] "Q: And what, if any, of these risks that you see here were described to you in terms of the funds you were invested in? A: None of those risks were involved in the funds I was invested in. That was my understanding: Those risks did not exist in that fund. Q: Did anyone at RD Legal ever tell you that the funds you were invested in had any of those risks? A: No, not at all. . . . Q: Okay. And now I'm going to direct your attentions to the following paragraph that starts with 'U.S. relations with Iran,' and ask that you please read it to yourself. A: Okay. Q: Okay. And having read this sitting here today, were any of these issues or factors described to you with respect to the investments that your clients were in with RD Legal? A: No.").

[577] Ex. 373 at 1 (September 27, 2013 email from K. Markovic to J. Burrow attaching Iran SPV Documents); Tr. 158:2-15 (Burrow) ("Q: And this conversation you described with Mr. Dersovitz and Katarina, did they mention whether any of the funds you had invested in were invested in this opportunity? A: No, I think Roni had said that he had done it personally . . . that was the only time I understood that money that Roni had had in his life went into it. In fact, the way this is described in writing here, it says the Special Opportunities Fund, so by its nature it's different, it's separate, and I always understood that to be the case.").

Flagship Funds had frozen redemptions, and he felt "upset because [he] felt like [he] had been duped."[578]

365. After the conversations with Respondents in 2015, Mr. Burrow asked for a list of positions in the Flagship Funds to better understand the extent of the Flagship Funds' concentration in the Peterson Turnover Litigation and received a document listing each position, including all the Peterson Turnover Litigation investments, without identifying them by name, making it seem to Mr. Burrow as if the Flagship Funds were diversified because they were invested in dozens of positions, and not concentrated in the Peterson Turnover Litigation. A portion of the file is excerpted below:

Indicated Portfolio Value
RD Legal Capital, LLC
June 30, 2015

Law Firm ID	Position ID	Total Legal Fee	Purchase Price	Contract Rate/	Indicated Portfolio
74	0E1	$183,361	$52,500	18%	72,895
75	0E2	$292,750	$102,500	NA	270,101
7B	0E7	$585,500	$205,000	NA	540,201
2C	0E4	$585,594	$221,827	24%	171,879
0Z	0E3	$325,884	$125,000	24%	38,640
3X	0E9	$585,500	$205,000	NA	540,201
01	005	$585,500	$205,000	NA	540,201
04	009	$1,171,000	$410,000	NA	1,080,403

See Ex. 460 at 9-17.[579]

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[578] Tr. 172:1-5 (Burrow); see also Tr. 172:1-5 (Burrow) ("Q: You had heard of the Iran bombing case before that in the context of the SPV; is that right? A: Correct. So it was very confusing because we had never invested in it, so that was the first time I had ever heard of it.").

[579] See also Tr. 173:7—174:16 (Burrow) ("Q: Let me direct your attention to what's been marked Division Exhibit 460, please. Do you recognize this document, sir? A: Yes. Q: What is

366. One of Mr. Burrow's clients, who invested $500,000 in the Flagship Funds, filed a redemption request but has not received any of his principal investment back.[580]

2. Tom Condon

367. Tom Condon is an investment manager who manages investments for himself and his extended family.[581]

368. After "extensive communication," oral and in writing with RD Legal, Tom Condon invested $1 million with RD Legal in early 2012.[582]

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this document? A: This is me requesting from RD Legal, Katarina specifically, more information about the receivables because what I could not understand was how the receivables got to the point of such concentration and secondly that that one large concentrated note was on a receivable that did not fit the criteria of the RD Legal fund. So I said, 'Show me this,' and so she sent a document that was kind of mysterious, to be honest. Q: You're referring to the document attached to this e-mail? A: Yeah. Q: Could you please tell the Court what page? A: This is 460-9. So this particular document if we're going to call this a listing of the notes and the assets in the fund, I understand the reason for law firm ID and for confidentiality, but again, there is absolutely no indication that any of these were different from what we had received in -- or the types of notes that were put in place on the fee acceleration strategy previously. In fact, in going through here, mathematically, you don't have to be a math expert to understand that no one of these is a large enough majority to make up, you know, one position of the fund. So again, it does not match with the way they were describing to us. It was one large case that was still not done or settled. I can't see here mathematically how any one of those case could make up the majority because the math does not work.").

580 Tr. 175:12—176:3 & 242:6-10 (Burrow) ("Q: Okay. What is the status of the redemption requests that your clients submitted, sitting here today? A: I believe all but one client has gotten at least all of their money back. In one situation a client had a trustee change on an irrevocable trust, and it took a long time. So the court process takes a long time. That's what we're talking about here. We didn't get that signed until last year. That is the only client who still hasn't gotten money back. It was May of 2016 that was submitted, and to date there hasn't been any redemption payments made to that client. Q: So is the principal still outstanding? A: Everything is outstanding: The principal, the accrued balance that we have on the most recent statement for that client, everything is still just on paper. We have not received anything back. . . . Q: Now, we skipped over Investor No. 3, who invested $500,000 in December of 2011, and as of -- well, this is only as of 2012. Investor No. 3, is that the investor that you indicated did not file for redemption until May of 2016?").

581 Tr. 949:19—950:1 (Condon) ("Q: Good morning, Mr. Condon, thanks for coming in today. Are you currently employed? A: Yes. Q: What do you do? A: I am an investment manager. Q: What does that mean? A: I manage investments for myself and my extended family.").

369. Mr. Condon was interested in advancing funds with respect to cases where the payors would be "large corporations, financial stable, and capable of settling" and he did not have any desire in "extending debt to attorneys . . . [he] never would meet, and wouldn't have the capability of assessing their ability to repay."[583]

370. Mr. Condon asked for examples of why payment on a settlement may be delayed and he was led into believing that any delays would be of an administrative or procedural nature, not because of additional ongoing litigation.[584]

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582 Tr. 950:10-17 (Condon) ("Q: Did you ever invest any money with RD Legal? A: I did. Q: Approximately when did you do that? A: I did that early 2012. Q: Before investing money with RD Legal, did you have any communications with them, written or oral? A: Before investing, yes, I had extensive communication, both written and oral, and in person."); Tr. 971:25—972:1 (Condon) ("A: My original $1 million investment in RD Legal Fund.").

583 Tr. 954:1-11. (Condon) ("A: Yes, it did. What attracted me to RD Legal was a diversified portfolio of settled legal cases. The legal factoring side. And I understood the payers to be large corporations, financially stable, and capable of settling. And, in fact, all of the cases were settled and payment had been agreed to, and everybody was happy, or at least the outcome had been, you know, agreed to. I was a lot less interested in extending debt to attorneys, personally, who I never met, never would -- never would meet, and wouldn't have the capability of assessing their ability to repay.").

584 Tr. 1023:8—1027:9 (Condon) ([discussing Ex. 263] "Q: And one of those questions was: 'Please describe the cushion for investment tenures. What is the primary cause of payment delays?' Do you see that, Mr. Condon? A: Right. Right. Q: And the response you got back from the company starts, 'Most delays are process driven.' Do you see that? A: Yes. Q: And did you understand that to be some legal process that has to happen? A: Legal process? I don't know what you mean by that. There is -- we might be waiting for final judge's approval, approval of the administrator. These are the specific things that I got as an example. Q: Sure. So let's just walk through that if you don't mind. The answer says: We might be waiting for final judge's approval, comma. Do you see that? A: Right. Q : It goes on to say: Approval of the administrator who will distribute the settlement proceeds, larger cases, comma. Do you see that? A: Yes. Q: A minor was the plaintiff, which requires a judge to review and approval. Do you see that, sir? A: Yeah. Q: Or a fairness hearing. A: Um-hmm. Q: So those are four different scenarios or reasons why there would be a payment delay. Do you see that? A: Yes. I see it. . . . Q: Okay. And in the example of a minor plaintiff, it indicates a judge has to approve that award, did you understand that? A: Yeah. Q: Okay. And then the second example is: Approval of administrator who will distribute the settlement proceeds. Do you see that, sir? A: Right. . . . Q: It goes on to say: 'The primary cause of payment delays is court appeals.' Do you see that, sir? A: Um-hmm. Q : 'And other operational issues'? A: Um-hmm. Q: Did you have an understanding at the time you made the investment, whether there would be any court issues or court appeals that could affect the

371. When Tom Condon asked Respondents what caused post-settlement delays, he was told, in writing: "Most delays are process driven. We might be waiting final judges [sic] approval, approval of the administrator who will distribute the settlement proceeds (larger cases), a minor was the plaintiff which requires a judges review and approval, or a fairness hearing.... The primary cause of payment delays is court appeals and other operational issues."[585] Condon specifically asked Respondents to clarify whether there is "any chance that the obligation to pay a judgment could be overturned or re-enter litigation," and was told, also in writing, that the Funds "are only purchasing receivables ***after*** a settlement agreement has been signed by all the parties... We will purchase the receivable once the settlement is signed and all the terms are agreed to by both parties even if it is conditioned on final court approval."[586]

a. Condon testified that he asked these questions because he "wanted to be a hundred percent sure [he] understood that there was no litigation risk... ."[587]

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payment on the receivables? A: I understood that there could not be any court appeals. I don't know what Meesha is referring to. To my knowledge, Meesha isn't a lawyer, and I don't know if she wrote this actually. She's the one that sent it to me. Q: I was going to ask you: Do you have an understanding if Meesha wrote this or someone else at the company. A: I don't know who wrote it. She sent it, but it could have been written by somebody else. But court appeal, I don't necessarily know that that refers to appealing a settled case. It could be appealing these other things, judge's approval, approval of the administrator, blah bitty blah, blah, blah. Q Right. A If you can enter that in the record. Q: My apologies, Your Honor. So where it's talking about a court appeal, you don't know if that related to the underlying settlement or the agreement? Could be one of these other factors? A: My assumption is that it is not, and I point to my question number 10, is there any chance of the obligation to pay a judgment could be overturned or reenter litigation. That's the crux. Q: That's the crux. A: That's the crux. That is the most important question to me.").

585 Ex. 263 at 4-5.

586 Ex. 263 at 5 (emphasis added).

587 Tr. 967:11—968:8 (Condon) ("Q: And did anything in the answer change what you described as your understanding before, that there was no litigation risk left to the investment? A: No. And I was -- I was actually clear in my questions. I wanted to be a hundred percent sure I understood that there was no litigation risk and, further on in the document, I asked that specifically. Q: Can you point us to where you asked that specifically, please? A: It's number 10

He "wanted there to be no risk that the case [could] be continued, reheard, could be appealed, could be held up in court indefinitely ... ."[588] Whether there was "any chance of the obligation to pay a judgment could be overturned" was "the most important question to [Mr. Condon]."[589]

372. Mr. Condon asked Dersovitz about the concentration to the "Obligor" "Merck" that he saw in some of the documents that he collected during his due diligence.[590] Dersovitz falsely told him that the high concentration was accidental and had arisen because investors who had

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here: 'Is there any chance that the allocation of a judgment can be overturned or reentered into litigation?' Q: Why did you want to know that? A: I wanted to confirm what I had been told and what my understanding was in the most crystal clear language that I could express. Q: And did you come away with a crystal clear understanding of whether there would be litigation risk going forward? A: Well, I think the first line says everything. 'We are only purchasing receivables after a settlement agreement has been signed by all the parties.' So, that told me that there was no litigation risk.").

588 Tr. 1021:21—1022:8 (Condon) ("Q: Yeah. You wanted there to be no risk that that right to payment that existed could go away? A: Right to payment. No. I wanted there to be no risk that the case to be continued, reheard, could be appealed, could be held up in court indefinitely because of, you know, appeals. Again, I don't know all the stuff that could happen, but stuff happens, and I wanted to make sure, like, okay, the case is settled and, to me that means it's done, we all agree, there's going to be payment, and we'll work out the detail when that payment comes in. The whole parties agree, everyone is reasonably happy with the outcome and we're moving on. Next case, this one's over.").

589 Tr. 1026:24—1027:9 (Condon) ("Q: My apologies, Your Honor. So where it's talking about a court appeal, you don't know if that related to the underlying settlement or the agreement? Could be one of these other factors? A: My assumption is that it is not, and I point to my question number 10, is there any chance of the obligation to pay a judgment could be overturned or reenter litigation. That's the crux. Q: That's the crux. A: That's the crux. That is the most important question to me..").

590 Tr. 964:14—965:7 (Condon) ("Q: And did you, in particular, discuss this market issue with Mr. Dersovitz? A: So, back to your previous question. These notes are dated December 2011, and the diversification question is addressed. So, my assumption is that sometime in late 2011, I had a call -- a discussion with Roni. Q: And did you discuss -- did you have any understanding at that time as to whether -- where Merck stood in terms of the order of concentration within the fund? A: It was the large -- it seemed to be the largest. It certainly was -- each case was separately listed or – I don't know if each case was, but each receivable it had purchased was separately listed and the Merck case was there over and over and over again. So that caught my attention. And then just looking across and seeing the dollar -- the dollar amount and adding that up, I realized, wow, this is a big chunk out of the fund.").

committed funds to the Flagship Funds around the time of the recession in 2008 and 2009 withdrew their commitments.[591] In reality, at least some of the receivables for which "Merck" was listed as the Obligor actually corresponded to the ONJ Cases, which were still being funded as of 2011 and 2012 when Mr. Condon spoke to Dersovitz, and not only to the "Vioxx" case, which was no longer being funded.[592]

373. When Mr. Condon found out about the existence of the Peterson Turnover Litigation in the Flagship Funds on or around October of 2013, he was surprised, he expressed this surprise to Dersovitz, and he immediately redeemed a portion of his investment.[593]

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591 Tr. 962:2—963:4 (Condon) ("Q: If we can go to the next page, please. Under No. 5, you'll see a 5-A, Portfolio concentration limits were exceeded -- when, quote, 'soft commitments,' closed quotes, from fund -- of fund investors evaporated 2008/2009 what were you referring to there? A: So, one of the documents that I received from RD Legal was a list of the portfolio, the cases within the portfolio, the legal cases, and I noticed in many of the lines, and in quick mathematic calculation, just adding up in my head, wow, there's a lot of concentration in just this one company, Merck, this one case. So I remember asking RD Legal about that, and I wanted an explanation. Why is so much of the portfolio in this one when it seems to go -- that there are other -- some of the other materials that we've already covered. They talked about the benefit of diversification within the fund, and certainly diversification was something I was looking for. So I wanted an explanation, if diversification is something that we're all aiming for, they're aiming for, I'm aiming for, why did this happen, and this was the explanation that I was given, that soft commitments referred to people who try to find investors who pledged to make an investment. Yeah, we're interested; we're going to do it, but then they chose not to do it, evaporated in 2008, 2009. That's the time of the great recession, so a lot of things went off the rails at that time.").

592 See Ex. 2869 at 8 & 9 (Merck obligor referring to "In re Vioxx – MDL" and Merck obligor referring to "In re Fosamax Products Liability Litigation").

593 Tr. 975:12—976:15 (Condon) ("Q :Then you wrote: 'I'm glad that it's your intention to reduce the concentration of Peterson versus Iran in the fund.' What did you mean by that? A: Well, I mean, I expressed concern pretty directly about the concentration of this case in the fund, and I was uneasy about it. I think I said it here. I said: 'I'm not totally comfortable.' I think that understates how I felt. And Roni explained to me that it was the special purpose vehicle, one of the intents was to raise money there, raise commitments to that, and he could pull money from RD Legal out of the RD Legal fund and into this special purpose vehicle. So that's what I'm referring to. Q: Did you express to Mr. Dersovitz at or around that October 8th meeting, your surprise that the Iran case was in the fund you invested in? A: Yes. Q: Do you recall how he reacted? A: I don't know, Roni doesn't get alarmed, so I don't think there was a demonstrative response from him. Q: At some point did you decide to redeem CIB's Investments in the RD Legal fund? A: Yes. Q: Why did you do that? A: Well, I made a partial redemption. I actually, don't remember

3. Warren Levenbaum

374. Warren Levenbaum is the general partner and founder of a law firm called Levenbaum & Trachtenberg, which concentrates in plaintiffs' personal injury work, and he is the CEO of the American Association of Motorcycle Injury Lawyers, and has been a lawyer for over 45 years during which time he has served as a prosecutor and worked as a criminal defense attorney as well.[594]

375. Mr. Levenbaum understood there to be five types of operations that lend money to plaintiffs or lawyers involved in litigation, including funding plaintiffs who needed advances, lines of credit to attorneys, and risky investments in cases that were on appeal.[595]

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the exact date, but It was not long after earning about this concentration, so, I mean, I decided to take some of that money off the table. I think it was early in 2014."); Tr. 977:2-13 (Condon) ("Q: Before the break, I believe you explained at some point you did received some portion of – you redeemed some portion of your investment in RD Legal; is that correct? A" Yes. Q: Why did you do that? A: I was unsettled by learning that the Iran case was such a big portion of the fund, even they there were plans to pull that money out,. . . it didn't seem to be happening quickly, or maybe at all. But I just felt uneasy and I thought, let me take some of this back right now.").

[594] Tr. 2948:13-22 (Levenbaum) ("Q : Who are you employed by? A: I'm self-employed. Two positions. I have two -- wear two hats. One, I am the founder and general partner of a law firm of Levenbaum & Trachtenberg, which is a multistate practice, with our headquarters in Phoenix, Arizona. We basically concentrate on plaintiffs' personal injury work. And the other hat I wear, I am the president, founder and CEO of the American Association of Motorcycle Injury Lawyers."); Tr. 2949:8-23 (Levenbaum) ("Q: How long have you been a personal injury attorney? A: Many years. I was admitted to the State Bar of Arizona in 1972. Q: Okay. A: But not just personal injury. I've done multiple types of work as an attorney throughout the years and changed the nature and scope of my practice. Q: Just for the Court's benefit, since you're not providing a resume, can you just briefly – you know, other types of work that you've done as an attorney, please. A: I started my career as a prosecutor, an assistant district attorney in Phoenix, Arizona for three years. And I did some criminal defense work.").

[595] Tr. 2953:8—2956:25 (Levenbaum) ("Q: Could you explain what you mean by that? What are you talking about there? A: Being in the industry in some way, . I'm in -- part of the plaintiffs' lawyer bar across the United States. I'm familiar with various types of financing operations directed to the plaintiffs' bar. There are different categories. Category No. 1, money is loaned to the client to alleviate some of the exigencies of living expenses while his case is pending. The client can't pay his rent. The client doesn't have food money. The client is unemployed. There's a number of reasons why the client needs money at that time and can't necessarily wait -- or it's going to be difficult for the client to wait for the case to run its course years to come. That's

376. When Mr. Levenbaum was considering whether to invest in the Flagship Funds, he was not interested in any of the categories of legal financing that had to do with financing in the first four categories he described.[596]

377. After discussions with Dersovitz and reviewing the written materials he received from Respondents, he came to understand that Respondents had a "niche" where they loaned

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category No. 1. Category No. 2 is, there are lending institutions, again, directly to the legal community, the plaintiffs' legal community in particular, that buy medical positions. Let me tell you how they do this. John Doe is involved in a very, very serious accident. He is -- on the pain and discomfort, he needs a major medical procedure. Doesn't have medical insurance. The type of procedure is not necessarily covered by Medicare or state access programs. And he's hurting pretty bad. And he can't wait the two to three years to resolve this case, if it's going to be revolved successfully, to get well. So he goes -- the lawyer finds a doctor as well as a hospital that will do the operation at a discount. . . . Q: Are there any other categories? A: Yes. Q: What is that? A: The next category is credit lines to lawyers. The fourth category -- when I say "credit lines to lawyers," it's for their practice to cover their costs involved in prosecuting complicated cases on behalf of their plaintiff where the cost, the expenses for expert witnesses, for example, can run into hundred thousands of dollars over a period of a number of years. So they advance money to the lawyer who otherwise doesn't have the ability to finance these costs. Typically plaintiffs' lawyers are not bankable. Banks don't and will not loan money to plaintiffs' lawyers across the country. So these money lenders, if you will, fulfill the need for the legal community in this regard. That's one category -- that's another category. Another category -- and I call it 'betting the farm' or 'the ranch' -- where a finance company will sell a stake in a very large case that's on appeal. And the investor either wins big with a lawyer or loses big. So rates of return are very, very good for the lawyer. By way of example, a case is on appeal -- and these loans are made to the lawyers, not the clients. The lawyer's fee is a million dollars, and it's up on appeal. Either the lawyer will get paid or not get paid. It's at different stages of the appeal. The lawyer will sell his position, half of his position to the money lender, the institution, at a 50 percent rate. So if the lawyer prevails, the lawyer doesn't get his $1 million in fees, only gets 500,000, the investor gets 500,000. That's another one. That is a very, very dangerous investment, as far as I was concerned. It's like going to Las Vegas, so to speak, and putting all of your money on red or black. So that's another category.").

596 Tr. 2958:1-20 (Levenbaum) ("Q: ... So when you were looking at RD Legal, were you looking to invest in any of these other four categories that you described; the money loan, the medical positions, the betting-the-farm categories? Were you looking at any of those? A: None of those were my cup of tea for a number of reasons. Q: Can you please explain for the Court. A: Risk, No. 1. Well, risk was first and foremost. Advancing money to the clients. Even though there was a niche, it just didn't sit well with me. These were relatively poor people. And, you know, they were -- you know. And the rates of interest to these clients, incidentally, was, like, everybody's heard of these Payday Loan situations. You're talking about over 100, 150 percent. It just didn't sit well with me on a preferential -- not necessarily on a moral ground. It just didn't fit well with me.").

money to lawyers with respect to cases that "were already settled and resolved," with the delays arising from things like the need to get the board of supervisors of a municipality to approve a settlement, as well as investing a "small percentage" in the lines of credit business.[597]

378. In January of 2011, Respondents' employees told Mr. Levenbaum that the majority of their business was advancing on settled cases.[598]

379. In early 2011, Mr. Levenbaum met with Dersovitz in person in New Jersey, during which meeting Dersovitz described the strategy to him in the same way he had read in the marketing materials, including that the Flagship Funds were diversified and that 95% of the business was advancing on settled cases and 5% in lines of credit.[599]

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[597] Tr. 2957:1-24 (Levenbaum) ("Q : Okay. And did you understand -- I think you said you understood at least some of RD Legal's business had to do with credit lines; is that fair?: A: Yes. To lawyers. Q: Okay. A: Very small percentage. Q: How did you know it was a small percentage? A: That was what was disclosed. Q: Now, you said that Mr. Dersovitz or RD Legal had a niche. What was their niche? Was it – A: Their niche was loaning money to lawyers, representing a discount on their fees for the cases that were already settled and resolved, but are waiting funding, because of the very nuances involved in these type of cases where it could take months or years for the cases to be funded. Class action suits, for example, cases against municipalities where you had to get the -- for example, accounting, the board of supervisors to eventually agree on how the funds are going to be paid. So the issues on the settled cases were the timing or getting paid."); Tr. 2960:23—2961:6 (Levenbaum) ("Q: What about conversations with Mr. Dersovitz or any of his employees? Did you have any of those before you invested? A: I did. Q: Okay. And what . . . did they say anything about the strategy? A: All the conversations were consistent with the written documentation through that period of time I invested.").

[598] Ex. 233 at 2 (W. Levenbaum notes); Tr. 2972:20—2973:9 (Levenbaum) ("Q: Yes. What is going on there? Go ahead and read it to yourself before – A: It says, 'Most of their business today is advancing on settlement cases, which I still don't completely understand. Very little is offered via the credit line.' Again, it was a comment to myself. And as I went along my due diligence, what was represented, and I applied my own logic and my own experience, I get to understand it, yes. Q: Does this reflect something that was expressed to you by somebody at RD Legal, Mr. Mallon, that most of their business today is advancing on settlement cases? A: That's the majority, yes."); see also Ex. 232 (W. Levenbaum notes).

[599] Tr. 2975:6—2976:6 (Levenbaum) ("Q: All right. So did you, in fact, visit with Mr. Dersovitz and your wife in Cresskill? A: Yes. Q: And what, if anything, did Mr. Dersovitz tell you about the RD Legal strategy? A: About the RD Legal what? Q: The strategy, the fund strategy. A: Exactly what I'm telling you: Diversification, loaning to lawyers, the fee acceleration program, which he said he was – about 95 percent -- at least 95 percent of his business the credit

380. In February of 2011, Mr. Levenbaum had a telephone call with Amy Hirsch, a consultant for Respondents, who reiterated that "95%" of the Flagship Funds" were doing fee acceleration with respect to settled cases only.[600]

381. In March of 2011, Mr. Levenbaum had a telephone call with Rick Rowella, an employee of Respondents, who told him that there were 100 positions in the Flagship Funds' portfolio with $61 million invested, which led Mr. Levenbaum to understand that the Flagship Funds were diversified.[601]

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line was 5 percent. We really, really honed in on the transparency factor, especially with the Bernie Madoff matter. And that transparency where I would have access, if I wanted to, to the various transactions. It was very impressive -- Q: Okay. A: -- and comforting. Q: Okay. And did he say anything contrary to your understanding of the stage of the litigation -- of the lawsuit - A: Nothing. Everything was consistent with what I had read and had been informed up to that point in time.").

600 See Ex. 536 at 2 (W. Levenbaum notes); Tr. 2988:7—2989:6 (Levenbaum) ("Q: Please turn the page to the second page, and you see there's a bullet point there saying 'She reaffirmed that 95 percent of RD's placement is fee acceleration.' Do you see that? A: Yes. Q: What does that mean? What does that say? A: Again, consistent with what was represented up to that point in time in writing by Roni, disclosure document -- disclosure documents, for example, marketing materials, et cetera, fee acceleration where the advances were made to lawyers, yes. Q: Okay. And so you -- did you understand this to be with respect to settled cases? A: Yes. Only. Q: Did Ms. Hirsch say anything that was contrary to what you had understood up to that point about the strategy -- A: No. Nothing. Q: I guess -- would you have written it down if she had said something contrary? A: Excuse me? Q: Would you have written it down if she had said something contrary?").

601 See Ex. 537 at 1 (W. Levenbaum notes); Tr. 2997:7—2998:1 (Levenbaum) ("Q: Okay. 537, is this another memorandum you wrote? A: Yes. Q: And was this part of your due diligence in -- to RD Legal? A: Yes. Q: Okay. And do you see where it says, 'There are currently 61 million investments in 100 positions, 25 attorney/law firms'? A: Yes. Q: Do you see that? What, if anything, did that mean to you? A: It shows the diversification. Q: Okay. And -- A: Dealt with 25 different law firms. Some of them sort of had multiple positions, multiple fees coming in. So diversification. Q: Okay. And that was important to you, I think you said? A: Appreciably.").

382. Mr. Levenbaum, reading the language in the Offering Memoranda about "litigation, judgment and settlements" understood it to be a generic description and that the Flagship Funds were invested only in settlements, given what he had been told and read.[602]

383. At the end of his due diligence, Mr. Levenbaum's understanding was that non-settled cases did not exist in the Flagship Funds' portfolios.[603]

384. In March of 2011 and April of 2012, Mr. Levenbaum invested a combined total of $400,000 in the Flagship Funds.[604]

385. After his first and before his second investment, Mr. Levenbaum understood the investments of the Flagship Funds not to have changed based on conversations with Respondents'

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602 Tr. 3088:21—3089:24 (Levenbaum) ("[discussing Ex. 235 at 5] Q: All right. You talked about that with my friend a minute ago. I think we've heard your testimony a couple times today that before you invested, you understood that RD Legal was -- the legal fee factoring portion of the business was with respect to settled cases by lawyers; is that correct? A: Yes. Q: Okay. Reading this here, does that change your understanding? A: No. Q: Why not? A: That is consistent with my mindset from day one as to what I was getting into. Q: It says "Litigation," though. Why doesn't that change your understanding as to -- A: Because -- if you -- if you look at the -- the litigation judgment and settlements is generically describing a plaintiffs' PI practice to whom the loans were made as an attorney. Q: Okay. And you had -- prior to this, you had read over documents that described these advances as -- as to settled cases; is that right? A: Yeah. It was settled cases. All right. Advanced loans to lawyers in settled cases. So litigation judgments and settlements was just, again -- didn't take away from the settled cases. My mindset was already there descriptive of the relationship of lawyers in advancing fees, yes.").

603 Tr. 3001:5-18 (Levenbaum) ("Q: What understanding, if any, did you have about whether RD Legal invested in non-settled cases? THE WITNESS: My understanding was it didn't exist. JUDGE PATIL: I'm sorry. In the mic. THE WITNESS: My understanding, sir, that was not -- it did not exist. That was not their business -- that was not their offering. That was not their business in non-settled cases, other than credit lines to attorneys for cases that were pending. Those could be -- those were unsettled cases. That was 5 percent of the total."); Tr. 3001:23—3002:4 (Levenbaum) ("Q: Did you see anything in all -- in all of this due diligence we just reviewed, that was contrary to that understanding? A: Nothing at all. Q: Did anyone tell you in these conversations that we reviewed anything contrary to that? A: Nobody and nothing.").

604 Tr. 2964:1-11 (Levenbaum) ("Q : Okay. Let me ask you this, sir: Did there come a time that you invested in RD Legal? A: I did. Q: And when was that? A: Let me see. March of 2011. Q: Okay. And did you make an additional investment at any time after that? A: The next year, I think in April of 2012. Q: Okay. And what was the total investment combined? A: $400,000.").

employees and on the monthly statements he was receiving, including in graphical format showing diversification in the Funds.[605]

386. In March of 2013, Respondents' employees emailed Mr. Levenbaum to solicit an additional investment in the Flagship Funds, sending him only a subscription agreement for his execution and did not appraise him of any change in the strategy of the Flagship Funds, but he did not invest further funds.[606] Between his April 2012 investment and March of 2013, Mr.

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[605] Tr. 3006:21—3008:2 (Levenbaum) ("Q: Okay. Now, between the time of your original investment and the second investment – let me ask you this, sir: Do you do -- do you go through the whole due diligence again, generally, for an additional investment? A: No. Q: Why not? A: I had what they had. He was sending reports that represented monthly reports, net asset reports. He was following through on what he told me he was going to do. I felt comfortable with the investment. No. Other than -- he may have – anything he may have sent me during one -- the nine-month or one-year interim, as it may be reflected in here. Q: Okay. Did Mr. Rowella tell you anything different about the strategy of the RD Legal fund at this point? A: No. Q: Did he mention any changes in strategy or investment ideas? A: No. Q: Okay. A: I might add, there was graphical analysis, which I liked, that he showed me for the term that I was in there, every month, the status of the accounts, the capital invested, the capital outlay, the diversification accounts. And that was sort of part of my due -- well, my due diligence at this stage. Summary due diligence. He had changed the format of the graphs in the reports. So that's what I'm talking about."); Ex. 542 at 1-2 (Levenbaum notes); see also Ex. 250 (copy of investor sheet received by W. Levenbaum in August of 2011).

[606] See Ex. 333; Tr. 3015:4—3016:10 (Levenbaum) ("Q: Okay. It says here -- let me direct you to the bottom half of the email from Katarina Markovic to yourself dated February 28, 2013. It says, 'Warren, Joe mentioned that he saw you last week while in Arizona, and he had asked that I contacted you. He said you mentioned you might be interested in adding to your allocation to the fund. I called earlier and left a message, but I wanted to follow up with an email as well.' Do you see that, sir? A: Yes. Q: Is that -- is that accurate? Were you at least considering an additional allocation on or around March 2013? A: He was trying to sell me on it. No. I wasn't really interested. Q: Did you make another allocation? A: No. Q: Why not? A: It was enough. You know, again, I was interested in the diversification portfolio offered by RD, and at the same token, I wanted to diversify my portfolio. Q: Now, I think you said they were trying to sell you on an additional subscription; is that correct? A: Yes. Q: Now, in connection with this, did they -- these conversations, did they tell you anything about any change in the portfolio strategy of any kind? A: No.").

Levenbaum had continued to receive from Respondents documents that indicated that the Flagship Funds invested only in settled cases and was diversified.[607]

387. Mr. Levenbaum did not know of the existence of any Peterson Turnover Litigation positions in the Flagship Funds before he made any investments.[608]

388. When Mr. Levenbaum invested in the Flagship Funds, he had no understanding that he would be taking any risks associated with a case like the Peterson Turnover Litigation, instead, he understood the delays in collections arose from, for example, reaching a settlement with the City of New York. He considered the risks inherent in the Peterson Turnover Litigation as

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607 E.g., Ex. 544 (September 2012 document representing that Flagship Funds "purchase[] legal fee receivables from law firms once cases have settled"); Ex. 545 (fourth quarter 2012 quarterly statistics document); Tr. 3012:1-10 (Levenbaum) ("Q: Okay. And do you see it says 'Portfolio characteristics as of September 30, 2012,' for example? A: Yes. Q: And then on the left side it says, 'RD Legal purchases legal fee receivables from law firms once cases have settled.' Did that mean anything to you when you read that? A: Consistent. Nothing out of the ordinary."); Tr. 3012:24—3014:6 (Levenbaum). ("Q: And, you know, there's an attachment --there appears to be an attachment here. Please take a moment to look and let me know if you recognize this email and what it is. A: Yes. Q: What is it? A: It's a portfolio statistics analysis from fourth quarter ending 2012. Q: Did you get this? A: Yes. Q: What, if anything, did this tell you about the portfolio around this time? A: Well, they had outstanding approximately $140 million. There were 117 plaintiffs' law firms that they had relationship with. 76 percent of those plaintiffs' law firms were repaid. The number of cases, she had amongst those -- amongst -- was 63 in the breakdown of category cases. Q: Okay. Do you see where it says 'By settlement type'? A: Yes. Q: What does that mean to you, 'by settlement type.' A: By category of tort action. Q: Okay. And what, if anything, did this tell you about the status of the portfolio around this time? A: Again, it was -- validated the diversification. He was dealing with a multitude of law firms, even though some had a -- you know, more than one position and a multitude of different cases. It really validated the diversification factor.")

608 Tr. 3068:7—3069:2 (Levenbaum) ("Q: -- the investment manager had made any loans at all to claimants in the Marine barracks case? A: I didn't know of any. Q: Okay. Would it surprise you to learn that at the time you invested, that the investment manager had not made a loan to plaintiffs in the Marine barracks case? A: Had not made? Q: Had not made. A: It wouldn't surprise me, because it would be inconsistent with the representation and the disclosures and everything else. Q: Right. And that at the time you invested, the investment manager had made investments with lawyers in the Marine barracks case? A: I don't know if they're Marine barracks cases. I knew the lawyers. Beyond that, it was -- in the list of the types of positions, there was no Marine barracks case.").

compared to the risk of settlement approvals with the City of New York as either "black and white" or "risk times ten," and no one told him that he would be entering into that type of risk.[609]

389. Mr. Levenbaum first found out about the Flagship Funds investment in the Peterson Turnover Litigation around June of 2015 when he read a story in the Wall Street Journal ("WSJ") —prior to that time he had never heard of that case—and when he had a call with Dersovitz about the issue Dersovitz acknowledged that he had not told Mr. Levenbaum about that matter.[610]

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609 Tr. 3083:20—3085:1 (Levenbaum) ("Q: Can you elaborate a little bit. A: Everybody -- City of New York, you know, even though they may have had budget crunches over the years and have recovered, and almost went bankrupt a couple years -- more than a couple years, and they're still here -- the Iranian situation is quite different. Especially with the politics that has influenced the relationship with the United States, the citizens of the United States and the Iranian government. It's like a wild cannon, if you will. Q: When you were investing in the RD Legal funds -- A: Yeah. Q: -- did you understand that you would be taking that kind of risk, the Iranian type of risk, whatever it is in your mind? A: No way. That is a risk times ten. Q: Would you want to know whether RD Legal had already invested in that case when you invested? A: Absolutely. Q: Would you have wanted to know whether RD Legal was planning on further investing in that case, including victims, when you invested? A: Yes, sir. Q: Why? A: Because that was a risk that I was not willing to participate in or be involved in, either indirectly or directly as an investor with RD. Q: Did anyone tell you, in fact, that was happening? A: No.").

610 Tr. 3020:18—3021:24 (Levenbaum) ("Q: Okay. So it says here, 'On May 21, 2015, we had a conference call during which you profusely apologized for your shortcomings and not timely following up with investors about the Iran victims' funding dilemma as it impacted RD's ability to timely meet its quarterly distributions.' Do you see that? A: Yes. Q: What is that about, sir? A: Basically he apologized. I didn't know anything about the Iran investment. And he apologized for not telling me. Q: Okay. So on May 21, 2015, you had a conversation with Mr. Dersovitz; is that correct? A: Yes. Q: And had you heard about this Iran investment before that date? A: In the Wall Street Journal article. Q: Okay. And Wall Street Journal article on or around what time? A: I don't recall specifically. Around that time. Q: Other than the Wall Street Journal article or talking to Mr. Dersovitz, had you heard about the Iran victims' funding issue before -- before those two -- you know, those two things? A : No. Q: Okay. At the -- at the time of your second investment in RD Legal on or around May 2012, did you have any understanding as to whether RD Legal was already investing in this Iran case? A: No understanding, no knowledge whatsoever.").

390. Mr. Levenbaum submitted a redemption request after he found about the investment in the Peterson Turnover Litigation, and has received approximately $579,614.66 of his $400,000 investment, but is due approximately $108,000 in interest.[611]

4. Asami Ishimaru and Paul Craig

391. Asami Ishimaru, who formerly worked in the hedge fund business and is currently in the process of starting an investment strategy business, first heard of RD Legal in 2009.[612]

392. Shortly thereafter, Ms. Ishimaru met with Dersovitz and he explained to her that the Flagship Funds did not lend money to lawyers "who were fighting a case," but rather advanced funds with respect to cases were there was less risk than in those circumstances because the outcome was assured.[613]

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611 Tr. 3024:9-19 (Levenbaum) (Q So this is a letter sent on or around January 12, 2016; is that correct? A Yes. Q And why did you sent this letter? A I wanted to cover myself, protect myself. I wasn't happy with what I heard, how things were going. And I wanted to redeem my investment in full pursuant to the terms of the agreement, knowing that it would take some time to get back all my money, based upon the redemption periods.); Tr. 3044:7-19 (Levenbaum) (Q And then on that total investment of $400,000, you give a very specific number; total paid $579,614.66. Is that right? A Correct. Q Is that accurate information on what you were paid back on your investment in RD Legal? A Yes. Q So not just principal and a little interest, but $179,000 worth of interest to date? A Yes. Q And then you also wrote beneath that, that you still had a balance due and owing of approximately $108,000, correct?).

612 Tr. 265:12—266:13 (Ishimaru) ("Q: And can you tell me what you do for a living? A: Actually, I was retired for a while, and I'm in the process right of starting an investment strategy business. Q: And do you have any background in finance or investment? A: Yes, I worked on Wall Street, and I was in the hedge fund business for many years. Q: And how many years have you been in Wall Street or the hedge fund business? A: I graduated from business school in 1983. I worked at Lehman Brothers and Goldman Sachs, and in 1991 I helped a hedge fund raise money and then I formed a fund to fund in 1996 with a partner. Q: Okay. Have you ever heard of an entity called RD Legal? A: Yes. Q: And when did you first hear of them? A: I heard of them in 2009. Q: And how did you hear of them? A: I heard about them through a friend of mine who invested in hedge funds and also advises high net worth individuals in investing in alternatives, that lives in Geneva. Q: Okay. And did there come a time when you met anyone from RD Legal? A: Yes.").

613 Tr. 267:24—268:19 (Ishimaru) ("Q: Was the fact that the plaintiffs had won their cases important to you or attractive to you in considering this strategy? A: Yes, because I was also aware of funds that lent money to lawyers who were fighting a case, and so the outcome was still

393. Dersovitz also told Ms. Ishimaru that he managed "a well-diversified portfolio."[614]

394. Ms. Ishimaru was told that all of the cases in which the Flagship Funds invested were cases involving situation were the "defendant was willing and able to pay."[615]

395. At no time before Ms. Ishimaru investment did anyone at RD Legal mention workout situations or situations where the defendant was fighting its obligation to pay.[616]

396. Ms. Ishimaru invested $100,000 into the Flagship Funds on or around early 2010.[617]

397. In later 2010, as part of her continued due diligence on the Flagship Funds and to understand "what are the reasons why it takes many months or years for plaintiffs to receive

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assured, so those were higher risk and this strategy I believed was less risk. Q: Did you have any interest in funds that -- where the lawyers were still fighting, as you said? A: No. Q: And why not? A: Because I just felt that rulings can go either way, and even for people who are experienced, they never really know. Q: And in terms of -- you said you believed that this fund, that that risk was not in this fund; is that correct? A: Yes. Q: And what was the basis for that belief? A: That's what Mr. Dersovitz -- how he explained his strategy.").

614 Tr. 276:3-9 (Ishimaru) ("Q: Okay. And in terms of that diversification, did anyone at RD Legal discuss diversification with you around the time you were looking to invest with them? A: Yes, I was told it was a well-diversified portfolio. Q: Who told you that? A: Mr. Dersovitz.").

615 Tr. 375:24—376:13 (Ishimaru) ("Q: And you said -- A: Well, for me everything was a settlement. Q: Everything was a settlement for you. You are not a lawyer. A: Well, I guess judgment could mean that. Now that I think about it, it could mean that it was something that was ordered by a judge. Q: And at the time you made your investment decision, Mrs. Ishimaru, you said you weren't concerned with the distinction between settlements and judgments? A: Because I kind of assumed that everything was a settlement where we were told that the defendant was willing and able to pay. Q: And you assumed that? A: Yes. Well, we were told that too.").

616 Tr. 280:9—281:1 (Ishimaru) ("Q: Okay. At any time before you invested in RD Legal, did anyone at RD Legal mention any exceptions to their strategy as they had described it to you? A: I also forgot to say about the line of credit. . . . No, apart from those two, I don't recall about any exceptions. Q: Did anyone mention any workout situations? A: Not that I recall. Q: Okay. Did anyone mention any cases where a defendant was fighting its obligation to pay? A: The defendant was? No, I think there were some instances where the law firm was having some problems making their payments on time, but I don't recall anything about the defendants fighting. Q: Okay. A: I mean not until later. Well, until I found out about the -- that the defendant was Iran.").

617 Tr. 278:21-23 (Ishimaru) ("Q: And can you just remind the Court when you invested? A: February of 2010."); Ex. 168 at 2 (Ishimaru investment of $100,000 effective March 1, 2010).

payment from defendants even once the settlement amount is determined[,]"[618] Ms. Ishimaru asked individuals at RD Legal for an explanation.[619]

398. In response to her inquiries, Dersovitz wrote to Ms. Ishimaru and explained that the reasons there would be delays in collection would take time because, for example:

> the City of New York as they statutorily have 90 days to pay a settlement. Many municipalities and state governments have these types of provisions and are a subset of our traditional niche. Another subset are situations when infants are injured in accidents. In many states, the parents can not settle these types of cases without court approval. The same holds true for wrongful death situations where someone is killed due to someone else's negligence. . . . Finally, you can have class actions and mass tort settlements that typically have payment delays post settlement of 1-3 years.[620]

399. After receiving this answer to her inquiries, Ms. Ishimaru was lead into thinking the reasons for a post-settlement payment delay were merely "procedures" and "bureaucracy." Indeed, based on Dersovitz's explanation to her, she expected "that the settlements were monies that would be disbursed given certain bureaucratic hurdles."[621]

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618 Ex. 230 at 4.

619 Tr. 285:12-25 (Ishimaru) ("[discussing Exs. 230 and 231] Q: Okay. Now, in terms of this e-mail we're focusing on, 231, do you have any understanding as to what this e-mail is about? A: It's Mr. Dersovitz explaining why some cases take a while to make the payment, and he's giving an example. Q: Now, was this in response to your question a minute ago about why there's delays? A: Yes. Q: Okay. And what example is he giving? A: What did he give me? Q: Yes. A: He gave an example, like for an example, in New York City they have 90 days to pay a settlement.").

620 Ex. 231 at 1.

621 Tr. 286:14-15 (Ishimaru) ("A: There were some procedures and they just took time. It was bureaucracy."); see also Tr. 405:14-19 ("Q: What did you expect, just to be clear? A: I expected that the settlements were monies that would be disbursed given certain bureaucratic hurdles. Q: What was that expectation based on? A: On Mr. Dersovitz's explanation.").

400. At the hearing, Dersovitz provided similar examples of the reasons for the delay in payment.[622]

401. The kind of reasons for a delay in the resolution of the Peterson Turnover Litigation, including legislative actions that were occurring before disbursement, were never discussed with Ms. Ishimaru with respect to the cases in the Flagship Funds' portfolios.[623]

402. On or around July 29, 2011, Ms. Ishimaru and a college classmate of hers, Paul Craig, visited RD Legal's offices in New Jersey, because both Mr. Craig and Ms. Ishimaru were considering investments into the Flagship Funds.[624]

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622 Tr. 5450:20—5451:22 (Dersovitz) ("A: . . . So if there's going to be a payment delay, which gets to duration, that's when I become valuable. So if you've got an entitlement, if you're got a duration -- you have to understand the duration comes about, because if you think about the cases that I identified earlier, whether it's an infant compromise, wrongful death, City of New York, state liquidation bureau, class action, there's typically an intervening duration between the time you can demonstrate a settlement and the time you're going to collect it. Usually, in the types of cases we fund, there's an intervening court process that still requires to occur before payment is going to happen. And your last question is: Who is paying it? So when you understand the nature of the cases -- the cases that we accelerate the legal fees on aren't your garden -- they're your garden-variety negligence securities class actions, mass torts. We're not factoring the legal fees due to one of two lawyers who are having a dispute over whether a fence line is on someone's property. The defendants, the settling parties in all of these instances are either a large entity that has a bond rating or are self-insured or have an insurance agreement of indemnification. So they're all professionals in their space, and they're professionals in terms of settling litigation.").

623 Tr. 403:18—404:6 (Ishimaru) ("Q: Did that kind of reason for a delay ever get discussed with you for the settlements in the portfolio? A: No. Q: In your mind, are these reasons for delay such as, you know, the City of New York statutory 90 days, parents cannot settle these types of cases without court approval, how does that compare to legislative actions and the case against blocked assets and frozen funds? A: I think these examples that are mentioned are -- happened quite frequently, and you could rely on past cases, and I felt that this Iran deal -- I mean, I -- it was unique, so you couldn't really look at past situations and have a good idea of when or if the funds would be disbursed.").

624 Tr. 287:24—289:1 (Ishimaru) ("Q: Okay. Do you see this document is an e-mail from Mr. Rowella to you, ma'am? A: Yes. Q: And can you remind the Court who Mr. Rowella was? A: Mr. Rowella was in charge of marketing and investor relations at RD Legal. Q: Okay. And do you see it says, 'Asami, it was nice to see you again. We appreciate you introducing us to Paul Craig. Thanks again for all your support'? Do you see that? A: Yes. Q: Who is Paul Craig? A: Paul Craig is a college classmate of mine, a good friend. Q: Okay. And did you, in fact, introduce Paul Craig to RD Legal? A: Yes. Q: When did you do that? A. I guess I did that in July of 2011. Q:

403. At the meeting, Dersovitz described the Flagship Funds' as "lending money to law firms against settlements."[625] He did not describe any change in the strategy from the time that Ms. Ishimaru had invested.[626]

404. In sum, Dersovitz told Mr. Craig and Ms. Ishimaru that "his portfolio is to have a diversified portfolio of settled – loans to law firms that had won settlements for their clients."[627]

405. Neither the Peterson Turnover Litigation nor the Cohen Cases were mentioned to Ms. Ishimaru and Mr. Craig at the time of that visit.[628]

Why did you introduce him to RD Legal? A: Paul was looking for an investment opportunity that made regular payouts. Q: Okay. And did you -- how did you introduce him to RD Legal? A: We went to visit the RD Legal office. Q: Where was that? A: It's in New Jersey."); Tr. 290:6-12 (Ishimaru) ("Q: At this time of your trip, is it fair to say that -- I think you said Mr. Craig was looking for investments; is that right? A: Yes. Q: And were you also considering additional investments in RD Legal? A: Yes.").

625 Tr. 289:9-12 (Ishimaru) ("A: They explained their strategy, which is the strategy that was mentioned before about lending money to law firms against settlements and also against collateral as the liens.").

626 Tr. 289:16-23 (Ishimaru) ("Q: Okay. Did he describe -- I think you said earlier he had described the strategy to you first when you invested; is that right? A: Yes. Q: At this meeting in New Jersey, did he describe anything different about his strategy? A: No, I don't recall thinking that there was any change."); Tr. 400:11-21 (Ishimaru) ("Q: Can I please direct your attention to page 7 of this document. I think counsel showed you this long paragraph about a review of Cohen Foster & Romine. Do you see that, ma'am? A: Yes. Q: Was this Cohen Foster & Romine law firm discussed with you prior to your investment in RD Legal? A: Not that I recall. Q: And your meeting in New Jersey in 2011 with Mr. Craig, was this Cohen Foster & Romine case discussed? A: No, I don't recall.").

627 Tr. 402:6-8 (Ishimaru) ("A: He told us that his portfolio is to have a diversified portfolio of settled -- loans to law firms that had won settlements for their clients.").

628 Tr. 302:8-24 (Ishimaru) ("Q: Do you see the line where it says 'Citibank'? Do you see that? A: Yes. Q: Okay. Sitting here today, do you know what this refers to? A: Yes. Q: What does it refer to? A: It refers to loans that were made by the fund to a law firm that represented families of victims of the Iranian terrorist attack. Q: Okay. At the time you received this document, had you heard about that matter before that? A: No. Q: You mentioned a trip to New Jersey in or around July 2011 with Mr. Craig. Was that matter mentioned during that visit? A: No."); Tr. 304:10-25 ("Q: Ms. Ishimaru, I think you mentioned that you were shocked by this information. Did you do anything after you received this e-mail? A: Yes, I contacted Mr. Rowella and asked him what this exposure was. Q: What did he say? A: He said that, in fact, it was not Citibank, but it was money that was held at Citibank that was frozen by the U.S. government that was the Iranian

406. Paul Craig invested $2 million into the Domestic Fund on August 25, 2011.[629]

407. In response to a query from Ms. Ishimaru and Mr. Craig,[630] on February 17, 2012, Mr. Rowella emailed Ms. Ishimaru and Mr. Craig as list of the "top 5 obligor exposures."[631]

408. After reviewing the attachment sent by Mr. Rowella, Ms. Ishimaru came to learn that the "Citibank" obligor "refers to loans that were made by the fund to a law firm that represented families of victims of the Iranian terrorist attack."[632]

409. After Ms. Ishimaru received the February 17, 2012 email showing that an exposure with respect to which "Citibank" was the obligor was the top position in the Flagship Funds'

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government's assets, and it was money that could be used to pay to the families of the victims of this Iranian terrorist attack. Q: Okay. And was this the first time you heard of this fund of Iranian assets? A: Yes."); Tr. 405:20-25 (Ishimaru) ("Q: Mrs. Ishimaru, who was the first person at RD Legal to tell you about the Iran case? A: Mr. Rowella. Q: Did Mr. Dersovitz mention that case to you before that? A: No.").

629 Ex. 168 at 2.

630 Tr. 301:6-15 (Ishimaru) ("[reviewing Ex. 1319] Q: Do you have any understanding or do you have an understanding as to why you received this e-mail? A: Yes, I believe that Paul and I had requested for a concentration. I mean, so we probably ask for the top five obligors of the portfolio. Q: Who did you ask? A: Mr. Rowella. Q: . . . And as far as you know, is this e-mail in response to that request? A. Yes.").

631 Ex. 1319; Ex. 1319_001 (attachment) (listing "Citibank, N.A." as a "Top 5 Obligor[] as of 1/31/12").

632 Ex. 1319_001; Tr. 302:8-20 (Ishimaru) ("[referring to 'a spreadsheet that Mr. Rowella sent to me and Mr. Craig about the top five obligors'] Q: Do you see the line where it says 'Citibank'? . . . A: Yes. Q: Okay. Sitting here today, do you know what this refers to? A: Yes. . . . It refers to loans that were made by the fund to a law firm that represented families of victims of the Iranian terrorist attack. Q: . . . At the time you received this document, had you heard about that matter before that? A: No."); Tr. 332:8—333:8 ("Q: I think you testified yesterday that you had spoken at some point to Mr. Rowella about the concentration; is that correct? A: Yes. . . . So I believe Mr. Craig was also on the phone with me, and we said, What is this Citicorp? And Mr. Rowella said, Well, it's actually not Citicorp. It's money that's held at Citicorp. It's money that was frozen by the U.S. government that the Iranian government owns. . . . It must be before this email [Ex. 277], because we spoke to Mr. Rowella right after we received this email with this Excel spreadsheet with the top obligors stating that Citibank had like 28 percent [Ex. 1319]. . . . Q: If you already knew what the Citicorp obligation was, why were you guys still asking here what -- A: We wanted explanation from Mr. Dersovitz, who is the fund manager.").

portfolio, Mr. Rowella explained to Ms. Ishimaru that the obligor was not really Citibank, but rather an account frozen by the United States Government.[633]

410. Prior to February of 2012, Ms. Ishimaru and Mr. Craig were "totally unaware" about the existence of the Peterson Turnover Litigation exposure in the Flagship Funds, and Ms. Ishimaru was "really shocked" when she found out about it, because the Citicorp exposure was a "major surprise" to them.[634]

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633 Tr. 304:10-25 (Ishimaru) ("Q: Ms. Ishimaru, I think you mentioned that you were shocked by this information. Did you do anything after you received this e-mail? A: Yes, I contacted Mr. Rowella and asked him what this exposure was. Q: What did he say? A: He said that, in fact, it was not Citibank, but it was money that was held at Citibank that was frozen by the U.S. government that was the Iranian government's assets, and it was money that could be used to pay to the families of the victims of this Iranian terrorist attack. Q: Okay. And was this the first time you heard of this fund of Iranian assets? A: Yes.").

634 Ex. 1319 at 1 (February 7, 2012 email from R. Rowella to A. Ishimaru and P. Craig listing top five obligors); Ex. 274 at 3 (March 4, 2012 email from P. Craig asking Dersovitz certain questions about the Flagship Funds, including when the Citibank exposure arose); Tr. 301:6-15 (Ishimaru) ("Q: Do you have any understanding or do you have an understanding as to why you received this e-mail? A: Yes, I believe that Paul and I had requested for a concentration. I mean, so we probably ask for the top five obligors of the portfolio. Q: Who did you ask? A: Mr. Rowella. Q: Okay. And as far as you know, is this e-mail in response to that request? A: Yes."); Tr. 303:13-23 (Ishimaru) ("Q: Okay. Did you have any reaction when you received this spreadsheet in an attachment to the e-mail from Mr. Rowella? Did you have any reaction to this? A: Well, I was really shocked with particularly how big the Citibank exposure was, and Merck, I guess, and Novartis too, but 28 percent in one position was a big shock. Q: Why was it a shock? A: Because the portfolio was supposed to be diversified, and having almost 1/3 in one position is not a diversified portfolio."); Tr. 307:1-21 (Ishimaru) ("Q: Okay. Let me direct your attention to Division Exhibit 274-3, which is just the next page in this document. The last part starts, 'Concentration Risk, 5. At the time I invested in it, the only major borrower or open obligor concentration was Merck. Now we understand based on information we asked from Rick and Leo that while Merck is down to 18 percent at January 31, Citicorp and Novartis are 28 percent and 11 percent. How and when did these exposures arise? We would like to see top five obligor data as part of your monthly communication.' Do you see that, ma'am? A: Yes. Q: Do you know why Mr. Craig was asking how and why did these exposures arise? A: Because we were totally unaware that this happened. We received those monthly statements, but it would say how many new lenders, but it was not specific, and it didn't tell us exactly how the investments were distributed in the portfolio, so we wanted to know when these transactions took place."); Tr. 331:24—332:2 (Ishimaru) ("Q: And where he says 'The Citicorp and Novartis exposures came as a surprise to us,' did those exposures come as a surprise to you? A: Yes, but the Citicorp was a major surprise.").

411. On March 4, 2012, in connection with considering whether to increase the size of their investments in the Flagship Funds, Ms. Ishimaru and Mr. Craig informed Dersovitz of their concerns regarding the "Citibank" (i.e., the Peterson) exposure.[635]

412. When Ms. Ishimaru and Mr. Craig asked Dersovitz about the Citibank exposure, he did not answer their questions, and Ms. Ishimaru and Mr. Craig did not feel that Dersovitz was being straightforward with them.[636]

a. In a subsequent email, Dersovitz again did not answer their questions about how the Citibank exposure had arisen.[637]

See also Tr. 405:20-25 (Ishimaru) ("Q: Mrs. Ishimaru, who was the first person at RD Legal to tell you about the Iran case? A: Mr. Rowella. Q: Did Mr. Dersovitz mention that case to you before that? A: No.").

635 Ex. 274 at 2 ("As Asami and I have been considering adding to our investments in RD Legal, we've become uncomfortable with a few issues."), 3 ("At the time I invested, the only major borrower or ultimate obligor concentration was Merck. . . . at Jan. 31, Citicorp and Novartis are 28% and 11%. How and when did these exposures arise? . . . The upshot of these concerns is that we think that LP's are taking on more risk than we used to think.").

636 Ex. 274 at 1 (March 7, 2012 email from R. Dersovitz to P. Craig, A. Ishimaru and S. Gumins); Tr. 314:20-25 (Ishimaru) ("Q: Okay. Can you explain for the Court what's going on between you and Mr. Craig with this word? A: We're being a little bit sarcastic. Q: And why is that? A: Because we kind of felt that Mr. Dersovitz wasn't being straightforward with us.").

637 Tr. 329:9—330:7 (Ishimaru) ("[discussing Ex. 277] Q: Can I direct your attention, please, to number 5 where it says, 'This is the first year in a long time that we have seen significant inflows, and with that being the case, we now have three full time and 20 or so part-time people looking for new attorney clients. Each month for the last six months or so we have done business with at least three to five new attorneys. That's an all-time high for us, and that is what I hope will assist in granularizing the portfolio even further. 'I appreciate the fact that lumpiness is to be avoided, but having said that, if you look at the business's history over the last ten, you see that we have always been lumpy. This is the first time, however, we have had such a large group marketing to attorneys, and over the next two years or so I really hope to bring these concentrations down. With regards to your request for specific information, please communicate with Rick or Leo, and they will provide whatever information you require on a monthly basis.' Do you see that, ma'am? A: Yes. Q: Did he answer your question about how this Citibank exposure arrived here? A: Not in the email exchange."); Tr. 307:22—308:5 (Ishimaru) ([discussing Ex. 1319] "Q: Okay. Now, directing your attention back to the front of this document, the e-mail that starts 'ladies, gentlemen,' from Mr. Dersovitz to Mr. Craig, copying you. A: Yes. Q: Ma'am, now, in terms of

b. Instead, Dersovitz represented to Ms. Ishimaru and Mr. Craig that he would seek to "bring these concentrations down[,]"[638] forcing Mr. Craig to reiterate the questions concerning the nature of the "Citicorp" exposure.[639]

413. Ms. Ishimaru and Mr. Craig already knew that the Citibank exposure referred to the Peterson Turnover Litigation because they had just found this out from Rick Rowella after calling him to ask him about that exposure, but were asking Dersovitz because they wanted an explanation directly from the fund manager.[640]

414. When Dersovitz finally addressed Ms. Ishimaru's and Mr. Craig's questions about the origins of the Peterson exposure, he wrote: "We've actually had pieces of it in the portfolio for

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your question, 'How and when did these exposures arise,' did Mr. Dersovitz answer your question? A: No.").

[638] Ex. 277 at 2 ("Each month for the last six months or so, we've done business with at least three to five new attorneys. . . . [T]hat is what I hope will assist us in granularizing the portfolio even further. I appreciate the fact that lumpiness is to be avoid, but having said that if you look at the business' history over the last ten, you'd see that we've always been lumpy. . . . [O]ver the next two years or so, I really hope to bring these concentrations downs."); Tr. 330:8-17 (Ishimaru) ("[discussing Ex. 277 at 2] Q: Do you see the reference to 'That's an all-time high for us, and that is what I hope will assist in granularizing the portfolio even further'? A: Yes. Q: Does that mean anything to you, or did that mean anything to you when you read it? A: That meant the concentrations would go down and the portfolio would be more diversified going forward. Q: Was that -- did you have a reaction to that? A: Well, that's what we wanted, yes.").

[639] Ex. 277 at 1 ("5. . . . the Citicorp (28% as of Jan. 31) and Novartis (11%) exposures came as a surprise to us . . . Questions: •When and how did these exposures arise? What kind of settlements is Citicorp the ultimate obligor on? • Why were LP's not told about it? • Can we get some assurance that you won't enter these kinds of concentrated positions in the future?").

[640] Tr. 332:8—333:8 (Ishimaru) ("Q: I think you testified yesterday that you had spoken at some point to Mr. Rowella about the concentration; is that correct? A: Yes. Q: What did he tell you, again, about what it was? A: So I believe Mr. Craig was also on the phone with me, and we said, What is this Citicorp? And Mr. Rowella said, Well, it's actually not Citicorp. It's money that's held at Citicorp. It's money that was frozen by the U.S. government that the Iranian government owns. Q: Was that before or after this email? A: I don't recall. Q: Okay. A: Actually, I think -- yeah. It must be before this email, because we spoke to Mr. Rowella right after we received this email with this Excel spreadsheet with the top obligors stating that Citibank had like 28 percent. Q: Is that the spreadsheet you saw yesterday? A: Yes. Q: If you already knew what the Citicorp obligation was, why were you guys still asking here what -- A: We wanted explanation from Mr. Dersovitz, who is the fund manager.").

quite some time and as a matter of fact, we are going to market now with a special purpose entity that will exclusively have more of this asset. Said another way, it's probably one of the best assets in the book and I'd like to purchase a much greater amount in another vehicle. . . . Once again, if you call, I'll walk you through the transaction and you can formulate your own opinion. With regards to the investor communications, we've just posted a note on the investor site about the Citibank exposure. . . . [W]e're trying to be the most forthcoming manager you can deal with . . . I simply can't imagine many managers being more transparent than us. Have you ever taken a moment to read our quarterly AUP reports. Any problem that we have is reported in that document and we updated three times a quarter."[641]

a. The AUP reports do not provide information about the origin of the Peterson positions or the concentration of the Peterson positions.[642]

415. Ms. Ishimaru responded to Mr. Craig: "Who cares about transparency after you put on a horrendous trade. Transparency is not the only thing that matters. . . . I will go over the quarterly reports to see if there are any mentions of the 30% Citicorp position."[643]

a. Ms. Ishimaru further explained in testimony; "My response is it's not just transparency that matters, it's also what you do. And just because Dersovitz told us after the fact didn't make it okay that he took such a large position."[644]

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641 Ex. 278 at 2, 5.

642 See generally Ex. 349; 369; 1064; 1073; 1083; 1103; 1186; 1246; 1263; 1431; 1432; 1490; 1491; 1544; 1712; 1723; 1796; 1892; 2018A; 2092A.

643 Ex. 278 at 2, 5.

644 Tr. 336:12-16 (Ishimaru) ("[asking about language at Ex. 278 at 2, 5] Q: Did you have a response to that [Ms.] Ishimaru? A: My response is it's not just transparency that matters, it's also what you do. And just because Mr. Dersovitz told us after the fact didn't make it okay that he took such a large position.").

416. On or around March of 2012, Ms. Ishimaru and Mr. Craig met with Dersovitz, and although Dersovitz told them that he felt there was a good chance of recovery with respect to the Peterson Turnover Litigation, Ms. Ishimaru and Mr. Craig told him that in their view the investment in the Peterson Turnover Litigation was not the same type of case that they had been told the Flagship Funds would be making, in part because of the political risks inherent in that investment.[645]

a. Ms. Ishimaru also testified that, during a meeting with Dersovitz and Mr. Craig, she told Dersovitz that she was uncomfortable with political risk because "we never know with politics" and that, considering that the Onshore Fund was seasoning assets for the Offshore Fund, concentrations in the Peterson case might "increase a lot more."[646]

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[645] Tr. 311:2—312:5 (Ishimaru) ("Q: Ms. Ishimaru, do you have any understanding as to why Mr. Dersovitz is representing that there's not going to be any change in behavior patterns or shifting to a new area? A: Probably because we asked him questions, and I don't know if at this stage when this e-mail was written we had told them that we didn't think that the Iranian-related loan was in line with his normal investment. Q: Okay. Did there come a time when you said that to Mr. Dersovitz? A: Yes. Q: And who said it or what did you say? A: Well, I think Mr. Craig and I, we said to him -- I believe we also had a face-to-face meeting at his office, yeah. Q: Okay. And what did you say? A: And we said -- we asked him to explain, you know, what the status was and why he thought that there was a good chance of recovery, and -- but I know that we both -- Mr. Craig and I felt that it was not the same kind of settlement that plaintiffs have won against companies like Merck and Novartis because there was a lot of political risk. Q: And did you explain that to Mr. Dersovitz? A: Yes. Q: Okay. And I think you said that he explained the status of the matter to you; is that correct? A: Yes.").

[646] Tr. 345:16—347:7 (Ishimaru) ("Q: . . . I just want to ask you, at around this time, this point in time, did you have an opinion about the Iran matter? A: I just didn't really understand -- I had a hard time understanding the risk, because it was -- it had a lot to do with the political situation so I was uncomfortable. Q: What about the political situation made you uncomfortable? A: Well, because, first of all, this money was frozen, I think, for many years, and so, you know, why wouldn't it be frozen for many more years? And I did try to go on the internet and read about all the things that different congressmen were doing about this, but I didn't really, to be honest, understand everything and so I just had no -- I mean, I know Mr. Dersovitz had done a lot of work on it, but I still -- you know, I hoped that he was right, but, you know, we never know with politics. Q: Did you have an opinion about the concentration of the Iran matter in the funds you were in?

417. Ms. Ishimaru and Mr. Craig asked Dersovitz about language in the documents governing the Flagship Funds that seemed to give Dersovitz flexibility to invest in assets that Ms. Ishimaru and Mr. Craig did not consider a part of the strategy they had invested in.[647]

a. In response to these queries Dersovitz told Ms. Ishimaru and Mr. Craig that they should trust him and not the flexibility given to him by the Funds' governing documents because "if [they were] worried about [Dersovitz] changing [his] behavior patterns or shifting into a new area, [Dersovitz would] say forget it. That's simply not going to happen."[648]

A: Well, I particularly felt uncomfortable about the fact that the domestic LP was being used to season for the offshore fund, and that the offshore fund seemed to be growing at a much faster pace. And so Mr. Dersovitz correctly pointed out that, you know, the exposure could increase a lot more. And so I felt that that was not a very good situation for especially the domestic investors. Q: And these opinions or feelings you had, did you express any of those to anyone at RD Legal? A: Yes. . . . I recall having a meeting. I know Mr. Dersovitz was there, but we went -- I believe Paul Craig and I went to see him, and we told him that we were uncomfortable. Q: And the uncomfortableness you had with the political aspect that you did not understand, was that something you expressed at this meeting? A: Yes.").

See also Tr. 408:13-21(Ishimaru) ("Q I think you mentioned earlier that Mr. Dersovitz felt gung ho about the case? A: Yes. Q: Did you feel gung ho about the case? A: No. Q: Did you express that to Mr. Dersovitz? A: Well, we -- that's why we asked him to explain why he was so confident, yes, but we were -- you know, Paul, Craig and I and Mr. Gumins were not so sure.").

647 See Ex. 274 at 2 (March 4, 2012 email from P. Craig asking about powers of General Partner that he viewed as "[not] relevant to how RD Legal currently manages its funds"); Ex. 275 at 1-5 (March 5, 2012 email from M. Chandarana to B. Goldberg indicating an investor had asked about the powers of the general partner in the Fund documents; March 5, 2012 response of B. Goldberg pointing out that RDLC has "broad investment flexibility" under the Offering Document; March 8, 2012 forward by R. Dersovitz to S. Gumins, A. Ishimaru, and P. Craig regarding "counsel's response" on issue of flexibility).

648 Ex. 275 at 1 (March 8, 2012 email from R. Dersovitz to S. Gumins, P. Craig, and A. Ishimaru); see also Tr. 311:2-10 (Ishimaru) ("Q: Ms. Ishimaru, do you have any understanding as to why Mr. Dersovitz is representing that there's not going to be any change in behavior patterns or shifting to a new area? A: Probably because we asked him questions, and I don't know if at this stage when this e-mail was written we had told them that we didn't think that the Iranian-related loan was in line with his normal investment."). Tr. 312:16-313:23 (Ishimaru) ("Q: Okay. Now, do you see on this Exhibit 275, the e-mail on top that says 'Asami Ishimaru wrote: Roni hit the nail on its head when he said you need to be comfortable with the manager, but more importantly the

b. Dersovitz also told Ms. Ishimaru and Mr. Craig he would "agree to waive [their] hard lock of a year."[649]

c. In response to these queries, Dersovitz at times told Ms. Ishimaru and Mr. Craig that his goal was to have the concentrations in the Peterson Turnover Litigation would go down.[650]

418. Ms. Ishimaru and Mr. Craig told Dersovitz that the believed that the Peterson investments were not "in line" with the Flagship Funds' "normal" investments because "there was a lot of political risk."[651]

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person running the fund than the underlying documents'? A. Yes. Q: Do you see that part, ma'am? A: Yes. Q: Did you write that? A: Yes. Q: What did you mean by that? A: That's what's really important -- when one invests in a hedge fund it's important to -- because hedge funds are given a lot of leeway about how to make their investments, and it's -- you know, with anything that you deal with with a person, it's important that -- the character of the person and the integrity of the person. Q: Okay. And just referring back to the bottom part of the document where Mr. Dersovitz says, 'At the end of the day, regardless of what agreed to on this topic, you need to be comfortable with the manager, or more importantly, the person running the fund, than the underlying documents,' do you see that? A: Yes. Q: Did that mean anything to you, that sentence? A: Yes. Q: What did you mean by that? A: That the investors need to trust the manager to do the right thing. Q: Do you know what 'the underlying documents' refers to? A: Offering memorandum.").

649 Ex. 275 at 2 (March 8, 2012 email from R. Dersovitz to S. Gumins, P. Craig, and A. Ishimaru).

650 Tr. 330:8-17 (Ishimaru) ("Q: Do you see the reference to 'That's an all-time high for us, and that is what I hope will assist in granularizing the portfolio even further'? A: Yes. Q: Does that mean anything to you, or did that mean anything to you when you read it? A: That meant the concentrations would go down and the portfolio would be more diversified going forward. Q: Was that -- did you have a reaction to that? A: Well, that's what we wanted, yes."); Ex. 277 at 2 (email from Dersovitz to Ishimaru stating ". . . that is what I hope will assist us in granularizing the portfolio even further . . . over the next two years or so, I really hope to bring these concentrations downs.").

651 Tr. 311:2—312:2 (Ishimaru) ("[discussing Ex. 275] Q: Ms. Ishimaru, do you have any understanding as to why Mr. Dersovitz is representing that there's not going to be any change in behavior patterns or shifting to a new area? A: Probably because we asked him questions, and I don't know if at this stage when this e-mail was written we had told them that we didn't think that the Iranian-related loan was in line with his normal investment. Q: Okay. Did there come a time when you said that to Mr. Dersovitz? A: Yes. Q: And who said it or what did you say? A: Well, I

419. In addition to political risk, Ms. Ishimaru believed that the uniqueness of the Peterson position made it difficult to assess the risk relative to the examples of post-settlement delay Dersovitz previously described to her.[652]

420. In June, Ms. Ishimaru and Mr. Craig asked further questions concerning the size of the Peterson position.[653]

421. Mr. Zatta responded that the "total Iran position is approximately $26 million" and that, following participations to the Offshore Fund, the Onshore Fund's concentration was "16% of domestic capital."[654]

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think Mr. Craig and I, we said to him -- I believe we also had a face-to-face meeting at his office, yeah. Q: Okay. And what did you say? A: And we said -- we asked him to explain, you know, what the status was and why he thought that there was a good chance of recovery, and -- but I know that we both -- Mr. Craig and I felt that it was not the same kind of settlement that plaintiffs have won against companies like Merck and Novartis because there was a lot of political risk. Q: And did you explain that to Mr. Dersovitz? A: Yes.").

652 Tr. 402:25—404:6 (Ishimaru) ("Q: Back to this email [Ex. 231], Mrs. Ishimaru, . . . this is where Mr. Dersovitz is giving you some examples about reasons for delays in settlement payments. Do you remember this? A: Yes. Q: Other than the reasons in this email, did he discuss other reasons with you orally why there might be delays in settlements? A: He could have. I don't recall. Q: Did he ever say that there might be a delay because the defendant was contesting its obligation to turn over funds? A: I don't recall that conversation. Q: I think you mentioned a moment ago that for the Iran matter, you understood there were legislative actions and a lot of stuff going on before the disbursement of funds; is that right? A: Yes. Q: Did that kind of reason for a delay ever get discussed with you for the settlements in the portfolio? A: No. Q: In your mind, are these reasons for delay such as, you know, the City of New York statutory 90 days, parents cannot settle these types of cases without court approval, how does that compare to legislative actions and the case against blocked assets and frozen funds? A: I think these examples that are mentioned are -- happened quite frequently, and you could rely on past cases, and I felt that this Iran deal -- I mean, I -- it was unique, so you couldn't really look at past situations and have a good idea of when or if the funds would be disbursed.").

653 Ex. 286 at 2 ("Hi Leo, I have a few questions coming out of my phone call with Roni of last week and my review of the domestic fund's 2011 audited statements: 1. My main question: what's the domestic fund's current exposure to the Iran lawsuit? The 2011 audit says on page 3 that as of Dec. 21 the Iran exposure ('U.S. Government') is 47% of partners' capital in the domestic fund and footnote 3 says that the domestic fund is $14 million of the total $21 million of the money lent into this case. . . .").

422. Responding to Mr. Craig's question about whether the size of the Peterson position would increase from $26 million, Dersovitz responded: "If you recall during our phone conversation last week, I had said that it will continue to prob increase slightly, and if we increase significantly it will only be after discussions with investors."[655]

423. Ms. Ishimaru followed up to ask questions concerning the size of the Peterson positions in the Onshore Fund because she did not believe that Dersovitz was answering the questions and wanted to understand how large the Peterson concentrations might grow to.[656]

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654 Ex. 286 at 1 ([from June 5, 2012 Zatta email] "1. The total Iran position is approximately $26 million. Yes, domestic capital is $29 million and offshore capital is $82 million for a total of $111 million. The Offshore Fund has purchased participations of approximately $21.4 million of the Iran position resulting in approximately $4.6 million in the Domestic Fund or about 16% of domestic capital.").

655 Ex. 286 at 1. See also Tr. 407:8—408:12 (Ishimaru) ("Q: Was the fact that -- I think you said Mr. Dersovitz said the concentration might go up, you wanted it to go down; is that fair? A: I wanted it to go down, and he said it might go up? Yes. Q: Did he also at other times mention to you he wanted it to go down? A: He said he would work on it, yes. Q: Is that part of the reason why you waited a few months to redeem? A: Yes, and also I was hoping that the lawyers for the Peterson case would receive their fees. Q: You said Mr. Dersovitz said he was hoping to work on it, is that right, to getting it down? A: Yes. He uses the word -- he often used the word granularize. Q: If you had known at this moment that he was planning on increasing the concentration at this moment, would that have affected your decision to wait? A: Well, he did explain that it could go up, but I did stay. Q: And why did you redeem your investment ultimately? A: Because it was taking much longer -- not that Mr. Dersovitz ever said exactly when he expected this money to be disbursed to the victims' families, but it seemed like it wasn't going anywhere, and that the position had increased to 40 percent; a very high number, as I recall. I didn't recall the 40 percent until recently.").

656 Ex. 286 at 2 ([June 5, 2012 Ishimaru email] "Dear Leo: Does this mean that once the assets that are seasoning on the domestic fund's books are participated out to the offshore fund, the percentage of the Iranian exposure for the domestic fund will end up higher than the current 16%?"); 286 at 1 ([June 7, 2012 Ishimaru email] "I understand that. That is why I asked what percentage the domestic's fund will the Iran exposure end up assuming nothing else changes.").

See also Tr. 341:7—343:12 (Ishimaru) ("[referring to 287 at 2] Q: . . . do you see where Mr. Zatta writes to Mr. Craig and he copies you? . . . [D]id you write a response to that on top? A: Yes. I asked him another question. Q: Can you explain just for the Court, and take a moment to read it, please, what you asked. A: I'm really trying to understand where the domestic funds Iranian exposure would end up, because . . . part of the Iranian exposure in the domestic fund was loans that were held to season for the offshore fund so I'm asking Mr. Zatta if once these loans that

424. In response, Dersovitz reiterated (i) the commitment to limit the size of the Peterson concentration and (ii) to communicate with investors concerning the size of the Peterson position in a June 10, 2012 email to Ms. Ishimaru: "Asami, If you look at the RDLC website you'll see a memo stating that the concentration threshold for this action will be restricted to no more than 30%. Having said that we're anticipating to launch an offshore vehicle . . . and the domestic vehicle will probably have to season assets for that vehicle. If that's the case . . . than the concentrations for this asset could significantly increase in the domestic fund as we ramp up that exposure . . . for the new vehicle. . . . I'm planning on having a discussion with investors to see what their tolerance threshold is for an increased exposure beyond what is today. Obviously if everyone balks, we will not proceed. If only a few remain unhappy with the exposure at that time, the option exists to redeem them out."[657]

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are being seasoned are moved off the books to the offshore fund, . . . where [the Iranian exposure] will end up. . . . Q: . . . Do you see there a response from Mr. Dersovitz on June 6, 2012 that starts with, . . . 'The seasoning process and the holdings ratio between the two funds is what controls the percentage in each of the funds.' . . . Ma'am, did Mr. Dersovitz address your question about where the position of the Iran in the domestic fund would end up? A: Not where it would end up. He answered that it would not be static. Q: What does that mean to you? A: Well, it depends on -- that it could really go -- increase a lot more, it could decrease, but it could increase a lot more. Q: Did you have any reaction to that? A: Well, that was not the kind of answer that I was hoping for. Q: Let me direct your attention on the first page . . . I think you say, 'I understand that that is why I asked what percentage of the domestics fund will the Iranian exposure end up assuming nothing else changes.' Did you write that? A: Yes. Q: Why did you write that? A: Because I still want to get to the bottom of how high this exposure can go, because I wasn't very happy about this loan.").

[657] Ex. 287 at 1. Tr. 406:21—407:3 (Ishimaru) ("Q: Just going back to this email [Ex. 287] again. Do you recall discussing where Mr. Dersovitz says 'I plan on having a discussion with investors to see what their tolerance threshold is for an increased exposure'? A: Yes. Q: Was that ever discussed again with you after this? A: I don't recall having such a discussion.").

425. Dersovitz never went back to Ms. Ishimaru to have any discussion about appetite for an increased exposure to the Peterson Turnover Litigation, including exposure to the Peterson plaintiff claims.[658]

426. In connection with these discussions, Dersovitz also falsely told Mr. Ishimaru and Mr. Craig that the "current interest" in the Peterson Turnover Litigation lied in "an offshore vehicle" at a time when no special purpose vehicle existed for the Peterson Turnover Litigation and when the concentration of the Peterson Turnover Litigation investment in the Domestic Flagship Fund was significant.[659]

427. Ms. Ishimaru ultimately submitted a redemption request on February 26, 2013.[660]

428. Ms. Ishimaru redeemed after learning that the Peterson concentration was getting "really, really high."[661]

429. Ms. Ishimaru learned that the concentration numbers were 40%--what she called a "pretty shocking number"—from Mr. Craig, who learned from Mr. Gumins.[662]

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658 Tr. 345:1-10 (Ishimaru) ("A: Yes. Q: In this section that talks about 'I'm planning on having a discussion with investors to see what their tolerance threshold is,' did that mean anything to you when you read that? A: Well, that he would come back to the investors if the -- as he previously stated, if he is going to significantly increase concentration of any position. Q: Did he ever come back to you about this issue? A: No.").

659 Ex. 287 at 1 (email from R. Dersovitz to A. Ishimaru stating 'we're anticipating to launch an offshore vehicle (since that's where the current interest lies)'); Ex. 463A.

660 Ex. 2759 at 2.

661 Tr. 347:13-23 (Ishimaru) ("Q: And did there come a time when you did redeem or submit a redemption for your investment in RD Legal? A: Yes. Q: When was that? A: Maybe like six or seven months later. Q: Why did you redeem at that point? A: I think it was because I found out that the concentration of this Iranian exposure was really, really high. I can't recall the exact number, but it was so high that I didn't really care if I was getting 13-and-a-half percent so I decided to redeem.").

662 Tr. 349:8-19 (Ishimaru) ("[reviewing Ex. 480] Q: Mrs. Ishimaru, does that refresh your memory as to how you found out about the exposure? A: Yes. Mr. Craig had spoken to Mr. Gumins, who had spoken to Mr. Dersovitz, who told him that. Q: Mr. Craig told you? A: Yes. He emailed me and told me. Q: Is that the reason you redeemed, you filed the redemption? A: Yes. I

430. At the time Ms. Ishimaru and Mr. Craig invested, they believed that RD Legal was "(95%) lending against resolved cases."[663]

5. Steven Gumins

431. Steven Gumins is a resident of Santa Barbara and Mammoth Lakes, California. He runs Athens Capital, which is an extension of a family office managing approximately $75 million. He founded Athens Capital in 2001.[664]

432. Brian Torres is the Chief Financial Officer of Athens Capital.[665]

433. Mr. Gumins heard of RD Legal in late summer of 2011,[666] and as part of his efforts to decide whether to invest, visited the RD Legal offices in New Jersey in September 2011, where he met with Dersovitz for approximately four hours.[667]

434. At the meeting in New Jersey, Dersovitz described the Flagship Funds' investments to Mr. Gumins as "only invest[ing] in settled court cases."[668]

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think that was a pretty shocking number. . . . A: It wasn't going down fast."); Ex. 480 at 1 ([Jan. 23, 2013 1:46 PM email from Craig to Ishimaru] "Steve Gumins doesn't want me to let on that I know that Roni told Steve that the Iran exposure is 40%. . . . I sort of remember that Roni told us that he would get the Iran exposure in the domestic fund down to 20% once it had seasoned and a lot of it had been offloaded to the offshore fund, and that was months ago."); See also Ex. 480 at 1 ([Jan. 23, 2013 email from Ishimaru to Craig] "I don't remember if he gave us a number, but he told us that the exposure would decrease going forward. The disclosures should include what the exposure is by fund and not on a consolidated basis. I know if we ask for a breakdown by fund Roni will go into a long explanation, of how he can't separate the two. . . .").

663 See n. 268.

664 Tr. 3599:14—3601:2.

665 Tr. 3601:13-25 (identifying Brian Torres as the CFO of Athens Capital).

666 Tr. 3601:10-12 (Gumins) ("Q: Do you have any sense as to approximately when you first heard of [RD Legal]? A: End of the summer 2011.").

667 Tr. 3602:25—3603:11 (Gumins) ("Q: Did you meet him on or around September 11, 2011? A: Somewhere around there, I went to his offices with Paul Craig and spent about four hours there. Q: Where were those? A: In New Jersey. Q: Did he tell you anything about the opportunity? A: Yes, he did. He explained it extremely well and had a lot of documentation to back it up. So we went through documentation for about four hours on cases.").

435. Mr. Gumins directed Athens Capital to invest a total of $1.5 million on or about September 21, 2011 in the Onshore Fund.[669]

a. At the time, the Peterson case represented approximately 22% of the Funds' value.[670]

436. Athens Capital invested a further $250,000 to the Onshore Fund on December 1, 2011.[671]

a. At the time, the Peterson case represented approximately 27% of the Funds' value.[672]

437. In addition, Athens Capital made an additional investment in the Onshore Fund in July 2012, for a total combined investment of approximately $2.05 million.[673]

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668 Tr. 3603:12—3604:4 (Gumins) ("Q: And what did he explain about the strategy? A: That he only invested in settled court cases, period. Q: What did you understand that to mean, settled court cases? A: That if you sued a corporation and it was judged in your favor, that that was what he went after, only after it was settled and loaned the money to the attorney. And the attorney, he would attach -- he would go after receivables of the attorney and his personal net worth to make sure we got paid on the back end after he received his money. I understood it to be a short-term, for the most part, like a bridge loan. Q: And was the fact that the cases were settled or finished, was that important in your analysis of this investment? A: Absolutely. It was the only reason I invested.").

669 Ex. 592 at 1 (Sept. 21, 2011 email from Brian Torres) ("You should have also received an additional 500K sent separately from Athens Steady Return Fund, LP for a total of 1.5M investment."). See also Ex. 591 (Sept. 19, 2011 email from Chandarana sending marketing and subscription documents to Mr. Torres).

670 Ex. 2 at Cell O-5.

671 Ex. 595 at 3 (investment confirmation).

672 Ex. 2 at Cell O-8.

673 Tr. 3623:5-10 (Gumins) ("Q: So did you come to invest an additional amount with RD Legal on or around July 2012? A: I'm confident I did. Q: And why did you do that? A: Because he had returned capital. And I was comfortable that he was doing a good job."); Tr. 3662:1-5 ("Q: . . . our records show, sir, that you invested $2,050,000 overall. Any reason to believe that wasn't true based on what we've seen? A: No. I believe that you're correct."). See also Tr. 3660:25—3661:6 ("Q: . . . Well, you invested additional capital in or around July of 2012? I believe that's

a. At the time, the Peterson case represented approximately 34% of the Funds' value.[674]

438. Mr. Gumins, at the time he invested in the Onshore Fund, believed that the Onshore Fund was investing in "resolved" cases.[675]

439. Prior to his investments, Mr. Gumins had not been informed about the Peterson positions.[676]

440. Following his second investment in 2011,[677] in February 2012, Mr. Gumins received information concerning the Peterson case.[678]

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what you said on direct. A: Yeah. I think so. Q: About another $300,000? A: If you have documentation, I'm sure it's correct. I don't remember.").

674 Ex. 2 at Cell O-15.

675 Tr. 3679:7-15 (Gumins) ("Q: Was it your understanding that the portfolio of RD Legal was lumpy and it could not be assured that it would forever go away as Mr. Dersovitz wrote? A: No, sir. **My understanding was I invested in settled cases, period.** I never asked about lumpiness of the settled cases. If it's a large corporate case against Merck, I imagine there could be a large part of the portfolio which would be perfectly okay because it's part of what he sold me." (emphasis added)).

See also Tr. 3666:25—3667:16 (Gumins) ("[discussing Ex. 1334] A: No., no. . . . **Roni Dersovitz explained to me that he only invested in settled judgments.** So I accepted that. Paul got on to something about there was more concentration we expected. That was utterly immaterial to me in the trade. I wouldn't pay any attention to it, one way or the other. I just didn't even bother reading it. Probably to tell you the truth, it didn't even say that in the file. Had I seen it, as I said earlier, it would have said 28 percent Citicorp. If I saw those, delete, I'm fine with that, Roni. That's what you said you did. **You said you invested exactly to me in settled cases that we didn't have a risk because the case was settled. And the money was forthcoming.** So these kind of people, I didn't understand where the discrepancy was. It seemed as though Roni was doing exactly what he told me." (emphasis added)); Tr. 3654:13-3655:5 (Gumins) (Gumins explaining that he shared Craig's understanding, expressed in Ex. 318, that "Roni was only 95 percent lending against resolved cases[,]" but "thought that it was 100 percent.").

676 Tr. 3613:7-11 (Gumins) ("Q: Prior to your first two investments, had you heard about this opportunity? A: No, sir. Q: Had anyone at RD Legal mentioned this case? A: No.").

677 See supra ¶¶ 433, 436.

678 Ex. 588 (Feb. 9, 2012 email from Laraia to Gumins re: Perles); Tr. 3612:14—3613:3 (Gumins) ("Q: Mr. Gumins, can you please turn your attention to Division Exhibit 588? . . . Q: Do

441. Mr. Gumins told Dersovitz that he was not interested in investing in the Peterson litigation because he did not want the "headline risk" and concerns with that lending to the families of the Marines would spur anti-Semitism.[679]

442. Mr. Gumins had a number of conversation about the proposed Peterson investment and also told Dersovitz about political risks, analogizing to historical examples, as well as expressing a moral concern with the investment.[680]

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you know what this e-mail is about? A: At this point, Roni was talking about a bombing from Iran against the Marine barracks in Beirut and going after the case, Iran -- U.S. versus Iran.").

[679] Tr. 3613:12—3614:15 (Gumins) ("Q: Would you have wanted to know about that case if it was in your fund before those investments? A: Yes. Q: Why? A: Because I wouldn't invest in that. Q: Why not? A: Headline risk. I don't invest. Two reasons: First, there's headline risk. If we as the United States Government were to decide that it's in the United States Government's best interest to make a treaty and have a rapprochement with Iran, we will forget about the bombing because it's in the interest of the United States Government. Second, I specifically told Roni that it was blood money. And Jews don't belong doing that kind of business. Q: I'm sorry. What do you mean by that? A: People died. You don't go to them and loan them money against interest, against the case to make a profit on the death of their children, the least of all, Jewish people. It just brings out antisemitism. Q: You expressed this view to Mr. Dersovitz? A: Very strongly as a friend first. Q: And did he respond? A: Yes. Q: What did he say? A: In the beginning, he just said, 'Well, I'm just looking at it.' That's how it all began. 'I didn't say I was going to do it.' And he would come back and really say that.").

See also Tr. 3734:12—3735:11 (Gumins) ("JUDGE PATIL: But if you could just describe to me why those particular issues were important to you, either as a matter of culture or your own tradition, that would help me to understand your ethical conditions and your views. THE WITNESS: I don't know the right way to put it. But it's always Jews and money, the moneylender, going back for 2,000 years. I did not think that we should be loaning money on American servicemen that had died in the 1982 bombing. If you're part of a suit and you're going to take that money as a memory for your son and you're going to create a charity or something, that's mekhaya. It's a wonderful thing to do. If you're a Jewish attorney that is going to represent that and you're going to make that your profitable business, it's morally wrong to me. If you're a Jewish person and you're going to donate 100 percent of that to the fund, I would respect you. It's just, you have to draw a line somewhere. And that's a line that I would draw. JUDGE PATIL: What did you mean when you said you were culturally Jewish? THE WITNESS: I love my culture. I just don't go to temple. You can be a Jew. You don't have to go to temple."); Ex. 3064 (May 22, 2012 email from Gumins to Dersovitz) ("Lol..they always blame the jahudom!!").

[680] Tr. 3624:7—3625:22 (Gumins) ("Would you have made this additional investment [in July 2012] had you known that your fund was already investing in the Peterson case at this time? A: No, sir. Q: Why not? A: Because that was headline risk. It morally was indefensible to me. And it

443. On April 16, 2012, Dersovitz sent Mr. Gumins, among others, "a one pager" concerning the Iran SPV.[681]

444. The Iran SPV term sheet described the Iran SPV structure, as well as the Opportunity Background noting that: "RDLF is in a position to purchase a portion of these [i.e., the

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was a very risky investment, extremely risky. Q: Why was it risky to you? A: I'm a history student. How long we've been suing Cuba for the sugar, for the expropriation in 1959 and '60. How about Mexico in 1948. I can go on and on. 1938 with the expiration of oil. It just doesn't work out the way you think. I can give you so many cases: Libya, Saudi Arabia. It goes against the brain of what happens in an international. It just doesn't come out the way you think when a government does something. Q: Is it fair to say -- were you interested in that kind of risk? A: No. Q: Did you convey that to Mr. Dersovitz? A: 100 percent. Q: And now specifically just to be clear, did you convey your views on these more political historic risks? A: I explained it to him. Q: And what did you say? A: He said I was wrong. Q: What did you say? A: I laughed. And I told him about Cuba. And then I said if every person who is suing the State of Cuba for their land to get back, it'll be a little bigger than Alaska. But I did discuss it. And I mentioned a number of appropriations and how ultimately, sovereign governments get to do that. And in the case of the bombing, no matter what he would say to me, there was a moral issue that I would not want my money involved in that under any circumstances. Q: Is it fair to say you had a number of conversations with him about this? A: Yes.").

See also Tr. 3670:6-13 (Gumins) ("Q: Okay, sir. But before you got this e-mail in March of 2012 [Ex. 1334], you had already been told about the investment, the Iran investment, hadn't you? A: No. Well, if I had, I don't remember. I can't give you the timeline. **But from the moment he told me, I made it clear I did not want to be invested in Iran. He made it clear I would not be invested in Iran.**" (emphasis added)); Tr. 3623:11—3624:2 (Gumins) ("Q: At the time of this additional investment on or around July of 2012, did you have any understanding about whether your fund had investments in the Peterson case? A: Yes. Q: What was your understanding? A: We had none. Q: And what was the understanding based on? A: Roni Dersovitz telling me that. Q: . . . he had been mentioning the Iran case to you as we've seen; is that not correct? A: Yes. Q: So how did you understand that was not in your fund? A: Because he said that he would not put it in the offshore domestic fund."); Tr. 3672:7-17 (Gumins) ("Q: So, Mr. Gumins, . . . It's your testimony that you just didn't have any idea that your money was going to be invested in an Iranian investment; that's what your testimony is? A: 100 percent. Q: But you understood that Mr. Dersovitz had funds that were invested in the Iranian transaction? A: I wasn't sure because he danced and would not answer my question until he had some fund. And at this point, he's just one of 15 investments. I like the guy. But I mean, I got my own business to run, not Roni's.").

[681] Ex. 279 (April 16, 2012 email from Dersovitz re: Iran Sanctions).

Peterson] receivables and accelerate the fee payment to the attorney as well as some of the plaintiffs." There is no mention that the Flagship Funds have already funded Peterson positions.[682]

445. Mr. Gumins was not interested in the Iran SPV.[683]

446. In addition, during conversations with Dersovitz about the Peterson opportunity, Dersovitz repeatedly told Mr. Gumins that there were no Peterson positions in the Flagship Funds.[684]

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682 Ex. 279 at 2 (describing structure), 3 (describing Opportunity Background).

683 Tr. 3620:14—3621:8 ("Q: Do you see there's an attachment that is entitled, if you go to the second page [of Ex. 279], Memorandum of Terms for Private Placement of RD Legal's Special Opportunities Fund. Do you see that? A : Yes, sir. Q: Do you know what this is about? A: No. Q: Do you know about an Iran special opportunities fund? A: Wasn't paying attention to it. Q: Why not? A: Because I told them I wasn't interested in it. Q: Do you know why Mr. Dersovitz is sending you this e-mail? A: No idea. Q: Is he pitching you on the special opportunities fund? A: I'm sure he tried. Q: And, again, what was your response to that? A: No.").

684 Tr. 3621:9-22 (Gumins) ("Q: Did you have any conversations with him as to whether this opportunity was in the fund you were invested in? A: Repeatedly. Q: What were those conversations? A: He assured me he was not putting the Iran in the settled cases fund. Q: When did he do that? A: Because I told him that I didn't want any part of that investment at all, period. Q: Do you recall when he told you this, that he was not putting the Iran investment in the settled cases fund? A: No, sir.").

See also Tr. 3670:6-13 (Gumins) ("Q: Okay, sir. But before you got this e-mail in March of 2012 [Ex. 1334], you had already been told about the investment, the Iran investment, hadn't you? A: No. Well, if I had, I don't remember. I can't give you the timeline. **But from the moment he told me, I made it clear I did not want to be invested in Iran. He made it clear I would not be invested in Iran.**" (emphasis added)); Tr. 3623:11—3624:2 (Gumins) ("Q: At the time of this additional investment on or around July of 2012, did you have any understanding about whether your fund had investments in the Peterson case? A: Yes. Q: What was your understanding? A: We had none. Q: And what was the understanding based on? A: Roni Dersovitz telling me that. Q: . . . he had been mentioning the Iran case to you as we've seen; is that not correct? A: Yes. Q: So how did you understand that was not in your fund? A: Because he said that he would not put it in the offshore domestic fund."); Tr. 3672:7-17 (Gumins) ("Q: So, Mr. Gumins, . . . It's your testimony that you just didn't have any idea that your money was going to be invested in an Iranian investment; that's what your testimony is? A: 100 percent. Q: But you understood that Mr. Dersovitz had funds that were invested in the Iranian transaction? A: I wasn't sure because he danced and would not answer my question until he had some fund. And at this point, he's just one of 15 investments. I like the guy. But I mean, I got my own business to run, not Roni's.").

447. Despite Dersovitz sending Mr. Gumins more information regarding the Peterson case in June 2012 and August 2012, Mr. Gumins remained uninterested in the opportunity.[685]

448. In January 2013, Mr. Gumins, suspicious of whether Dersovitz was misleading him, asked Dersovitz questions in order to learn whether there were Peterson positions in the Onshore Fund.[686]

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685 Ex. 3068 (Aug. 17, 2012 email from Dersovitz to Gumins re: Marine Case), Ex. 3066 (June 26, 2012 email from Dersovitz to Gumins); Tr. 3631:8—3632:11 (Gumins) ("Q: . . . But can I direct your attention to Respondents' Exhibit 3066? . . . A: I would never have paid any attention to this at all. Q: Well, let me ask you a question. It's an e-mail from Mr. Dersovitz to you on December 26th, 2012. . . . Do you see that? A: Yes. Q: And actually, the first e-mail, it says, 'Gals, guys, here's a very recent case that while it sounds like ours, it's sufficiently different and not real noteworthy but for the following two inference and conclusions.' And then it talks about Supreme Court and Bank Melli. Do you see that e-mail? A: Yes. Q: Your response is, 'You are a tenacious hard worker. I am in the UK, just arrived from Portugal, lol.' . . . What's your response about? A: That's my way of saying this, whatever. I'm on holiday. I'm just -- what are you doing? I already told you I wasn't interested."); Tr. 3626:9—3627:8 (Gumins) ("Q: Mr. Gumins, do you see this [Ex.3068] is an e-mail from Mr. Dersovitz on August 17th, 2012? A: Yes. Q: The subject is Marine Case. And you see he says, 'Steve, here's a copy of the legal analysis for your review, as well as an abbreviated summary of the turnover litigation.' And then there's an attachment with some memos. . . . Do you have any idea as to why Mr. Dersovitz is sending this to you? A: He was still trying to talk me into being interested. And I never looked at this. I never read it. Q: Why not? A: Because it's headline risk. And I had an issue with two sides of it -- . . . From the very first time he explained it to me, I made the decision that it was a very, very morally unjustified investment. Under no circumstances did I want our family, my family, me, my son, I did not want to profit from that. It's wrong.").

686 Ex. 598 at 3 (Jan. 15, 2013 email from Gumins to Dersovitz) ("What's our exposure to Iran onshore and offshore? I may have more $."); Tr. 3627:15—3629:20 ("Q: You say, 'What's our exposure to Iran, onshore and offshore? I may have more money.' . . . What is that about? A: I wanted to make sure that I wasn't invested. I wanted to know the exposure. Q: . . . Why were you asking about the exposure? A: Because I'm beginning to get a sense that he's making investments in Iran. I don't timeline -- I'm sorry. I do not remember. But I just wanted to make sure that I wasn't going to be involved in that. And probably, but I'm not sure of this statement, probably, I was concerned to make sure he didn't have too much invested in it for the safety of the entire fund. . . . Q: You said 'I may have more money.' What was that about? A: . . . there's two things. Either I was fishing and playing the game of throwing money to him to try to get an answer. Or I was considering adding a little bit more money to him because he was pitching better opportunities all the time. Q: Did you understand in your mind, was there a distinction between onshore and offshore? A: Yes. . . . I just wanted to make sure the onshore didn't have any exposure going both sides now. I'm beginning to get a little bit -- I'm becoming a little bit more of a detective because something's -- just a gut. I didn't know anything at this moment at all. I never really was sure for

449. Dersovitz wrote to Mr. Gumins: "We're at roughly 40-45% and now beginning to dial down with new dollars."[687]

450. In addition, Dersovitz told Mr. Gumins that he was not invested in Iran at all.[688]

451. On January 28, 2013, Dersovitz emailed Mr. Gumins a master participation agreement and the email discussed "a 20 percent limiter to Iran."[689]

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quite some time. Q: . . . Was there anything that you saw or anything that you heard that you can recall that gave you this feeling? A: Roni was becoming -- there was small changes in the way Roni talked to me. . . . JUDGE PATIL: Excuse me, what do you mean by small changes? THE WITNESS: You read a document, Your Honor. And you understand that document incredibly well. I stood on the floor. And I watched you trade. I listen to you. I listen to your story all the time. You made a slight change. It might be minuscule. But I caught it. And now I'm a little curious. Now I got to look at documentation. But I still don't have the ability to analyze the documentation. Now I have to talk more to you.").

687 Ex. 598 at 2 (Jan. 15. 2013 email from Dersovitz to Gumins). See also Tr. 3629:23—3631:1 ("Q: On 598, page 2, do you see Mr. Dersovitz writes, 'We're roughly at 40, 45 percent and now beginning to dial down with new dollars.' . . . Did you have any reaction to that? A: I was very nervous. Q: Why is that? A: Because it was the first time I think that he had actually admitted that he had money and he had raised this money from Iran. And I was becoming nervous. Q: Now, your response is, 'I may have another 1 million. But that will only be good until 3/31. Not sure. But would that work?' Why did you say that? A: One has nothing to do with the other. He was pitching me on a very short-term bridge loan. Q:. . . What is the short-term bridge loan? A: He was pitching me for a very short-term bridge loan on a legal case that was settled. But I do not remember any specifics. Q: Did you invest in that? A: I believe that I gave him 90-day money. Q: So that had nothing to do with the funds you were in or the fund you were in, rather? A: It had everything to do with domestic only, no Iran exposure, short-term.").

688 Tr. 3639:1—3640:1 (Gumins) ("[discussing Ex. 598] Q: So you had asked him about what exposure to Iran, onshore and offshore; is that correct? A: Yes, sir. Q: So you understood your response to be offshore -- his response? A: Only. Q: Why did you read that to be just offshore? A: Because that's what he told me. Q: How did he tell you? A: 'Steven, I'm only investing in the offshore. Athens is not invested in Iran at all.' Q: Did he tell you this on the phone or in person? A: He put it on the phone. I believe he put it in writing because I specifically asked him enough times. But he consistently said I wasn't invested in Iran. . . . And he also made it clear. He said, 'I heard you.' This is when it got a little testy one time. 'I heard you. You're not. Stop hocking me -- [']which is a Yiddish expression for stop bothering me about it [']-- you're not invested in Iran.' Q: Oh, he said that to you? A: Yes, sir. And he was irritated at me because I kept asking repeatedly the same questions.").

689 Ex. 3071 (Jan. 18, 2013 email from Dersovitz to Gumins).

452. Mr. Gumins did not know what the email was about, and testified that it made him nervous that he was not getting answers from Dersovitz.[690]

453. Mr. Gumins ultimately requested a redemption of his investments because he came to believe that Dersovitz was lying to him about the Peterson exposure.[691]

454. Mr. Gumins also informed Mr. Craig that he believed that Dersovitz had been dishonest in a January 30, 2013 email. Mr. Gumins wrote: "I prefer to redeem and move forward. What you did with me was wrong. . . . you actually used me as a reference and did not tell me the

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690 Tr. 3635:11—3636:5 (Gumins) ("Q: Now, let me ask you about Respondents' Exhibit 3071. Do you see this e-mail from Mr. Dersovitz and Mr. Gumins to you on January 18th, 2013? . . . 'Attaching master participation agreement. Steven, here's the participation agreement that I'm suggesting we use. We'll simply craft a schedule of participated assets from the entire fund but with a 20 percent limiter to Iran.' . . . Do you know what this is about? A: Not sure. Q: . . . did you discuss with Mr. Dersovitz the participation agreement? A: No. Q: And do you know why he's talking about a 20 percent limiter to Iran? A: It must be because at this point, I'm very nervous that I'm not getting answers from him when I'm asking questions.").

691 Tr. 3636:6—3638:4 (Gumins) ("Q: Did there come a time when you redeemed your investment in RD Legal? A: Yes. Q: When was that? A: Right around this time. Q: Why did you redeem? A: I got a quarterly summary of investments. And there was a 25 percent in an offshore vehicle. And when I asked about it, I couldn't get a straight answer. And I don't know anything. So I'm in the dark. And I'm thinking, again, I do not know this. I'm thinking this reminds me -- past performance is indicative in the future. This reminds me of someone else who lied to me. And I had to do a lot of forensic checking and SEC filings to find out the last case that something was wrong. He didn't register to own that much stock. But I couldn't get the documentation to prove it. This was a case exactly like this. I could not prove anything. But something was wrong. Q: So let me just be clear for the record. The explanation you gave about stocks and SEC documentation, that was not about this case, right? A: No. I'm sorry. . . . There was no place for me to do the research on what Roni had done to follow up to find out if I was correct. I didn't know how to go back into any documentation to qualify without right, giving me the information, what exactly were we invested in. And Roni wasn't telling me at that time. He, in fact, was telling me I was not invested in Iran. Q: You saw a 25 percent investment of some sort that made you uncomfortable? Am I getting that right? A: Yes. Q: And you said you couldn't get a straight answer. What did you mean by that? A: You would ask Roni. And different things would happen. He's stonewall, avoid it, just wasn't answering it. Or he'd say you're not invested on the onshore fund specifically. But then I tried to -- JUDGE PATIL: Excuse me. You said 'not invested in the onshore fund.' Did you mean the offshore? THE WITNESS: The onshore fund was not invested in Iran. Then I wanted to get both to the administrator and to the CPA firm. Neither would give me any information.").

size of the investment in Iran. . . . You were aware that I did not agree with you on Iran but yet you saw fit too [sic] invest 40% of my money there without disclosing it."[692]

455. Mr. Gumins wrote to Dersovitz in March 2013: "This does not change the fact you saw fit to put 40% of my investment in Iran... used me as a reference and did not disclose what you were doing."[693] Mr. Gumins testified that he sent the email because "Roni lied, directly lied to me."[694]

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692 Ex. 323; Tr. 3642:23—3644:7 ("Q: Do you see there's an e-mail . . . from Mr. Dersovitz to you, January 30, 2013. 'Steve, I'm back in the office. Can you please give me a call when you have a moment?' . . . Mr. Dersovitz sent you that e-mail, as far as you know? A: I'm confident he did. Q: . . . . I think you write, 'What do you think as he is calling and e-mailing? Our conversation will turn counterproductive and negative. I prefer to redeem and move on forward. What you did with me was wrong. You actually used me as a reference and did not tell me the size of the investment in Iran. You were aware that I did not agree with you on Iran. But yet you saw fit to invest 40 percent of my money there without disclosing it. I need to make this clear to the people that I gave you a reference for. Please redeem Athens 100 percent as soon as possible." Can you explain that e-mail, please? A: I had made the decision that Roni had completely lied. I didn't know what my investment was in any longer. I had no clue. He told me only settled cases domestically. And I found out that's not what I was invested in. Q: And so why were you writing this to Mr. Craig? A: I did not write him. I would have CC'd him what I sent Roni. Q: So a part of this is what you would have sent Mr. Dersovitz? A: No. I think this would have been word for word, probably.").

693 Ex. 335 at 2 (Mar. 18, 2013 email from Gumins to Dersovitz).

694 Tr. 3645:9-16 (Gumins) ("Q: And you say on top [Ex. 335 at 2], it appears to say, 'Roni, this does not change the fact that you saw to put 40 percent of my investment in Iran, use me as a reference and did not disclose what you were doing.' Did you write that? A: I'm sure I did. Q: Why? A: Because Roni lied, directly lied to me.").

See also Tr. 3646:14—3647:1 (Gumins) ("[regarding Ex. 335 at 1] Q: . . . Mr. Dersovitz writes, 'I've told you previously that I totally disagree with your characterization of what occurred.' Do you recall if Mr. Dersovitz told you that he disagreed with your characterization? A: Yes. Q: And what was the conversation like or what was said? A: It was testy. I don't remember exactly. But at that moment, I no longer could be this polite because he had -- he directly lied to me so many times by now that there was no way that I hadn't already said to him, Roni, a liar's a cheat, a cheat's a thief."); Tr. 3735:12—3737:3 (Gumins) ("JUDGE PATIL: One of the things that you recalled from a conversation you had with Mr. Dersovitz related to the fact that you recall calling him a liar, a cheat? THE WITNESS: My exact words would have been, 'Roni, my grandfather taught me: A liar's a cheat, a cheat's a thief. I don't want anything to do with you.' JUDGE PATIL: And if you recall, what was his response to that? THE WITNESS: Well, you don't understand. It's always like -- you know, trying to overcome that I don't understand, that I'm

456. In June 2013, Mr. Gumins continued to request information from RD Legal concerning the size of the Peterson litigation.[695]

457. In another example, Mr. Gumins wrote to Ms. Markovic copying Dersovitz on June 24, 2014: "As a current LP I would like to understand why would you have an audit that leaves out your largest single investment. . . .are you hiding something? Do you or do you not have over 25% in claims against Iran. Simple question deserves a written response."[696]

458. Mr. Gumins was asking RD Legal staff because Dersovitz was no longer responding to Mr. Gumins's inquiries and the documents circulated by RDLC did not provide that information.[697]

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wrong. So I don't mean this about him. But people that do things wrong can have an [ability] to rationalize that they didn't do something wrong. You're a judge. You've seen it your entire career. I don't understand that. If the shop teacher -- shop clerk gives me an extra $2, I don't have a choice but to give it back. I don't want to. You've got to. It's what you do. I don't want to be here. I didn't want to spend three and a half hours in a delayed flight, leaving a day early from Santa Barbara so I could get here. This is nerve-wracking. I never had to do this before. Once, I had to say a couple of words in a court case in Tennessee for my best friend in a corporate thing. But this is terrible for me. And I do talk too much for the attorney that said it. It's my biggest worry, that I'd overtalk because I generally like people. I liked Roni. I'd like to, you know, take the SEC guys out for a beer. I don't drink beer. But I'd have a glass of wine. I don't have anything against Roni. It was a huge disappointment that he turned out to do something entirely different than he told me. And he just walked by me in the hallway, staring right at me. And I'm wondering, you must look in the mirror and think it's okay. I don't. I just don't. It's not right. So if the court doesn't find him guilty, that's okay. In the court that I live by, he's guilty then because it's wrong. You don't do that. And if you do, you give it away. You give it back. You don't take.").

695 Ex. 349 at 2 (June 13, 2013 email from Gumins to Chandarana) ("Can you please advise me as to what % of my money is invested in the Iranian litigation?").

696 Ex. 419 (June 24, 2014 email from Gumins to Markovic). At the time, the Peterson case was more than 60% of the Funds' portfolio. See Ex. 2 at cell O-38.

697 Tr. 3647:25—3648:12 ("[discussing Ex. 349] Q: What did you write? A: I asked Meesha, what percentage of my money is in Iran now because Roni wouldn't respond back to me. If I called him, he wouldn't return the call. I couldn't get an answer. So now I'm going to his administrative assistant. Brian went to the administrator. We tried to call the CPA. He wouldn't take our calls. Q: Did you see anything in the quarterly audit report, though, that explained what percentage of your money was in the Iran litigation? A: No. It just showed us, again, an offshore investment."); 3650:22—3651:4 ("[discussing Ex. 419] A: May I add something? Q: Please. A: I smell it,

6. Jason Garlock and Cobblestone

459. Respondents also communicated orally with potential investors in the Flagship Funds, including on a recorded call with individuals from Cobblestone Capital Advisors on November 16, 2012.[698] Dersovitz described the recorded Cobblestone call as representative of how he spoke to potential investors about the Flagship Funds, explaining that it was "a typical investor call."[699]

460. Dersovitz's call with Cobblestone occurred several months into Cobblestone's diligence of the Flagship Funds, which had included an in-person meeting with then-marketing director Rick Rowella and additional conversations with other individuals at RD Legal,[700] and approximately eight months after Respondents first contacted Cobblestone about considering an investment in the Funds.[701] Prior to Dersovitz's November 2012 call with Cobblestone, Respondents had already sent Cobblestone the Alpha Generation presentation,[702] the DDQ[703] the

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nonstop. And I can't get a damn answer. I can't understand it. All I get is a non-answer or Roni saying he's going to call me back and doesn't call, doesn't return my calls. The CPA won't return my calls. Meesha doesn't. Nobody will talk to me or Brian.").

698 Tr. 432:12-23 (Garlock) ("Q: And did you record a call with Mr. Dersovitz and the others you just mentioned? A: We did. Q: Did you provide that call to the Division of Enforcement? A: I did. Q: Have you had a chance to listen to that call since it was first recorded? A: I have. Q: Do you know when that call was recorded? A: To the best of my recollection, November 16th, 2012.").

699 Tr. 6166:24—6167:13 (Dersovitz) ("Q: Okay. And then you said, Thank God for Cobblestone. Are you referring to the tape they made? A: That's exactly what I'm referring to.... Q: And was that a typical investor call? A: That was a typical investor call in those types of presentations. You would occasionally get interruptions. But it has most of -- it has most of the presentation that either Kat or I would give. Q: The typical one, you mean? A: Yeah."); see also id. at 6179:5-8 (Dersovitz) ("Q: ...Was this tape your typical spiel? ... A: Absolutely.")

700 See generally Tr. 411:17—432:23 (testimony of Garlock describing due diligence of Cobblestone prior to Nov. 16, 2012 telephone call).

701 See Ex. 276 (Mar. 8, 2012 email from M. Chandarana to J. Garlock) (first contact approximately eight-months prior).

702 Ex. 276.

"one pager" describing the Funds' strategy as purchasing "legal fee receivables from law firms once cases have settled,"[704] had provided access to the RD Legal website, and had offered access to the Demo Library on Lotus Notes.[705] Cobblestone's call with Dersovitz also occurred more than two months after Respondents sent Cobblestone the Offering Memorandum for Onshore Fund,[706] and after Rick Rowella had alerted Cobblestone of certain concentration-related concerns about the Funds' portfolios.[707]

461. Dersovitz represented to Cobblestone: "What we're dealing with primarily, 100 percent, are settled cases. So there is no litigation risk in the strategy."[708]

a. According to Respondents' proffered expert witness, Mr. Metzger, telling investors that the Flagship Funds were investing 100 percent in settlements, particularly after giving them an offering memorandum (as Respondents

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703 Ex. 293 (Aug. 2, 2012 email from M. Chandarana to J. Garlock).

704 Ex. 282 at 2-3 (May 10, 2012 email from M. Chandarana to J. Garlock).

705 Ex. 302 at 2 (Oct. 4, 2012 email from M. Chandarana to J. Garlock) (website); id. at 1 (Demo Library).

706 Ex. 2772 (Aug. 28, 2012 email from M. Chandarana to J. Garlock).

707 Tr. 424:25—426:4 (Garlock) ("Q: And why were you concerned about the holdings in the fund? A: Concentration is a risk that we are always concerned about when we are looking at a strategy. Q: And did you have any reason to be concerned about concentration on or around October 4th, 2012? A: I did. Q: What reason? A: If I recall correctly, I had a conversation with Rick Rowella sometime prior to this, and I believe subsequent to him leaving the firm, where the issue of concentration in the portfolio as a potential concern came up. Q: Is that an issue you raised? A: I don't recall who raised it. Q: As best you can recollect, what did Mr. Rowella say? A: ... I believe he had mentioned difference of opinion with leadership of the firm, and specifically concerns about some of the concentrated positions in the portfolio. That is to the best of my recollection. Q: And that prompted you to ask RD Legal at or around the time you sent the October 4th email for more insight into their concentrations? A: As best as I can recall. I don't have any other reason that I can recall why I would have asked such a pointed question about the concentration.").

708 Ex. 216 at 4 (7:18-20).

had by the time they had their call with Cobblestone), would be "a problem, because that's not what [Respondents] were doing."[709]

462. Mr. Garlock explained that Dersovitz's words meant "there is no litigation risk in the strategy. These are all settled cases."[710] Garlock understood from his communications with Respondents that the "fact that there is no litigation risk; that the cases are all settled," was "a key part of RD Legal['s] strategy."[711] That purported absence of litigation risk in RD Legal's strategy was important to Mr. Garlock in considering whether to invest in the Flagship Funds.[712]

463. Dersovitz acknowledged in testimony that the Osborn jaw receivables were something other than the 100 percent settlements in which he represented the Funds invested.[713]

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709 Tr. 5284:23—5287:1 (Metzger) ("Q: And for a potential investor who is told that there is 100 percent settlements -- again, I'm focusing on a potential investor, not one who is exiting the fund -- do you believe that that investor, in order to conduct what you think is reasonable due diligence, would need to continue to ask for more information beyond the PPM, beyond the investment manager's representations to verify what the investment manager tells them? A And when was the investor told this information? Because that has an impact on my answer. If the investors receive the PPM and now is told 100 percent settlements, I would say that that doesn't sound right. ... I'm trying to make a distinction between early stage marketing where investors may not understand everything. So you're trying to introduce the investor to what the strategy is, but you're not going to explain all -- all three strategies the first time. As opposed to being told, certainly after the PPM, you've told 100 percent, that's -- I think that's a problem, because that's not what they were doing.").

710 Tr. 436:8-14 (Garlock) ("Q: Later in the recording, did you hear Mr. Dersovitz say 'What we are dealing with primarily 100 percent are settled cases'? A: I did. Q: What did that mean to you? A: As it said, that there is no litigation risk in the strategy. These are all settled cases.").

711 Tr. 437:12-17 (Garlock) ("Q: When you say right after that, 'and I know that's a key part of your strategy,' what are you reacting to there? What are you referring to as a key part of RD Legal strategy? A: The fact that there is no litigation risk; that the cases are all settled.").

712 Tr. 436:15-24 (Garlock) ("Q: Did it matter to you that there was no litigation risk in the strategy? A: Very much so. Q: Why is that? A: Again, we were looking for – especially finance economic-based strategies, not strategies that were funding litigation. Q: You were not interested in funding litigation that had any litigation risk; is that true? A: That's true.");

713 Tr. 2682:20—2683:8 (Dersovitz) ("Q: Okay. And did you hear the audio tape played of a conversation involving you and Mr. Garlock? A: Yes. Q: And did you hear on that tape you said, among other things, that RD Legal invests in – What we invest is in 100 percent settled cases? A: As well as judgments, yes, I did. Q: Okay. And when you were referring to settlements, even

464. Dersovitz understood that characterizing the Peterson matter as settled would "not reflect the true nature of that case."[714]

465. Markovic echoed Dersovitz's description of the Flagship Funds, telling Cobblestone, for example, that the Funds' "focus is very, very specific," that Respondents had "to work with those that are only settled claims," and that the Funds' "niche" is "post-settlement, and it's only those cases that for one reason or another have some sort of delay attached with them."[715] Garlock testified that he understood Markovic's representations to mean the Funds invested in "only settled claims [with] no litigation risk," consistent, Garlock testified, with what he heard Dersovitz represent.[716]

466. Dersovitz further explained: "A settlement is a settlement is a settlement. At some point during the litigation process, Party A agrees to pay Party B. And what we're doing is

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when you got to judgments, were you including these workout situations in that description? A: No. Because that's not a primary strategy. Every finance company has problem assets.").

[714] Tr. 2917:8-21 (Dersovitz) ("Q: In fact you wrote back to Mr. Clark, page 1 of 288, 'Andrew, really nice piece. Note that in the what is happening today session, I would not have stated judicial related comment as you did. I also would not have used the phrase "settled legal claims."' Do you see that? A: Yes. ... Q: And you were concerned that by calling some of the Peterson investment a settled legal claim, it might not reflect the true nature of that case; isn't that so? A: Correct."); see also Ex. 288 (June 21, 2012 email from R. Dersovitz to A. Clark suggesting changing the description of the Peterson case to omit "Settled Legal Claims.").

[715] Ex. 216 at 9 (31:21—32:22).

[716] Tr. 452:7—453:7 (Garlock) ("Q: When Markovic says to you the bottom of page 31, line 21, 'Right, because, remember, our area of focus is very, very specific. First of all, we have to work with those that are only settled claims,' what did that mean to you? A: Again, only settled claims, no litigation risk. Q: Same thing Mr. Dersovitz was telling you? A: Correct. Q: And when they continued on page 32, line 5, to say that they have to prove there is a settlement, they have to show proof of the total amount of the legal fee, there has to be proof of that, what did that mean to you? A: Further evidence of the same. Q: Of the same? A: Yes. Q: And a few lines later on page 32, line 18, I should ask, do you believe that was Ms. Markovic that was talking there? A: I do. Q: When the person you believe to be Ms. Markovic says, 'So our niche, again, is – we want to reiterate that, but the niche is very specific. It's post settlement, and it's only those cases that for one reason or another have some sort of delay attached with them,' what did you understand it to mean there? A: Same thing: Settled cases, no litigation risk.").

accelerating the legal fees to attorneys that are entitled to their fee. Now we accelerate legal fees on settlements and judgments that are collectable."[717] Garlock explained this confirmed for him that Respondents were investing in "all settled cases."[718]

467. Dersovitz continued on the recorded call: RD Legal got involved in the "small percentage of settlements ... that have a post-settlement payment delay associated with [them]," and gave examples of the reasons for these delays as including class action fairness hearings, settlements with a city, or infant proceedings.[719] Garlock explained that he understood Dersovitz to be explaining "the reason why certain attorneys would need the services that RD Legal provided."[720]

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717 Ex. 216 at 3-4 (9:6—10:11); see also Ex. 231 (Dec. 6, 2010 R. Dersovitz email to A. Ishimaru explaining Funds "are only dealing with a small subset of settlements, perhaps 1-3% that do not pay within 15-30 days of settlement. That is our niche" and providing examples of Funds' "niche" including City of New York statute allowing 90 days to pay a settlement; and "situations when infants are injured" and/or where statutes require court approval of settlements).

718 Tr. 440:12-23 ("Q: When Mr. Dersovitz answered in part, 'When people think about this strategy they initially think about litigation risk appeals, but a settlement can occur pre-litigation, during the pendency of litigation, post appeal. None of that is really relevant, okay? A: settlement is a settlement is a settlement,' what did you understand by that, a settlement is a settlement is a settlement? A: These are all settled cases. He was – appeared to be simply clarifying for our benefit that settlements can happen, different parts – different times during the litigation process.").

See also Tr. 453:23-454:12 (Garlock) ("[Q:] What kind of delays did you understand to exist for the RD Legal investments? A: I understood that we were still talking about the same delays that had been brought up earlier in the call, 2 to 4 percent that had normal post settlement delays. **Q: Would a refusal by defendant to pay fall into that normal post settlement delays? A: I don't think that would have been consistent with what I heard before.** Q: What about a delay while parties litigated to see if a court would rule in their favor? A: No. **Q: Not part of the delays you heard? A: No. That would be litigation risk.**" (emphasis added)).

719 Ex. 216 at 3-4 (9:6—10:11).

720 Tr. 441:8-16 (Garlock) ("Q: And then Mr. Dersovitz explains that sometimes, if you go to the bottom of page 9, line 22, 'There is a small percentage of settlements, 2 to 4 percent I would estimate, that have a post-settlement payment delay associated with it.' What did you understand him to be describing there? A: He was describing, in my understanding, really the reason why certain attorneys would need the services that RD Legal provided."); Tr. 446:18-25 (Garlock) ("Q: When Mr. Dersovitz explained in his own words on page 17, line 8, every type of case that has a post settlement payment delay has a legal process that needs to follow, what did you understand

468. On the Cobblestone call, Dersovitz was asked: "the judge can't change that settlement, right? I mean so the settlement is agree between the two parties, the judge just manages the payout process? Is that the case?" And Dersovitz responded: "99.99999 percent of the time that's true," explaining that "[if] a complaint or a comment is made that a settlement is inappropriate, it's always because it's not enough."[721] Dersovitz further confirmed that "at some point where Party A and Party B agree that this payment is going to happen, there [is] some legally binding contract between the two... ."[722] Garlock found significant that the Funds purchased receivables where "two parties had agreed" because that meant "both wanted to settle."[723]

469. Dersovitz's discussion of risks in discussing the Funds with potential investors echoed the marketing materials Respondents provided to them. Dersovitz explained to potential investors that the Funds' "risks are two-fold: duration and theft."[724]

a. Dersovitz's explanation of duration risk was material to Garlock and gave Garlock the impression that such delays were predictable.[725]

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him to be describing by a post settlement delay relative to a legal process? A: Effectively, the same type of process that he described earlier with the 2 to 4 percent of cases that had a post settlement delay.").

721 Ex. 216 at 4 (10:16—11:12).

722 Ex. 216 at 4 (12:20—13:2).

723 Tr. 439:10-22 (Garlock) ("Q: When that person with that experience in doing so, Mr. Dersovitz, explained to you on page 8, line 12, 'At a certain point in time, there's an accord and satisfaction between two parties,' what did you understand him to mean by an accord and satisfaction? A: Those two parties had agreed. Q: And did it matter that they had agreed? A: It did. Q: Why? A: That was the settlement, in my interpretation. Q: It wasn't enough that just one side wanted to settle? A: They both wanted to settle.").

724 Ex. 216 at 5 (17:2-23); see also id. at 4 (12:12-13) ("two main risks in [the Funds'] strategy.").

725 Tr. 447:1-23 (Garlock) ("Q: In the beginning of his answer, he had referred to two risks, duration and theft. Did what we just read or discussed address one of those risks? A: It did. Q: Which one? A: Duration. Q: And on line 10 of page 17 when Mr. Dersovitz explained that there is a predictability associated with how long that legal process should take, what did that mean to

470. Regarding duration Dersovitz stated "historically, that has been an insignificant issue," and explained that duration impacts only return on investment "and not principal."[726]

471. Dersovitz also told potential investors that the risk of theft "can be tremendously mitigated," and that theft "has not been a real issue" because Respondents "have the best hammer available"—i.e., for the attorneys with whom Respondents would do business, their law "license is on the line."[727]

472. Dersovitz explained to Cobblestone that he "personally [was] not a fan of [the line of credit] asset class because it's not bankruptcy-proof. You're just a secured creditor, and you usually get diluted."[728] Accordingly, Dersovitz represented that the line of credit business was, by November 2012, "a de minimis piece of the business."[729]

473. Ultimately, Cobblestone declined to invest because of concerns about the Peterson concentration and the risks involved therein.[730]

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you? A: That however long these settlements take, the payment delays take to unfold post settlement, it's reasonably predictable. Q: Did it matter to you that in evaluating the fund as a potential investment opportunity whether the post settlement delay was a reasonably predictable risk? A: Yes. Q: Why is that? A: He identified duration as a primary risk in his concern. To the extent that there is predictability around it, it makes it easier to manage. Q: Manage the risk? A: Manage the risk.").

726 Ex. 216 at 6 (19:11-25).

727 . 216 at 6 (20:8—21:24); see also Ex. 478 at 3 (Schaffer notes) (noting "huge hammer for collecting: can get them disbarred").

728 Ex. 216 at 5 (15:13—16:18).

729 Ex. 216 at 5 (16:19—17:1).

730 Tr. 462:1-15 (Garlock) ("Q: Why did Cobblestone decide to decline investment in the RD Legal fund? A: The primary reason was the concentration and the U.S. government Iran case. Q: When you say the concentration, U.S. government, Iran, what do you mean by that? A: How large of a holding that had become in RD Legal's portfolio, and our concern over not just the size of it, but the case itself. Q: What were your concerns about the case itself? A: Again, my recollection is that I -- myself and the other members of the investment committee had a significant amount of difficulty understanding how an act of Congress is the same as a legal settlement. What Congress can do they can undo.").

7. The Tiger 21 Investors

474. Tiger 21 is an association of high-net worth individuals. Members meet in groups of 12-13 individuals on an approximate monthly basis to discuss, among other things, investments and investment opportunities. Members of Tiger 21 groups make individual decisions concerning their investments.[731]

a. Dersovitz accused the witnesses who were member of Tiger 21 of "selective amnesia" in giving their testimony in this proceeding.[732]

475. Tiger 21 groups are referred to by number, e.g., Group 5.[733]

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731 Tr. 594:22—596:2 (Mantell) ("Q: Mr. Mantell, you discussed a moment ago Tiger 21? . . . And you mentioned it here in Exhibit [482] that it's an association of high net worth investors. Do you see that line? A: Yeah. Q: . . . Where you wrote 'Today they manage their own collective portfolio of approximately 30 billion' -- A: That's a big understatement today, because I didn't update that. It's probably about 500 members and probably 50 billion. Close to 50. Q: What did you mean by 'collective portfolio'? A: So Tiger is nothing but a group of high net worth investors. You can do the math. If you divide basically the number of people, it's not completely evenly balanced, but the average net worth of the members is $100 million. And they're simply sitting in rooms together in groups of 12, 13 people, meet once monthly, are broad investment ideas and discuss those ideas and then debrief about those ideas. And they don't co-invest. It's -- sometimes they do, but it's not like we -- Tiger 21doesn't have an investment arm. Each individual is making individual decisions all the time about what they will or won't do, and once in awhile it overlaps.").

732 Tr. 6584:4-21 (Dersovitz) ("[Q:] Do you believe Mr. Slifka was mistaken in his March 24, 2014, email when he reported that you, Mr. Dersovitz, had told him that you had a 20 percent position in the Peterson case? A: In earlier emails he had said I had a disproportionate portion of my fund invested in Iran. It was my understanding that he was communicating all of that to Tiger members. Tiger members received that email on September 13 saying that we had deployed the funds and continued – that first one didn't say anything about has – had already deployed the funds. We had an update call with them sometime in December. This is why we are here. JUDGE PATIL: Sorry. What is why we are here? THE WITNESS: The selective amnesia.").

733 Tr. 596:11—597:2 (Mantell) ("Q: And how is Tiger 21 organized? A: As I said, it's a membership organization. It's private. You may -- you pay dues. You have to have a minimum net worth investment portfolio -- is the more accurate word -- in order to be a member. You are then designated by management into a group. They try to create diversity in the group, and -- of skills, talents, capabilities to make the thinking robust. And you meet once a month, 11 months a year, and attendance is relatively mandatory. You don't get to show up occasionally. And you debate investment options. Q: And you mentioned groups. Are you a member of a group? A: I'm a member of group 5.").

476. Members of Group 5 included:

a. Allen Demby, a retired board-certified ophthalmologist and registered investment adviser;[734]

b. Alan Mantell, who is a private investor, non-practicing lawyer, and investment adviser;[735]

c. Arthur Sinensky, a semi-retired management consultant;[736] and

d. Steven Wils, a private investor who formerly owned a food-distribution business and owns real estate.[737]

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734 Tr. 2163:11-16 (Demby) ("Q: And, Dr. Demby, can you please tell us your professional background. A: I'm a board certified ophthalmologist, now retired. Currently a registered investment advisor. I have a small practice. That's my professional background.").

735 Tr. 591:16-24 (Mantell) ("Q: Do you practice as a lawyer? A: I practiced for seven years, almost seven years. Q: Do you currently practice as a lawyer? A: No, I haven't practiced for a long time. . . . I hold my license, but I don't practice."); Tr. 592:3—593:3 (Mantell) ("THE WITNESS: Actually, there's one thing that's not in my bio [Ex. 482] that I should add. . . . When I became an investor, I decided to try to professionalize my knowledge of the industry, so that -- which I joined Tiger 21 which is nothing be a peer-to-peer learning network for high net worth investors. . . . And today I advise others with regard to about. Depending upon how you look at it, 75, $80 million of capital."); see also Ex. 482 (Mantell bio).

736 Tr. 3296:7-14 (Sinensky) ("Q: What do you do for a living? . . . A: I'm a semiretired management consultant. I had a career at a firm called Accenture where I worked for 31 years. And I retired from there nine years ago. And now I'm an independent contractor.").

737 Tr. 869:5-25 (Wils) ("Mr. Wils, what's your professional background? A: I ran a food distribution business. I was a third generation in that business that was founded in 1921. My father ran it his entire life. I got involved in the business when I was in my mid-20s, thinking I would do it for six months. And I did it for 40 years. Q: And what happened to that business? A: I decided that I would -- had the opportunity to sell it to a competitor, and I did sell it in 2011. Q: What did you do after that? A: I have other investments. I own real estate in New York and New Jersey. And -- that I spend my time managing that real estate and managing the money that I received from that sale. And also I had invested in other food-related entities during my career. Two of them are considered best in class, so I -- I have some experience being an investor."); Tr. 870:19-23 (Wils) ("Q: And are you a member of a specific group within Tiger 21? A: I am. Q: Which group is that? A: Group 5.").

477. David Ashcraft, another member of Tiger 21, formerly owned a software company who currently manages property including a festival grounds, farm, and home development.[738] Mr. Ashcraft is a member of Group 4.[739]

478. On February 1, 2013, George Mrkonic, a Group 5 member,[740] forwarded information about the Flagship Funds to Group 5 members including Messrs. Mantell, Sinensky, and Wils.[741]

a. The email attached the RD Legal Overview document, the Alpha Generation and Process document, and the FAQs.[742]

479. Mr. Sinensky forwarded the email to Dersovitz, who he knew from his community for approximately 20 years, including belonging to the same synagogue and country club.[743]

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738 Tr. 1459:1—1460:4 (Ashcraft) ("Q: . . . And what's your professional background? A: . . . I had a software company. I was a math and computer science guy from a local college, Ohio State University. Built a system integration firm. And that evolved into a product firm. Ended up doing a product development for a transactional base stuff, retail point of sales server, head of integration. That evolved into a solution-based product that then we – OEM and sold through NCR Worldwide. So I dealt with probably 14 countries throughout that process. And then eventually sold the company in June of 2000. And then end of February of '08, left there, continued doing past investments and ongoing -- just personal development, if you will. . . . Q: . . . What's your current day-to-day job? A: Well, probably the past seven years I've looked at a lot of different deals. Ironically, this particular one happened to be in our area, and some other guys I know who we invest with out of Dayton. We actually acquired a 287-acre facility of which 130 acres is a festival grounds.").

739 Tr. 1460:13-18 (Ashcraft) ("Q: And are you a member of an entity called Tiger 21? A: Yes. Q: And do you belong to a specific group within Tiger 21? A: Right. Group 4.").

740 Tr. 2194:23-24 (Demby) ("One of the members of Group 5 is George Mrkonic.")

741 Ex. 324 at 1 (Feb. 1, 2013 email from G. Mrkonic); see also Tr. 841:18—842:1 (Mantell) ("Q: There are a number of persons identified who received the email from Mr. Mrkonic, yourself, Arthur Sinensky, Warren Partridge, Michael Crawford, John Bertuzzi, Steven Wils and Chip Perkins. Do you see that, sir? A: Yes. Q: Are those all Tiger 21 group 5 members? A: Yes.").

742 Ex. 324 at 3 (Overview), 4 (Alpha Generation), and 25 (FAQs).

743 Ex. 324 at 1 (Feb. 1, 2013 email from A, Sinensky to R, Dersovitz); Tr. 3297:16—3298:11 (Sinensky) ("Q: And how do you know Mr. Dersovitz? A: Mr. Dersovitz and I live in the same community in Bergen County, New Jersey, not the same town but the same general community . . .

a. Mr. Sinensky, unaware that the presentation related to Dersovitz's business because he had not read the attached materials, reached out to Dersovitz to begin a conversation about the business.[744]

480. Mr. Sinensky and Dersovitz met for breakfast, after which Mr. Sinensky recommended that Dersovitz present the Funds to Group 5 at Tiger 21, including copying the individuals responsible for inviting guests to meetings and facilitating the meetings.[745]

a. At the breakfast, Dersovitz provided a "high level, introductory" summary of the Funds, including "what the investment opportunity was, what it was, [and] how it worked" and summarized the materials RD Legal provided to Mr. Sinensky.[746]

So I know Mr. Dersovitz just through the community. . . . Q: Anything in particular in the community? A: Well, we've been members of the same country club, the same synagogue and have mutual friends. Q: And how long have you known Mr. Dersovitz from the community? A: I would approximate around 20 years, give or take. Q: What kind of relationship over those 20 years did you have with Mr. Dersovitz? A: I would say a good relationship, not close friends but more than just acquaintances, you know, occasionally see each other around the community, have a brief conversation, cordial and good.").

744 Tr. 3299:4-11 (Sinensky) ("Q: And why did you send this e-mail [Ex. 324] to Mr. Dersovitz? A: Well, when this material was passed to me, I was aware that Mr. Dersovitz was in a related business. I hadn't opened the presentation yet to realize it was his presentation. So I sent it to him, just to -- hey, I saw this, do you have a point of view, can we chat, just to establish a connection around this.").

745 Ex. 329 (Feb. 16, 2013 email from A. Sinensky to R. Dersovitz) ("I met with my group Thursday, and briefly debriefed our breakfast. They agreed we would like to have you come visit and explain the fund."); Tr. 3307:18—3308:8 (Sinensky) ("Q: If we turn back to Exhibit 329, sir, in your e-mail at the bottom there, you talk about copying or getting a call from Joel Herskovitz. . . . Q: Who's Mr. Herskovitz? A: Mr. Herskovitz is an employee from Tiger 21. And he is usually the person who facilitates the invitation and the background gathering for people who are invited to present investment opportunities at Tiger 21. Q: And Mr. Crawford there, who's referenced also, Mike Crawford, who is he? A: So Mike Crawford is the Tiger 21 Group 5 facilitator, meaning at our monthly meetings, he's the chair of the meeting. He calls a meeting to order and facilitates the dialogue in the group.").

746 Tr. 3302:24—3303:11 (Sinensky) ("[Q:] How would you describe the -- what Mr. Dersovitz said to you at that meeting? A: Well, I don't remember exactly what he said to me. But

481. In advance of the April 11, 2013 presentation to Group 5, Ms. Markovic sent (i) the RD Legal Overview, (ii) the Alpha Generation presentation, and (iii) the FAQs to Tiger 21 copying Mr. Sinensky.[747]

a. The materials were distributed to Group 5.[748]

b. Ms. Markovic chose what materials to send to Tiger 21 in advance of the meeting.[749]

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it was in all likelihood, 20 percent social, how's it going, how's the family, those kinds of things. And the rest was a little bit more information about what the investment opportunity was, what it was, how it worked, just at a high level, introductory. Q: How did he describe that investment opportunity? A: Well, again, it goes back four years ago. So I don't remember the specifics of that meeting. I would likely say it was a summation of some of these materials [in Ex. 324].").

See also Tr. 3310:7—3311:16 (Sinensky) ("Q: Do you recall how the fund was presented at that meeting? A: Well, what I recall is, it was presented as I just described to Your Honor. And there was also probably a question-and-answer dialogue which is usually the case. Q: And during that presentation, were the risks of the investment discussed? A: Yes, to a degree. Q: Do you recall which risks? A: I don't recall all of the specifics. But I do recall what stands out, was that there was a risk involved. If the attorney from who the receivable was being purchased turned out to be dishonest because I remember there being a discussion how, you know, that person could be disbarred for doing that. So that was sort of an element of risk mitigation. And I don't really recall all the details of other risks. But typically things like diversification, we often get into, you know, the accounting firm for typical things. But I don't remember the details of the risk discussion other than this point about, you know, what if it's a lawyer who's dishonest. **Q: What about the risk of cases not being finished or being litigated? Is that discussed? A: I don't recall that.** Q: You mentioned diversification being discussed in your answer a moment ago. What was your impression of how diversified the fund was in early 2013 when you were hearing these pitches? A: Well, like I said, it's back four years. I don't remember a quantification of diversification. **But I think I satisfied myself that it was sufficiently diversified, so that the returns of the fund would not be dependent on any one receivable or two receivables. Q: And how did you do that for yourself? A: Well, I don't recall exactly if I asked that question or how it came up. like I said, it's four years ago. But I think it's a standard question that usually gets asked."** (emphasis added)).

747 Ex. 336 (Mar. 29, 2013 email from Markovic).

748 Ex. 337 (Mar. 31, 2013 email from Sinensky) ("Mike Crawford sent out the three documents to the group.").

749 Tr. 6518:24—6519:2 (Dersovitz) ("Q: Okay. And you chose -- and Ms. Markovic chose not to include any of the special opportunity fund documents in what she sent Tiger 21, correct? A: She made the decision not to include that.").

482. On April 9, 2013, Dr. Demby visited RD Legal's offices in Cresskill, New Jersey for an unannounced visit prior to the presentation to Group 5.[750]

a. The visit lasted approximately 40 minutes during which Respondents generally described the Funds, including that the Funds invested "in cases that have been fully adjudicated" with "no appeals pending" and that "no single investment in the fund would exceed 5 percent of the fund."[751]

b. Dr. Demby was unable to view Respondents' computer system because Respondents "couldn't get it to boot up."[752]

483. Messrs. Demby and Mantell attended the April 11, 2013 meeting, as did Dersovitz.[753] Mr. Wils did not.[754]

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750 Ex. 501 (Apr. 9, 2013 email from Markovic to Demby) ("It was a great pleasure to meet you this morning. It's a real treat for us as we rarely get visitors here in Cresskill.").

751 Tr. 2167:3-24 (Demby) ("Q: . . . I think you referenced Mr. Dersovitz. Did you meet with anyone else while you were there? A: Katarina Markovic was there. Q: And what did they tell you about the fund? A: Well, they told me how the fund was structured. And they emphasized the safety of the fund, which was of great importance to me. Q: What did they tell you about how the fund was structured? A: They buy legal settlements from attorneys in cases that have been fully adjudicated; that there are no appeals pending; that the moneys that are due to the plaintiffs are held in escrow; and that the chance of a default is extremely minimal; and that there was a very high return associated with the investment, 13.5 percent. They mentioned that the investment is not correlated to the stock market. And they made a very important point, that no single investment in the fund would exceed 5 percent of the fund. ").

752 Tr. 2166:15—2167:2 (Demby) ("Q: And when you went to the offices to meet with RD Legal, what happened at that meeting? A: Well, they were a little surprised to see me just show up unannounced; but they were very warm, very gracious, very helpful. We spent, I would say, about 40 minutes. They discussed the fund with me. They told me about the fund. We had a laugh together when Mr. Dersovitz was talking about the sophistication of his computer system and that he couldn't get it to boot up. So we had a little chuckle together. And I left very impressed with the fund and the principals.").

753 See Tr. 599:14-21 (Mantell) ("Q: How did you hear of RD Legal? A: I first learned of RD Legal through the typical way that investors and other Tiger members learn of funds where there's a presentation; RD Legal made a presentation to group 5. Q: And who at RD Legal made the presentation to Tiger 21? A: Roni Dersovitz."); Ex. 336 (Mar. 29, 2013 K. Markovic email) ("We

a. The April 11, 2013 meeting occurred at the Tiger 21 townhouse in New York City.[755]

484. At the April 11, 2013 meeting, Dersovitz presented the Funds as "exclusively focused" on funding matters "where the fees arose out of cases where [judgment] had already been obtained and the opportunity to appeal had passed." The payors were primarily "insurance companies" that were "good for the money" and the fact the receivables were purchased from lawyers provided additional assurance because of their fiduciary duties.[756]

485. During the April 11, 2013 meeting:

a. Dersovitz provided handouts of the Alpha Generation presentation;[757]

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look forward to meeting everyone on the 11th of April."); Ex. 501 (Tuesday April 9, 2013 email from Markovic to Demby referencing "seeing you [Demby] on Thursday [April 11, 2013]").

754 Tr. 911:18-20 (Wils) ("Q: You did not participate in the initial presentation Mr. Dersovitz gave to group 5? A: I was not present in the United States.").

755 Tr. 602:5-12 (Mantell) ("Q: And, Mr. Mantell, you mentioned this meeting with RD Legal with group 5. Where did that occur? A: At the -- Tiger 21 has -- I don't think it owns it, but it has several floors used in a townhouse on 87th Street between Madison and 5th. And that's where all of its meetings in New York take place.").

756 Tr. 604:15—605:22 (Mantell) ("Q: So at that meeting, Mr. Mantell, how did RD Legal present itself? A: The investment was presented as an opportunity to engage in a litigation finance business. The premise is that it was attractive and essentially quite safe for a lot of reasons. The primary one was that it was exclusively focused, as I perceived it, on financing matters where all risk of recovery – it was financing law firms where they had fees that they could anticipate receiving in the future, where the fees arose out of cases where judgment had already been obtained and the opportunity to appeal had passed. So the only question was whether or not the payor would pay. And the payors were, in turn, insurance companies primarily who were good for the money. And the lawyers were presumably going to assure that you got the money, because they were the -- they were fiduciaries of the Court to receive these payments and to disburse them properly; to pay a portion to their clients but to pay themselves. And Roni said he had a lot of expertise and a lot of history and had been a lawyer and knew his way around the secured finance business, and had a lot of ability to perfect security interest in those legal fee receivables so that those lawyers would not dare to divert the funds. Because if they did, they would be prejudicing their licensure. So it seemed there was a lot of risk removed from the transaction."); Tr. 599:19-21 (Mantell) ("Q: And who at RD Legal made the presentation to Tiger 21? A: Roni Dersovitz.").

757 Tr. 2170:9—2171:3 (Demby) ("Q: . . . What did he tell the members of Group 5 at Tiger 21? A: He went through -- he had a handout. It was a spiral-bound handout. He went through

b. Dersovitz reiterated statements in Respondents' marketing materials highlighting that the Funds invested in cases without the risk of appeal;[758]

c. Dersovitz did not describe any litigation risk in the Funds' portfolio;[759]

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some of the things that were in the handout. And he discussed how the loans were structured and how the fund was structured. Q: Did you hear anything different than what you had heard when you went to visit the Cresskill office? A: I don't think so. Q: You mentioned a handout. Can you look at one of the binders in front of you. It should be marked Tiger 21. That's the one. And particularly, to Exhibit 336, please. And if you go to [Ex. 336 at 6], please. . . . Do you recognize that document? A: Yes. That's the front page of the handout that he gave us.").

[758] Tr. 617:4-22 (Mantell) ("Q: Directing your attention to the point of the bullet [Ex. 336 at 9] where it says, 'The legal fees from settled litigation are past the point of any potential appeals or other disputes.' . . . Did Mr. Dersovitz explain that in detail at the meeting? A: He did. Q: How did he describe it? A: Just that way; he said in probably – you know, more than once, You don't have risk of appeal. You don't have -- he didn't say more specifically what kind of appeal. He just -- we didn't drill into that stuff. He just said, we don't have risk of appeals. We don't have risk of -- the possibility of appeal has passed, and the judgment is definitive."); Tr. 605:23—607:5 (Mantell) ("Q: And, Mr. Mantell, you mentioned a moment ago that the receivables were from certain kinds of cases. What kind of cases did they arise from? A: Cases where judgment had already been obtained, and the opportunity to appeal had passed. So there was no risk of the merit of the case. The merit of the case had nothing to do with the matter. ").

[759] Tr. 610:8-10 (Mantell) ("Q: Did Mr. Dersovitz mention at that time any litigation risk in the portfolio? A: No. That he clearly did not do."); Tr. 3310:24-3311:1 (Sinensky) ("Q: What about the risk of cases not being finished or being litigated? Is that discussed? A: I don't recall that."); Tr. 624:11-624:21(Mantell) ("Q: And what does Armadillo do? A: Armadillo is in the litigation finance business. But they're different in that they invest prejudgment, completely different business. Q: And when you say they 'invest prejudgment,' [sic] what do you mean? A: **They take the risk that Roni insisted he was not taking; meaning, they finance law firms on contingent -- who have contingent cases who have not yet been brought to judgment or settlement.** They're betting on the absolute – they're investing in the book -- investing is the wrong word, because technically they're lending too. But they're taking risk with regard to the viability of the law firm that has a big book of cases against, you know, I don't know Merck for Vioxx or -- or the Dalcon shield cases or things like that, where you've got medical malpractice in a massive class action scale. And these law firms are wanting money often to advertise to get more plaintiffs or things like that. Q: . . . Do you understand whether there was litigation risk in Armadillo's -- A: Oh, sure. There's huge litigation risk in Armadillo's business. Q: And what was your understanding of the litigation risk in RD Legal's strategy? A: None. That's why in Armadillo, our target returns are in the 20s after the sponsors promote. . . . You wouldn't make -- you would never invest in a litigation finance business with a litigation risk in it to try to make 13 percent." (emphasis added)).

d. Dersovitz echoed statements in the Respondents' marketing materials that the fact of settlement meant that the obligor was willing to pay;[760]

e. Dersovitz said that concentration in the Funds' portfolio was "low[,]" that they were limited by creditworthiness of the payors, that he would diversify the Funds;[761] and affirmed that the Funds' were diversified with many positions;[762] and

f. Dersovitz did not mention Iran or the Peterson case at all.[763]

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760 Tr. 618:14—619:6 (Mantell) ("Q: Directing your attention as to what's labeled as risk 1 [in Ex. 336 at 17] . . . do you recall Mr. Dersovitz discussing that at the meeting? A: Yes. Q: What did he say? A: He said that you could presume from the fact that a settlement had been entered into and, therefore, that an agreed receivable could be identified, that the payor was good for the money, because otherwise they wouldn't settle. They would try to delay in some way. So you could infer, said he, that if they've settled with you, it's because they're ready to write the check. Whether you accept that or not is another question. But that's what he said.").

761 Tr. 621:13-20 (Mantell) ("Q: Mr. Mantell, we were discussing portfolio concentration from this slide [Ex. 336 at 17] a moment ago. Was that something that was discussed at the Tiger 21 meeting? A: Yes. Roni went over this. Q: I see. And do you see anything different than what you just related? A: No."); Tr. 619:15—620:8 (Mantell) ("Q: Looking at risk No. 2 [Ex. 336 at 17], what does that risk discuss? A: That's a critical risk in any investment thinking that we do, which is, you know, What kind of concentration risk are you accepting? And he was saying that the concentration risk in his portfolios was low. And he was in this case pointing out that he had some processes in which he limited risk to particular payors with attention to the creditworthiness of those payors. . . . . And he was going to diversify and not take undue concentration risk. That's what he's telling you."); Tr. 654:3—655:11 (Mantell) ("Q: And if you had no -- if at the time you had been told -- A: . . . Secondly, if somebody said one exposure is 25 percent of the fund, I would have looked at it completely differently. I inferred from Ron who discussed diversification in the verbal meeting that he was going to routinely diversify his exposure. If somebody said it was 20 to 25 percent exposure to a single payor, I will say, I want to go to the office. I want to see the payor. I want to understand what the creditworthiness is. None of that was ever suggested.").

762 Tr. 3383:23—3384:5 (Sinensky) ("Q: And before you invested, you never reviewed any prior year financial statements to understand what the diversification -- what concentrations existed in the fund prior to the time you invested? A: I didn't review financial statements. My recollection is that in the discussion at Tiger, there was an affirmation that this is a diversified fund with many positions.").

763 Tr. 629:4-25 (Mantell) ("Q: During the meeting at Tiger 21 that you attended, did Mr. Dersovitz mention Iran at all? A: Absolutely not. Q: Did he mention a case called Peterson? A: No way. . . . Just to be clear, the first time I ever heard about the Peterson case was when -- I know

g. In April 2013, concentration on a fair value basis in the Flagship Funds of the Peterson positions was approximately 50%.[764]

486. Mr. Sinensky came to understand following his meetings and reviewing the marketing and Offering Memoranda that the Funds invested in "resolved" or "settled" cases—meaning "finalized."[765]

487. Following the April 11, 2013 Tiger 21 meeting, Dersovitz instructed Meesha Chandarana to email Mr. Sinensky and two prospective investors RD Legal's FAQ document, stating "I find that the FAQ crystalizes for many people exactly what it is that we do."[766]

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nothing about it. I didn't even know it existed. You know, that's – said something about what news I'm reading. And could be argued very insensitive. But the first time I learned was when Ron put together an SPV, special purpose vehicle, and offered it. And I got it in an email and started looking at it and said, Oh, there is this Peterson case. Never learned about the Peterson case. Never before did he say anything about that."); Tr. 2173:24—2174:5 (Demby) ("[Q:] During either of the first meeting that you had with RD Legal, did Mr. Dersovitz or anybody from RD Legal discuss with you an Iranian position or an Iranian fund? A: No. Q: Anything about a case called Peterson? A: No.").

764 Ex. 2 at Cell O-24.

765 Tr. 3303:21—3304:6 (Sinensky) ("Q: The first paragraph [Ex. 324 at 3] says, 'The legal fees which arise from settled litigation are past the point of any potential appeals or other disputes.' . . . Q: What did you understand that to mean? A: Again, I'm not a lawyer. So I would say that these are cases that have been resolved or settled and an award has been made. Q: When you say 'resolved' or 'settled,' what do you mean by that? A: That it was finalized."); Tr. 3305:7—3306:8 (Sinensky) ("JUDGE PATIL: . . . I'm interested in your understanding of this material [Ex. 324 at 3], this strategy at the time to the extent you can recall it. . . . THE WITNESS: So it was four years ago. I don't remember the details of any meeting or the details of what I browsed. But what I came to understand, what I believe I clearly understood was what is written or the themes conveyed in these two points in my own words, that there would be a settled case and an award made. But there's a delay for some reason. I don't know if it's administrative or paperwork between the time it's settled and being -- between the time the cash is exchanged. And, therefore, the fund would purchase the claim, the receivable on it at a discount to the face value and then own it and would collect it. And this -- these first two paragraphs essentially say that.").

766 Ex. 340 at 2 (Apr. 17. 2013 email from R. Dersovitz); Tr. 3313:15-22 (Sinensky) ("Q: If we turn to Exhibit 340 in your binder, sir, do you recognize Exhibit 340? A: Yes, I do. Q: What is it? A: That's an e-mail from one of the employees at RD Legal Capital to my friends, John Cook and Bob Cook, and basically, you know, kind of introducing them to the fund.").

488. On April 30, 2013, Mr. Sinensky forwarded a Wall Street Journal article ("Loan & Order: States Object to 'Payday' Lawsuit Lending") to Dersovitz, asking "Could you shoot me a few words on what impact, if any, this might have?"[767]

a. The Wall Street Journal article concerned "the burgeoning business of lending money to people involved in lawsuits and collecting when the suits pay out."[768]

b. Dersovitz responded: "It was an interesting article. I had seen it yesterday evening and would point out that deals with pre-settlement funding which is very distinct from what we're doing."[769]

c. Mr. Sinensky understood that statement as "an affirmation that the RD Legal fund does not do what this article is talking about."[770]

d. Respondents funded an Osborn ONJ Case position on May 1, 2013—the day after Dersovitz's representation to Mr. Sinensky that RD Legal's

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767 Ex. 343 (Apr. 30, 2013 email from A. Sinensky to R. Dersovitz).

768 Ex. 561 (Ashby Jones, Loan & Order: States Object to "Payday" Lawsuit Lending, WALL STREET JOURNAL, Apr. 29, 2013, at B1). See also Tr. 3317:14—3318:9 (Sinensky) ("Q: Mr. Sinensky, looking at Division Exhibit 561, what did you understand that news article to be reporting? A: Well, this was reporting about broadly, people who lend money or businesses who lend money to people involved in lawsuits, although I came to understand that it was a different strategy than the strategy that I was investing in. Q: And how did you come to that understanding? A: Well, both through reading this and, you know, my own dialogue and fact gathering, is that I realized that this was about financing lawsuits and that RD Legal was not about financing. It was about factoring in receivables. Q: When you say 'dialogue' in your previous answer, who did you have that dialogue with? A: Well, as I said earlier, I don't remember – as I said earlier, I had a lot of dialogue with different people throughout this process. And I don't remember who I had a dialogue with, specifically with regard to this article.").

769 Ex. 343 (Apr. 30, 2013 email from Dersovitz to Sinensky) (emphasis added).

770 Tr. 3318:10-20 (Sinensky) ("Q: If we turn back to Exhibit 343 . . . At the top of the page is Mr. Dersovitz's response to you. It says, 'Arthur, it was an interesting article. I had seen it yesterday evening and would point out that it deals with pre-settlement funding which is very distinct from what we're doing.' . . . . What did you understand that to mean? A: Well, that's an affirmation that the RD Legal fund does not do what this article is talking about.").

business was "very distinct" from pre-settlement funding—and continued to fund ONJ Case positions until December 2015.[771]

489. On May 15, 2013, Mr. Demby invested $1,000,000 in the Offshore Fund.[772]

a. At the time he invested, Mr. Demby was unaware that there was any Peterson positions in the Flagship Funds.[773]

b. Mr. Demby read the subscription documents thoroughly before investing.[774]

490. On or about June 4, 2013, Mr. Sinensky invested $500,000 in the Offshore Fund.[775]

a. Mr. Sinensky, who attended "three or four" meetings with Dersovitz prior to investing,[776] was told about the Peterson case in the context of the Iran SPV.[777]

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771 Ex. 5 at Rows 45 to 53.

772 Ex. 504 (May 16, 2013 email from Demby to Markovic) ("I overnighted subscription forms to Schwab in the amount of $1,000,000.").

773 Tr. 2180:19-23 (Demby) ("Q: Dr. Demby, did you believe in May of 2013 that there were any Iran-related positions in the offshore fund in which you invested? A: I had no reason to -- I never heard of the Iran case at that time."); Tr. 2173:24-2174:5 (Demby) ("[Q:] During either of the first meeting that you had with RD Legal, did Mr. Dersovitz or anybody from RD Legal discuss with you an Iranian position or an Iranian fund? A: No. Q: Anything about a case called Peterson? A: No."); see also Ex. 395 (Mar. 24, 2014 email from Demby) ("I am pretty sure that Katarina and Ron D stated previously that this fund and the Iranian settlement fund are separate entities and that the existing fund would not participate in the Iranian settlement 'opportunity'.").

774 Tr. 2213:6-12 (Demby) ("Q: You talked about when you received the offering documents, you reviewed them? A: I did. Q: Okay. I believe it's Division Exhibit 503, that large document that had the subscription agreement in it, sir? A: Yes. I read them thoroughly.").

775 Ex. 718 at 3 (Feb. 24, 2016 email from Spadafora to Dersovitz); see also Tr. 3319:15-19 (Sinensky) ("Q: And do you recall when you made your investment? A: I don't recall the date. But it's probably either the late spring or the early summer of 2013, just based on the chronology that I'm seeing in these e-mails.").

776 Tr. 3302:18-22 (Sinensky) ("[Q:] Approximately how many times in 2013 did you meet with Mr. Dersovitz in person before investing? A: In 2013 -- I'm going to guess -- it's four years ago, probably two to three times. If I include the Tiger meeting as well, maybe it's three or four times.").

b. Prior to investing, Mr. Sinensky reviewed the Offering Memoranda in part and did not see anything inconsistent with the other written materials that Respondents provided him or that Dersovitz told him.[778]

c. Prior to investing, Respondents did not tell Mr. Sinensky anything about Iran-related risks or the Peterson case in connection with the Offshore Fund.[779]

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[777] Tr. 3311:22—3312:5 (Sinensky) ("Q: What, if anything, did Mr. Dersovitz say about an Iran trade or the Peterson funds during your meetings with him? A: So over the course of those multiple discussions that I mentioned earlier, yes, Mr. Dersovitz did mention the Iran case and said that there would be a special-purpose vehicle set up to invest in that case and that, you know, I should give consideration to potentially thinking about that as well.").

[778] Tr. 3319:20—3320:17 (Sinensky) ("Q: And if you look, you'll see one of the attachments to the Respondents Exhibit 1684 is the confidential explanatory memorandum. . . . Did you review that at the time? A: I didn't read all of it, no. Q: What did you review it for? A: Well, I don't remember exactly what I reviewed it for. But what I typically do is I like to look at the executive summary. These usually have a summary upfront. So given -- and, again, I don't remember exactly, excuse me. But I probably reviewed where it says 'summary of terms.' I don't remember exactly what I was looking for. Q: At the time you reviewed it, did you see anything that was inconsistent with what you had heard from Mr. Dersovitz during your meetings with him? A: No, I did not. Q: Had you seen anything inconsistent with the other written materials you had been provided? A: No.").

[779] Tr. 3324:24—3326:12 (Sinensky) ("Q: If we turn to 360-5, sir, you'll see a heading that says 'Potential Risks' there. . . . And if you look at the first bullet point, what risk do you understand that bullet point to be discussing? . . . A: Well, what it says is at the time -- well, by way of background at the time, our government, the United States Government was in the process of engaging with the government in Iran to improve the relationship. And I thought that in reading this, it highlighted that if there is an improvement in the relationship and there's actually a treaty, that it may change the status of this Iran situation in terms of the investment and the claim on it. . . . Q: What, if anything, did Mr. Dersovitz or anybody from RD Legal tell you about that risk prior to your investment in the Offshore Fund? A: **Nothing about Iran was discussed in the Offshore Fund.** Q: So if I were to ask you the same question about the second bullet point [at Ex. 360 at 5], your answer would be the same? . . . A: **Nothing about Iran. To the extent that this is a valid -- a special-purpose vehicle, which is about Iran, there was no discussion of this in the original fund, to the best of my recollection.**" (emphasis added)).

d. At the time he invested, Mr. Sinensky believed that the Funds were invested in only resolved cases and not on-going litigations[780] and did not believe that there were any Peterson-related positions in the Offshore Fund.[781]

491. On June 11, 2013, Ms. Markovic forwarded marketing materials and subscription documents to an associate of Mr. Mantell, stating that Respondents "manage a fund which invests in legal fee receivables from US-based contingency fee attorneys **once cases have settled.**"[782]

a. Mr. Mantell understood Ms. Markovic's description to be "exactly" what RD Legal did.[783]

492. On or about that same day, June 11, 2013, Mr. Mantell indicated that he wished to invest in the Offshore Fund,[784] and he submitted his subscription documents on or about June 28, 2013, investing $325,000.[785]

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780 Tr. 3321:1-4 (Sinensky) ("Q: What, if any, belief did you have about whether there were any unsettled or unresolved cases in the fund in which you invested? A: I believe it was all resolved cases."); Tr. 3343:4-8 (Sinensky) ("Q: And just to be clear, did anyone -- what, if anything, did anybody from RD Legal tell you prior to your investment about funding ongoing litigation? A: Nothing. I was unaware that there was any funding of ongoing litigation.").

781 Tr. 3320:18-20 (Sinensky) ("Q: At the time you invested, did you believe that there were any Iranian positions in the Offshore Funds? A: No, I did not.").

782 Ex. 348 (June 11, 2013 email from Markovic) (emphasis added).

783 Tr. 644:6—645:4 (Mantell) ("Q: And directing your attention to where in her email [Ex.348] she [Markovic] writes, 'We manage a fund which invests in legal fee receivables from U.S.-based contingency fee attorneys once cases have settled.' . . . Q: Is that consistent with your understanding at the time what RD Legal did? A: No. That's exactly what I understood them to do. [Exhibit 348 admitted.] THE WITNESS: That's actually what I was trying to say before is despite what that offering memorandum had in that one paragraph, there was such a drum beat of legal fee receivables, legal fee receivables, I didn't focus particularly on the financing of judgments, although it's clearly described in the offering memorandum. ").

784 Ex. 2836 (June 11, 2013 email from Markovic).

785 Ex. 2850 at 14 (June 28, 2013 facsimile).

a. Prior to investing, Mr. Mantell read the entirety of the Offering Memoranda provided by Respondents.[786] Respondents did not provide prior year audited financials.[787]

b. At the time he invested, it would have mattered to Mr. Mantell whether Respondents were deviating from their original business plan.[788]

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786 Tr. 631:18-24 (Mantell) ("A: This is the confidential memorandum that was used to offer the transaction to us. It's a disclosure document. Q: Did you review it prior to investing? A: I did. Q: What parts of it did you review? A: The entirety of it.").

787 Tr. 857:3—859:5 (Mantell) ("[Q:] At the April Tiger 21 meeting, you testified earlier that you received documents from RD Legal? A: Yeah. Q: Who selected those documents? A: RD Legal. Q: The document here at Exhibit 342, you received this from RD Legal as well, correct? A: Document 342 that I'm looking at, I just want to be clear, is with a -- besides the cover email from Katarina, are the offering documents -- right? -- the offshore offering documents, the subscription documents and the offering memorandum? Q: That's correct. A: Yes, I received that. Q: And who selected these documents for you? A: RD Legal. Q: Okay. And I think Mr. Healy on cross-exam showed you a later -- a later set of documents of subscription documents that were sent to you. Do you recall that? A: Yes. Q: And who selected those documents for you? A: RD Legal. Q: Okay. And he also showed you an email that may -- that you may have been forwarded from Mr. Mrkonic. Do you remember that with -- A: Yes. Q: Do you recall who selected the documents in that email? A: I don't -- I can't see from the email what was or wasn't attached to it, so I really can't say. I -- you know, George didn't have any other source of these documents except RD Legal either. . . . [Q:] You testified earlier that you reviewed the documents that you received at the April 2013 meeting -- A: I did. Q: And you also testified that you reviewed these offering documents here in Exhibit 342? A: I did. Q: Okay. Did RD Legal send you the prior year financials before you invested? A: No.").

788 Tr. 700:12—701:13 (Mantell) ("Q: Mr. Mantell, would it have mattered to you if the style drift had already occurred at the time you invested? A: Absolutely. One of the things that we look at in any business is -- is there -- are the control persons of that business focused and focused on their business? It's the same thing as when you look at major companies that say, We're not going to -- keep assets in our -- outside of our core competence. Right? So we -- we're very interested that the people who are doing -- with whom we're doing business engage in the businesses that they say they're going to engage in, have a -- you know – I mean, it's just -- it's crucial. And if people routinely don't do -- I'm not saying that this is a case, because this is a single event of style drift. But if you've seen someone who you've seen engage in a style drift in a prior business context, you have some added concern. You might choose to do business with them or not. But you have some added concern about this, per se, because they have been willing to engage in style drift. It's not in general. It's just a bad thing to do.").

c. At the time he invested, Mr. Mantell understood that for the investments in the Offshore Fund's portfolio the "merit of the case had nothing to do with the matter" and that was important to him because the risk was that the manager might misjudge duration, not the merits.[789]

d. At the time he invested, Mr. Mantell understood that the delays in payments of the legal fee receivables in which RD Legal invested were caused by "court administration of some kind."[790]

e. Mr. Mantell believed based on what he was told that the payors were highly rated entities such as insurance companies and Fortune 500 companies.[791]

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789 Tr. 605:23—607:24 (Mantell) ("Q: And, Mr. Mantell, you mentioned a moment ago that the receivables were from certain kinds of cases. What kind of cases did they arise from? A: Cases where judgment had already been obtained, and the opportunity to appeal had passed. So there was no risk of the merit of the case. **The merit of the case had nothing to do with the matter.** Q: Did that matter to you? A: It mattered vastly. Q: Why? A: Well, where routine -- I don't want to be dumbed down and generic, but the -- you know, investing is a risk-adjusted gain. And the key to the entirety of decision-making is to evaluate risk, to be keen in identifying risk and evaluating the risk and thinking about the prospective reward in proportion to it. This series of facts makes the -- if it pertained in value -- it makes the likelihood of recovery very high in my judgment and, therefore, the prospective return which was offered in the RD Legal transaction at 13.5 percent was a very attractive return, especially given what the rate market was like at the time. The spread to treasury was very large. In the context where really it seemed as though there weren't a lot of things that would go wrong. You're waiting -- it's a time -- the wait was presented. It was if -- the single mistake that you could make as the sponsor was to misjudge time. . . . But apart from misjudging that in terms of how long it would take to get paid, it seemed there was very little risk in the transaction.").

See also Ex. 454 (June 1, 2015 email from A. Mantell) ("He made two disgusting moves. The first was to take that degree of exposure to a claim that was utterly unlike the ones he sold the fund saying he'd invest in, namely ones in which all appeal rights were gone . . . .").

790 Tr. 865:24—866:16 (Mantell) ("Q: Mr. Mantell, you testified earlier, I believe, or Mr. Healy asked you about delay, the process of delay. Do you recall that? A: Delay in what sense? Q: In time between -- A: Oh, yes. You mean between -- yes. The question of what kind of delay in collection might make the investment discounting sufficient or not when you invest it? Q: Correct. A: Yeah. Correct. Q: . . . At the time you invested, what was your understanding of what caused that delay? A: I assumed it was court administration of some kind in accordance with a further distribution.").

f. Mr. Mantell, at the time he invested, believed based on what he was told that there were no unresolved cases in the Funds' portfolio, no cases related to non-lawyers, no cases related to Iran, and no risks in the Funds' investments like the risks in the Peterson investments.[792]

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[791] Tr. 607:25—608:17 (Mantell) ("Q: And when you say there was very little risk, why was there -- why did you believe there was very little risk? A: If you have [judgments]-- and **there were many, many ways in which Ron sought to establish in writing and sort of verbally that the -- that the situation were ones in which the payors were highly credit payors -- the list of highly creditworthy payors.** He was saying major insurance companies. There are [judgments] against institutions that have -- that are Fortune 500 companies. There's some references somewhere in the offering memorandum leading to that. I mean, he says -- these are very high credit payors, so there's very low credit risk. I think in the offering memorandum it even says that. But I believed it certainly.").

[792] Tr. 654:5-25 (Mantell) ("A: . . . We just went through the whole thing about the concentration risk, and what he was doing did not have concentration risk. If he had said, By the way, I have no idea what he owned -- I didn't know -- to this moment, I did not know if Ron owned any of the Peterson case when he closed our investment. I have no knowledge of that. But if you're telling me that he owned a material piece of the Peterson case at the time, I would say to you two things: First of all, in my judgment, he absolutely had to tell us that if it was a material matter. I would say he had to tell it to us if it -- it was there, because it's a completely different kind of exposure, right? The time to appeal, in theory, had not passed depending upon what you want to look at as to what the time to appeal means. Certainly, in any case, it has these other risks, and he should have told us about it."); Tr. 647:9—648:11 (Mantell) ("[Q:] Mr. Mantell, at the time you invested in June of 2013, had Mr. Dersovitz or anyone from RD Legal ever told you that the funds had invested in any unresolved cases? A: No. Q: If they had told you that, would that have affected your decision to invest in the funds? A: Vastly. Q: Why? A: Completely alters the risk profile, as I was talking with regard to Armadillo. If Armadillo came to me and said, We'll give you a 13.5 percent coupon, I wouldn't have even -- I would have taken the offering memorandum and dropped it down the well. Because the risk is too great for that return. Q: At the time you invested in June 2014, had Mr. Dersovitz or anyone from RD Legal told you that the funds would invest in cases related to non-lawyers? A: Other than through the offering memorandum, the answer is no. They told me through the offering memorandum that you can invest in [judgments]. But it was never mentioned. Q: Did Mr. Dersovitz or anyone from RD Legal ever tell you that the funds would invest in cases related to Iran at the time you invested? A: No."); Tr. 608:18—609:14 (Mantell) ("Q: And you mentioned a moment ago that another thing that was mentioned was the fact that the receivables were from law firms or lawyers, and that they were fiduciaries. . . . And did that matter to you in your investment decision? A: Certainly. Q: Why? A: Because I'm aware -- I understand what it would be like to have an obligation to deliver funds someplace and to literally divert them somewhere else, and it seems to me that it wouldn't go well for the person who did it. And I don't know -- in my history, I haven't seen a lot of lawyers do those things and get disbarred. Maybe you've seen more. But not in my world. So it seemed like an extra

g. In addition, Mr. Mantell understood that the Offshore Fund was not concentrated in any single position.[793]

h. In June 2013, the concentration in the Peterson positions in both Funds was approximately 53%.[794]

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presumption of credibility in the processing environment in which funds would be handled."); see also supra n. 1102.

[793] Tr. 783:13—786:12 (Mantell) ("Q: Yes. So simply, Mr. Mantell, one of the risks that investors in the offshore fund were advised of were risks associated with investment concentration? A: I completely disagree with that. So let me tell you why. The phrase 'investment concentration' is here point blank clear, right [Ex. 342 at 53]? And I want to read this carefully, and I want to respond. (The witness examined the document.) THE WITNESS: Yeah, I know why. Because I looked at it last night, and when I read it at the time, it bothered me, and it bothers me in hindsight for the following reason. **If you look at the fourth line which says -- which is what it's describing as the risk it's revealing. What it's revealing is concentration in certain types of investments. It's saying the fund may be concentrated in receivables or lines of credit or other advances. It's not saying the fund may be concentrated in one -- one position, that is could be the whole fund or 60 or 70 percent of the fund. You might make a disclosure like that, but that's not what this is doing.** This is saying very clearly it's the risk of -- the investment protection loss afforded by diversification where concentration in certain types of investments have the effect of exposing a significant portion of the investment capital of the risks. And the second thing I would say is, if you have a concentration risk -- and I have lots of history of thinking about this and doing it as a -- as a sponsor, as an offerer in all kinds of contexts, it's – there are two different kinds of risk disclosure that you have to make. One is generic. Oh, there's concentration risk. The other is, if it reaches a certain level, it requires specificity. That's why you have a risk factor section. And that risk factor section in an offering document has to highlight anything that I would materially want to know in order to make that investment. And one thing sure as heck is, it might be that I'm going to have a position that's 60 percent of the fund. It's not good enough to just say, Oh, concentration could happen. Because concentration of 60 percent of the fund in a single asset is nothing akin of what the investor believes when he's thinking he's making a loan -- with a guy who tells us in the oral conversation, I've made a thousand loans, and I don't -- and there's all kinds of disclosure all over this document that talks about the fact that he won't take concentration risk. In fact, it even discloses in other places -- and we can go find them -- that we're not taking -- we're carefully analyzing the creditworthiness of each of our -- of these kinds of, you know, payors. And we're selectively making [judgments] about how much concentration risk to take home. The implication of that statement is that you're doing it judiciously. And certainly if you are going to say -- if you wanted to say that you were having a plan or that you conceive of taking 50 percent or more of the fund and putting it into one asset, you need to say that separately. You'd have to say, By the way, the concentration might exceed 50 percent of the fund. **And I guarantee you that there wouldn't have been a single Tiger investor who would have participated in that fund if he'd done that.**" (emphasis added)).

[794] Ex. 2 at Cell O-26.

493. In May or June 2013, Mr. Wils, who missed Respondents' presentation to Group 5 in April 2013, attended a separate presentation that Respondents gave to a separate Tiger 21 group.[795]

a. At the Tiger 21 meeting Mr. Wils attended, Ms. Markovic began the presentation prior to Dersovitz taking over.[796]

b. Dersovitz described the Funds as investing in "settled legal cases"[797] from "law firms."[798]

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795 Tr. 871:15—872:8 (Wils) ("Q: How are you familiar with RD Legal? A: RD Legal made a presentation to Tiger Group 5 in March of 2013, I believe. And I was not present for that meeting. I was traveling. . . . And I decided that I would -- because the presentation that was made to the group, Mr. Dersovitz was not coming back, I went to another group and listened to the presentation. I think in May or June. Q: And in May or June, do you recall which group -- whose meeting you attended to listen to Mr. Dersovitz? A: I believe it was group 4. It may have been group 6 or 7. Again, I was in group 5, but I am not really certain which group it was. "); see also Ex. 718 at 3 (Feb. 24, 2016 email from M. Spadafora to R. Dersovitz reflecting that RD Legal presented to Tiger 21 meetings on May 22, 2013, and June 27, 2013).

796 Tr. 872:18—22 (Wils) ("Q: And what happened at that meeting? A: Katarina began the presentation. And shortly into the presentation, Mr. Dersovitz took the floor and made a representation of what RD Legal did.").

797 Tr. 872:23—873:3 (Wils) ("Q: What did he . . . say? A: He said basically -- my interpretation was that it was a legal settlement factoring fund of settled legal cases."); Tr. 873:22—874:18 (Wils) ("Q: And in terms of the kind of financing that RD Legal did, did he describe that? A: Yes, he did. Q: What did he say about it? A: He said that what he did -- what the company did, RD Legal, was -- basically bought claims that were settled from law firms who needed cash flow. Q: And in terms of the word 'settled,'. . . what did you understand 'settled' to mean? A: My understanding of settlement was that a judgment has been handed down by a judge. And forgive me, I'm not an attorney. If I get the language wrong, please correct me. That a judgment had been handed down by the judge, and there was a collectible receivable that was in the hands of the law firm that basically won the -- it was a legal fee settlement for their clients.").

798 Tr. 876:22—874:4 (Wils) ("Q: And in terms of the kind of financing that RD Legal did, did he describe that? A: Yes, he did. Q: What did he say about it? A: He said that what he did -- what the company did, RD Legal, was -- basically bought claims that were settled from law firms who needed cash flow."); Tr. 875:11-23 (Wils) ("Q: You mentioned that they were lending to law firms. A: Yes. Q: Did that affect your investment considerations -- A: Yes. Q: How so? A: Well, because my sister is an attorney in the State of Texas, and I told her about the concept. And she confirmed that, yes, legal firms frequently have cash flow problems, and that if it were settled claims, it would probably be a pretty good, solid investment.").

c. Dersovitz also mentioned that "a special purpose vehicle was in the works" related to the Peterson Case, but "he did not go into great detail about it."[799]

d. Dersovitz did not inform the prospective investors that Peterson related to the Flagship Funds, and Mr. Wils understood that the position related to the prospective Iran SPV.[800]

494. Following the May or June 2013 meeting, Mr. Wils attended another meeting with Respondents at RD Legal's offices in Cresskill, New Jersey, in July 2013.[801]

a. At the July 2013 meeting, Mr. Wils sat in on a pitch Dersovitz gave to "two or three" prospective investors and then had a separate, individual conversation with him.[802]

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799 Tr. 876:7-21 (Wils) ("Q: Was there anything else discussed at the meeting that you attended? A: Yes. At that meeting, Roni -- Mr. Dersovitz discussed -- I -- what he said was a special purpose vehicle that was in the works and that had a higher return. But no one -- I was not interested in that. And I think he did not go into great detail about it. He did mention a claim, though, about the 1983 Marine barracks bombing, which everybody in the group was familiar with, because we were all, you know, more than 30. So I do remember that. But it wasn't something that anybody focused on. I didn't.").

800 Tr. 876:22—877:17 (Wils) ("Q: And why didn't you focus on [the Peterson case]? A: It was kind of added as a matter-of-fact thing . . . Q: And had he mentioned that the Iran position was related in any way to the funds that you were looking at? A: I do not believe that he did. . . . Because he said -- he was considering putting together a special purpose vehicle at that time. He – my understanding was that it was represented as being a separate entity, but that was my understanding.").

801 Tr. 882:23—883:16 (Wils) ("Q: And you mentioned earlier a second conversation with Mr. Dersovitz? A: There was a second conversation, yes. Q: And when was that? A: That was in July of 2013. Q: And where did that occur? A: That was in Mr. Dersovitz's -- RD Legal's offices in Cresskill, New Jersey. Q: Why did -- A: I had missed -- because I was interested in putting in a substantial sum of money. I wanted to meet Mr. Dersovitz individually. And so I arranged with Arthur Sinensky who knew Mr. – who knows -- or knew Mr. Dersovitz, because they belong to the same synagogue, to go visit Mr. Dersovitz at his offices and to see what the offices are like and see what the mood is, and see what -- meet the other personnel. And just to get a little depth of the character of the organization."); see also Ex. 351 (July 4, 2013 email from A. Sinenksy) (discussing meeting on July 24, 2013, noting that "Wils . . . has expressed interest in learning more about RD. He can arrive at 10:30 am.").

b. Over the course of an hour and a half to two hours, Dersovitz reiterated the "same thing" that he had expressed in the May or June 2013 meeting, i.e., that the investment was "settled legal claims." Dersovitz again mentioned the Peterson case in the context of the Iran SPV.[803]

c. Again, Dersovitz did not mention the presence of Peterson positions within the Flagship Funds.[804]

d. Mr. Wils asked Dersovitz about concentration in the Funds, and Dersovitz's response lead Mr. Wils to believe that the Funds were "well diversified." Mr. Wils believed that Dersovitz may have told him that the greatest

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802 Tr. 884:18—885:1 (Wils) ("Q: . . . And who did you meet with at RD Legal's offices? A: We met -- initially when we showed up there, Roni was making a pitch to two or three other people as well. So we -- Arthur and I sat in the meeting. And after he had concluded, we said that we would like to stay and have a conversation with him individually, so we did.").

803 Tr. 885:2—886:11 (Wils) ("Q: And what was that conversation? A: That conversation -- Roni was eloquent, and he expressed the same thing that he had expressed in the meeting that we had at Tiger a month or two before. And outlined what the investment was, talking about settled legal claims. And I had, at that time -- I think I had read the overview. And I was -- if I liked what I was seeing, I had decided that I would invest. And we discussed a few things. It was kind of -- went on for the -- the conversation probably went on for about, I would probably say, an hour and a half to two hours. And Arthur and Roni talked about some personal things, because they had -- they knew similar people, et cetera. And I also remember -- and I remember this distinctly, that Roni, again, mentioned the special purpose vehicle that he was either formulating or had already formulated. I couldn't remember that. That was strictly devoted to the Peterson case, 1983 Marine barracks bombing. Q: What did he say about it at that meeting? A: He said that it had a higher return. That he felt that it was going to be a good investment that it had to be settled. That he had bought the -- so if they had the opportunity to buy the claims at a considerable discount, because the case has gone on for so long. And that was it. He didn't harp on it. I listened, basically. I did not have a political perspective about that. But my job was to be an observer. And that's what I was.").

804 Tr. 887:19—888:4 (Wils) ("Q: Did Mr. Dersovitz say at that meeting that there was any Iranian positions inside the funds you were considering investing in? A: He did not. And I did not ask him. I must say that, I didn't ask him if they were or they weren't. But I assumed because -- I assumed -- always a dangerous word -- because he mentioned the Iranian claims, that they were in a special purpose vehicle, that I assumed that they were not in the portfolio.").

concentration perhaps at "8 or 10 percent" because Mr. Wils would have noted a larger concentration.[805]

e. In July 2013, the Peterson concentration was approximately 55%.[806]

495. Mr. Wils invested $800,000 in the Onshore Fund shortly after the visit to Cresskill, on or about July 24, 2013.[807]

a. Mr. Wils invested based upon Dersovitz's presentation of the Flagship Funds and the description of the investment strategy in the RD Legal Executive Summary.[808]

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[805] Tr. 888:24—890:25 (Wils) ("Q: And what about the first question you asked about concentration? A: **I asked about concentration. And I believe he said that the greatest concentration that he had was 8 or 10 percent. I guess it was diverse.** But, again, that would be a question that I always ask. **I really don't have a clear recollection of exactly what he said. If anything was more than 10, I probably would have raised -- been a bit more skeptical about it,** because that's my habit. Q: And why is that? Why would it – why would you have been a bit more skeptical about it? A: Because when you -- when you have a concentration of risk, you're putting the enterprise at risk. And you -- you have a black swan event where something happens and suddenly, poof, that -- that interest is gone. You have to write it off. And business can take a 10 percent write-off typically. Sometimes they can take a 15 percent write-off, depending upon what your overhead is. You really don't want to have anything more than that. Therefore, you want to be diverse as a sound business practice. Q: I forget the amount that Mr. Dersovitz told you was the highest -- the largest position? A: I don't recall. I'll repeat that: I don't recall specifically what he said. But I know it's a question that I always ask. . . . The truth is that statement on my part in terms of the answer is, it's a bit of conjecture, because I do not have a clear visual recollection of what his response was. But I do remember asking the question. Q: Okay. And what was your impression after you asked the question? A: Sounds like a good investment. Sounds solid. It's on a strong foundation. Settled claims, where the payor is at serious risk, lose their legal license. I thought it was a good business. It was a basic, simple business and that it was a good business. Q: And did you have an impression as to whether it was -- as to whether the fund was diversified? A: **I got the impression that the fund was well diversified, yes.**" (emphasis added)).

[806] Ex. 2 at Cell O-27.

[807] Ex. 2834 at 32 (July 25, 2013 email from Chandarana with Wils subscription documents (showing investment of $800,000)).

[808] Tr. 894:6-13 (Wils) ("Q: And, Mr. Wils, why did you invest in RD Legal? A: Because of what I saw in the offering memorandum and what I -- that's -- what I read in the offering

b. At the time Mr. Wils invested, he did not believe that there were any Peterson positions in the Flagship Funds because the investment had been presented by Respondents as relating to the Iran SPV with a higher return.[809]

c. At the time Mr. Wils invested, he did not know that approximately 50% of the Funds' portfolio was invested in the Peterson case and would not have invested if he had known.[810]

496. On September 11, 2013, Ms. Markovic sent an email ("September 11 Email") on behalf of Respondents pitching the Iran SPV to the Tiger 21 investors, including Messrs. Wils and Mantell, and attaching the Iran SPV Summary of Investment Opportunity and Term Sheet.[811]

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memorandum, which -- items 1, 2 and 3, which seemed very plain and simple. And also from how Mr. Dersovitz represented the organization on two occasions.").

[809] Tr. 895:17—896:2 (Wils) ("Q: At the time you invested, did you believe there were Iran positions or positions related to Iran in the fund? A: I was -- I do not believe -- I am very clear that I did not believe there were Iran positions in the fund. Q: Why did you not believe that? A: Because it was presented on two occasions as a special purpose vehicle . . . that had a higher return.").

[810] Tr. 896:6-20 (Wils) ("Q: Would it have affected your decision to invest if you had known that in July 2013, 50 percent of the fund was invested in the Iran position? A: Most definitely. Q: Why? A: I wouldn't have invested in it. Q: Why not? A: Because it was -- 50 percent was in something that I didn't want to invest in. It broke two of my rules. It was a great concentration. Five times is my standard. And it was an investment that I would not favor -- look upon favorably, for the reasons that I discussed."); Tr. 925:10—926:11 (Wils) ("Q: Okay. Now, you said concentration is also a risk that you're always looking at as an investor? A: That is correct. Q: And that was based in part on your experience as a businessman -- A: That is correct. Q: -- that you'd like to keep your vendors or your accounts -- A: Receivable. Q: -- receivables above a certain percent? A: That is correct. . . . Q: Does concentration always increase risk? A: It's a generalization. And -- but in my experience, concentration does increase risk. Q: What if you're concentrated in a position that has lower risk? A: You're still taking -- you're still increasing a risk. That's a -- that's a subjective determination. Image you were invested in Enron. Great company. Fabulous company. Had bought a lot of Enron stock. Great reports, great financials. Poof.").

[811] Ex. 361 (Sept. 11, 2013 email from Markovic to Wils); Ex. 362 (Sept. 11, 2013 email from Markovic to Mantell).

a. The September 11 Email greeted the current investors before continuing: "I am reaching out to you to discuss an opportunity separate from our flagship fund in which you are invested."[812]

b. The September 11 Email did not inform Messrs. Mantell and Wils that the Flagship Funds were invested in the Peterson case.[813]

497. Mr. Sinensky received an email on September 11, 2013, with the Summary of Investment Opportunity and Term Sheet, but with a different email message.[814]

498. Following the emails of September 11, 2013, Mr. Sinensky forwarded an email from Mr. Demby to Respondents requesting that they answer Mr. Demby's question because the "SPV will almost certainly be a topic of conversation" in the upcoming Group 5 meeting.[815]

a. Dersovitz responded, noting that "the outcome [of the Peterson investment] appears to be binary, with a very small probably in my own estimation, for non-payment[,]" and setting forth his basis for his opinion that the Peterson

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812 Ex. 361 (Sept. 11, 2013 email from Markovic to Wils); Ex. 362 (Sept. 11, 2013 email from Markovic to Mantell).

813 Tr. 656:4-25 (Mantell) ("Q: Do you recognize Exhibit 362? A: Yes. Q: What is it? A: This is the first time I ever heard about the Peterson case. They sent this, and they were making a -- they were trying to raise money for a special purpose separate fund, separate vehicle that would invest in the Peterson case. So that's -- that's Roni's firm through a -- or through some entity that he was going to form saying, We'd like to put aside pocket investment and raise capital, because we've got this great idea and we want to invest in the Peterson case. **Even then it never occurred to me that he owned any of the Peterson case.** To me, this was a whole new idea. I immediately dismissed it for myself. And I didn't even read -- I read a little bit of the material and then stopped. Because as soon as I saw the risk, I decided that it wasn't really going to interest me." (emphasis added)); Tr. 898:16-21 (Wils) ("Q: After receiving emails in [Ex.] 361, that you recall receiving, did you have any -- did you believe at that time that the fund you were invested in was invested in Iran? A: I was reasonably certain that they weren't.").

814 Ex. 360 (Sept. 11, 2013 email from Markovic to Sinensky) ("Thank you again for having us at the Dragon meeting. . . . As promised I am sending you the updated summary and term sheet on the Marines barracks bombing case . . .").

815 Ex. 364 at 2-3 (Sept. 12, 2013 email from Sinensky forwarding email from Demby).

investments were good investments, concluding with "I hope this helps with your evaluation."[816]

b. Dersovitz, in his response, did not advise the investors that the Peterson position was in the Flagship Funds or that his analysis applied to positions currently within the Flagship Funds.[817]

499. On or about September 12, 2013, Respondents gave another presentation to Tiger 21 Group 4, which Mr. Ashcraft attended.[818]

a. The September 2013 presentation to Group 4 was attended by Dersovitz and Zatta.[819]

b. Dersovitz presented the Funds' investment strategy as "basically buy[ing] settlements[.]"[820]

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816 Ex. 364 at 1-2 (Sept. 13, 2013 email from Dersovitz).

817 See Ex. 364.

818 Tr. 1460:22—1461:1 (Ashcraft) ("Q: Are you familiar with RD Legal? A: Yes. Q: Okay. How are you familiar with it? A: They've presented to our -- our Group 4 in September of 2013, I believe."); see also Ex. 718 at 3 (Feb. 24, 2016 email from M. Spadafora to R. Dersovitz) (indicating that there was a Sept. 12, 2013 presentation at Tiger 21).

819 Tr. 1461:12-15 (Ashcraft) ("Q: And who was at the presentation from RD Legal? A: Roni, and I think a CFO. I don't recall the gentleman's name.").

820 Tr. 1461:16—1462:7 (Ashcraft) ("Q: And what did Mr. Dersovitz present at the September -- 2013 meeting at Tiger 21 townhouse? A: He presented -- basically his investment strategy in his fund that he was running since about -- I think he started doing it in early 2000s, is when he was involved. He gave his background on how he saw the opportunity to basically buy settlements, the best way I can describe it, I viewed it as a receivables, for law firms. And -- I think his case experience led him to that kind of investment strategy. You see a fair amount of that kind of stuff in Tiger 21. We see two presentations a month. And so this particular one fell into a category of -- you know, it's not correlated in the market. It's sort of an alpha kind of play, fairly early."); see also Tr. 1467:17—1468:25 (Ashcraft) ("Q: Okay. And insofar as it [Ex. 336 at 27] says that, 'The settled litigation are past the point of any potential appeals or other disputes,' did that factor into your investment decision? A: Yeah. . . . Q: Okay. And what did you understand by that? A: That the case had already been judged. Q: Okay. And if we go to paragraph 2 on that same page. . . . Do you recall seeing that language? A: In the presentations, yeah -- . . . and in subsequent documents when I looked at it. Q: Okay. And what was the -- what did you understand from this

c. Dersovitz, in explaining how Respondents were able to generate the Funds' investments, stated that there was a post-settlement process (as described in RD Legal's FAQs) that "could" occur, that "rarely" resulted in upsetting the settlement or judgment, and that "oftentimes benefitted the person who had the claim."[821]

d. Part of Dersovitz's pitch to Group 4 was that there was a "wide set" of assets that were purchased and that the Funds were diversified,[822] and

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language here? A: It basically means he's -- he has a primary lien. **He owns it, essentially, of the settlement -- of the cases that has already been judged upon.** Q: And was that important to you? A: Yeah, it was. **You know, you weren't waiting to -- he wasn't starting -- he wasn't doing any of the litigation.** He was viewing from a pool of people that already had -- to me, it just looked like a cash flow kind of business model. You see it commonly -- not just with law firms. You see it with retailers. You see it with other people who are needing alternative investment." (emphasis added)).

[821] Tr. 1498:19-23 (Ashcraft) ("Q: And that they're -- and in the meeting it was told to you that there could be an appeals process involved and things like that? A: Could be -- there could be appeals processes. I'd also say in the meeting that it was stated that rarely did the appeals overturn. They oftentimes benefited the person who had the claim."); Tr. 1531:12—1532:13 (Ashcraft) ("Q: That appears, the full question and answer on that page, 336-29. The question is, 'If the attorney has won a settlement and stands to make a large percentage of cash award, why do they pay a premium to get cash now?' Do you see that question there, sir? A: Yes. Q: And you see the answer, 'We get involved upon settlement which may be as long as three to five years after litigation first began. Even after a settlement is reached, there is a subset (which is our focus) of settlements that have,' quote, post-settlement payment delays, end quote, period. 'These delays can range from nine months upwards of two years and can be caused by a number of factors such as additional court procedures that need to be completed before a settlement can be disbursed, lack of staffing in courts, insurance company policies and state-by-state statutes, etcetera.' Do you see that? A: Yes. Q: Before when you were discussing on direct and on cross, appeals, was that your understanding of appeals? A: Yes.").

[822] Tr. 1463:15—1465:16 (Ashcraft) ("Q: What else did Mr. Dersovitz present at this meeting? A: Mostly just his -- well, still within this fund, there's many questions it took to pacify this group. One of them is diversification. That's a very common question, because you're trying to mitigate the risk. His -- I guess I want to call it his investment strategy is collect assets from others, buy or invest, or take over the rights to a settlement, offer up to 13.5 percent. There's no guarantee in life, especially in these -- anything. But that's the objective he had. So he would play the spread essentially between them. Whatever the par to settlement was or based on his analysis how long it would take to collect, he would discount to an appropriate amount, and that's what he would offer for them. So example, if he had a $1, he might offer $0.70 on a dollar, gives him a window of time

Dersovitz was specifically asked about concentration and answered that he mitigated concentration by diversifying on cases.[823]

e. During the September 2013 presentation to Group 4, Dersovitz presented the Iran SPV.[824]

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to collect and not have that 13.5 percent eat into that margin essentially. So if I had a collection of them – I think in the material they sent there was, like, about 1500 of them he had done over a -- the amount of time he had been in business, 230 million, I believe, was the presentations. I don't have that exactly right. But it was in that range. So from a risk standpoint, he tried to spread the -- which is prudent. No concentration if you can avoid it. Because that is also a common question that we asked for these kinds of things. Because it's an illiquid asset that you have no certainty of when it will be delivered. Q: . . . Can you just explain to the Court what you mean by concentration? A: Concentration means anything over 5 percent in one thing. That's kind of a common thing in the -- in my views anyway, anyone that's dealing with asset allocations, 5 to 10 percent max. Anything outside of that is not the norm to be considered diversified. It doesn't mean that it doesn't happen. But it's not the norm. So part of the pitch was, you know, we will -- we have some comfort in the fact that there is a wide set that is purchased. Because no one deal is guaranteed. And just like anything -- you know, you see a collection of bonds, you see a collection of mutual funds. That's why there's more equities typically in a fund." (emphasis added)).

[823] Tr. 1501:10—1502:23 (Ashcraft) ("Q: Yeah. I'd ask that you read it [Ex. 336 at 17 (Alpha Generation document)]. A: . . . 'Portfolio exposure limits on obligors, corporate, municipal, insurance companies based on bond ratings.' Q: And so it was your testimony, sir, that you received this document with a description of a risk factor of portfolio concentration prior to you making your investment, right? A: Uh-huh. Q: Correct? A: Right. Q: And that there was a description of how . . . RD Legal mitigates that risk? A: Right. Q: That was provided to you . . . in their marketing materials? A: -- right. But also to that as a person running the company, he said he doesn't typically get -- matter of fact, he was -- the question was asked about concentration. It's always asked. And the answer was: By diversifying on a case. Q: Diversify on the types of cases – A: And what is -- Q: And what is -- the creditworthy -- I'm -- (Simultaneous conversations.) BY MR. WILLINGHAM: Q: And I just want to get the question. And I'm sure the creditworthiness of the obligor? Whether the person paying the debt can pay the tab? A: That was separate from a concentration point. That was similar to risk mitigation. **But concentration was asked specifically about how many cases, so you don't have 40 or 50 percent of your money in one investment.**" (emphasis added)).

[824] Tr. 1470:25—1471:8 (Ashcraft) ("[Q:] Did Mr. Dersovitz describe any other opportunities at the September 2013 meeting? A: Yeah. He had two presentations, and the second one was a -- what was called a special opportunity fund. That particular opportunity was against the -- I believe it was known at the Peterson case. It was the judgment [sic] against Iran for the Marine barracks that was destroyed in the 1990 – '83.").

f. Dersovitz presented the Iran SPV and the Peterson trade as "a separate investment option" and presented a risk that was "night and day" between the Iran SPV and the Flagship Funds.[825]

g. Dersovitz did not discuss the Peterson trade in connection with the Flagship Funds at the September 2013 Group 4 meeting.[826]

500. On September 16, 2013, following the presentation to Group 4, Ms. Markovic sent the Iran SPV Term Sheet and Summary of Investment Opportunity to Mr. Ashcraft.[827] Mr. Ashcraft was not interested in the opportunity.[828]

501. In September 2013, the concentration of the Peterson positions in the Flagship Funds was approximately 57.69%.[829]

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825 Tr. 1471:12—1473:13 (Ashcraft) ("Q: And in discussing that opportunity, what did Mr. Dersovitz say about it? A: Basically it was, in his belief, there was -- it was still -- it was judged. And I'm not an attorney, so I'm not going to get this exactly correct. But there was still the appeal process to go. But in his legal opinion, that he was pretty confident with that opportunity. **Now, it was basically a separate investment option. Much higher risk, because it's kind of binary.** Either -- if it never transpired or was completed, you know, he's taking those monies to do a similar thing, pay out the families of the Marines that were owed. But until it was collected, just like anything else, you know, you're still kind of tied, hoping you can get settlement on it. So, in our opinion, and it was presented that way, the risk profile was kind of night and day between the two. You were -- now you've morphed over into a singular investment that's kind of an all or nothing, which changes the game of risk. The payouts were -- you know, we've been dealing with federal government, dealing with Iran, dealing with -- I mean, it is much more complex, at least in my perspective."); Tr. 1514:20—1515:1 (Ashcraft) ("Q: And was it your understanding that this was a new fund [the Iran SPV] that he was getting up off the ground at the time? A: My understanding was it was a different opportunity based on what -- this is what he presented, is my understanding. It was the second option in our presentation." (emphasis added)).

826 Tr. 1474:11-14 (Ashcraft) ("[Q:] In discussions at that meeting, was that Iran investment discussed in connection with the main funds? A: No.").

827 Ex. 367 (Sept. 16, 2013 email from Markovic to Mantell).

828 Tr. 1474:21—1475:3 (Ashcraft) ("Q: Mr. Ashcraft, do you recognize Exhibit 367? A: Yeah. Q: Okay. And what is it? A: This was the separate presentation. The second presentation we viewed as a special opportunity fund that I didn't -- wasn't interested in, so I didn't pursue it.")

829 Ex. 2 at Cell O-29.

502. None of Messrs. Demby, Mantell, Wils, Sinensky, or Ashcraft invested in the Iran SPV.

a. Mr. Wils was not interested in the Iran SPV[830] and the materials did not provide him with any reason to believe that there were Peterson positions in the Flagship Funds.[831]

b. The September 11, 2013 email to Mr. Mantell was the first time he heard about the Peterson case, he was not interested in the investment, and so read little about it.[832]

c. Mr. Ashcraft viewed the 2013 Peterson Timeline and Iran SPV Termsheet as a "separate presentation" in which he was not interested.[833]

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830 Tr. 896:21—897:15 (Wils) ("Q: I'm going to ask you to look at Exhibit 361 . . . . What is it? A: It is an announcement from her – the marketing person at RD Legal from Katarina indicating that a special purpose vehicle was not formulated or reformulated. I actually thought there was one before this. And that it was an announcement about the Marine barracks bombing settlement that's an SPV. Q: When you received this email, were you interested in investing in the SPV? A: No. Q: Did you take any action to find out more about the SPV? A: No, I did not. I did not respond.").

831 Tr. 898:16-21 (Wils) ("Q: After receiving emails in [Ex.] 361, that you recall receiving, did you have any -- did you believe at that time that the fund you were invested in was invested in Iran? A: I was reasonably certain that they weren't.").

832 Tr. 656:4—656:25 (Mantell) ("Q: Do you recognize Exhibit 362? . . . What is it? A: This is the first time I ever heard about the Peterson case. They sent this, and they were making a -- they were trying to raise money for a special purpose separate fund, separate vehicle that would invest in the Peterson case. So that's -- that's Roni's firm through a -- or through some entity that he was going to form saying, We'd like to put aside pocket investment and raise capital, because we've got this great idea and we want to invest in the Peterson case. **Even then it never occurred to me that he owned any of the Peterson case. To me, this was a whole new idea.** I immediately dismissed it for myself. And I didn't even read -- I read a little bit of the material and then stopped. Because as soon as I saw the risk, I decided that it wasn't really going to interest me." (emphasis added)).

833 Tr. 1474:21—1475:3 (Ashcraft) ("Q: Mr. Ashcraft, do you recognize Exhibit 367? . . . And what is it? A: This was the separate presentation. The second presentation we viewed as a special opportunity fund that I didn't -- wasn't interested in, so I didn't pursue it.").

503. On September 19, 2013, Mr. Mantell forwarded the AUP report for the second quarter of 2013 to Mr. Slifka.[834] Upon reading the AUP, Mr. Mantell was concerned because it appeared to Mr. Mantell that, when a position within the Funds' portfolio became distressed or was not timely satisfied, "instead of acknowledging the trouble and writing down the positions and taking reserves," Respondents would advance further moneys against cases that were still pending and not settled—the effect of which was to put investors' money at risk on unsettled cases.[835]

a. Mr. Mantell was particularly concerned by the ONJ Cases positions, particularly that Respondents were continuing to lend funds to Osborn rather than write the position down.[836]

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834 Ex. 369 (Sept. 19, 2013 email from A. Mantell attaching Q2 2013 AUP).

835 Tr. 666:11—668:7 (Mantell) (emphasis added) ("Q: What issue are you referring to? A: When you look at this, there are a bunch of reports about law firms -- about defaults, if you will, troubled loans, troubled loans from Osborn Law firm, from -- there are two or three of them. I don't remember now, because I haven't read it. Smith law firm. It's on pages 4, 5 and 6, roughly, of the document. And when you read into it -- I haven't read it in a while, but I remember vividly what happened at the time, because I thought – I started looking through the entirety, and what I realized was several things. One was, there is some trouble here. And I don't like some aspects of the way in which there's been a response, because it seems what happens was there was trouble, and instead of acknowledging the trouble and writing down the positions and taking reserves, what Randy did -- what Roni did was to make further advances to the borrowers, law firms, borrower law firm in one case. Maybe more than one, but in one case specifically. He advanced more money. And then there was some justification in this narrative that said, Well, we're safe, because we got additional pledges of assets. But the assets that were pledged were -- no longer were judgments that were just obtained. They were contingent cases. And I thought, Oh, my God. Now I have a completely different risk than I thought I had. Because now I have advances made out of the fund. They were not secured by the cases which judgments had been obtained. They were secured by cases that were contingent, and maybe we'll win them, and maybe we won't. And these people are thinking about – or some analysis is being done of the likelihood of recovery in those cases. That is a risk that I never thought I was taking. So it alarmed me, and I started to think about truizing it. And the dollar amounts of these were not huge in proportion to the fund. I looked at it, and I didn't redeem at that time, but I became concerned at the time.").

836 Tr. 668:10—670:6 (Mantell) ("Q: Okay. And, Mr. Mantell, if you look at the page marked Division Exhibit 369-6 . . . Is this the position to which you were just referring? A: Yeah. Because this is -- if you look at the second paragraph, it specifically points out at the end and says, Basically, as part of the decision, we continued advancing funds to Osborn. The investment manager has increased the portfolio concentration limit for the Novartis Pharmaceutical Company

504. Mr. Mantell raised his concerns with Dersovitz, who wrote to Mr. Mantell on September 20, 2013.[837] Concerning the ONJ Cases positions, Dersovitz wrote that Smith Mazure "fully evaluated" the positions, and that Dersovitz decided to continue the Osborn relationship "[o]nce collateral was evaluated and it was determined that there was a great deal of excess collateral and we were able to achieve control of cash[.]"[838] Dersovitz continued:

> [T]he focus of the business remains exactly the same as it has always been, to advance cash on settlements and/or judgments with a clearly identified corpus of money to collect from. I assure you that has not changed, nor will ever change.[839]

505. Dersovitz's response did not comfort Mr. Mantell, who requested a call with Smith Mazure.[840]

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to $9 million. And what I thought at the time was, That's convenient. They're suddenly saying we had a limit that was planned that we won't want to take for Novartis, but now we need to. So we'll just increase the limit and advance the funds, because we don't want to admit that the Osborn case needs to be written down. We're deferring and denying to some degree or would be by virtue of making this choice in the long run. Q: And why did that alarm you? A: It alarmed me in one very specific way. It made me realize for the first time, and you can say, Boy, you're a fool, Alan, you should have seen this earlier. **But I didn't believe what we were dealing with were valuation cases with these cases. And suddenly I realized, Oh, my God. I am no better than the marks. My investment position has no more validity than the way in which somebody is marking these assets to market.** What I thought that we were talking about was a book. I thought we're making an investment in a $100 claim. It's got $100 face. We're paying 60 million for it -- $60 for it. We're carrying that thing at $60 and maybe we'll accrue some interest. But we're not otherwise dependent for our sense of whether there's been a profit or not a profit in any month on the way in which some other independent valuing agency is valuing or Roni, the manager, is valuing the portfolio. So I realized there's an entirely new risk in here that I have not accurately assessed." (emphasis added))

837 Ex. 371 at 1-2 (Sept. 20, 2013 R. Dersovitz email).

838 Ex. 371 at 2 (Sept. 20, 2013 R. Dersovitz email).

839 Ex. 371 at 2 (Sept. 20, 2013 Dersovitz email).

840 Ex. 371 at 1 (Sept. 20, 2013 8:32 PM email from A. Mantell to R. Dersovitz) ("I'm anxious to continue getting a clear understanding of the Osborne matter. . ."); Tr. 674:25—676:24 (Mantell) ("Q: . . . 'Once the collateral was evaluated and it was determined that there was a great deal of excess collateral and we were able to achieve control of cash.' . . . What did you understand that to mean? . . . [A:] So that's -- that's the same thing. That's Ron mentioning this. But it just

506. If Mr. Mantell understood at the time he invested that the ONJ Cases represented approximately 10% of the fair value of the Funds, he would not have invested.[841]

507. On or about January 10, 2014, Mr. Ashcraft invested $750,000 in the Offshore Fund.[842]

a. At the time Mr. Ashcraft invested, based on what Respondents told him, he did not believe that there were any Peterson positions in the Offshore Fund.[843]

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further alarmed me, right? Because it made me realize that I was depending upon somebody's reevaluation of the collateral worth and whether or not, therefore, quote, to continue the relationship. My inference was to continue the relationship, keep advancing. Keep this carried at par, both of which could be very detrimental to an investor. Q: And, Mr. Mantell, if you look a little further on in that same paragraph, . . . It says, 'As discussed on the call, I decided to continue with the relationship, putting aside for the moment whether I was right or wrong. The focus on the business remains exactly the same as it has always been, to advance cash on settlements and/or judgments [sic] with a clearly identified corpus of money to collect from. I assure you that has not changed, nor will ever change.' . . . What did that mean to you? A: **My reaction at the time was that it was a statement on its face that was not quite right. It was not always the focus of the business to advance cash -- additional cash to people who are in default to keep from acknowledging the degree of the default, the problem of the default or having to mark the assets.** So I just looked at it that way. I didn't draw further inferences from it." (emphasis added)).

841 Tr. 672:21—673:15 (Mantell) ("Q: And, Mr. Mantell, would it have affected your decision to invest if you had understood that Osborn Law positions were valued at approximately 10 percent of the portfolio value at the time that you invested? A: Yeah, that would concern me if there was a defaulted position that was being sustained in any way by virtue of additional advances in the amount of 10 percent of the book. I probably would not invest on that fact alone. Q: Why not? A: Too much exposure. You got -- all of a sudden you've got a known troubled position for 10 percent of the portfolio. No. That's me. That's I. But that's -- you know, that's the way I function. I'm certainly -- look at some 10 percent defaulted position and say I don't care if there's some rationale that it's going to be okay. I don't need that risk.").

842 Ex. 718 at 3 (Feb. 24, 2016 email from M. Spadafora to R. Dersovitz); Tr. 1477:4-7 (Ashcraft) ("Q: Mr. Ashcraft, did there come a time when you invested in RD Legal? A: Yeah. A few months later after -- I don't recall -- yeah, I invested in January 2014."); Ex. 384 (Jan. 7, 2014 email from M. Spadafora to Ashcraft) ("we just received your paperwork from Fidelity today"); Tr. 1482:11-21 (Ashcraft) ("Q: Just generally, what is this document? For example, it is an email or -- A: Yeah, it's an email. The top part has to deal with a person confirming that she received my material. Q: Okay. And when you say confirming she received your material . . . what material? A: The material from Fidelity for the investment, and the subscription document.").

b. Mr. Ashcraft also reviewed the Offering Memoranda, but believed that Dersovitz's oral statements to be "far more relevant."[844]

508. On March 23, 2014, the Wall Street Journal published an article, "Hedge Fund's $100 Million Bet: Iran Will Pay for Terror Attack."[845]

a. The article reported that Respondents were "seeking to raise that sum [$100 million] from investors to buy stakes in the protracted litigation related to the attack" and that "RD already is buying rights to some of the payments received by victims' families, as well as fees earned by their attorneys involved in the case[.]"[846]

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843 Tr. 1483:22—1485:6 (Ashcraft) ("Q: Did you believe, Mr. Ashcraft, in January of 2014 when you invested that there were any Iranian assets in the offshore funding in which you invested? A: No. Q: Why not? A: It would have -- I would have been – **it was presented a base fund, and then a special opportunity fund about that. So had I been told that it was in the base fund, there would have been many questions about, Well, why is your structure different over here? Why is your return different?** . . . His base was giving me 13.5 percent. **And this other was -- it's a special opportunity fund. It's definitely something different with a higher risk, higher return.**" (emphasis added)).

844 Tr. 1507:11—1508:9 (Ashcraft) ("Q: You believe – this [Ex. 2943 (Dec. 16, 2013 email from Chandarana with subscription documents)] is something that you read, but not in detail, before your investment in RD Legal? Is that what you just said, sir? A: Well, I said I reviewed it. Q: You reviewed it, okay. And did you review it in detail? A: As detailed as I review a fair amount of these. What I understand of them, yeah. Q: And you understand that the offering memorandum is essentially the contract between you and the fund, in essence, in control over your investment? A: Yeah. Q: And it's what offers the powers of the fund manager to act with your money in the way that he should underneath the offering memorandum, correct? A: This is a base, yes. But I also hold people that are RIAs and other investors to – you get -- you get somebody who owns a business presenting to you and telling you certain things, that trumps -- I mean, it's their intents, their experience that's far more relevant. Because when you invest, you invest in people; not documents.").

845 Ex. 55 (Rob Copeland, Hedge Fund's $100 Million Bet: Iran Will Pay for Terror Attack, WALL STREET JOURNAL, Mar. 23, 2014).

846 Id. at 1-2.

509. Upon reading the WSJ article, Mr. Demby was "shocked and appalled" because Dersovitz had presented the Peterson investment to Group 5 as a "higher risk investment with a higher rate of return."[847]

510. Mr. Demby forwarded the WSJ article to other Group 5 members, including Messrs. Mantell and Sinensky on the morning of March 24, 2014 (8:44 AM Email).[848] Five minutes later, Mr. Demby emailed Ms. Markovic to ask "what percentage of RD Capital Fund is invested in the Iranian litigation settlement?"[849]

511. Later the afternoon of March 24, 2014, Mr. Demby forwarded the 8:44 AM Email to the entirety of Group 5 and Mr. Slifka, including Mr. Wils. He wrote:

> As an investor in RD Legal Capital Fund, I am concerned by the statement in the attached article stating that RD Legal Capital Fund has used shareholder monies to "invest" in the possible resolution of the claim against the Iranian government. **I am pretty sure that Katerina and Ron D stated previously that this fund in the Iranian settlement fund are separate entities and that the existing fund would not participate in the Iranian settlement "opportunity".**[850]

512. At 5:23 PM, Mr. Demby again emailed Group 5 and Mr. Slifka:

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847 Tr. 2182:16—2183:1 (Demby) ("Q: Dr. Demby, what was your reaction to reading that article? A: I was shocked. Q: Why were you shocked? A: Shocked and appalled. Because prior to this time, Mr. Dersovitz had presented to us an opportunity to invest in the Iran settlement. He presented it as a higher risk investment with a higher rate of return. I believe he was offering 16 percent or 16.5 percent, and I wanted nothing to do with it.").

848 Ex. 395 (Mar. 24, 2014, 8:44 AM email from A. Demby).

849 Ex. 393 (Mar. 24, 2014 email from A. Demby).

850 Ex. 395 (Mar. 24, 2014, 4:30 PM email from A. Demby) (emphasis added); see also Tr. 2187:17—2188:6 (Demby) ("Q: And you see in your email to the group, there's a sentence that says, 'I am pretty sure that Katarina and Ron D. stated previously that this fund and the Iranian settlement fund are separate entities and that that existing fund would not participate in the Iranian settlement,' quote, "opportunity." . . . What did you mean by that line? A: Exactly what it says; that the fund I invested in had nothing to do with the Iran settlement. He put the Iran settlement into the fund in which I invested after I invested in the fund.").

> Just got off the phone with Katerina and Ron D. **$54.8 million of the total $178 million in RD Legal Funding Fund is currently in the Iranian litigation pool.** In an effort to reduce this percentage participation, RD is selling off "small amounts" of the participation to Swiss investors. Ron and Katerina are very enthusiastic about this investment for many reasons. . . .
>
> ....
>
> Questions: do we believe their story, **are we comfortable with 30% of RD Legal Funding Fund in this situation,** what is worst case scenario . . .?[851]

a. George Mrkonic, a Group 5 member and RD Legal investor, responded to Mr. Demby's email: "Sounds like he couldn't raise as much as he wanted to in separate fund so diverted his primary fund into this. . . . Very hi [sic] risk for him and thus for us."[852] Mr. Mantell shared Mr. Mrkonic's opinion.[853]

b. Mr. Sinensky responded that the situation was "[c]learly, deeply troubling[,]" and noted that Dersovitz had not warned him about the WSJ article.[854] Mr. Slifka replied: "Ron told me that he had a 20% position and that he was going to lay it off to the swiss, and to a hedge fund . . . frankly

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851 Ex. 398 (Mar. 24, 2014, 5:23 PM email from A. Demby) (emphasis added).

852 Ex. 397 at 2 (Mar. 24, 2014 email from Mrkonic).

853 Tr. 692:20—694:16 (Mantell) ("Q: What did you understand Mr. Mrkonic to be saying in his email here? A: Just what I said here today. When he sees what's happening, he is deeply distressed by it. It sounds as though – [objection partially sustained and partially overruled] THE WITNESS: I'll try to be much more precise about that. My perspective about this is that this is very clear. I understood exactly what he was saying, which is I -- George, I'm troubled. I believe that Roni did raise this money. **He said -- he's saying actually the same thing that I said in my own reaction a minute ago, which is George's assumption is that Ron made -- took our offshore money and put it into this when he couldn't raise the money in the special purpose vehicle.** And he's making other observations. I can go further into what he's saying about the no current pay and very high risk and -- you know, there. But they're pretty self-explanatory. I don't trust him, you know. That's what he's saying. I don't trust Roni. He's gotten some style drift here, and we better notice him." (emphasis added)).

854 Ex. 397 at 1-2 (Mar. 24, 2014 email from A. Sinensky).

his lack of disclosure is very upsetting, and liberties in concentration and strategy shift . . . . This is at best style shift, and more likely taking too much risk with other peoples [sic] capital."[855]

c. On a fair-value basis, the approximate total value of the Peterson claims in the Funds as of March 2014 was $106.9 million of a total indicated portfolio value of $168.3 million, or approximately 63.53%.[856]

513. When Mr. Sinensky learned that there were Peterson receivables in the Flagship funds, he was "surprised" because he "didn't think that there were any Iranian assets in the fund [he] had invested in."[857]

514. When Mr. Wils learned that the Peterson receivables were in the Flagship Funds, he felt "blindsided" because "it was presented that the Iranian claims were in a special purpose vehicle at a higher risk, and, therefore, higher reward, by Dersovitz on two separate occasions."[858]

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855 Ex. 397 at 1 (Mar. 24, 2014 email from R. Slifka).

856 Ex. 2 at Cells C-35 (total portfolio value); N-35 (total Peterson value); 35-O (Peterson percentage of total value).

857 Tr. 3329:19—3330:11 (Sinensky) ("Q: And when you learned about the Iranian assets, what was your reaction? A: I was surprised. But I didn't have, you know, a huge over-the-top reaction. Let me try to understand what this means and sort of assess the impact. But I was surprised. Q: And why were you surprised? A: Because I didn't think that there were any Iranian assets in the fund I had invested in. Q: Why didn't you think there were any Iranian assets in the fund that you had invested in? A: Well, there was never any mention of it being Iranian assets. But more specifically, there was a lot of discussion or some discussion, I should say, of the special-purpose vehicle. So my logic was, well, if we're talking about the special-purpose vehicle, the Iranian assets, then I would just assume it's not in the other vehicle.").

858 Tr. 900:18—901:10 (Wils) ("[discussing Ex. 398 (Mar. 24, 2014, 5:23 PM email from Demby)] Q: What was your reaction to receiving this email? A: I was -- that isn't my recollection of what we were investing in. It was kind of a surprise. And I was looking forward to the next meeting to find out what was going on. Because this -- I felt like I was blindsided. Q: Why did you feel that way? A: My understanding from my conversation -- and perhaps I misinterpreted the facts. But my understanding was the Iranian claims were in a special purpose vehicle and I assumed in a special purpose vehicle only. Q: And why did you make that assumption? A: **Because it was presented that the Iranian claims were in a special purpose vehicle at a higher**

a. Mr. Wils was "surprised" and "felt that trust was broken[,]" but wanted to wait to get more facts and to consult with other Tiger 21 members.[859]

515. Mr. Mantell learned of the Peterson exposure either from Mr. Demby's emails or from the 2013 Financial Statements which were issued around the time of the WSJ article.[860]

a. When Mr. Mantell learned of the Peterson positions, he was "stunned" and "horrified" because the Peterson investment had been presented as an opportunity separate from the Flagship Funds with different risks.[861]

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risk, and, therefore, a higher reward, by Mr. Dersovitz on two separate occasions." (emphasis added)).

[859] Tr. 901:21—902:21 (Wils) ("Q: After you found out that there were Eastern positions in the main fund, what did you do? A: Well, I thought, Oh, this is a surprise. And I felt that trust had been broken. I was consider -- well, it is a good investment. It is a sound business idea, but let's get more details. Let's get more facts. And I waited until the next -- I believe it was the next Tiger meeting, or it might have been one after, which would occur in April. And I travel a lot, so I don't remember when it happened. But I was -- I was quite surprised. And then skeptical of continuing with the investment . . . because the risk profile had been raised. Q: And what did you do in response to that skepticism? A: Well, again, I waited for the next meeting, because, you know, it would be -- as I said, the model was collaborative intelligence. What I learned is that I don't -- from years of investing is, don't jump to conclusions until you get information that's accurate.").

[860] Tr. 689:19—690:5 (Mantell) ("Q: And I'm going to direct your attention to only the page 397-2. . . . And the . . . the two most bottommost emails . . . . A: Yeah. This may very well be where I somehow got awareness that the – it may be this is the first time that I understood that the – that there was the Peterson case, Iran litigation pool. But obviously by then I saw it."); Tr. 682:14-22 (Mantell) ("Q: Okay. We spoke earlier about you learning about the Iran position, correct? A: Yes. Q: And how did you learn about it? A: I learned about it when I read the – I want to say the 2013 audited financial statements. But it would be a help to me if I could see those to be sure it was that year. But I think that's when it was. So sometime in early 2014.").

[861] Tr. 686:18—687:15 (Mantell) ("Q: But at some time you learned that was the Iran position? A: Yes. Q: What was your reaction? A: **I was stunned, because, among other things, there was an SPV that was offered for this very purpose that I had the opportunity to reject.** So the idea that I and a number of other investors would look at that SPV and say no and all of a sudden instead the fund would wind up – I didn't know -- **if the fund ever did own this before, if they offered the SPV, I didn't know it.** So from my point of view, I'm saying, Oh, wait a minute, you asked us to make an investment in this case. We said no. **And you just used the existing fund to do it even though it was outside the box of what the existing fund was supposed to be doing, because you just wanted to do what you wanted to do.** That was my reaction at the time. **And I felt, Not only are you taking an absurd concentration risk, but you**

516. At 6:10 PM on March 24, 2014, Mr. Mrkonic emailed Ms. Markovic: "I am very concerned to learn that the rd legal primary fund is invested in the Iran matter. I understood to be a separate fund completely. Please process my redemption asap."[862]

517. Also on March 24, 2014, Mr. Slifka sent an email to Mr. Mantell and others stating: "I have just spoken to ron [sic] . . . the sum of the call was that he is indeed selling down his position . . . ."[863] Mr. Mantell responded in the same email chain that "I wholly agree with Waring's concise observation that this is more than style drift. I too advised Ron as soon as I learned of this 30 percent exposure that I intend to redeem in full."[864]

a. "Style drift" to Mr. Mantell meant the "abandonment of an initially intended business plan to such a material degree that you're really effectively in a different business – or in a different business position than the one that you started to be in."[865]

518. Messrs. Demby and Mantell redeemed their investments on March 24-25, 2014.[866]

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have taken a whole new kind of risk that I would never have accepted in the first place. And I was horrified." (emphasis added)).

862 Ex. 683 at 3 (Mar. 24, 2014 email from Mrkonic).

863 Ex. 400 at 1-2 (Mar. 24, 2014 email from R. Slifka).

864 Ex. 400 (Mar. 25, 2014 email from A. Mantell).

865 Tr. 699:10-18 (Mantell) ("Q: And what did you mean by the word 'style drift'? A: So, to me, style drift is -- it's something that we talk about and think about often, which is -- and it is simply the abandonment of an initially intended business plan to such a material degree that you're really effectively in a different business -- or in a different business position than the one that you started to be in.").

866 Ex. 392 (Mar. 24, 2014 email from A. Demby) ("Please assist me in my formal request to redeem all of the shares in RD Legal Funding Offshore, Ltd. owned by" Mr. Demby); Exs. 401 , 2843 (Mar. 25, 2014 emails from M. Spadafora re: Mantell redemption); Ex. 171 at 2 (RD Legal spreadsheet reflecting redemption requests and dates); Tr. 2183:12-16 (Demby) ("Q: After you read the article, what did you do? A: I sent an email to Katarina, and I asked for complete redemption of my investment in the fund. I wanted nothing more to do with the fund.").

a. Mr. Mantell redeemed because he "felt that the risk profile of the fund, as revealed by the Financial Statements of 2013, was intolerable."[867]

b. Mr. Demby redeemed because Dersovitz "violated [his] trust."[868]

519. When Mr. Ashcraft learned of the Peterson exposure, sometime in "March or April 2014[,]" he was "surprised" that Respondents had invested across funds or engaged in the "mixing of funds."[869]

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867 Tr. 702:18—703:22 (Mantell) ("Q: Mr. Mantell, why did you redeem? A: I redeemed, because I felt the risk profile of the fund, as revealed by the financial statements of 2013, was intolerable. Q: And why was it intolerable? A: **By then I knew that there were defaults that were resulting in advances that I wasn't certain were warranted by the collateral,** but then in, any case, **would require an analysis of collateral that I'm incapable of doing involving contingent recoveries in non-resolved cases.** And, **in addition, we had the Iran claim for a huge concentrated position that had risks that we discussed throughout this morning that I'm not capable of analyzing to my satisfaction** to a long shot. So I began to redeem. **Q: You started that answer by saying 'By then I knew.' Did you know anything of those things at the time you invested? A: No, of course not. . . . Nobody said to me, When you're entering the fund, the material portion of the loan already has defaulted, and we're dealing with them.** In one way or another as we're working them out of adjusting them -- didn't get any such information." (emphasis added)).

868 Tr. 2190:14-22 (Demby) ("Q: And why did you want out? A: Because he violated my trust. He promised me a safe fund. And he put a very large investment into a settlement that was really, really risky and well above my risk tolerance. Q: And why was it above your risk tolerance? A: Because I don't have that high a risk tolerance, because I'm older. And I trusted him with a very large percentage of my net worth.").

869 Tr. 1486:10—1487:19 (Ashcraft) ("Q: Did there come a time when you learned that there were Iran positions in the fund that you invested in? A: There was speculation that kind of created a swirl, if you will. I think the articles in the Wall Street Journal, I think March or April of 2014. That's what -- within the Tiger 21 group's – you know, again, they come up once a month. And so at those presentations, they will bring up if somebody's done different -- investments -- the guy that runs it knows – other people in the group have, and they're hearing other things over there, they bring it to our group. Just as a notification to let people be aware of -- so it was brought up that people were wondering. There was certainly no substantiation at that point. Q: What was your position in learning that there were Iran positions in the fund that you invested in? A: Surprised. It, again, got a little conversation on that scenario. Well, first of all, investing in a cross-funds, at least what was presented to us. And secondly, you know -- well, that had a different deal structure that paid out a different amount, so that's kind of gaming the system – not gaming, but, you know, benefitting fund A versus fund B. And you're only getting 13.5 percent. Again, I didn't care so much about the financial return side of it, but that was one of the comments that were made later on. Q: Did you care about some other side of it? A: It was more -- I wasn't

520. After learning that the Funds were invested in the Peterson receivables, Mr. Wils and Mr. Sinensky met with Dersovitz in person to relay the Tiger 21 investors' dissatisfaction with Dersovitz, including that the investors "felt that we had been deceived as a group[,]" but found that Dersovitz was "a bit evasive and didn't really directly answer our concerns."[870]

521. Mr. Ashcraft spoke to Dersovitz individually. Mr. Ashcraft "suspected" that there were Peterson positions in the Offshore Fund, "never really knew one way or the other," and although he spoke to Dersovitz, Mr. Ashcraft "never walked away exactly certain though whether or not there was money invested in . . . the Iran deal."[871]

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that enamored with that investment in the first place."); Tr. 1529:6-12 (Ashcraft) ("Q: Okay. You didn't -- you didn't write that [in Ex. 2952]. You wrote that, 'I like the investment strategy and its potential,' right? A: Right. I also have other emails where I think the issue is mixing of funds, to Katrina. . . . I'm just putting it in total context.").

[870] Tr. 905:4—906:18 (Wils) ("[Q:] Did you speak to Mr. Dersovitz after -- after you found out that the Iran position was -- A: Yes. I spoke to Mr. Dersovitz. I made an appointment to meet with Mr. Dersovitz with Arthur [Sinensky] to discuss the apparent dissatisfaction that the people -- . . . And I decided that I would -- that Arthur and I decided that we should speak to Roni ourselves face-to-face to tell him that people were extremely upset about -- about -- that we all felt that we had been deceived as a group. Q: And was there anything else that was discussed at that meeting? A: That was our primary purpose. That we were hoping that we -- that we would get him to see our perspective, and also to tell him that – that it just wasn't prudent business to have things so concentrated. Arthur -- my being an experienced business person and Arthur being an experienced business person, we thought that this was a poor way to run the business. And that -- given that there were other possibilities that he -- and we felt it was a good idea that we were trying to get him to see our perspective, and get him to change, and also to relate that people were angry. Q: And how did Mr. Dersovitz respond? A: He was evasive. I remember that. And that it was -- it was hard to get our point – he was pleasant enough, but he was a bit evasive and didn't really directly answer our concerns. He was polite and showed us his offices. And Arthur had a -- as I said, a bit of a personal relationship with him. He was a gentleman, but he didn't respond to what we had requested in any meaningful way.").

[871] Tr. 1488:22—1490:4 (Ashcraft) ("Q: After you discovered that there were Iran positions in the offshore fund, did you have a conversation with Mr. Dersovitz about that? A: Suspected it. Never really discovered -- never really knew one way or the other. There was a conference call that was tried to be arranged. And that was in the -- I want to say mid- -- May-ish time frame of 2014. That ended up getting canceled. And he was actually going to come back and present it to the Tiger 21 group for a Q and A. But in his case, he did reach out to others individually. And I did speak to him eventually, yeah. Q: And what was that conversation? A: It was -- you know, I don't have exact memory of every little thing discussed. But it was more about, you know, that the fund's

522. Mr. Ashcraft also spoke to Ms. Markovic "a number of times" and told her that the "the root causes of people's concerns is they're becoming aware of the fact" that the Flagship Funds were invested in the same case as the Iran SPV.[872]

523. Mr. Wils redeemed his investment in two partial requests beginning in or about April 15, 2014, because he believed that the information about the Fund had been

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okay, you know, we're still -- he was a little irritated with the group. I would say that. Because I know it's probably more peppering of questions than he's used to. So I could tell he was a little bit irritated. But he did try to give a general overview of the fund. I never walked away exactly certain though whether or not there was money invested in that particular -- in the Iran deal. Q: And why did you walk away uncertain? A: The -- probably my fault. I didn't say: Did you or did you not invest in this, you know, like that. So, you know, it was not that obvious to me. I'll just say that. Didn't jump out at me. I'll say that."), see also Ex. 2948 (Apr. 10, 2014 email from Ashcraft to Spadafora) (scheduling call between Ashcraft and Dersovitz).

[872] Tr. 1535:17—1536:24 (Ashcraft) ("[JUDGE PATIL] Excuse me. You were talking a little bit before about maybe telling or corresponding with Katrina about mixing. THE WITNESS: Uh-huh. JUDGE PATIL: Can you describe what you mean by that? THE WITNESS: Sure. I had spoken with her a number of times. And when we were trying to get meetings set up or conversations, or if I had questions about it, you know, I told Katrina, you know, the root causes of people's concern is they're becoming aware of the fact -- or think that there is a -- I don't want to call it a bleedover, a crossing over from two -- I'm calling them two funds; a high-risk fund, a special opportunity fund, and the basic vanilla funds. I don't mean to say that they're trivial, but -- you know, this core business is what I'm going to call it -- is what he's known and presented. The other is a special opportunity. Now, granted, this is experience saying I believe that this is a potentially great thing. But it's high risk. It's all or nothing. Your money may be lost -- whatever you put over here. Or you may get a better gain. You just don't know. So the crux of it was the crossover; taking money out of the basic stuff presented, at least a perception of everybody that was in the meetings, and investing across into a high-risk pool. And it wasn't even pools. It's one case. . . . But, you know, guys that are RAs or when they say things, most of it is very transparent. And if there was anything in there that was -- if it was even implied, like, you're presenting two things at the same time to the same people -- and over here if you had -- if there was any hint, he should have said, This is being invested with this other stuff so there's full transparency. That's what you expect from investment people. They're fiducial responsible. That's what they do. So when I've had conversations with her, I'm saying, you know, look, maybe you need an advisory board around him to run things across to make sure things are set properly. Now, again, that's my takeaway. So when I talk to her -- and I can show you the emails that I sent her -- that I think it's the crossover of funds that's got everyone hyped up.").

See also Ex. 2947 at 1-2 (Apr. 9, 2014 email from Ashcraft to Spadafora) ("Crossover fund investing into the Iran special opportunity fund seems to be the primary concern.").

"misrepresented" to him and because "[his] word is [his] bond, and [he] felt that that had not been the case with Dersovitz."[873]

524. On June 24, 2014, Mr. Demby emailed Dersovitz: "Ron: pls inform me of the percentage of the existing fund that is currently invested, directly and indirectly, in Iranian settlement."[874]

a. Dersovitz responded on June 24, 2014, by referring Mr. Demby to the "year end numbers" in the Financial Statements, to which Mr. Demby replied asking for the "current percentage" in the Flagship Funds.[875]

b. Dersovitz was "evasive" in responding the Mr. Demby's questions.[876]

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873 Ex. 170 at 2 (RD Legal spreadsheet showing redemptions in the Onshore Fund); Tr. 902:22—904:14 (Wils) ("Q: Did you ultimately decide to redeem some or all of the -- A: I did. I decided at the next meeting, I believe, to redeem, I think it was 55 or 60 percent of my investment. I had initially thought I would redeem all of it. But after going around the room, some people said, you know -- some members of the group said, Oh, the Iranian claim is going to be settled, and it's a very good return. We'll all be made whole. And I thought, Okay, that may be the case. So I went from -- but I still didn't like the fact that the information that I was given was different from the information that appeared here. So I decided to redeem -- I think the investment was worth because we had had had – I placed the investment in July. There was a 13 percent -- 13.5 percent return, so it had probably increased 6 or 8 percent, something like that. So I redeemed $450,000 of the investment just to see where it went. And I believe that I received most of those funds back over a period of a few months. Q: And the other 50 percent, did you redeem that? A: I redeemed that shortly thereafter, actually, after the next meeting, or the meeting after that. **And I couldn't -- I decided that I wanted -- after -- after seeing the group and hearing that a lot of people were really upset about it, because they felt they had been deceived, and that the -- that they had decided that they were going to redeem completely.** Some people decided not to redeem at all. They decided to ride on the wave. But, again, as I said, I am risk adverse, and **I don't like getting information that has been misrepresented. In my situation, I live out – my word is my bond, and I felt that that had not been the case with Mr. Dersovitz.**" (emphasis added)).

874 Ex. 420 (June 24, 2014, email from Demby).

875 Ex. 420 (June 24, 2014, email from Demby).

876 Tr. 906:22—908:22 (Wils) ("Q: Do you recognize that email [Ex. 420]? A: I don't have a vivid memory of it, but I remember the mood. Q: What do you remember of the mood? A: Pissed off. . . . Angry. I'm sorry. My Brooklyn is coming out. We were angry. Q: And if you look down in the email chain . . . do you see Mr. Dersovitz's response above that? 'I should have mentioned

525. Mr. Sinensky responded directly to Dersovitz's June 24, 2014 email the following day: "why can't you simply provide him an answer?"[877]

a. Dersovitz responded, "I simply haven't gotten to it and thought that I was being helpful when I suggested that he look in the financials."[878]

526. On June 25, 2014, Mr. Demby had a conversation with Dersovitz concerning the Flagship Funds' investments in Peterson, specifically as to the concentration of the Peterson investments.[879]

a. During that conversation, Mr. Demby pressed Dersovitz for the percentage concentration of the Peterson investment in the Offshore Fund, and Dersovitz repeatedly denied being able to calculate or estimate the percentage. He offered to tell Mr. Demby the next day by telephone. Mr. Demby called a number of times before connecting with Dersovitz, who

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during the call the yearend numbers, position sizes, total fund sizes, appear on the yearend financials, which you all should have.' Do you see that? A: Yes. Q: Okay. Is that -- A: He's not responding. When I say 'evasive,' he was not responding to the question he was asked.... Q: Sure. And do you see that above Mr. Dersovitz's response, Mr. Demby writes, 'What is the current percentage of Iranian-related assets' ... 'directly and indirectly in the fund now' ... 'quantitatively'? A: Yes. Q: Do you know if that question was ever answered? A: I don't think it was answered in an accurate way, because my recollection is that we kept getting different responses and -- that I don't think that -- I don't know -- I don't believe that question was ever answered directly. Certainly not here. And there's -- we had a hard time ascertaining what the facts were.").

877 Ex. 423 at 2 (June 25, 2014 email from Sinensky)

878 Ex. 423 at 1 (June 25, 2014 email from Dersovitz).

879 Tr. 2193:12-2194:18 (Demby) ("Q: And if you look at the first email on -- the bottom most email on Division Exhibit 424 [email chain dated June 25, 2014], you'll see an email from you, it appears? A: Yes. Q: Do you recall that conversation with Mr. Dersovitz? A: That's the one I just recounted.").

was evasive again before finally admitting that the concentration was "in the high 40 percent range."[880]

b. Mr. Demby was "appalled" when Dersovitz told him that the concentration was in the high 40% range because he believed he had invested in a fund "where there were no further appeals, a fund in which the maximum investment in any entity was 5 percent."[881]

c. In fact, the Peterson exposure had been in the high 40% range since April 2013 around the time Mr. Demby first invested,[882] but had since topped

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880 Tr. 2190:23—2192:12 (Demby) ("Q: After you redeemed, did you have any further conversations with RD Legal or Mr. Dersovitz? A: Yes. Q: What were those conversations? A: Mr. Dersovitz appeared at Tiger 21 in May of 2014. At his request, he came and he reassured the group that our investments were safe, that he had -- I remember him saying -- this is almost a quote, Go ahead and redeem. I have plenty of money to meet redemptions. And that was the essence of what he had to say. **At that time, I asked him, I pressed him, What percentage of the offshore fund is invested in the Iranian settlements? And he said he didn't know.** And I said, How can you be running a hedge fund like this and not know? He says, It's very complicated. It's very difficult to calculate. I said, You must know. He said, no, he didn't. I said, Give us an estimate. He said he couldn't. I kept pushing him. **He said, You call me at my office tomorrow, and I'll explain to you tomorrow.** I called him the following morning. I called a few times. One time they said he was out. One time he was in conference. **And I kept calling. Finally, he got on the phone, and he gave me the same story, that it's very difficult, you can't just calculate these things and so forth. And I kept pressing him for a number. And he said that the amount that was invested in the Iranian settlement was in the 40 percent range. And I said, How much? 40-how much? Is it high 40? Low 40? I finally got him to say it was in the high 40 percent range. I terminated the conversation after that point. I was appalled."** (emphasis added)).

See also Ex. 422 at 2 (June 25, 2014 email from A. Demby) ("Spoke with Ron D. Based on fair market value, the exposure of the fund to Iranian settlement is in the 'high 40 percentages'."); Ex. 424 (same).

881 Tr. 2192:13-22 (Demby) ("Q: Why were you appalled, Dr. Demby? A: Why was I appalled? Q: Yes. A: For the same reasons that I was telling you. I invested in a fund that was presented to me as a safe fund, as a fund where there were no further appeals, a fund in which the maximum investment in any entity was 5 percent. That's what I signed up for. That's what I believed I was getting.").

882 Ex. 2 at Cell O-24.

even that range and was approximately 60-65% of the Flagship Funds during 2014.[883]

d. Dersovitz also evaded Mr. Demby's questions by claiming that "the Iranian exposure was irrelevant" to Mr. Demby because he had "filed for full redemption."[884]

527. Following the call on June 25, 2014, Mr. Demby emailed a number of Group 5 investors: "Spoke with Ron D. Based on fair market value, the exposure of the fund to Iranian settlement is in the 'high 40 percentages'."[885]

528. Mr. Sinensky sent a separate email following the call on June 25, 2014, to Dersovitz noting that "there was a big disconnect in the communications on the call" and "I heard you say on the call that you have $190 mm in total in the fund. And, then, I thought I heard you say somewhere around $65 mm in Iran. Maybe I heard wrong."[886] Mr. Sinensky also requested an answer to Mr. Demby's question concerning the concentration percentage.[887]

a. Dersovitz, now aware of a "big disconnect[,]" did not provide a percentage, instead responding: "There are two issues involved. First there are two funds and participants, each having different balances. Furthermore, I always think of this issues [sic] in terms of dollars deployed. During the call

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883 Ex. 2 at Cells O-33 to O-44.

884 Ex. 424 (June 25, 2014 3:04 PM email from Demby).

885 Ex. 422 at 2 (June 25, 2014 email from Demby).

886 Ex. 423 at 1 (June 25, 2014 email from A. Sinensky).

887 Ex. 423 at 2 (June 24, 2014 email from A. Demby ("pls inform me of the percentage of the existing fund that in currently invested . . . in Iranian settlement")), at 1 (June 25, 2014 email from A. Sinensky ("I don't think it has to be precise. A range would do.")).

I mentioned that the notion of fair value, which impacts this question as well."[888]

b. At the time, the fair value concentration of the Peterson position was approximately 64.12%.[889] The fair value of Fund was approximately $170.4 million and the fair value of the Peterson positions was approximately $109.2 million.[890]

c. Dersovitz knew or was able to calculate the Peterson concentrations because the concentration levels did not significantly vary throughout the year[891] as well as because he had access to the RD Legal dashboard[892] and to the monthly internal information book.[893]

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888 Ex. 423 at 1 (June 25, 2014 email from R. Dersovitz).

889 Ex. 2 at Cell O-38.

890 Ex. 2 at Cells C-38 (total value of Funds) and N-38 (total fair value of Peterson).

891 See also Tr. 5715:15—5717:10 (Dersovitz) ("JUDGE PATIL: Why didn't you refer Allen to the CFO? . . . Why didn't you refer George to the CFO? Is probably the better question. THE WITNESS: I think I might have in an email. There is an email chain where I think I did. BY MR. WILLINGHAM: Q: What did you refer Mr. Mrkonic to and to Allen -- and it looks like you're talking to Allen on the phone -- to take a look at to find the precise number in this email? A: It would have been the financials. Q: Well -- A: Oh, I do. THE WITNESS: Forgive me. Your Honor, I did. "Furthermore" at the bottom -- the last sentence in the second paragraph. JUDGE PATIL: Go ahead and read it. THE WITNESS: "Furthermore, I was out to lunch when he called and told him that the exact numbers are available in the year-end financials." JUDGE PATIL: The year-end financials for what year? THE WITNESS: That would have been 2013. JUDGE PATIL: Understood. Go ahead. . . . A: **Can I add? At that point, the concentrations weren't changing that much from that point on.**").

892 E.g., Ex. 418 (June 2014 dashboard); Ex. 3004 (March 31, 2014 dashboard).

893 See, supra, ¶ 295.

529. Mr. Mrkonic forwarded Mr. Demby's June 25, 2014 email concerning the call to Dersovitz asking: "Of the hi 40% number how much is advanced on contingency fees in this matter vs advanced on claims?"[894]

a. Dersovitz's response did not directly address Mr. Mrkonic's question and did not correct the misstated 40% concentration amount.[895]

530. Mr. Sinensky redeemed his investment on or about September 30, 2014, because of his concern with the Peterson exposure.[896]

531. Dersovitz continued to avoid providing Tiger 21 investors direct answers concerning the concentration of the Peterson position, including referring investor Gerald Kaminsky (whose original request for information went unanswered for a week), in November 2014, to the prior year-end financials as reflecting "the most accurate number."[897]

532. On January 2, 2015, the Bergen Record published an article "Cresskill Company Sues 2 Lawyers For Loan Non-Payment."[898]

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894 Ex. 422 at 1-2 (June 25, 2014 email from G. Mrkonic).

895 Ex. 422 at 1 (June 25, 2014 email from R. Dersovitz).

896 Ex. 171 at 2 (chart of redemptions in Offshore Fund); Tr. 3337:10—3338:4 (Sinensky) ("Q: Why did you redeem? A: Well, once I understood fully that the fund had invested in the Iran deal, I didn't want to hold the investment any longer because it was beyond my parameters. I would not have invested in all likelihood if I knew it was in there to this magnitude. Q: And what was the magnitude you understood at the time? A: Well, the number moved around over this period. But just doing the basic arithmetic of what I wrote here [in Ex. 423], I was probably surmising about the third. Q: And when you say 'the number moved around,' what do you mean? A: Well, there were different discussions at different points in time. And, you know, I think any fund is fairly dynamic in terms of assigning value to it, you know, some funds could have a value every day, some could have once a month. So depending on the point in time of the discussion, these numbers could have moved around.").

897 Ex. 717 at 1 (Nov. 14, 2014 email from R. Dersovitz).

898 Ex. 441 (Kathleen Lynn, Cresskill Company Sues 2 Lawyers For Loan Non-Payment, RECORD (BERGEN CO.), Jan. 2, 2015, at L07); see also infra ¶ 660.

a. Mr. Sinensky asked Dersovitz whether it would impact the Funds' results given that "[t]he article describes the loans as providing funding for litigation, which is different then [sic] the loans in the fund."[899]

b. Dersovitz misleadingly responded that: "[t]he litigation involves two non fund attorneys that had signed an escrow agreement for the fund's benefit and not remitted the legal fees collected."[900]

c. Dersovitz knew, as RD Legal's pleading in the lawsuit against the attorneys made clear, that it was the Onshore Fund that had advanced funds to those attorneys.[901]

533. In May 2015, in response to the distribution of the year-end 2014 Financial Statements, Mr. Demby called Ms. Markovic to inquire what the 79% concentration was.[902]

a. Ms. Markovic told him that the concentration was the Peterson case.[903]

b. When Mr. Demby inquired about the reason for the growth from Dersovitz's statement the prior year that the concentration was "about high 40%" (a false statement, see supra ¶ 526.c), Ms. Markovic falsely stated that the discrepancy in figures was "due to appreciation of the asset[,]"[904] as

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899 Ex. 442 at 1-2 (Jan. 2, 2013 email from Sinensky) ("I saw the article in today's Record concerning your lawsuit against several attorneys for nonpayment."); see also infra ¶ 660.

900 Ex. 442 at 1 (Jan. 3, 2013 email from Dersovitz); see also infra ¶ 660.

901 See Ex. 441 (Jan. 2, 2015 Bergen County Record article); Ex. 192 at 3 (Osborn Compl.). See also infra ¶ 660.

902 Ex. 449 (May 15, 2015 email from A. Demby) ("One loan is 79+% so I asked Katarina what this asset represented.").

903 Ex. 449 (May 15, 2015 email from A. Demby) ("She said it was Iranian settlement.").

904 Ex. 449 (May 15, 2015 email from A. Demby) ("After Roni's conference call, I called him to learn the percentage of Iranian settlement in offshore fund. He replied 'about high 40%'. I asked

opposed to Dersovitz's misleading and false statement in 2014 that the concentration was "about high 40%" when in fact it was approximately 64.12% on a fair value basis.[905]

534. Mr. Ashcraft submitted redemption paperwork in June 2015, while redemptions from the Funds were frozen, and in September 2015, elected to have his investment liquidate rather than have it roll-over in the new structure RD Legal was establishing for the Offshore Fund.[906]

Katarina why the discrepancy in percentages. She stated that it was due to appreciation of the asset.").

[905] See Ex. 2 at Cell O-38.

[906] Tr. 1490:15—1491:19 (Ashcraft) ("Q: In terms of -- did you come to redeem your investment? A: Eventually, yeah. Q: When? A: Well, if I recall, there's a -- you have to wait one year, if I remember right. And then there was a 25 percent per to get 100 percent outtake that second full year. As the discussions were going back and forth, you just get uneasy with uncertainty as to where things were. April of 2015, there was a gate thrown upon the offshore, so you couldn't redeem. They could not pay out anything anyway. I discussed it before that with our group. But then that letter came out. So it was, like, you're not going to redeem anyway. But in June I did get the documentation and -- it's June of 2015. Prepared it and submitted it. And then also had a conversation with them. They were switching from that offshore anyway. They were going to let it liquidate and start renewing and have a right to roll-over. So it was essentially a redemption anyway. If you chose not to move forward, your money would be returned anyway. So in September of 2015, that's when I wrote up I did not want to have the money rolled over. So it's essentially a redemption on September 2015."); Tr. 1517:24-1519:8 (Ashcraft) ("Q: And you didn't redeem until quite a bit later, correct? A: You have a one-year hold. You can't redeem until after a minimum of a year. Q: Okay. And is that why you didn't redeem? A: Part -- twofold. One, I wanted -- it is hearsay. I've also just invested and wanted to see facts; not what might be the case or not the case. I think following that, there was a number of questions in regard to this. And I -- you know, I would say frankly, in my opinion, it was not as forthright to answer these questions. It was rather elusive. Q: And he didn't want to discuss with you the different questions with regard to the concentration level, for example, and things like that? A: This particular case was -- it seemed to me took way too long. Meetings were scheduled and canceled. Q: It was that he didn't actually schedule the meeting with you and it was hard to get a hold of him? A: No. There was a scheduled meeting that got cancelled with the group. . . . JUDGE PATIL: Sorry. Excuse me. Who cancelled the meeting? THE WITNESS: Oh, Roni. Or his office. I mean, the meeting was a day before, and it was canceled. And at that point, people were -- in my case, I was contacted separately. I even talked with, I believe, Katrina to say, I can't -- I can't make this meeting, can I dial in, because I live in Dayton.").

a. Mr. Ashcraft testified that he decided to redeem because of his discomfort with RD Legal and his concern with the concentration in the Funds.[907]

535. At the time of the hearing in this matter, Mr. Wils was still owed "5 to 6 percent" of the amount due on his investment.[908]

536. At the time of the hearing, Mr. Ashcraft had received only one redemption payment of $76,000, and had more than $800,000 outstanding to be paid, including most of his $750,000 principal investment.[909]

537. At the time of the hearing in this matter, Mr. Sinensky was still owed additional redemption payments.[910]

8. Andrew Furgatch and Magna Carta

538. Andrew Furgatch has a bachelor of business administration from the University of Miami and a J.D. degree from Pepperdine University School of Law.[911]

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907 Tr. 1491:20—1492:15 (Ashcraft) ("Q: And why did you redeem at that point or not let your money get rolled over? A: Just apprehensive. You know, you just kind of -- you know, I worked with a lot of investment firms over the past, and, you know, you just kind of -- it was too gray for me. . . . A: And so, you know, I just -- and also, if there was concentration, that was concerning. So I don't know still to this day exactly how much. So it was just a reason. And you got to remember, this is once a month you go to these meetings. And I don't spend full time thinking about this particular investment. I probably have 70 different investments, plus a number of observation boards and other things. So when it comes back up, you swirl it around a little bit. Yeah, this is getting a little -- a little antsy for me, so it may still be good, but I'm just going to throw in the card. So that's my fault.").

908 Tr. 910:16-21 (Wils) ("Q: And you filed for redemption of that investment, correct? A: Correct. Q: And you said you're still waiting for perhaps 5 percent additional payment? A: 5, yes. 5 to 6 percent, yes.").

909 Tr. 1492:16—1493:2 (Ashcraft) ("Q: Do you have any money left outstanding in your investment with RD Legal? A: How do you want to measure it? Off the 750 or what's on the statements? Q: If you know the amount, for example. A: The last statement was pre-payment of the last loan -- I've only had one. The accrued, if you will, the valuations that were presented, was 886 -- 886,000 was the valuation, minus the 76,000 that was redeemed or paid out in January. So on paper, 800-plus thousand. Who knows what it's worth.").

910 Tr. 3390:8-11 (Sinensky) ("Q: And you're still waiting for some additional redemption payments as they become available and are made; is that correct, sir? A: Yes.").

539. Mr. Furgatch practiced law for several years before becoming an officer of the Public Insurance Company, which operates under the trade name Magna Carta, of which he is the chairman of the board and chief executive officer.[912]

540. Mr. Furgatch met Katarina Markovic at a conference in Monaco in September of 2013, where she pitched him in investment in the Flagship Funds, which she described as lending money to law firms to collect on legal receivables with respect to cases that were already resolved, where it was just a matter of time before the money was collected.[913]

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911 Tr. 2001:17-24 (Furgatch) ("Q: Mr. Furgatch, do you have any post-high school education? A: Yes. Q: What is that? A: I have a bachelor's of business administration from the University of Miami in 1982. And a juris doctorate from Pepperdine University School of Law, 1985.").

912 Tr. 2001:25—2002:19 (Furgatch) ("Q: Would you please walk us through your professional history since then. A: Sure. I practiced law, a private practice of law, at various law firms for about seven years after law school. Thereupon I became an officer of my current employer, of Public Insurance Company. Q: What is Public Insurance Company? A: A property casualty insurance carrier. Q: And what is your role there? A: I'm currently chairman of the board and chief executive officer. Q: Okay. And are you familiar with an organization known as Magna Carta? A: Yes. Q: What is Magna Carta? A: Magna Carta is the trade name under which we operate our group of companies. So Public Service is one of the nine corporations in the group.").

913 Tr. 2002:20—2003:5 (Furgatch) ("Q: And are you familiar be RD Legal? A: Yes. Q: How did you first become familiar with RD Legal? A: I met representatives of RD Legal at an investment conference in September 2013. Q: Where was that? A: Monte Carlo. Q: And who did you meet from Monte Carlo in 2013? A: Their chief marketing officer, Katarina."); Tr. 2006:4-23 (Furgatch) ("Q: Okay. And the flagship fund, what did you understand the flagship fund to invest in at that time, after your conversation with Ms. Markovic? A: Well, we viewed it as a lending operation. I think the way they pitched it was they either factored or purchased account receivables of law firms to collect on legal recoverables -- or the legal fees attached to legal recoverables. Q: And did you have any experience with legal fees attached to legal recoverables? A: Yes. Part of what attracted us to the strategy to consider it is the fact that being in the insurance business, we're actually -- we view ourselves as being in the litigation business. I mean, when we sell insurance policies, they come with a duty of defense. And so right now, as we sit here, our company is a defendant in probably more than 500 suits across the country, mostly here in the New York tri-state area defending our policyholders."); Tr. 2011:6-12 (Furgatch) ("Q: And those two sentences we just looked at, how did that compare to the description Ms. Markovic had given you about the fund? A: It was consistent. She represented that the strategy of the fund was to invest in cases that were already resolved, but it was just a matter of a timing risk of when the money gets collected."); n. 914.

541. During their meeting, Ms. Markovic also presented to Mr. Furgatch the Iran SPV, which she described as a high-risk fund with political risk that housed special situations.[914] She did not tell him that the Flagship Funds had invested in the same opportunity as the Iran SPV.[915]

542. In October of 2013, Mr. Furgatch visited Respondents' offices in New Jersey, where among other people he met with Dersovitz, who also told him that the investments were in cases that were already resolved, and that there was no litigation risk in the investments.[916]

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914 Tr. 2004:2-15 (Furgatch) ("Q: And what did you discuss with Ms. Markovic at that half-hour conference? A: Well, she was pitching the investment in RD Legal. And we spent probably half the time -- she made a presentation, and it followed up with some questions and answers. Q: And when you say the 'investment in RD Legal,' what are you talking about there? A: Well, they had two funds that they presented to me. One was the -- I forget the name of it, but I call it the flagship fund or their main fund, if you will. And then they had another one that they called a special situations fund."); Tr. 2005:5-11 (Furgatch) ("Q: What did you understand the fund other than the flagship fund to be? A: Yeah. She described it as the special situations fund. And that was high-risk, political risk, one-off situations that she claimed to not know a whole lot about, but that I needed to speak to Mr. Dersovitz.").

915 Tr. 2025:21—2026:5 (Furgatch) ("Q: You spoke earlier about the two funds Ms. Markovic mentioned at your initial meeting with her. Did she ever say -- tell you that there was -- that the flagship funds had invested any of the flagship fund money in the Iran opportunity at that meeting? A: No. She said that the special situations funds had not been launched yet. They were looking to raise money. And I had the impression that there were no investments pertaining to that.").

916 Tr. 2006:24—2007:18 (Furgatch) ("Q: After the meeting with Ms. Markovic, did you ever meet with anybody else from RD Legal before you invested in the flagship fund? A: Sure. Q: Did you have any personal meetings? A: Quite a few. Q: Okay. When is the next in-person meeting that you can recall with anybody from RD Legal before you invested in the flagship fund? A: It was the month following, back here in the States, at their headquarters in New Jersey. Q: And do you know on precisely what date? A: Yes, I do know the precise date. It was October 2 of 2013, because that was my birthday. Q: Okay. And who did you meet with when you visited the RD Legal offices in New Jersey? A: My recollection is Katarina was not there that day, but Mr. Dersovitz met me in the parking lot and brought me inside and introduced me to his whole team that was present."); Tr. 2011:13-16 (Furgatch) ("Q: And how did those sentences compare to what Mr. Dersovitz described to you as how the fund invests money? A: Well, he described it the same way."); Tr. 2015:7—2016:6 (Furgatch) ("Q: What did that mean to you? A: Well, I mean, again, it's consistent with everything that we're talking about. There's a few elements in here. First, they were talking about purchasing the legal fees. So that means he's taking title to it. That's really the best form of security one can have is to have, you know, title to the collateral. And then, secondly, it pertains to settled litigation, which connotes that one is not investing in litigation risk, but, rather, collection risk. Q: Okay. And the next sentence in the paragraph – I'm sorry -- that begins, 'RD Legal purchases legal fee receivables from law firms once cases have settled.' Does that mean

543. Dersovitz also explained to Mr. Furgatch that they were investing in receivables and that the investment was collateralized by the receivables, as opposed to by the law firms themselves.[917]

544. At the meeting in New Jersey, Mr. Furgatch was walked through the underwriting process for the Flagship Funds' investments, and given a document that reiterated that the Flagship Funds invested only in settled cases.[918]

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anything different to you? A: That's just really telling me at what point in the process. So, again, they're just reiterating that it's resolved litigation. Q: And did that matter to you? A: Of course. Q: And how did that compare to the description you were hearing from Ms. Markovic and Mr. Dersovitz about what the fund invested in? A: It was perfectly consistent.").

[917] Tr. 2011:17—2012:22 (Furgatch) ("Q: I want to take a look at those next two sentences beginning 'In addition.' Reads, Most firms that are involved in this space are lenders issuing credit lines to individuals rather than taking the risk of an obligor. This is a major difference, as we are not taking individual, closed quote, counterparty risk. What did you understand that to mean? A: I understood that to mean that RD Legal was essentially taking ownership of the recoverable. So they're essentially collateralized by the collection. In fact, I remember Roni giving me some significant detail about how RD Legal would make filings with the Court to actually be a direct payee of distribution of funds. That was not always the case. But wherever that was, I guess, legally allowed or possible, he would do that. The point I'm stressing is we are investing in these collectibles and it was collateralized by the collectibles as distinguished from essentially nonsecured line of credit to a firm. Q: Did that matter to you? A: Yes. That's very important. I mean, in specialty lending, particularly when you're looking at high rates of return, what separates the success from the failures is managing what's called the default rate. And collateral is a critical aspect of managing that."); Tr. 2154:23—2155:10 (Furgatch) ("Q: Do you think that these -- we can go back and look at the underwriting guidelines. Did you interpret it during the time that you were making -- conducting diligence on this investment that those guidelines relate to law firms? A: My understanding from Roni is that he would purchase the receivable, and typically would collect directly from the defendants in the case, usually administered through court supervision. That the law firms would be secondarily liable for that or, you know, the cash flows of the law firm. But the security interest or the ownership was in the receivable itself.").

[918] Tr. 2142:17—2143:10 ("Q: Take as much time as you need. My question just is: Do you recognize that? A: Yes, I do. In particular, the bullet point that refers to the Schedule A as well as the next bullet point of UCC really resonates with me. Q: Why does that resonate? Let me see if I can follow you here. A: It's the middle of the page. Q: And what is it about what you refer to that resonates with you? A: The Master Assignment and Sale Agreement is something that I have a pretty good recollection of reviewing. And this documents seems familiar to me. Q: Were you given any other documents – if we can go back to the title here -- for steps involved in the process of funding attorney legal fees for anything other than settled cases? A: No."); Ex. 439.

545. At the meeting in New Jersey, Dersovitz gave Mr. Furgatch a copy of Respondents' underwriting guidelines which showed certain "concentration limits" for the "portfolio balance," with the highest exposure capped at 15% of the portfolio.[919] No one told him that at that moment the Flagship Funds had invested beyond the concentration limits show in that document.[920]

546. Dersovitz testified both that he was "sure [Furgatch] [wa]s right" that he had received underwriting guidelines showing the concentration limits,[921] and also that Furgatch could

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[919] Ex. 228 at 1; Tr. 2016:24—2018:16 (Furgatch) ("Q: And do you remember receiving any documents from Mr. Dersovitz at that meeting? A: Yes. Q: What do you remember receiving from Mr. Dersovitz? A: Well, I actually did not get much in terms of -- well, I guess it depends on how you define 'receivable.' So let me elaborate. Most of the day was an overhead presentation, kind of like a screen on the wall opposite me in this courtroom here. And so the presentation was done that way. Towards the latter end of the day, I had asked Mr. Dersovitz for a copy of the underwriting guidelines which were demonstrated to me in the presentation. He was reluctant to give them to me at first, saying that they were proprietary information. But later, before I left for the day, he relented and gave me a copy. And to my recollection, that's the only document I walked out of the meeting with. Q: Why did you ask for that document? A: Well, it was critically important. I mean, I'm in the underwriting business. I mean, lenders and insurance companies basically operate through underwriters who have to make critical judgments on what risks to accept. In a sense, those two businesses are unique compared to most businesses. Most businesses make sales of product, and they know what their cost of goods are when they sell it. But when you issue loans, or when you underwrite insurance, you're receiving money, but you really don't know what your losses or lost cost, if you will, will be. So the way I describe it to people is, We're not in the sales business, we're in the risk selection business. So the success or fail of an operation that's specialty lending is very much predicated on the strength of the underwriters and the guidelines they follow.").

[920] Tr. 2026:12-17 (Furgatch) ("Q: When you were handed the underwriting standards, Document 228 that we looked at moments ago, did anybody tell you at that point that RD Legal had invested any money beyond the concentration limits in that document? A: No.").

[921] Tr. 3523:10-21 (Dersovitz) ("Q: Did you hear Mr. Dersovitz that he at least got this [Ex. 228] from RD Legal? A: Yes, he did. Q: And he got this while visiting RD Legal's office? A: Yes. Q: And that happened sometime in 2013? A: That's correct. Q: Is it your testimony that Mr. Fergash is mistaken? A: No. I'm sure he's right. I have no idea how this was given to him or why.").

not have gotten those documents from him and that the Division must have "suborned perjury" and "told him what to say" about the document.[922]

a. Dersovitz testified that testifying investors had differing recollections because of "fear" about the Peterson position and that he did not understand why he was a subject of the proceeding despite having heard investors testify that they were misled.[923]

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[922] Tr. 6084:20—6086:3 (Dersovitz) ("THE WITNESS: Perjury was suborned. MR. BIRNBAUM: Objection, Your Honor. JUDGE PATIL: Overruled. Explain to me all of the bases for that understanding. THE WITNESS: [Furgatch] didn't get it at my office, which is my testimony. I would never in a million years share my cookbooks, okay? The only way he could have gotten his hands on that is because the staff at the SEC gave him that. . . . JUDGE PATIL:. . . Finish the thought that you were explaining to me. THE WITNESS: The SEC has been cherry picking isolated statements here, having people come in with collective amnesia. I couldn't have possibly -- I'm a lawyer. I couldn't have created a better way to be more transparent by affirmatively doing this stuff. JUDGE PATIL: Okay. Let's focus on the issue here. And what I'm interested in understanding here is -- THE WITNESS: Exhibit B was plucked from this email transmission, given to Furgatch. And whether he was told what to say or ran with it, I can't tell you.")

[923] Tr. 3891:5—3893:3 (Dersovitz) ("Q: Sitting here today, do you have any idea why so many investors have a different recollection? A: Fear. JUDGE PATIL: Fear of what? THE WITNESS: People got frightened. People got nervous and frightened when the Wall Street Journal came out and began trashing me. And when President Obama reached out to President Rouhani, everyone started getting extremely concerned that the moneys that had been restrained here could be the subject of a bargaining chip, vis-a-vis normalization of relations with Iran. . . . This case was locked up. But people -- even many of the smartest people don't always think rationally. JUDGE PATIL: Just so I'm following, I understand why you said they were afraid. THE WITNESS: Got terrified. JUDGE PATIL: Why does that fear or terror cause them to say under oath that you never told them about the Iranian position in the flagship fund? THE WITNESS: I expressed a little bit of this earlier. People see the track record. People see the 13 and a half. People the see the historical performance. Some people say they knew about Iran. Some people said they didn't. Some people -- people have limit -- and you also heard that a lot of people didn't understand that we get involved once a settlement or a legal fee can get – is demonstrated or evident. But there's still an intervening court process. People tune out at different points. And I couldn't imagine a better way of making it patently obvious to people and putting it in writing. The irony is, here it is, I'm putting all these things in writing. You've heard from numerous investors that I made myself as available as I could, subject to schedule. I don't understand why I'm here. I honestly don't understand how I could have done a better job. I don't even know what else to say. Put it in writing, wouldn't stop talking about it. It's the one thing I can't defend myself against. You didn't say it. But I did everything else to suggest it. How could

547. At the meeting in New Jersey, no one told Mr. Furgatch that the Flagship Funds had invested in the same case as the Iran SPV.[924]

548. At a subsequent lunch meeting in California between Mr. Furgatch, Dersovitz, and Ms. Markovic, Dersovitz spoke at length about the risks associated with the Peterson Turnover Litigation, which prompted Mr. Furgatch to ask for confirmation that the Flagship Funds were just investing in resolved or settled cases and that they were diversified, and separate from the Iran SPV. Ms. Markovic moved in to remind Dersovitz that Mr. Furgatch was only interested in the Flagship Funds and not the Iran SPV, and then Dersovitz said that there was a "residual negligible amount" of investments in the Peterson Turnover Litigation in the Flagship Funds, being seasoned there for the Iran SPV.[925]

I win he said-she said? I can't. That's why I put it in writing. And then I hear no one reads e-mails. What else am I supposed to do?").

[924] Tr. 2026:6-11 (Furgatch) ("Q: How about when you visited RD Legal's offices and met with a bunch of folks there in October 2013? Did anybody mention to you in that meeting that the RD Legal flagship funds had money invested in the Iran case? A: No.").

[925] Tr. 2026:25—2029:20 (Furgatch) ("Q: Did you ever have any further conversations with anybody at RD Legal about whether the concentration limits you were given still applied? A: Yes, yes. I recall at least one conversation. Q: When was that? A: Well, firstly, the reason I had asked for the underwriting guidelines, which I believe contain the concentration limits you're referring to, is because they were so important to us, that even though they were shown to us on a screen, again, like is done here in this courtroom, that I wanted to take them back to our office and just study them and get comfortable with them. To the extent I had follow-up questions on that, I'm sure we addressed that in such a conversation. But I also remember one particular conversation, I don't remember particularly when it was, it was during a lunch that I was having with both Katarina and Roni in Los Angeles, and the subject did come up about Iran. And what had happened is we were getting together, they were coming through town or meeting investors, and we went to lunch. And we spent most of lunch talking about -- or I should say I was listening to Roni talk about the legal intricacies of this Iran case. And, you know, I would get into this repetitive healthy debate with Mr. Dersovitz about the kinds of risks associated with his interest in that case. And at the end of the lunch, I basically asked: Why are we spending all of our time talking about this case anyway? Give me the update of what's going on in my fund, in the fund that I'm invested in or I'm going to invest in, the flagship fund. And so I -- you know, I just thought that situation was odd that he was speaking so much about the Iran fund. I remember turning to -- by the way, my response to that comment, you know, talking about the other fund, was met with an awkward silence. I remember

549. Mr. Furgatch was "vehemently against investing" in the Peterson Turnover Litigation, he viewed the case as having litigation and political risk, and he made his views of the risks clear to Dersovitz at the meeting in California.[926] He also told Dersovitz he had no interest in investing in the Peterson Turnover Litigation.[927]

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turning to Katarina and suggesting that she remind Roni that our interest was in the flagship fund, and we were not interested in the special situations fund. And then, you know, she indicated that. And then I just got -- all I can say is I got an intuition based on the awkwardness of the exchange at that point. And so I asked the question. I said, Just to be sure, you do have two separate funds, isn't that right? And this Iran case that you speak about is in your special situations fund? And you have another fund which is just resolved settlement litigation where you own a series of collectibles? **To which Roni had said, Well, yes, generally. And I asked, Is there any Iran exposure in the main fund? And he kind of hemmed and hawed, and basically concluded by saying, well, he thinks maybe there could be some residual negligible amount in that fund. I think he might have mentioned that he was just parking it there until the special situations fund was launched, and then he would move the Iran exposure over.** And your question related I think to guidelines or concentration." (emphasis added)).

See also Tr. 2035:2-15 (Furgatch) ("Q: The first category, what you described, I believe, as litigation risks, was that part of what you discussed with Mr. Dersovitz at that lunch in Los Angeles? A: Yes. That seemed to be Roni's focus, that he felt he had a good handle on the litigation risk, and that he thought that that was a good bet. And I was playing devil's advocate speaking about some of the adverse things that could happen in that process. Q: And what about the political risk, the relationship with Iran? Is that something that came up at the lunch with Mr. Dersovitz? A: Absolutely.").

[926] Tr. 2030:9—2031:3 (Furgatch) ("Q: Why were you asking Mr. Dersovitz whether any possible investment they might have made in the Iran case conformed to the underwriting guidelines he had given you? A: Well, because I was absolutely vehemently against investing in that Iran exposure. In fact, the first 45 minutes of that lunch was a healthy debate between lawyers who liked to talk about legal stuff. And so we were debating the, you know, types of litigation risk, the political risk associated with that investment. It was abundantly clear on numerous occasions, but essentially during that lunch, that I had no interest in that exposure. So when I got an inkling that there might have been some in there – 'there' meaning that main fund -- I wanted to satisfy myself that it wasn't a material amount that would actually -- if I can use the term 'dilute' or 'pollute' the strategy, the specialty lending strategy of that primary fund.").

See also Tr. 2032:2-18 (Furgatch) ("[Q:] What risks at that time did you believe there to be related to the Peterson case? A: Well, it's almost like: Where do I start? So there's two big risk areas. One is litigation risk, and I suppose everyone here is sophisticated on litigation, so I don't have to run through the bullet points of the things that could go wrong. I don't know if that's the right term. Let me say, the unpredictability of outcomes associated with litigation. Not to mention the enormous time involved. So there was litigation risk for one, meaning uncertainty of outcome. Number two, in this particular case, dealing with Iran, and where Roni and I spent most of our time

550. At that meeting, Mr. Furgatch also asked for confirmation that the concentration limits for the Flagship Funds were still being met, whatever else Dersovitz was doing with "parking" the Peterson Turnover Litigation investment in the Flagship Funds, to which Dersovitz assured him "absolutely."[928]

551. In April of 2014, subsequent to the foregoing meetings, Mr. Furgatch caused Magna Carta to invest $10 million in the Flagship Funds.[929]

-- actually, Roni would argue the legal points, and I would retort with the political points."); see also Ex. 313 (Jan. 13, 2016 email from A. Furgatch).

[927] Tr. 2079:21—2080:1 (Furgatch) ("Q: Okay. He may have sent that, but you don't recall whether you received it? A: Again, we had this ongoing dialogue about Iran. He would share information. We would share documents. And I would just respond: I am not interested in investing in that case.").

[928] Tr. 2029:22—2030:7 (Furgatch) ("THE WITNESS: Yes. So I remember thinking, to try to get myself comfortable with this -- I referred back to the underwriting guidelines including the concentrations. And I asked, Well, whatever you've done, it does still comply with all the guidelines and all the concentrations that my own underwriting staff reviewed of yours and signed off on; is that right? And he said, Absolutely. So that – that's the one conversation I recall on that subject."); Tr. 2031:4-20 (Furgatch) ("Q: I'm sorry. What are you say -- when you asked Mr. Dersovitz whether the fund was complying with its underwriting guidelines, what did you say his response was? A: 'Absolutely.' Q: And what did that mean to you? A: That in no uncertain terms, notwithstanding his memory of how much negligible Iran exposure is in there, that there was a very, very small percentage. I think my recollection at the time was, like, a 5 percent limitation on any one issuer. Q: And did it matter to you -- did Mr. Dersovitz's 'Absolutely' answer matter to you when you then considered whether to invest in the flagship fund? A: Yes. Very much so."); Tr. 2084:17—2085:16 ("JUDGE PATIL: Sustained. I understand that he said they may be parking. I don't want to put words in your mouth. I thought it was sort of a -- I think parking is correct. But my understanding of the testimony was that they may be parking it there, or he may need to park those things there. But if I'm wrong, you can -- THE WITNESS: No, that's exactly right. I got a very confusing answer from Roni, which in 20/20 hindsight I think was because he didn't want to answer me directly. And so I walked away from that part of the conversation still confused, which is why I sought to satisfy myself with respect to any Iran exposure in the main fund by trying to encapsulate that exposure in my own mind by validating with Roni that, Well, whatever the heck you've done with this Iran exposure in the main fund, is it complying with the underwriting guidelines and limitations and constraints that my staff reviewed and signed off on? And he said 'Absolutely.' So that gave me some degree of comfort that whatever exposure was in there, it was as negligible as he sought to represent it to be.").

[929] Tr. 2004:16—2005:2 (Furgatch) ("Q: Did you ever invest in either of those funds? A: Yes. We invested in the main fund. Q: . . . how much did you invest in the main fund? A: $10 million.

552. Before his investment, no one had told Mr. Furgatch that more than 10% of the Flagship Funds were invested in an unsettled litigation against Novartis—a fact he would have wanted to know because he did not want litigation risk.[930]

553. Before his investment, Mr. Furgatch understood that the kinds of cases the Flagship Funds invested in were, for example, settled class actions with administrative delays in payments, along the lines of the types of cases that Respondents later represented to him were the "typical" type of case in the Flagship Funds' portfolios.[931]

Q: And was that your personal money? A: That was the corporate portfolio money. Q: Okay. And when did you make that investment? A: Early the following year, 2014, I want to say April.).

930 Tr. 2036:5—2037:5 (Furgatch) ("Q: At that time, had anybody told you that more than 10 percent of the fund was invested in litigation that had not yet reached a settlement against Novartis? A: No. Q: Would you have wanted to know that? A: Forgive me. I want to make sure I heard you correctly. You just asked me if anybody had informed me that over 10 percent of the fund was invested in a Novartis case with unresolved litigation? Q: Correct. I'm asking you if anybody ever told you that at the time you invested. A: No. That's the first I'm hearing of it. Q: Would you have wanted to know that? A: Yes. Q: Why is that? A: Well, for all the reasons I discussed. Firstly, 10 percent is a big bet. But putting that aside, specialty lending -- I could give you a list of all the other funds that we invested in, and they were all specialty lenders just collecting on something certain. We don't want litigation risk. I've got $400 million of outstanding claim reserves backing the litigation I'm defending already."); Tr. 2144:23—2145:14 (Furgatch) ("Q: And Mr. Healy pointed you to some language about cases the -- the ongoing cases the Osborn Law Firm was dealing with. Do you remember that? A: Yes. Q: Did anyone before you invested ever tell you about ongoing litigation that the Osborn Law Firm was litigating? A: Just for clarification, is this Osborn litigating against RD Legal or is that a client? I'm not -- I'm a little confused on Osborn. So the answer is, I guess, no to your question. Q: Did anyone mention anything about ongoing, unresolved litigation against Novartis before you invested? A: No. Definitely not.").

931 Ex. 450 at 3 & 11-14 (email from K. Markovic to M. Freier stating: "I've attached a doc called 'case examples' that shows you the type of cases that are typically in the portfolio" and "Turnover Litigation Examples" attachment); Tr. 2052:24—2054:5 (Furgatch) ("[Q:] Third paragraph [of Ex. 450 at 3]. 'I've attached a doc called,' quote, 'Case examples,' closed quote, 'that shows you the type of cases that are typically in the portfolio and gives examples of actual transactions.' Do you see that? A: Yes. Q: And if you turn to page 450-11, you'll see that's the beginning of the document called 'Case examples.' A: I see that. Q: Okay. And feel free to look through the table of contents and other disclosures and so forth. I want to ask you about 450-15 -- I'm sorry. 450-16. Do you see where that contains four examples? A: Yes. Q: Generally speaking, are these what you understood when you invested in a fund to be the typical kinds of cases that RD Legal invests in? A: Yes. The answer is yes as respects the columns with the numbers and dates in

554. Before his investment, nobody disclosed to Mr. Furgatch any risks associated with possible constitutional challenges present in any of the Flagship Funds' investments, or with respect to political risks associated with the Flagship Funds' investments, and he would never have invested in the Flagship Funds had someone told him about such risks.[932]

555. After he caused Magna Carta to invest in the Flagship Funds, Mr. Furgatch slowly began to find out that more than "a negligible amount" of the Flagship Funds had been invested in the Peterson Turnover Litigation.[933]

556. During a telephone conversation in May 13, 2015, at a time when the Flagship Funds had advanced approximately $55 million to the Peterson Turnover Litigation, and over 50% of the Flagship Fund's dollars deployed and approximately 64% of the value of the Flagship Funds was related to the Peterson Turnover Litigation,[934] Dersovitz told Furgatch that only approximately

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them. Do you want me to quickly read the case summaries? Q: Please. (The witness examined the document.) THE WITNESS: Yes, it is. In fact, all four refer to class action, which was the typical -- one of the typical fact patterns of where you can have a final judgment but a significant delay in payment due to the administration of large classes.").

[932] Tr. 2146:24—2147:23 (Furgatch) ("[Discussing Ex. 1778 at 23-25] Q: And if we move to page 25 under that section -- 25 of the exhibit, you'll see the description of 'Risks related to constitutionality.' Do you see that? A: Yes. Q: Were those the risks described under constitutionality ever disclosed to you as risks relating to the flagship funds that you invested in? A: No. Q: How about right beneath there, you'll see another risk, the U.S. relations with Iran. Did anybody at RD Legal ever disclose to you before you invested in the flagship fund that that fund had a risk related to U.S. relations with Iran? A: No. Q: Would you have wanted to know if the flagship funds were exposed to risks relating to constitutionality or a risk related to U.S. relations with Iran? A: You'll have to forgive me. I read this, and it's like, I don't know who would invest after reading this. I mean, of course I would be interested to know. I mean, if -- I would never invest in this.").

[933] Tr. 2037:6-17 (Furgatch) ("Q: Did there come a time after you invested where you learned that there was a -- more than negligible amount of the flagship fund's money invested in Iran? A: Sorry. Are you asking me if I learned that at any point? Q: At any point. A: Yes. Q: And how did you learn that? A: Well, the information came to me very slowly. It was almost a dribble of admissions from RD Legal.").

[934] Div. Ex. 2 at cells L49, M49 & O49.

10-20% of Domestic Flagship Fund were invested in that matter, or about a $8 or $10 million investment.[935]

557. Subsequent to the telephone conversation, Mr. Furgatch wrote Dersovitz an email to confirm what Dersovitz had told him over the phone, including the representation that the amount deployed in the Peterson Turnover Litigation was about $8 or $10 million and that it represented 10-20% of the Domestic Flagship Fund.[936] Dersovitz confirmed on May 14, 2015 that Mr. Furgatch's understanding of Dersovitz's statement over the phone were "correct in all respects" except he hoped to "have the domestic fund caught up in 2-4 weeks."[937] The percentage of the Domestic Flagship Fund invested in the Peterson Turnover Litigation as of year-end 2014, as reported in April of 2015, was even higher than the combined total of approximately 64% for the Flagship Funds combined; it was 70.44%.[938]

558. A few days later, Mr. Furgatch received an email from his assistant Miriam Freier (which she had received from Ms. Markovic) explaining that as of year of 2014, 70.44% of the

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935 Tr. 2041:8-2042:15 (Furgatch) ("[Discussing Ex. 459 at 4] Q: Okay. So then let's start at the back on 459-4. Can you tell me the date of these notes? A: Upper left-hand corner, my initials and the date. I typically do that when I take notes. Q: Okay. So that's May 13, 2015? A: Yes. Q: . . . I just have questions about two lines. The first line, it seems to read 'T/C, W/Roni, Katarina'? A: Yes. 'T/C' stands for telephone conference. Q: And is that a telephone conference with Mr. Dersovitz and Ms. Markovic? A: Yes. Q: The last line, can you read that to the Court, please. A: '10 - 20 percent of domestic fund in Iran.' Q: What does that mean? A: Well, at this juncture, this is Roni telling me that there was a significant investment from the main fund in the Iran case, and that he didn't know exactly how much it was, but it was somewhere between 10 and 20 percent. Q: And is this after you had first raised with Mr. Dersovitz that you had some concerns about rumors about the fund? A: Well, yes. Because I see from the top of the page that the conversation is about liquidity. So clearly we were well into the discussion about the liquidity problems."); Ex. 459 at 4; Ex. 447 at 2-3 (May 14, 2015 email from A. Furgatch to R. Dersovitz).

936 Ex. 447 at 2-3.

937 Ex. 447 at 1.

938 Ex. 19 at 6.

Domestic Flagship Fund was invested in the Peterson Turnover Litigation, to which he was "blown away" given that Dersovitz had told him 10-20%.[939]

559. Mr. Furgatch and his assistant Ms. Freier also received a listing of positions from Respondents similar to the one Mr. Burrow received—listing many positions in the Flagship Funds, and each Peterson Turnover Litigation position as a separate position, including separate position for each of the advances to the same lawyers (Fay and Perles), continuing to give the misimpression that the portfolio was diversified and making it difficult for an investor to identify which were the Peterson Turnover Litigation investments.[940]

560. The grant of certiorari by the Supreme Court to review the turnover judgment in the Peterson Turnover Litigation confirmed for Mr. Furgatch the reasons he did not want to be investing in that matter in the first place—litigation risk.[941]

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939 Ex. 450; Tr. 2051:23—2052:6 (Furgatch) ("Q: So what did you understand Ms. Freier to be conveying to you when she said, 'Wow. See the answer to No. 1'? A: She was conveying to me, Andy, I told you so. That's what she was conveying. Because I had reassured her that Roni had put in writing to me that their main fund was -- while significant, a very manageable part of the flagship fund, that being 10 to 20 percent.").

940 See Ex. 450A (list of positions); Tr. 2055:10-14 (Furgatch) ("Q: And can you tell that looking at this spreadsheet? A: Well, my recollection is that when she showed it to me, to me it was a bunch of codes and it didn't really tell me very much."); see also supra at n. 579.

941 Tr. 2056:22—2058:19 (Furgatch) ("Q: And you'll see this seems to attach an article that begins, 'U.S. Supreme Court Justices appear to be divided over a bid to collect $2 billion from Iran Central Bank in a case that asks whether Congress went too far in trying to help American terrorism victims.' Do you remember this -- the Supreme Court hearing that case? A: Yes. Q: And do you remember sending the email that is at the top of 313? A: Yes. Q: Okay. And it begins, 'No surprise there. If it was not contentious, then they would not have volunteered to hear it. Unfucking believable that for years I told Roni, we don't want to invest in political risk, and he condescendingly lectured me that nothing could go wrong. Well, here we are with a 50/50 shot on all of our money based on headline news. As soon as we file the DFS suit, RD Legal will be next.' Forgive my -- or our language, but what did you mean there by 'unbelievable'? A: It was almost surreal that after years of debate with Roni, and making crystal clear, not only my disinterest in investing, but my sense of disdain for that type of investment and how foolish it was, here I am having a very significant part of the assets, my company, for which I am a fiduciary, tied up now in the outcome of some Supreme Court case where I have to get up every morning and check the headline news or check the Supreme Court online register to see what the outcome's going to be

561. Magna Carta has received its principal back from the Domestic Flagship Fund, and some interest for a total of $12,129,000,[942] but is still owed at least $1 million in interest to reach the 13.5% cumulative preferred return.[943]

9. Kyle Schaffer and Ballentine

562. Kyle Schaffer is a partner and a member of the board of directors of Ballentine Partners, a registered investment adviser based on Massachusetts, and has 26 years of experience in the financial services industry.[944]

563. In the fall of 2013, one of Mr. Schaffer's analysts, Austin Poirier, mentioned to Mr. Schaffer that he had run across RD Legal and suggested Mr. Schaffer take a look at the investment opportunity.[945]

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for my own fiduciary situation. Q: Did you ever express that disdain to anybody at RD Legal? Disdain, I think you said, that you had for the case? A: Yes. Q: When you say, 'Here we are with a 50/50 shot on all of our money based on headline news,' what did you mean by that? A: Well, again, that's just how I see litigation risk. As I said before, we're in the litigation business. Some cases are stronger than others. But I think we all know, if we put 12 people in a jury box, if not literally, then figuratively, and it is really almost impossible to predict outcomes."); see also Ex. 313 (Jan. 13, 2016 email from A. Furgatch).

942 Tr. 2133:8-13 (Furgatch) ("Q: Now, sir, I'll represent that adding those three numbers together comes out to approximately $12,129,000. Is that consistent with your understanding of the redemptions you received to date? A: Yes.").

943 Tr. 2058:20—2059:7 (Furgatch) ("Q: I believe you referenced earlier that at some point you submitted a redemption request; is that correct, Mr. Furgatch? A: Yes. Q: And have you received money from RD Legal pursuant to that redemption request? A: We have received some money back, yes. Q: Okay. When you say 'some money,' do you know how much? A: The majority of it. Q: Are you still waiting on anything? A: They still owe us a low seven-figure dollar amount.").

944 Tr. 1066:24—1065:11 (Schaffer) ("A: So that time period was, I guess, 2014. Q: . . . And what happened sort of between the time when you first heard of RD Legal and that time when you -- forgive me if I'm not using the right terminology, but approved that -- A: Recommended RD to our clients. Q: Okay. When you recommended RD Legal to your clients? A: So what happened -- well, that was a long time ago. I conducted research on the manager. So that involved calls with them, visits to their -- both of their offices, reference checks, background checks, things like that.") Tr. 1065:19-22 (Schaffer) ("Q: Okay. And how long have you been in the financial services industry? A: I have been in financial services since I graduated college in '91, so 26 years.").

564. Mr. Poirier had done some diligence on RD Legal and on November 13, 2013, emailed RD Legal employee Meesha Chandarana stating that "The [Iran SPV] doesn't look like something [Ballantine] would invest in but I would like to spend more time on the diversified contingent legal settlement fund."[946]

565. On December 4, 2013, Mr. Schaffer had a call with Katarina Markovic to discuss the Flagship Funds investment opportunities.[947] During the meeting, Ms. Markovic told Mr. Schaffer:

a. That the Flagship Funds' investments consisted of "only U.S." and "only already settled" cases.[948]

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945 Tr. 1066:1-16 (Schaffer) ("Q: Have you heard of an entity called RD Legal? A: I have. Q: When did you first hear of them? A: I heard of them sometime in the fall of 2013. Q: And in what context, or how did you hear of them? A: So I have a couple of my colleagues/analysts that work for me, specialize in hedge fund asset class, and as part of their regular research and networking, they came across RD Legal and mentioned to me that they thought it was interested in pursuing further. Q: Okay. And you mentioned a colleague? A: Yeah. Two colleagues, actually. . . . One, a junior analyst named Sam and senior analyst named Austin Poerre.").

946 Ex. 382 at 1; See also Tr. 1084:22—1085:8 (Schafer) ("Q: Where it says 'this special opportunities fund doesn't look like something we would invest in, but I would like to spend more time on the diversified contingent legal settlement fund.' Do you have any understanding as to why Mr. Piorer wrote that? A: Well, that's consistent with my recollection about what we were thinking about at the time and what we would be interested in. It's something that's diversified and lower risk and more appealing to us or our client base than this special opportunities fund, for the reasons I explained.").

947 Tr. 1067:24—1068:18 (Schaffer) ("Q: . . . Do you see Division Exhibit 478-1? . . . It's the first page. . . . And can you just, generally speaking, explain to the court what this reflects? A: Sure. So these are my notes that I keep in a spiral binder. I keep them all chronologically for every manager that I meet, and this reflects the discussion of a call or meeting I had with a Katerina at RD Legal. So my standard format is to put the name of the manager at the top, who I was talking to, and then the date of the meeting at the top right. Q: What was the date of this meeting? A: This was December 4th, 2013. Q:. . . And I think you said it was either a meeting or a phone call. Do you know which one it is? A: I believe it's a phone call. . . . Based -- I usually write 'onsite' next to the manager name, if it's a meeting."); Ex. 478 at 1 (Kyle Schaffer notes).

948 Tr. 1069:5-25 (Schaffer) ("Q: Okay. And if I can direct your attention to this first top part of the notes. . . . I think there is a star on the left? Is that a star? . . . Can you just read into the record, since it's your handwriting, what it says there? A: Sure. It says: 'Only U.S. Only already

b. That the reason there was a payment delay with respect to these settled cases was "just due to the nature of the court system and the fact that some of the[] liabilities . . . just have long tails and just take a while to work through the system."[949]

c. That the parties responsible for paying on the investments were "insurance companies, government entities, and Fortune 500 companies."[950]

d. That a piece of leverage the Funds' had for collecting was that to the extent the settlement proceeds would be in the hands of attorneys, the thread of losing their license was a "huge hammer for collection."[951]

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settled.' Q: What does that reflect? A: That reflects the type of investments that RD Legal was making. Q: Who told you that? A: Katerina told me that. Q: Okay. And did you -- what did you understand that to mean, only U.S. Only already settled? A: Well, this described the nature of their business, which was that they were purchasing receivables from attorneys and the type of business they were targeting were only U.S. and only cases -- it's referring to the cases that were already settled.").

949 Tr. 1070:4-14 (Schaffer) ("Q: What did it mean to you? A: Well, it meant one less dimension of risk. I'm familiar enough with the asset class to know that there are many managers that do sort of pre-sell the funding and do different types of legal support, legal funding, but contain in them more uncertainty due to the uncertain legal obligations. So this was described to me was really more just due to the nature of the court system and the fact that some of these liabilities for reasons that she explained, just have long tails and just take a while to work through the system.").

950 Tr. 1071:22—1072:19 (Schaffer) ("Q: Can you please read into the record this line. . . ? A: That says: 'Obligors are insurance companies, government entities, and Fortune 500 companies.' . . . Then the next line says: '70 percent of payments come from obligor and 30 percent come from attorneys.' Q: . . . So focusing first on the first line, you know, what does that mean? . . . A: So the -- I'm thinking of this investment almost to the extent I'm like -- at a very high level, certainly some major differences, but really, you know, a fixed income, you're focused on what -- are they going to get their money back at all, and if so, when are they going to get their money back. And so this – this really has to do with, you know, who is ultimately responsible for paying the money. And I took this to be a positive, that the obligors tend to be highly-rated creditors, insurance companies government agencies, things like that."); see also Ex. 478 at 1.

951 Tr. 1073:20—1074:16 (Schaffer) ("[Q:] All right. So can you please first read into the record the top part there. . . . . A: Okay. So it says: 'Huge hammer for collecting, colon, can get them disbarred.' Q: Okay. Can you just explain what that means, please, or what did that mean to

e. That the current book had "335 contracts (positions) from 200 attorneys" in "68 cases," which led Mr. Schaffer to understand that the Flagship Funds were "broadly diversified."[952]

f. That RD Legal was then "considering going directly to plaintiffs" in the Peterson Turnover Litigation to purchase some of their claims.[953]

566. During the December 2013 phone call, Ms. Markovic explained to Mr. Schaffer that RD Legal was looking to build an SPV to invest in the Peterson Turnover Litigation and that RD Legal had previously done deals with the Peterson Matter attorney, but did not tell him that the

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you then when you wrote that? A: Sure. So, again, back to the creditworthiness of the underlying receivables. 70 percent were entities typically that if we're going out and we're talking about the other 30 percent, where the payor is the attorney him or herself, and which to me seemed a little riskier. And Katerina was explaining that there are very strict rules for attorneys about the handling of money and paying -- it's not something you guys joke about. And so this was, you know, a very, very strong piece of leverage to put an investor's mind at ease because if an attorney took the money and ran, it would be career ending for sure."); see also Ex. 478 at 1.

952 Tr. 1074:20—1075:15 (Schaffer) ("Q: Okay. Then where it says -- just the next part. Can you please . . . read the next part? A: That says: 'Current book 335 contracts, (parentheses, positions) from 200 attorneys, 68 cases.' Q: Okay. What is that about? A: So this is describing the underlying book of business in the fund. The contracts, as I understood it, were individual positions that RD Legal had purchased, so the 335, 200 different attorneys representing the range of business that they source. And as I understood it, sometimes attorneys would sell multiple pieces at different times. Therefore, there are more positions than attorneys, and sometimes there are multiple attorneys on each case, and so one case could have multiple attorneys. Q: Okay. And did this tell you anything about kind of the overall composition of the portfolio? A: Yeah, this led me to believe that it was a broadly diversified portfolio."); see also Ex. 478 at 1.

953 Tr. 1079:22—1080:9 (Shaffer) ("Q: Okay. Great. What does it say after – what does it say after that highlighted line? A: 'Did some legal fees for this deal. Now considering going directly to plaintiff.' Q: What does that mean? A: This was just describing again how Roni had met the attorneys that did this -- that they -- they had done some traditional -- legal fees, some traditional attorney receivables transactions in the past and now considering going directly to plaintiff just means that rather that funding the attorneys, funding the claimants themselves. Q: And who told you that? A: That's Katerina."); see also Ex. 478 at 3; Tr. 1143:17-21 (Schaffer) ("Q: And it was your understanding that one of the risk mitigating factors was that attorneys were involved in some of these transactions; is that correct? . . . A: I thought attorneys were involved in all transactions.").

Flagship Funds he was looking at had already invested in the Peterson Matter.[954] To the contrary, she told him that deals with plaintiffs was something RD Legal was "considering doing,"[955] at a time when both the Flagship Funds and the Iran SPV had already invested in such deals.

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[954] Tr. 1077:24—1080:9 (Schaffer) ("Q: Okay. And what about this bottom part? A: 'Launching new fund, marine barracks bombing 1983. Iran was held responsible. No one expected to collect. 4.6 billion, found 2 billion in a city account, non-appealable judgment.' Q: Okay. And who told you this part? A: This is still Katerina. Q: Okay. And what, you know, what did this mean to you? A: So I think in the top half, I was just asking her who is the team, is it RD Legal? Is it a one-man show, is it -- you know, describe some of the other key players, and so that's what this much reflects. And then the second part was a new fund that the firm was launching, and she was describing to me what the strategy of that fund was. Q: . . . what did you understand her to mean with 'new fund'? . . . A: Well, this was another opportunity that Roni had sourced through his contacts, that he believed that -- or RD Legal believed that it was an attractive opportunity, and they were going to raise a special purpose vehicle to target this particular investment. Q: Okay. Did Ms. Markovic say whether this was something they had already invested in, in the main fund? A: She did not. Q: Okay. So let me now direct you to the second part of the page. A: Well, can I clarify that? . . . Reading my notes, I do recall, if you see like two-thirds down the page . . . It says 'RD had done two deals with this guy, too.' . . . And she was describing how this deal was sourced, and Mr. Dersovitz had met the attorneys previously. So, just to be completely precise, I'm not -- I think -- I knew that they had done deals before, but I don't think I knew at that time if those deals were still on a portfolio or not. Q: Okay. So are you referring to what's highlighted in yellow now, where it -- A: Yes. Q: Okay. Great. What does it say after – what does it say after that highlighted line? A: 'Did some legal fees for this deal. Now considering going directly to plaintiff.' Q: What does that mean? A: This was just describing again how Roni had met the attorneys that did this -- that they -- they had done some traditional -- legal fees, some traditional attorney receivables transactions in the past and now considering going directly to plaintiff just means that rather that funding the attorneys, funding the claimants themselves. Q: And who told you that? A: That's Katerina.").

[955] Tr. 1080:10—1081:21 (Schaffer) ("Q: . . . can you explain that they were -- what did you mean by 'now considering going directly to plaintiff'? A: This was a new business opportunity they were considering, and they're raising the fund so that they can make the loans with the claimants. Q: . . . What does it say underneath? What is this part? A: That says: 'Building an SPV, talking to institutional investors, expecting doubling of money in two years. Assets are in a trust. Iran can appeal.' Over on the right: 'March July of 2015, 30 million capacity, they are the only group doing this.' Q: Okay. And who told you that? A: This is all Katerina. Q: . . . And what is this mean, 'Building an SPV all around'? What is that? A: This is just talking about this new opportunity again. It's the same as the middle page. They are trying to raise money. They're talking to institutional investors. You know, it's sort of a different risk profile, and so they are trying to raise 30 million to target this specifically. And by 'this is the only group doing this,' I believe that I asked, you know, who else has got their hands in this pot, and I was told that this was an opportunity, that they were seeking a loan. Q: . . . was anyone ever on this call other than Ms. Markovic? A: I don't think so. Q: Okay. And did Ms. Markovic ever indicate to you during this

567. Mr. Schaffer had numerous other conversations and in person meetings with Ms. Markovic as well as with Dersovitz, and they were "both adept in telling [him] the same story."[956]

568. For example, Mr. Schaffer visited RD Legal's offices sometime in February of 2014, at which time Mr. Schaffer was again told, this time by either Ms. Markovic or Dersovitz, that the business of the Flagship Funds was to "buy settlements from attorneys" when the cases were "already settled" and that the reasons for payment delays include "fairness hearings" or "class action settlements."[957] These explanations conveyed to Mr. Schaffer that the procedures remaining

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call that the funds you were looking at had already done plaintiffs' deals with the Iran case? A: No. Q: Would you have written something down in your notes like that if she had said that to you? A: Yes."); see also Ex. 478 at 3.

[956] Tr. 1087:21—1088:4 (Schaffer) ("Q: . . . And you said you met with Ms. Markovic during this meeting; is that correct? A: That's correct. I'm not, in flipping through these notes, I can't recall whether Roni was at this meeting or not. And one thing that -- in defense of my memory, is just that many times they were both adept in telling me the same story, and so when I read these, they're just -- I can remember them telling me. I just can't place who was telling me at that time.").

[957] Tr. 1088:19—1090:8 (Schaffer) ("Q: . . . If you'll please read the first line and we can take it from there. A: 'Buy settlements from attorneys, already settled. Three to five years of work by attorney. RD comes in when there is a post-settlement delay. Most are 30 to 60 days and RD doesn't get involved. Interested in nine months to five years.' Q: . . .What does that describe? A: So that's describing the business that they're going after. Q: Okay. Let's go on. A: Okay. 'Fairness hearing, class action multiple plaintiffs.' Q: . . . What did that mean to you? A: So they were describing -- I don't -- I can't remember if this was Katerina or Roni . . . who was talking at this point. But describing what causes a delay in court. So, as they mentioned, most were 30 to 60 days, and RD doesn't get involved, but there are times when things get dragged out for nine months to five years and these are two examples of what might happen as part of the process which would cause them to be interested. Q: Okay. And what did you understand what those causes would be? I understand you're not a lawyer, but -- A: A fairness hearing, as I recall, had to – a judge had to sort of bless any sort of settlement agreement and so a client wanted that seemed reasonably fair, and that can take a long time to progress through the court system. And then class actions refer to the fact that in a case with lots of different plaintiffs, just everything moves slowly, and so the attorneys want to get their money, they want to fund the next thing they're working on, they've got bills, they've got witnesses and so they use cash flow from the previous deal to be able to fund their next."); see also Ex. 490 at 1 (Kyle Schaffer notes).

to obtain payment were not risky and, in any case, did not involve legal risk.[958]

569. At the February 2014 meeting, Mr. Schaffer was also once more led to believe that the Flagship Funds were broadly diversified.[959]

570. Mr. Schaffer also visited RD Legal's offices in March of 2014, at which time Dersovitz once more reiterated to him the nature of the business, told him that "future growth will be with funding plaintiffs" and that they were looking at Libya, BP, and 9/11-related funding. The Peterson Turnover Litigation was described only with respect to the Iran SPV, and not with respect to the Flagship Funds and, in particular, Mr. Schaffer was told that plaintiff deals would be "the future" of the RD Legal business generally, not that they currently existed in the Flagship Funds.[960]

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[958] Tr. 1090:9-16 (Schaffer) ("Q: Okay. From that, you know, from that explanation, did you get any sense as to how risky these procedures were? A: I understand that they were -- the uncertainty was the timing, but not -- there was no more risk than that. Q: Okay. And where did you get that sense from? A: Just from the description of the business.").

[959] Tr. 1091:14—1092:8 (Schaffer) ("Q: Got it. Further below here, where it's – can you read this part, please? A: 'Firms are small U.S. based, geographically diverse, two to five attorneys, 416 positions, 68 cases, 200 attorneys.' I mean, it's all -- it's the same -- this is good evidence that I talked about. You might think this was a transcript from my last conversation. This is a new conversation. Most obligors are Fortune 500 companies, insurance companies, and then the 70/30 split between the obligors administrator, one of those entities above, and 30 percent directly through the attorneys. Q: . . . Is it fair to say that whoever what giving you this presentation was reiterating what Ms. Markovic told you on the phone on December 4th? A: Yes. Q: Okay. And did you understand these explanations the same way as you described earlier? A: Yes. This was all confirmation of my previous understanding.").

See also Tr. 1160:21—1161:13 (Schaffer) ("Q: Okay. Did you read on page 47-3 where it starts 'March 8, 2011 meeting'? Did you read where it says 'RD Legal's key strategy is granularity, size and positions, having many positions, which makes it easier to avoid loss.' Did you read that? A: I did. Q: Okay. Was that consistent with what you had been told by RD Legal about, you know, granularity and the strategy you were looking at? A: Yes. Q: Directing your attention to the part on page two where it says 'May 25, 2011 meeting.' Can you read where it says, 'Roni discussed new commitments to RD Legal,' and then below: 'These additional investors will create greater diversification to the fund and increase the granularity of the fund.' Did you read that part? A: I did read that part."); see also Ex. 490 at 1.

[960] Tr. 1093:20—1095:25 (Schaffer) ("Q: What does that say? A: 'Thinks future growth will be with funding plaintiffs, not attorneys. Currently Libya, upcoming BP 911.' Q: What does that mean? A: I was asking Roni division of the business, how -- will it stay at this size forever. One of

571. Other than timing, credit risk, and attorney theft, no one explained to Mr. Schaffer that the investments may present other risks.[961]

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the concerns that we had really from the start was that it was a bit of a small operation, and we were just concerned, you know, working is sustainable. So I was asking him about the growth, and he just said that, as you can see here, that he described that the core business of attorney receivables is a little bit constrained in its size. It's a lot of administration and process and instruction and all these people doing -- just kind of keep the book of business, but the growth will be in funding the – funding plaintiffs or funding larger class actions on cases where there's bigger dollars involved. Q: Okay. And did he mention that that, you know, was the Iran case mentioned here? A: I don't think so. I don't recall. What I recall is what I wrote down. . . . Q: Yes, sir. At any time in this metering, did anyone at RD Legal mention that the funds you were looking at had funded Iran plaintiffs? A: No. But I would actually like to revise my answer to the previous question. Q: Yes. A: You asked me -- I think you asked me at any time was the Iran deal discussed. . . . And on page 6, in the middle of the page, there is a line that says: 'Under NDA, about to take in 50 million slugs from brand name hedge funds.' Okay. I believe that was in reference to the Iran deal. Q: Okay. And was that in reference to the Iran deal in your portfolio? A: No. That was in reference to the special opportunities funds we were chasing."); Tr. 1152:1-18 (Schaffer) ("Q: That was what was told to you prior to investing or recommending your clients invest in RD Legal, correct? A: Well, again, I want to draw a distinction between what the funds I was investing in does and what the firm does. So this is talking about the firm, and I very clearly will testify I understood that the firm, for the whole time I was talking to them, was focused on the special situations, but at no point did I understand that the main fund was investing in that. . . . A: Is that clear? Q: I'm not asking about the special opportunity fund or something else, just that there was an intention to engage in funding plaintiffs' side of cases. Okay? A: Right. But I'm saying by the firm, not by the fund. That's the distinction I'm trying to make, if that's clear to you."); see also Ex. 478 at 4-6.

961 Tr. 1097:22—1099:7 (Schaffer) ("Q: So let's go back to page 5, 478, page 5. I think we're still on the March 25th meeting, sir, and you can take a look at the top part, please. A: Yes. Want me to read it? Q: Yes. A: Okay. Core business: Risks. Got three of them. 1, time dragging on; 2, theft; 3, nonpayment and on the right, I wrote 'mitigated by rebate structure' and then it says '70 percent of cash flows come straight from insurance not through attorney.' Q: . . . can you explain what you mean here at the risks? A: Sure. So these are the -- this is Roni explaining to me that the core risks of the investment and, again, I will make the analogy of the fixed income. There is the question of the timing of the payment and the ultimate receipt of the payment. There's some uncertainty with the timing, because of the court system. And if you price the deal assuming it's going to take a year and you want to make 10 percent and you pay the attorney 90 bucks to get 100 bucks later, if that takes four years instead of a year, then you're not making 10 percent. I don't think that makes sense. And then, so that's the first risk, it's just the uncertainty about the timing we talked about. The mitigated by rebate structure was the way that RD Legal structured these transactions so that the attorney themselves, if they paid on time or quicker, they actually got some money back. They priced it such that it would incentivize to move quickly. So that helped mitigate that risk. Q: Okay. So did anyone explain that the strategy might have other risks? A: Two and 3, Roni also explained, were risks. Q: Other than 1, 2 and 3? A: No.").

572. Dersovitz also distinguished the RD Legal business from the competition (such as Burford and Juridica) by noting that other funds "are in the legal receivables space generally, but they are presettlement players, meaning that they're funding cases that are still on, with uncertain outcomes," whereas RD Legal was not engaged in that business.[962]

573. After that meeting, Mr. Schaffer conducted additional due diligence, including speaking to Mr. Genovesi, speaking to the CFO Mr. Zatta, requesting references and speaking to them, and asking additional questions from Respondents.[963]

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962 See Tr. 1102:9—1103:3 (Schaffer) ("Q: Okay. So further down on this page, can we just highlight the next section, sir? So you already told us about this part under MDA. A: Says used to be a captive for a hedge fund and then it says Broferd and Veridica [sic] and so it used to be a captive for hedge funds. I think it refers to Ron's business model that they used to somehow be involved. I think I put a question mark by that because then had to come back and talk about that later. And then those other two names I -- I recall I was asking -- when he said no competition, are there really no other firms that do what you do, and he gave these as two examples that are in the legal receivables space generally, but they are presettlement players, meaning that they're funding cases that are still on, with uncertain outcomes. Q: Okay. And did that, to you, distinguish the RD Legal business from those businesses? A: Yes.").

963 See, e.g., Tr. 1103:14-24 (Shaffer) ("Q: Okay. After -- after this on site visit, did you conduct any further due diligence on RD Legal? A: Yes, I did. Q: When was that? A: You asked me any further on site? Q: Any further at all. A: Well, this -- this person Joe Genovese was mentioned quite a few times in my previous meetings, so I requested a call with him to understand his role with the firm. And I recall from seeing my notes that that happened in April."); Tr. 1104:16—1105:1 (Shaffer) ("Q: Okay. And after this conversation with Mr. Genovese, did you conduct any further due diligence? A: Yes, I did. I requested references from RD Legal, and also attempted to source references from ourselves that weren't – that weren't provided by RD Legal. And so I see from my notes on 5/20 I had a conversation – a reference that RD Legal had given me from a firm called Triple I, which was a Swiss investor. Q: Did you speak to them? A: I did. It was Patrick, and I don't think I wrote his last name, and I don't recall it."); Tr. 1105:21—1106:15 (Schaffer) ("Q: Okay. After that reference check, did you conduct any additional due diligence in RD Legal? A: I did. So I did a final -- I did another onsite visit on 6/10/14. These are my notes described 478-10, and it looks like it goes for the next four pages and -- Q: 478-13 would be the last one? A: Yes. Q: Okay. A: So at this point, I had done quite a bit of work and research prior to my last meeting. Those bullets on the top half of the page, which are going to be 51, are my notes on things that, during the course of the discussion I wanted to make sure came up. So just to be clear, those aren't anyone else talking, that's just my -- those little checkmarks next to them mean that they were covered during the course of the conversation. And so the goal of this meeting really was just to tie up, you know, any outstanding questions or loose ends in my mind, so that I could reach a final determination."); see also Ex. 478 at 8-15.

574. At no time during any of his visits and conversations with Respondents was Mr. Schaffer told that the Flagship Funds had invested in the Peterson Turnover Litigation—with respect to attorneys or plaintiffs.[964]

575. The statements that Mr. Schaffer heard from Respondents orally were "all consistent" with what he read in the Funds' Marketing Materials and Offering Documents.[965]

576. In particular, Mr. Schaffer was told orally that the Peterson Turnover Litigation was separate from the Flagship Funds, much like the Alpha Presentation dated December 2013 described the Iran SPV as "an exception" that was "very different" from the Flagship Funds.[966]

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964 Tr. 1107:23—1108:20 (Schaffer) ("Q: Okay. At any time during this visit, did anyone tell you whether RD Legal, what you recall the traditional strategy, was invested in the Iran opportunity? A: No. Q: Did anyone tell you whether RD Legal was – the traditional strategy was invested in the Iran opportunity with respect to plaintiffs? A: No. Q: Okay. Would you have wanted to know either of those things? A: Definitely. Q: Why definitely? A: Well, for the same reasons I described before. I was trying to understand the underlying book of business and I spent some time talking about, you know, were these deals common, and how they source them and it was -- it was not my understanding that, you know, being a full and growing part of the -- what was this other transaction. Q: Okay. Is that something you think you would have written down if someone had told that to you? A: I'm sure."); Tr. 1134:18—1135:16 (Schaffer) ("Q: How did you feel? You said this was not the opportunity you signed up for. Can you explain what you mean by that? A: Yes. I was simply not aware that the fund was funding this Iran deal in any measure. It was always explained to me to be a separate opportunity, which is why they were raising a separate fund for it. And so the first thing I did was call my colleague, Toni, and e-mail, who was with me at a couple of these meetings, and said -- I actually -- probably my first reaction was, you know, did I miss something or am I should I be surprised -- because I was just so surprised. I was – I just remember being floored by it. And I called him and I was like, 'Is this surprising to you?' And he said, 'Yes, it floors me, too.' So, you know, I took some confirmation that this was never discussed. I dug out the legal documents to see if he could actually be doing this. I re-read PPM, and I'm no lawyer, but I came to the conclusion that, yes, he certainly had the right to do this, and a couple of places where, you know, it says he can do plaintiffs, and it says he can be concentrated. So, I didn't -- you know, there wasn't much more to discuss besides 'let's get out.'"); see also Ex. 478 at 13.

965 See, e.g., Tr. 1115:19—1116:7 (Schaffer) ("Q: I see. Okay. Please turn to page 2 at the bottom question, the bottom where it says: 'How is the strategy different from your competitors that execute legal fee strategies?' Is says, 'We are the only significant sized SEC registered entity that we are aware of with a post-settlement strategy. There are many groups doing pre-settlement funding to varying degrees of success.' . . .Was that something that people at RD Legal had said to you orally at the outset? A: Yes. This is all consistent with what we talked about and what I read."); Ex. 1902 at 2.

577. Mr. Schaffer did not want his clients to invest in an exposure to the Peterson Turnover Litigation because he viewed the case as a fundamentally different investment than the strategy of the Flagship Funds that had been described to him, because he didn't think his clients would find it desirable to profit from the individual plaintiffs involved in the Peterson Turnover Litigation, and because he did not want to have to worry about or understand whether the ongoing Peterson Litigation would result in the investments not being recouped.[967]

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[966] Tr. 1119:19—1120:22 (Schaffer) ("[discussing Ex. 489 at 4] Q: . . . Do you see this where it says 'Highlights?' Do you see where it says: 'The primary strategy of the funds, with the exception of RD LSO, LP and RD LSO, Ltd. is to factor legal fee receivables associated with settled litigation from U.S. based attorneys.' Did you see that? A: Yes. Q: What is that? A: That's saying that the main fund, the strategies that I've already described. They weren't just saying settled litigation. RDLSO, I took to understand to be the -- special -- RD Legal special opportunities investing, which is the Iran deal, and that's why I described there is an exception there, because that is very different. Q: How do you understand the RDLSO is the Iran deal? A: In terminology they used special opportunities to describe that. So I'm making a leap here that RDLSO stands for special opportunities. Q: Oh, do you see up here where it says RD legal special opportunities? A: Okay, well then my leap was correct. Q: . . . So you understand that they're drawing -- you sand an exception or a -- A: Yeah, it says with the exception of these. I understand that they're carving that out because that is the language that follows isn't applicable to be on the special opportunities.").

[967] Tr. 1081:15—1083:2 (Schaffer) ("Q: Okay. And did Ms. Markovic ever indicate to you during this call that the funds you were looking at had already done plaintiffs' deals with the Iran case? A: No. Q: Would you have written something down in you notes like that if she had said that to you? A: Yes. Q: And would you have wanted to know that if that was the case? A: Yes. Q: Why? A: Did you ask me about attorneys or claims? Q: Anything. A: Anything. Well, I would have wanted to know, because, I view -- as my understanding of this is now, I view it as fundamentally different in its risk profile. And I also believe that the business itself fronting the claimants is not something that we were interested in. I think even at the very beginning, when Austin first talked to Katerina, he learned about this and just – you know, our discussions internally were that we had one discussion, I can't recall when, but I recall the substance, where we were trying to decide whether our clients would find this business appealing or distasteful. And I think we concluded that sort of squeezing money out of attorneys-- no offense – was permissible, but to go onto the claimants themselves, that might just be viewed as kind of in poor taste. Q: . . . Why in poor taste? A: Just because I don't think our clients would feel good about meeting a high-level -- getting – more offense than others to be accepting cents on the dollar for their -- that, to me, feels like -- and this isn't what I'll fall back on, but my reaction to it is that that's taking advantage of their poor situation more than attorney receivables, which is for a natural part of their business due to their cash flow needs and the operation of business."); Tr. 1163:20—1164:16 (Schaffer) ("Q: And was that the kind of -- the situation you wanted to be in when you invested in the traditional

578. On the basis of the foregoing due diligence and understanding, two of Mr. Schaffer's clients invested in the Flagship Funds (one for $1 million and the other for $2 million),[968] in early 2015.[969]

579. Following those investments, Mr. Schaffer read an article in the Wall Street Journal that alleged that the Flagship Funds had invested in the Peterson Turnover Litigation, which if true was "news" to Mr. Schaffer.[970]

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strategy, stressful time waiting for news on a case? A: No. Q: These types of delays, you equate those types of delays to this process or this saga? A: No, because I mentioned earlier, I didn't want to be in a situation where I was trying to evaluate legal risk and throughout the time, post redemption, when I was asking for updates from the firm, you know, I really, I believe I was put in the position where I was just—when I expressed the concern to Roni that, 'what if the Supreme Court rules against us?' He was very strong that this – it's going to work. The votes were there. But he said even if it doesn't, there was another path to liquidity, there was another process, the details of which I think are in my notes, about how he might get paid. So, it all sounded somewhat comforting, but it was beyond my ability to handicap the odds of all this happening. I was in over my head at that point, if that makes sense.").

[968] Tr. 1123:20—1124:7 (Schaffer) ("Q: And did any of your clients actually invest with the Legal funds? A: Yes. Q: And can you please describe for the court how much and then which of the two funds. A: Sure. Two of my clients invested, and it was at year-end. And it was in the main traditional fund, one client invested in the onshore and one client, because he was investing through his IRA, invested in the offshore. Q: And the amounts? A: One client did a million and one client did two million.").

[969] See Ex. 464A tab "RD Legal Funding Partners" row 33 (ID# 12560) and tab "RD Legal Funding Offshore Fund" row 13 (ID # 12868).

[970] Tr. 1126:4—1127:6 (Schaffer) ("Q: Okay. Mr. Schaffer, I think you mentioned a few moments ago something about finding out in 2015 about something related to the Iran matter. Can you please, you know, go back to that and describe what you meant? A: Sure. So there was an article that came out in the Wall Street Journal in the beginning of June, 2015, that was unflattering to RD Legal. And I put pretty good odds on one or both of my clients were they going to see the article, so I wanted to be -- understand RD Legal's perspective. As luck would have it, I was going to be in New York the next day when the article came out. So, I called Roni and said, 'You know, I'm sure you're going to have a million calls about this, but I'd like to talk about the article, if you could make time for me.' And he was very gracious and said 'Yes, you can come to the office tomorrow.' So I met with him in June 2nd. I can confirm the date in my notes, but I believe it was the day after the article, and I wanted to hear his side of the story. Q: Okay. So, if I can get your notes and in just one second if I can direct your attention to Division Exhibit 56, please. . . . Do you recognize this? A: I believe this is the article. Yes. June -- yeah, this is the article that I was referring to. Q: Did you read it? A: I did. Yes."); Tr. 1128:22—1130:2 (Schaffer) ("Q: Mr.

580. Following this discovery, Mr. Schaffer had a conversation with Dersovitz in which he confirmed that the Flagship Funds had invested in the Peterson Turnover Litigation, stating that 55% of the Flagship Funds were invested in the Peterson Turnover Litigation at a time which nearly 65% of the Funds were so invested.[971]

581. To this, Mr. Schaffer reacted with disappointment and surprise—saying he was "floored"—because he was not aware that the Flagship Funds were investing in that deal. He also believed that concentrating so much of the Funds into one case was a "poor management decision." Accordingly he recommended to his clients that they redeem their investments in the Flagship Funds, which they did.[972]

Schaffer, if I could just please direct you back to Division Exhibit 478-18, so can you please explain to the court, you know, what -- and actually, before we get into the explanation, can you just explain how many pages this meeting covers? A: Two. Q: Okay. So that's 478-18 and 478-19? A: Correct. Q: Okay. So what happened at this meeting? What was it about? A: This meeting was a day after the article came out, and I wanted to talk to Roni about the article and get his take on it, and so I met him in the New York office to get his side of the story. Q: What was that side of the story? A: Well, there were really two parts to his side of the story. I guess there were two things in the article that I wanted to discuss, the first of which was: There were some comments about the economics of the fund and the amount he's been taking out. It actually read to me a little bit of a hatchet job. It felt like sort of unnecessarily unflattering. I'd have to look at the article again to tell you. But they were using some terms like fancy accountings and things -- just stuff that, to me, just didn't seem that egregious. And then it also mentioned in the article the fact that the main fund had significant portions in their Iran fund, and that part was news to me as well. So I wanted to see if that was true, and if not, how they interpreted that. So that's what I wanted to talk to him about.").

971 Tr. 1132:5-18 (Schaffer) ("Q: Okay. And you said it was news to you. What did you mean by that? A: I meant that I was not aware that the fund was invested in any particular transaction to the size and concentration that was referred to in the article, and I wasn't aware that the fund was purchasing receivables from plaintiffs. Q: Okay. And were you aware -- okay. And what did Mr. Dersovitz say? A: So I asked him what portion of the fund is in the – the main fund is in the Iran trade, and he said 45 percent non-Iran, 55 percent Iran. Q: Okay. A: Is like 2/3 down the page."); Ex. 56 (June 1, 2015 Wall Street Journal article); Ex. 478 at 18-19 (Kyle Schaffer notes); Ex. 2 at cell O-49 (showing Peterson exposure to be 64.76% in June 2015).

972 Tr. 1132:19—1134:6 (Schaffer) ("Q: Okay. And what was your reaction to finding out that the fund, the main fund had invested -- I'm sorry. Let me ask this first. Did you come to understand that the fund had invested in plaintiffs in the Iran case, the main fund? A: Yes. Q: Did you have a reaction to that discovery? A: That was news to me. My reaction was disheartenment,

582. Mr. Schaffer's clients have received only between one third and 40% of their principal, meaning that at least $1.5 million in principal has not been paid back to them despite filing a redemption request approximately two years ago.[973]

10. RD Legal's Investor Witnesses

583. Sal Geraci is a member of HHM Wealth Advisors, a registered investment advisor whose clients first invested in the Flagship Funds on or around July or August of 2012.[974] Travis

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disappointment, and surprise. Q: Why were you surprised? A: I was not aware that the fund was -- that the main fund was funding plaintiffs. Q: Okay. Why were you disheartened? A: Because that's not the business that we wanted to be in for reasons I described earlier. Q: . . . Did there come a time when your clients sought redemptions from this fund, from the main fund? A: Yes. My recommendation to clients was to redeem from the fund after this conversation. Q: Why did you make that recommendation? A: Well, three reasons, I guess, the first of which was that the fund itself was experiencing some illiquidity, and I was concerned that we didn't want to be the last ones in the building after everyone had run for the doors. So I wanted to get us in line for that. The second of which was that I believe that -- I was -- learning that the investments were in this, what he called the Peterson opportunity, was not what I believed we signed up for. And, third of all, I believe that, regardless of the particulars of the opportunity, that this was a poor portfolio management decision for Roni to have such concentration in any single thing, and that's just a blanket statement, not particular to this transaction, just if my stock pickers told me they had 55 percent in Apple, and I thought it was 40 different stocks, that, to me feels like poor risk management."); Tr. 1134:18—1135:16 (Schaffer) (full text at n. 964 ("I just remember being floored by it.")); 1135:17—1136:6 (Schaffer) ("Q: Okay. And so did you -- did you say you file for redemption; you recommended to your clients that they file for redemption? A: Yes. Q: Okay. And were they filed? A: The onshore fund was filed. The offshore fund was actually winding down and converting into a new structure, and so you have to consciously choose to rollover the new fund if you want to stay, and so that client didn't do that. So, I guess, technically, didn't file; but -- he didn't file for redemption, but he didn't choose to stick around. I'm not sure that made sense but I'll try again if you want. Q: That's fine. A: Yes, they filed.").

973 Tr. 1136:7-16 (Schaffer) ("Q: Okay. What is the status of the redemptions? So of the $3 million that -- I think you said $3 million total were invested? A: Yes. Q: Okay. How much of that -- I mean, your clients received that back? A: I believe somewhere between a third and 40 percent. Q: Okay. There's still some principal? A: Quite a bit.").

974 Tr. 2726:23—2727:6 (Geraci) ("Q: Where are you employed, Mr. Geraci? A: The name of the company is HHM Wealth Advisors. Q: Please advise what is HHM Wealth Advisors? A: Resident investment advisor. In addition to investment services, we also do the realm of financial planning including estate planning, tax planning, retirement planing. Q: You have various individual advisory clients? A: Yes."); Tr. 2744:10-13 (Geraci) ("Q: Do you recall when the first investment was made either by yourself or your clients in RD Legal? A: Yes. Again, I think it was around August of 2012 or July of 2012.").

Hutchinson, a managing member and financial planner for HHM Wealth Advisors, was also involved with HHM's clients' investments in RD Legal.[975]

584. Before he invested, Mr. Geraci understood the risks involved in the Flagship Funds' investments as interest rate risk, liquidity risk, and a risk that an obligor would go bankrupt, but not the risk that an obligor may not want to pay.[976]

585. Before Mr. Geraci and his clients invested in the Flagship Funds, Respondents had not told him that 10% of the Flagship Funds were invested in an unresolved matter against Novartis (i.e., the ONJ Cases),[977] and no one had told him that Respondents had already made investments in the Flagship Funds that Respondents believed were authorized under the Offering Documents' flexibility clause, although Mr. Geraci would have liked to have known that fact.[978]

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975 Tr. 2819:1-4 (Hutchinson) ("Q: What position do you hold at HHM Wealth Advisors? A: Today I'm the managing member and financial planner."); Tr. 2821:12-21 (Hutchinson) ("Q: When did you first become aware of RD Legal? A: I believe it was 2011, may have been as early as spring 2012. Q: Now, we heard some testimony earlier today from Mr. Geraci. Are you aware whether he is an investor in RD Legal? A: Yes, he is. Q: Did you participate in due diligence of RD Legal? A: Yes.").

976 Tr. 2781:2-23 (Geraci) ("Q: Now, you mentioned earlier that you understood as part of your due diligence there were certain kinds of risk relating to the RD Legal funds? A: Yes. Q: I believe you mentioned liquidity as a risk? A: Yes. Q: Interest rate risk? A: Yes. Q: Obligor risk? A: Yes. Q: Can you explain by obligor, the company or defendant that would ultimately have to pay a settlement? A: Yes. Q: What was the risk there, is it the obligor might go bankrupt or is -- A: It's the inability of the obligor to make settlement of the claim. Q: Inability to pay? A: Inability to pay. Q: Was part of the obligor risk the obligor might just not want to pay? A: I don't think so.").

977 Tr. 2784:17—2785:4 (Geraci) ("Q: At the time you invested in -- you first invested in RD Legal, had anybody told you that more than 10 percent of the funds value was invested in unresolved, unsettled cases against Novartis? A: Novartis, no. Q: Would you have wanted to know that when you invested in the fund was investing more than 10 percent of its portfolio in cases that had not been settled that were just ongoing against a drug company? A: Again based on the marketing material and our understanding at the time, we just reviewed marketing material, that would have been a factor we would have liked to know, yes.").

978 Tr. 2789:13-21 (Geraci) ("Q: No. At the time you received the offering memorandum that had a flexibility clause, did anybody ever tell you that the fund had already deviated from what

586. Before Mr. Geraci and his clients invested in the Flagship Funds, he was told by Respondents' employees that the Funds had "concentration limiters on [their] portfolio that dictate how much exposure [they] can take to any single obligor," and did not mention any exceptions.[979]

587. Mr. Geraci was also shown concentration limits in a more specific table format.[980]

588. In March of 2014, after reading a story in the Wall Street Journal about RD Legal, Mr. Geraci emailed Ms. Markovic asking her if the Flagship Funds—which had invested in attorney claims related to the Peterson Turnover Litigation since 2010 and in plaintiff positions in that case since September of 2012[981]—if the Flagship Funds would "participate in the new fund Iranian judgment."[982]

589. He also told Ms. Markovic in that email that Dersovitz had told him that the Domestic Flagship Fund had a "$6 million" loan in the Peterson Turnover Litigation.[983]

590. Despite having done diligence on the Flagship Funds which included speaking to Dersovitz and his staff and looking at the Offering Documents and other documents, Mr.

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they were presenting to you from the core strategy? A: No. Q: Would you have wanted to know if they already invoked a flexibility clause to deviate from the core strategy? A: I think so.").

979 Ex. 283 at 1 (May 18, 2012 email from K. Mallon to S. Geraci); see also Tr. 2793:14-25 (Geraci) ("Q: Did you have an understanding what the concentration limiters were for the RD Funds? A: As part of the presentation, I don't remember whether it was part of the informal presentation or formal documents we looked at. There were factors that aren't, my understanding, RD Legal applied in trying to limit the amount of concentration risk by various factors like the credit quality, nature of the obligor. You mentioned the pharmaceutical company would have a certain credit rating versus individual plaintiffs who would have obviously no rating. So it was our understanding there was a matrix that was applied.").

980 See Ex 228; Tr. 2794:6-12 (Geraci) ("Q: Let's take a look at 228, please. I believe you said as part of the presentation you were shown something on the concentration limits; is that right? A: Yes. It's hard to say. Q: My question is: Eventually does this look like what you were shown regarding concentration limits? A: Yes.").

981 Ex. 6 at rows 2 and 16 (spreadsheet showing Peterson positions in the Funds' portfolio).

982 Ex. 1936 at 2 (Mar. 24, 2014 email from S. Geraci to K. Markovic).

983 Ex. 1936 at 2 (Mar. 24, 2014 email from S. Geraci to K. Markovic).

Hutchinson testified that to his knowledge the Flagship Funds never invested in "mass tort litigation where there was no settlement yet," such as the ONJ Cases.[984]

591. Despite having done diligence on the Flagship Funds and understanding that the Flagship Funds' had invested in the Peterson Turnover Litigation, Mr. Hutchinson was not aware that that invested involved "yet to be decided turnover litigation,"[985] and he could not recall when he first learned that Respondents were funding plaintiffs in the Peterson Turnover Litigation.[986]

a. Nor could Mr. Lowe, another one of Respondents' investor witnesses. [987]

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[984] Tr. 2822:25—2823:7 (Hutchinson) ("Q: Do you recall what diligence you did specifically with RD Legal? A: I do. We looked at track record and the historic data involved in their prior investor dec if you would, reading their operating agreements, visiting with Roni, speaking with his staff. Much of our due diligence with RD Legal was legal, calls with Roni and Katarina and his staff."); Tr. 2825:11-17 (Hutchinson) ("Q: What documents had you reviewed at the time you made those first investment? A: Quite a few. Operating memorandum, the subscription and agreement, the investor dec. We had reviewed quite a few of the documents provided by Pluris, Swiss, Markum, FAQs. There are probably others, but they don't come to mind."); Tr. 2866:11-13 (Hutchinson) ("Q: Do you know whether RD Legal ever invested in mass tort litigation where there was no settlement yet? A: To my knowledge, no."); 2867:8-19 (Hutchinson) ("Q: Would you want to know if the Novartis line refers not to settled matters, but to unsettled matters where RD Legal was funding the lawyer who was in pursuit of the result? A: I think so. Q: That is not the kind of investment you understood to be part of RD Legal core business, correct? A: Right, I didn't think that was part of the core business model. Q: Nobody ever told you they were doing anything like that, right? A: No.").

[985] Tr. 2863:4-14 (Hutchinson) ("Q: It begins 'although the judgment receivables were awarded in what are now non-appealable final judgments in the Reparation Case, the payment of the judgment proceeds to a subset of the reparation plaintiffs, the Peterson plaintiffs, is the subject of continuing litigation, that turnover litigation.' Did anyone ever tell you in the context of investing in the flagship fund, that the Peterson case involved Reparation Case and yet to be decided turnover litigation? A: I don't think I was aware of that.").

[986] Tr. 2870:5-20 (Hutchinson) ("Q: You distinguish between the law firm guarantees and the plaintiff claims. When did you first come to learn RD Legal was funding plaintiff claims related to Peterson? A: I don't recall specifically when I learned of those. Q: Do you recall if you learned before or after you advised clients to invest in RD Legal? A: I can't say for sure. I knew today there are plaintiff positions in the portfolio and I knew for quite some time. Q: But you don't recall if you knew when you were telling your clients to invest in RD Legal? A: I can't tell you if we were investing in 2012. I can't tell you whether I knew at that specific point in time.").

[987] Tr. 4726:9—4727:4 (Lowe) ("Q: You don't remember if anyone told you whether the flagship funds were invested -- whether the flagship funds were invested -- A: At some point I

592. Mr. Thom Young, from Georgia, works for an administrative company that is a service provider between institutional investors and hedge funds.[988]

593. Mr. Young heard of RD Legal around 2010, and after speaking to Dersovitz about the opportunity, he came to understand that RD Legal funds "law firms that have settled cases" with pharmaceuticals and large corporations.[989]

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knew he was invested in both fee receivables and plaintiff judgments. I don't know when I knew that, and I don't know if we were still in the fund or not. Q: And when you say 'he was invested,' you mean Mr. Dersovitz? A: RD Legal, I'm sorry, I should say. Q: And do you know whether -- when you say RD Legal was investing, do you know whether that was RD Legal was investing flagship fund money, or RD Legal was investing other money? A: I don't know whether I knew it before – while we were still an investor or we had gotten out, but I did not at some point that RD Legal was investing both in fee receivables and plaintiff judgments. Q: You are just not sure if you learned that before or after you got out? A: That's correct.").

[988] Tr. 3738:3—3739:3 (Young) ("Q: . . . Where do you live? A: I live in Atlanta, Georgia. Q: . . . Can you please describe your educational experience after high school? A: Davidson College, undergraduate, class of '78, University of Virginia Business School, MBA class of '83. Q: After you got your MA at Darden, could you please describe your work experience? A: Sure. I worked for back then First Boston Corporation, which is the current Credit Suisse, a national investment bank. I work in sales and trading there in New York and in Atlanta until 1996. Left there -- so I opened Deutsche Bank Institutional Office in Atlanta, ran it for about a year and a half, moved back to New York. I lived here three times in my life. And I ran global equity sales for Deutsche Bank for about a year and a half. . . . So I moved back to North Carolina, opened a hedged fund, ran it for six years, closed it and now work for an administrative company that is a service provider between institutional investors and hedge funds.").

[989] Tr. 3742:19—3743:11 (Young) ("Q: You mentioned that you heard of a company called RD Legal in around 2010? A: Uh-huh. Q: What do you understand the company RD Legal Capital LLC to be? A: Yes. So RD Legal, the thing -- they funded law firms that had settled cases with -- you know, I don't know the legal words. So if I use a wrong legal word, forgive me -- mass cases like a General Motors or a Merck case or a Pfizer case, drug case. And the law firm has settled it. But they have not been paid out from the qualified settlement trust or however the cash flows. So in the interim, they borrow money from an entity RD Legal. And RD Legal gives them that money, gets paid back and whatever the period of time is when the settlement trust pays the law firm. So that's what I'm understanding their business to be."); Tr. 3748:15—3749:3 (Young) ("Q: Do you see at the top of page 5, it says, 'The fund portfolio is principally comprised of purchased -- legal fees associated with settled litigation. The portfolio has the following key characteristics.' That first sentence, is that consistent with your understanding of the fund's strategy? A: Yes. Q: And how did you come to that understanding? A: I guess from talking with Roni. As I tried to describe earlier, my understanding of what they're doing is funding lawyers. Lawyers are taking loans from them in anticipation of being paid a settlement. So payment for a case that's already settled, a Merck drug, for instance, or whatever.").

594. Mr. Young, who testified that he "did really good due diligence," Tr. 3744:12, and who invested $1 million in each of the Flagship Funds in October of 2011,[990] testified that his belief was that if there was any Peterson Turnover Litigation investments in the Flagship Funds when he invested would be "de minimis," even though, at the time he invested, it actually was over 20% of the Flagship Funds' portfolio.[991]

595. Mr. Young had never heard of the term "workout position" in the context of RD Legal, and after reading the AUP's description of the ONJ Cases still understood it to be a settled case with credit risk to Novartis.[992]

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990 Tr. 3744:4-8 (Young) ("Q: Approximately how much did you invest in those funds? A: Probably a million dollars onshore; probably a little over a million offshore, meaning the two IRA accounts, total."); see also Ex. 464A at tab "RD Legal Funding Partners, LP" row 105 ($1,000,000 investment by "Thom & Suzanne Young" on Oct. 25, 2011).

991 Tr. 3773:9-23 (Young) ("Q: Do you have an understanding at the time you invested, whether the funds were invested and any receivables related to this Peterson case? A: Yeah. My guess, I don't remember if I remember right, sometime in 2011, my guess is he had no exposure. But I can't say he had no exposure. So I'll do the SAT question. I can't say absolutely none. But it would be de minimis, is my best guess. And then it got to a point where it became too much. And then it became -- he was not only lending to the law firms but to the families that were the victims which I understand. It's a very passion thing to do. If the administration trying to make peace in the East decided that they wanted to just give that money up, they could have. And so -- again, RD."); Tr. 3790:7-19 (Young) ("Q: Would you have wanted to know when you invested if the fund had already gone beyond the guardrails? A: Well, in my due diligence on the fund, I did not learn that they had, if indeed, they had. So if you're telling me in 2011, he had a huge exposure to Peterson, then maybe there's an issue. But I did not understand that at the time. But prospectively in '14 or 15, if his analysis worked, whatever the year was, I don't know the year and he starts increasing or ramping up that Peterson exposure, believe me, he was good to let me know it. And I was, in my opinion, smart to get out."); Ex. 2 at cells L6-O6.

992 Tr. 3763:5—3765:13 (Young) ("[discussing Ex. 1431] Q: If you turn back to the first page, it's an e-mail. At the top, it says 'From RD Legal.' And it says, 'To RD Legal administration.' And it also says 'two recipients.' And it reads: 'Dear RD Legal investor, attached, you will find the first quarter 2012 compliance review of the fund assets.' Do you recall receiving this e-mail? A: I do because I would review these. This report, it was sort of ongoing due diligence. Q: Please turn to page 5. You see near the bottom, there's a header that says 'Osborn Law PC.' And it says, 'Beatie & Osborn at Osborn Law PC, Osborn have been maintained by the portfolio watch list since the original law practice. Beatie and Osborn dissolved in 2009.' Have you heard of the term 'workout position'? A: I've heard of the term, yeah. Q: In the context of RD Legal? A: No. Q: What did you understand this language to mean? A: I will make something up if you want me to. When I

596. Mr. Dabbah, an investor in the Funds called by Respondents, does not normally look at individual portfolio positions when familiarizing himself with an investment opportunity.[993]

B. Respondents Misled Investors About the Existence and Concentration of Peterson Investments In the Flagship Funds' Portfolios

1. Respondents Obfuscated the Nature of the Obligor in the Peterson Positions

597. As generally described in Section III.A, the Funds' marketing materials and offering documents referred to "obligors" or "defendants."[994]

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read this, I'm not sure I digested it. But if it's a workout, clearly, what happens is the two partners broke up or whatever. And he's having to figure out how to get paid back the loan that he made to the entity. Q: Going to the next paragraph, it says, 'Following the breakup, the investment manager engaged the Smith Mazure Law Firm to perform an audit of Osborn's portfolio of jaw injury cases arising from the ingestion of several different drugs, collectively the ONJ case inventory. To date, the Smith Mazure Law Firm has conducted three audits of the Osborn portfolio with the last audit being in December of 2011.' Do you know who Smith Mazure is? A: No, ma'am. Q: The next sentence goes on to say, 'Each audit concluded that the anticipated legal fees due to Osborn Law will likely materially exceed the balance due to RDLFP including any interim advances that have been made during the pendency of the ONJ litigation.' Did you review this litigation? A: I presume I did because I received it. I don't have notes with me on it or anything like that, no. Q: What did you understand it to mean, generally, the disclosure related to Osborn? A: I presume that it means the loans are good. Q: It goes on to say, 'As part of the decision to continue advancing funds to Osborn, the investment manager has increased the portfolio concentration limiter for the Novartis Pharmaceutical Company to 8 million.' What do you understand that to mean? A: So if the loans are good and they're all going and your credit risk is with Novartis, which is probably pretty good credit, then you just increase your own amount to whoever the law firms are that are trying the case."); Tr. 3792:19—3793:6 (Young) ("Q: You were shown earlier, I think it's an AUP, describing that Novartis litigation. Do you remember that? A: Yeah. Q: Did you have any understanding as to whether the Novartis litigation was ongoing or settled or something different? A: understanding is he wouldn't have funded it if it wasn't settled. Q: Would you have wanted to know from RD Legal if they were funding unsettled cases? A: Well, that would have been a guardrail question, yeah.").

[993] Tr. 5610:15-20 (Dabbah) ("Q: Do you do anything to familiarize yourself with the individual positions in the portfolio? A: No. I mean, sometimes. But, generally speaking, the whole point of investing with a manager, whether it's a mutual fund, a hedge fund, is that you are -- you have a leap of faith.").

[994] See, e.g., Ex. 31 at 12 ("Settlements are generally paid by ***investment grade obligors***" (emphasis in original)), at 16 (discussing mitigation of "Risk 1: Seller & Obligor Default"); Ex. 63 at 12 ("By purchasing the Legal Fee Receivable, the Partnership accepts the risk of nonpayment by the defendant in the legal action involved.").

598. Dersovitz and RDLC also understood that "one form of credit risk to the [Funds] is dependent primarily upon the financial capacity of the defendant in the settled lawsuit to pay the stipulated settlement amount."[995]

599. Dersovitz understood that investors who discovered the Peterson-related positions did not understand or were unhappy with the investment.[996]

600. Respondents were also cognizant of the fact that the Islamic Republic of Iran was the ultimate obligor in the Peterson case.

a. Respondent's underwriting file contained the default judgment against the Islamic Republic of Iran in the Reparation Case underlying the Turnover Litigations.[997]

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995 E.g., Ex. 63 at 13; 65 at 16-17.

996 Tr. 3825:13—3826:13 (Dersovitz) ([discussing Ex. 287] "JUDGE PATIL: If you read on -- forget about the highlighted sentence. There's one sentence after that. It says, 'If only a few remain unhappy with the exposure at that time, the option exists to redeem them out.' So the reason why I'm asking about who these people are is because you're obviously anticipating there, I think, that some people will be unhappy. THE WITNESS: I knew people were unhappy for all the reasons we've been discussing. And it's not my money. It's their money. My responsibility is to, A, act within the four corners of my offering documents and to do what I think is in their best interest. Their responsibility is to remain informed. And if they don't like the strategy, redeem. JUDGE PATIL: Mr. Birnbaum, go ahead. MR. BIRNBAUM: Thank you, Your Honor. Q: Is it the case that only a few of the RD Legal investors were unhappy with the Peterson exposure as of or around June 2012? **A: As I just mentioned, we – the funds must have paid in excess of $50-plus million over a period of four years. There were a lot of people who just didn't understand or were unhappy with the trade. Q: And you understood that in 2012, correct? A: Absolutely.**" (emphasis added)).

997 Tr. 4278:22—4279:10 (Laraia) ("Q: I want to ask you about, just in general, the underwriting for the Peterson cases. You've seen the judgment in that case? A: Yes. Q: . . . Exhibit 1020. Do you recognize that? A: Yes. Q: And is this the final judgment in the Peterson case? A: Yes. Q: You have that in your file somewhere, in your underwriting? A: We have it in a lot of files, yes.").

b. In a November 2011 chain email between Dersovitz and Michael Davis, a member of the Offshore Fund's Investment Committee,[998] both acknowledged that Iran was the obligor on the Peterson Receivables.[999]

c. The Respondents' marketing materials for the Iran SPV state that "Iran [was] liable for the attack" and the "district court entered a judgment against Iran" that the Peterson plaintiffs were attempting to enforce in the Turnover Action.[1000]

d. Mr. Perles, the attorney representing the plaintiffs in the Peterson Turnover Litigations emailed Dersovitz on November 7, 2011, to tell him there was no longer any factual dispute as to the ownership of the assets.[1001]

e. In the "Citibank Memorandum" that Dersovitz wrote in February 2012, he wrote that the assets "were Iranian."[1002]

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998 Tr. 2331:23—2332:7 (Larochelle) ("Q: Who is Michael Davis? A: He was a member of the investment committee. Q: . . . What's the investment committee? A: The investment committee was -- in this case -- two people, Mike Davis and Ralph Griffith, who would review positions in the portfolio that were owned by the domestic fund to see if they would be eligible for participation in the offshore fund.").

999 Ex. 253 at 1-2 ([Nov. 14, 2011 email from Davis to Dersovitz] "In every case, there is a judgment or agreement and an obligor, which there is here. We then look at the creditworthiness of the obligor and decide an appropriate exposure level. If we do that in this case, Iran would receive a low rating and the exposure would be very limited, if any. The difference here is that there is a substantial asset of the obligor that is being looked at as the payment source. Certainly cash is the best asset you can have. Everything thus far in the court would indicate that at some point this Iranian cash will be used to settled [sic] this (and other) judgments. But that is yet to be fully judged upon."); at 1 ([Nov. 14, 2011 email from Dersovitz to Davis] ". . . The law says we get the money and the significance is that Perles has to go through the motions yes the Iranians can make it easier, but that is all. . . .").

1000 Ex. 37 at 1.

1001 Ex. 1252 (Nov. 12, 2011 email from Dersovitz to Perles).

1002 See ¶ 318.f.

f. The funding documents with the attorneys in the Peterson Turnover Litigations themselves referred to the "Defendant" as "Islamic Republic of Iran."[1003]

g. RDLC's underwriting documents stated that the "Name and address of payor that will fund settlement to pay Purchased Receivable ('Obligor')" was the "Islamic Republic of Iran – More than $2 Billion in assets held on behalf of Iran in accounts w/ Citibank, NA . . . were ordered frozen by a Manhattan court in June, 2008. The settlement amounts awarded are to be covered by these frozen assets."[1004]

601. Respondents were aware that the Peterson case was not "settled" and was in fact "pending litigation."

a. When Respondents received a draft marketing material developed by a third-party that referred to the Iran SPV as investing in "Settled Legal Claims" and making "settled case advances[,]"[1005] Dersovitz responded twice that "I might also not have used the phrase, 'Settled Legal

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1003 E.g., Ex. 607 at 2 (Fay Sch. A-6) (listing "Defendant and/or Defendant's Attorney Firm and/or Defendant's Insurance Co." as "Islamic Republic of Iran *(Note: $2 Billion held in accounts with Citibank, N.A. on behalf of Iran seized and ordered frozen by Manhattan Federal Court to be applied towards payment of $2,656,944,977.00 Billion Judgment)*" (italics in original)); Ex. 1109 (Perles Sch. A-2) (same). See also, supra, nn. 35, 40.

1004 Ex. 607 at 14 (Item 4.d).

1005 Ex. 288 at 2 (referencing Peterson case as "Investment Opportunity in Settled Legal Claims" and the "Opportunity" as "Secured investment in settled case advances to plaintiffs in the 1983 Beirut bombing case and their attorneys").

Claims'"[1006] and ""I would use Adjudicated Legal Claims as opposed to Settled Legal Claims[.]"[1007]

b. The Funds' underwriting documents, created contemporaneously with the funding, of the Peterson Turnover Litigations, described the "pending appeals or proceedings in the Case and status of case" as "*Struggle between Luxemburg Clearstream Banking, SA (holder of the Citibank accts) and the families of the hundreds of U.S. Marines injured and/or killed in the 1983 terrorist attack*"[1008] and the "Status of settlement (i.e., final non-appealable, pending court approval, etc.)" as "Judgment in place dated 09/07/2007 ***(pending litigation** re: frozen Iranian assets being held in Citibank, N.A.)*[.]"[1009]

602. Respondents consistently described the obligor in the Peterson case as something other than "Iran" to investors in the Flagship Funds.

a. The Funds' audited Financial Statements referred to the "Payor" of the Peterson receivables as "Citibank, N.A." for FY 2010, for FY 2011 as "U.S. Government," as "Funds under control of the US Government" for FY 2012, and as "Qualified Settlement Trust" thereafter.[1010]

1006 Ex. 289 at 1-2 (June 21, 2012 email at 10:36 AM from Dersovitz to Clark discussing use of "Settled Legal Claims" in Ex. 288 at 2)

1007 Ex. 289 at 1 (June 21, 2012 email at 10:59 AM from Dersovitz to Clark ("I would use Adjudicated Legal Claims as opposed to Settled Legal Claims")).

1008 Ex. 607 at 13 (Item 3.d) (italics in original).

1009 Ex. 607 at 14 (Item 4.b) (italics in original; emphasis added).

1010 See ¶¶ 238-240.a.

b. Respondents were responsible for the description of the Peterson positions in the Financial Statements and chose the relevant descriptions, including "U.S. Government" and "Qualified Settlement Trust."[1011]

c. There were no notes or other information in the Financial Statements prior to the FY 2015 statements that would alert investors to that the positions listed as "Citibank, N.A.," "U.S. Government," "Funds under the control of the US Government," or "Qualified Settlement Trust" related to the Peterson case or an obligation on the part of the Islamic Republic of Iran.[1012]

d. Dersovitz was involved in the decision of how to describe the Peterson position in the financials.[1013]

603. The United States government was not obligated to make any payments with respect to the Peterson Turnover Action at any time.[1014]

1011 See ¶¶ 238-240.a.

1012 See generally Exs. 11-16, 18-19. See also, supra, ¶¶ 235-240; Tr. 3211:15—3212:7 (Schall) ("[discussing Ex. 11 at 6 (Schedule of Investment)] Q: Which one is the Peterson case? A: I believe the first one that has the total gross legal fee receivable purchased of $40,072,497 related to the Peterson case. Q: How do you know that? A: Because 15 minutes ago we looked at the schedule that tied that number out. And this number is on both the onshore and the offshore number. And I remember that number. I just looked at it 10 minutes ago. Q: That Excel spreadsheet [Ex. 554; Tr. 3183:14]? A: Yes. Q: Without looking at that Excel sheet, would you be able to tell? A: I'm not sure. Q: Would you be able to tell which of these relates to a case against the Republic of Iran? A: No.").

1013 See supra ¶ 235; see also Ex. 207 (Zatta Tr.) at 317:6-17 ("Q: When you were having -- I think you mentioned earlier there were decisions made, and you said you were involved and Mr. Dersovitz was involved and someone from [Marcum] was involved whether the funds were under the control of the U.S. government, qualified settlement trust. Is that correct? A: That's my recollection. Q: And in those conversations, were there any discussions about whether to use the words Iran or Peterson or marine barracks to identify the Iran claims in the financials? A: Not that I recall.").

1014 See, supra, Section II.C.

604. Citibank, N.A., was not obligated to make any payments with respect to the Peterson Turnover Action at any time.[1015]

605. The memorandum dated February 28, 2012 titled "Citibank Exposure" (the "Citibank Memorandum")[1016] further obfuscated the presence of the Peterson positions in the Funds' portfolio and the nature of the ultimate obligor.[1017]

606. Dersovitz understood that investors had, at best, "limited" ability to understand the Peterson investment or didn't understand it at all.[1018]

2. Respondents' Misrepresentations and Omissions Concerning Peterson

607. The initial Peterson funding agreements with Mr. Perles were executed on May 28, 2010, and Respondents agreed to advance Mr. Perles a total of $10 million in four separate schedules of $2.5 million each executed on May 28, 2010.[1019]

608. The initial Peterson funding agreement with Mr. Fay was executed in April 2011, for $500,000, and by December 2011, Respondents agreed to advance and additional $4.5 million to Mr. Fay.[1020]

609. On February 9, 2012, at the request of Dersovitz, Laraia sent to Mr. Gumins an email with Peterson information.[1021] Nothing in the email indicated that Peterson positions were already in the Funds' portfolio.

1015 See, supra, Section II.C.

1016 Ex. 1324.

1017 See Section III.D.2.

1018 Tr. 5930:7-14 (Dersovitz) ("Q: And when you engaged in the discussion about the merits of the Peterson case with investors or prospective investors, what was your understanding of their ability to analyze the issues? A: Limited to not at all. Q: Did you have trouble getting people to understand the trade? A: Yes.").

1019 See supra n.133.

1020 See supra n.134

610. On April 16, 2012, Dersovitz sent an email to Mr. Gumins and other current and prospective investors attaching a term sheet for the Iran SPV, including a subscription deadline of April 30, 2012.[1022] Nothing in the email or the term sheet indicates that Respondents have already caused the Flagship Funds to invest in the Peterson case.

611. Dersovitz reviewed and edited the Iran SPV term sheet.[1023]

612. Investors declined to invest in the Iran SPV.

a. One investor declined, noting that his "partners were not comfortable receiving 18% from the veteran families."[1024]

b. Mr. Gumins informed Dersovitz that he was not interested in investing in the Peterson case.[1025]

613. Many of the investors who received the April 16 email and learned that there were Peterson positions in the Flagship Funds, they chose to redeem their investments, including Mr. Gumins[1026] and Mr. Kessenich.[1027] Ms. Ishimaru, Mr. Craig, and Mr. Young also redeemed after they learned about the Peterson positions.[1028]

1021 Ex. 588 (Feb. 9, 2012 email from Laraia to Gumins). See also Tr. 3612:14—3613:3 (Gumins) ("Q: Mr. Gumins, can you please turn your attention to Division Exhibit 588? . . . Q: Do you know what this e-mail is about? A: At this point, Roni was talking about a bombing from Iran against the Marine barracks in Beirut and going after the case, Iran -- U.S. versus Iran.").

1022 Ex. 279 at 2 (Apr. 16, 2012 email from Dersovitz re: Iran Sanctions ("Subscriptions must be received and funded by April 30, 2012")).

1023 Ex. 606 (June 6, 2012 email from Dersovitz re: Marine Barracks Opp in which Dersovitz took "the liberty of layering on some changes to the updated term sheet").

1024 Ex. 281 at 2 (May 4, 2012 email from Pace Kessenich stating "I presented this fund at our investment committee meeting today. We are going to pass. I received the same reaction as the 9/11 fund. My partners were not comfortable receiving 18% from the veteran families.").

1025 See supra, ¶¶ 441, 442. See also n. 683.

1026 See supra, ¶ 453.

1027 See Ex. 204 at 278:13-23 (Dersovitz Jan. 29, 2016 Testimony Tr.) ("Q: And how about regarding Pace Kessenich . . . Sitting here today, do you have any recollection of Pace Kessenich

614. Dersovitz understood that investors were not comfortable with investing in the Peterson case.[1029]

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explaining to you, in writing or orally, Kessenich's reasons for not investing in the special opportunity? A: I had a meeting with four people down in Baltimore at their office. **They expressed that they didn't like the trade and the concentration. They elected to redeem.** We were having these conversations precisely because people knew of the trade and that I was excited about it." (emphasis added)).

See also Ex. 281 at 1 (Mr. Kessenich's signature block reflecting association with WMS Partners); Ex. 168 (schedule of former investors showing redemptions of WMS Income Opportunity Fund A, LLC; WMS Income Opp Fund B – Series 1; WMS Income Opp Fund B – Series 4).

[1028] See supra ¶¶ 427-428 (Ishimaru redeemed); Tr. 6590:10—6591:5 (Dersovitz) ("Q: . . . is it your testimony that some of these folks never complained, because their post-investment due diligence failed to make them aware of your investment in the Peterson case? A: Some of the people said that they were aware, but they didn't like the trade. The option then is for them to redeem. My job is to do what is in the best interest of my investors. I did that. I structured these claims in such a way that I created a diverse pool of investments around one trade that had different return profiles, different durations and different risk profiles. And that's what a manager is supposed to do. **If an investor chooses that he doesn't like or she doesn't like what we're doing, as Asami did, as Paul Craig did, as Steven Gumins did, they have the option to redeem.** I am permitted to do what I am permitted to do by virtue of the offering documents." (emphasis added)); Tr. 3801:8—3802:5 (Young) ("Q: And when you say in the third paragraph, 'As you know, the reason for our redemption request that I happened to fear the worst, a disrespect for the law, if this conclusion of this case runs counter to the views of some in very high places, I hope to be proven wrong,' is that the same idea; you're still fearing that somebody high up in the U.S. Government might enter into some kind of deal that imperils the recovery from Peterson? A: Yeah. Do you want to make it crystal clear? Mr. Obama is trying to make [peace] in the Middle East. Mr. Obama has a right to do anything he wants. And that's proven subsequent to that because whether you call it lawful or lawless, it doesn't matter. My theory was he had the capability of making that capital go pay off to buy peace in the Middle East. If I'm him, I sure would be tempted to do that. And, in fact, what he did was, the case went through. And as I said, he did transfer 2 billion of taxpayer's wealth over there. Q: And that concern you just expressed, that was the reason you redeemed your money out of the fund, correct . . . ? A: Yes.").

[1029] Tr. 3831:3—3832:4 (Dersovitz) ("Q: [discussing Ex. 281] Did you understand Mr. Kessenich to be explaining that his fund was not interested in whatever investment opportunity you were describing in your e-mail? A: Yes. Q: And do you understand that the reason he was giving is because his investment committee was not comfortable making 18 percent from the veteran families in the Marine barracks case? A: Yes. Q: And were those the same veteran families that ultimately entered into transactions with the flagship funds? A: Yes. Q: I think you already answered my next question. And you understood at that time that Mr. Kessenich was invested in those flagship funds, correct? A: That was my -- yes. I believe he was at that time.").

615. In addition, Dersovitz understood that prospective investors in early 2013 were not interested in the Iran SPV including for reasons such as they did not want "the pr headache" and the "return is too low[.]"[1030]

616. On occasions when Respondents forwarded information to prospective investors concerning the Iran SPV, the materials were presented with no indication that there already were Peterson positions within the Flagship Funds.[1031]

a. Mr. Burrow testified that the manner in which the Iran SPV materials were presented led him to believe that the Iran SPV were "different" and "separate" from the Flagship Funds.[1032]

b. Investors who received such pitches found it "confusing" and unclear whether the "Iran government claim [is] in the special opportunity fund or the main fund, or both perhaps" and alerted RD Legal to such confusion.[1033]

[1030] Ex. 339 (Apr. 16, 2013 email from Slifka to Dersovitz re: icahn); Tr. 3833:16—3834:6 (Dersovitz) ("Q: Do you recall Mr. Slifka telling you that Mr. Icahn's company or Mr. Icahn personally was not interested in investing in the Iran matter? A: Now that I see the e-mail [Ex. 339], yes. Q: And do you understand that Mr. Icahn decided not to invest in the Iran matter, at least in part because he didn't want any public relations headache? A: That's what it says. Q: And was that your understanding when you read Mr. Slifka's e-mail? A: Yes. Q: Do you understand Mr. Icahn was essentially saying the return is too low in the special opportunities fund for him to take on that potential public relations headache? A: For his portfolio, yes.").

[1031] Ex. 321 (Jan. 27, 2013 email from Markovic to Pottash) (pitching "primary strategy" of "factoring legal fee receivables associated with settled litigation" and "In addition to our fund offerings, we are also in the process of raising an SPV which will invest in one large opportunity:" i.e., the Peterson case).

[1032] Tr. 158:2-15 (Burrow) ("In fact, the way this is described in writing here, it says the Special Opportunities Fund, so by its nature it's different, it's separate, and I always understood that to be the case." (full text at n. 577)).

[1033] Ex. 1598 (January 30, 2013 email from Pottash to Slifka) ("Looked at the RD Legal materials and there are lots of questions; put a call into them.").

617. On February 28, 2013, the district court in the Peterson Turnover Action issued an Opinion and Order known as the "Turnover Order" granting, among other relief, Plaintiffs' motion for partial summary judgment in favor of turnover.[1034]

618. Following the issuance of the Turnover Order in February 2013, Respondents stopped pitching the Iran SPV for a period of time because demand for funding "dried up[.]"[1035]

a. For example, following the Turnover Order, Dersovitz asked his marketing team whether they should "revisit" prospective investors in the Iran SPV.[1036] Ms. Markovic replied noting that, with a few exceptions, RD Legal had "pretty much exhausted the original group of investors."[1037]

1034 See Order and Opinion, Peterson v. Islamic Republic of Iran, No. 10 Civ. 4518 (KBF) (July 9, 2013 S.D.N.Y.) at 5 (copy available at Ex. 1733). See also, supra, Section II.C.

1035 Ex. 210A at 216:6-21 (Excerpts of Apr. 21, 2016 Markovic Testimony) ("Q: . . . to the extent that you might have gone say, to a conference with your marketing materials, was this [Memorandum of Terms for Private Placement of RD Legal Special Opportunities Fund L.P. and Ltd.] part of what you included? A: Sometimes. Q: . . . so not every time? A: No. Q: . . . Why -- how would you determine, or why yes, or why no? A: Early in my tenure, Roni wanted me to mention it to gauge interest. . . . **Later on, we were trying to raise money for it, and as I mentioned earlier, when the turnover was granted demand dried up, so I stopped talking.**" (emphasis added)).

1036 Ex. 734 at 2-3 (Mar. 23, 2013 email from Dersovitz). See also Tr. 6511:2-8 (Dersovitz) ("Q: And were you asking Ms. Markovic to consider reaching out to investors who had previously declined to invest in Peterson? A: I think we're talking about specific ones, but, yes. Q: Specific investors? A: Specific people, yes.").

1037 Ex. 734 at 2 (Mar. 23, 2013 email from Markovic) ("I'm happy to send it out but I think we pretty much exhausted the original group of investors. . . . Atalya said no. Avenue said no.").

See also Tr. 6512:17—6513:14 (Dersovitz) ("Q: And you understand those entities and individuals Ms. Markovic identifies to be people or companies who had previously declined to invest in the Iran special opportunity? A: I'm just looking through the email, if it's decline to invest in general, or was it unique for the special opportunity. I'm not clear yet. Q: Meaning, you're at least convinced that these are people who had previously declined to invest with RD Legal; you're just not sure if that's generally or in particular related to the Peterson case or the special opportunity? A: People that RD Legal had approached for the fund or the unique opportunity. I'm not clear by this email which one it is. That's why I said I would like to look at it again. Q: Please let me know when you are ready. (The witness examined the document.) THE WITNESS: Based on my comment on the 23rd, the beginning of this string, it would be -- it

b. On March 23, 2013, Dersovitz inquired whether, "[w]ith the exception of the people that might have told you [Ms. Markovic] that they fear headline risk," RD Legal should send the Turnover Order to prospective investors to interest them in the Iran SPV.[1038] Ms. Markovic responded that she did not have "high hopes" and that certain investors "still prefer to avoid it" or did not "like the risk profile still."[1039]

619. Dersovitz understood that investors wanted a higher return than the Flagship Funds offered for a fund investing in the Peterson assets.[1040]

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would seem to me that these were people that we had spoken to at least with regard to **the Iran opportunity**." (emphasis added)).

[1038] Ex. 734 at 1 (Mar. 23, 2013 2:37 PM email from Dersovitz). See also Tr. 6514:19—6516:6 (Dersovitz) ("You understood at the time you wrote this email there were some investors who didn't want exposure to the Peterson case because of the headline risk; is that correct? A: These were institutional investors, not necessarily -- don't -- these were institutional-type investors that more likely than not would not have invested in our vehicle anyhow. If anything, they would have wanted SMAs. So these were institutional-type investors that didn't want headline risk. Q: And you also understood that there were some institutional-type investors who didn't want to invest in the Peterson case for reasons other than headline risk, correct? A: No. Most were -- most of the ones that I spoke to -- and I spoke to many with the assistance of Houlihan Lokey for a year and a half. All of them got virtual -- I'm struggling to think if there was one that didn't appreciate the fundamental soundness of the legal argument. It was predominantly headline risk that kept the institutional investors away, and not wanting to be involved with plaintiffs of this type. Those were the two main drivers . . . for institutional investors not wanting to participate in the trade. Q: And you believe this email, 734, is talking about institutional investors? A: So if you go back, Mount Vernon is a pension fund, Dallas Police. The Dallas Police, that's their pension fund. And Crestline is -- not 100 percent sure, but I believe part of the Bass family. They're an institutional investor. I could be mistaken that they're not the Bass family, but I believe it's an arm of the Bass family. That's institutional.").

[1039] Ex.. 734 at 1 (Mar. 23, 2013 email from Markovic).

[1040] Tr. 6563:5-11 (Dersovitz) ("You heard from some investors that if they were going to invest in a fund -- in the Peterson receivables, they wanted a higher return than the 13.5 percent that the flagship funds offered; is that correct? A: I heard many different things, including that.").

a. He also knew many investors either did not want to be invested in a Fund with any involvement in the Peterson case, or wanted to avoid significant concentrations in that case.[1041]

620. The Iran SPV represented an opportunity for a greater return on investment than the Flagship Funds, but nevertheless, Respondents had difficulty raising assets for the Iran SPV.[1042]

621. Given the foregoing difficulties, by late 2012 and early 2013, Respondents began to avoid pitching the Peterson opportunity in at least some circumstances.[1043]

622. Dersovitz understood that Ms. Markovic would in some instances send investors marketing materials concerning the Flagship Funds and omit marketing materials for the Iran SPV.[1044]

[1041] See Ex. 322 (Jan. 29, 2013 Gumins to Dersovitz email stating "I am very uncomfortable with the 40% and can't understand why you would have taken that type of exposure..."); Ex. 399 (Apr. 16, 2013 email from Dersovitz to Slifka stating Carl Icahn "[i]s a no go" because "he doesn't want the pr head ache and the return is too low"). See, supra, ¶¶ 599; 613; 614.

[1042] Tr. 6562:4-22 (Dersovitz) ("Q: And so if someone wanted to invest in a fund heavily concentrated in Peterson, they would get more upside if they invested in a fund with using this model, the one reflected at Division Exhibit 320, than they would if they invested through the flagship funds to get that Peterson exposure, correct? A: It's a different investment vehicle with a different paradigm. Q: Can you answer my question, sir? A: These yields are higher than what is offered in our -- in our fund. Q: The flagship fund? A: In the flagship funds.** Q: You had trouble selling the Peterson fund with these yields -- correct -- special purpose vehicle? A: We had difficulty raising assets for the special purpose vehicle, you are correct." (asterisks in the original)).

[1043] Ex. 1650 (Mar. 21, 2013 Slifka email to Markovic) (Slifka: "Btw just want to make sure that you send out the package to ned and tht it was on your main fund not the spv" Markovic: "Only the fund, not the SPV, yes"); Ex. 345 (May 21, 2013 email chain) (Jeff Hammer tells Dersovitz "We should simply not discuss the Peterson situation is that is your preference."); Ex. 440 (Dec. 12, 2014 email from Markovic to Dersovitz re: do not pitch IRAN).

[1044] Ex. 336 (Mar. 29, 2013 email from Markovic with Flagship Fund marketing materials, but omitting Iran SPV marketing materials); Ex. 337 (Mar. 31, 2013 email from Sinensky confirming distribution of marketing materials to Tiger 21 Group 5).

See also Tr. 6526:19—6527:25 (Dersovitz) ("Q: Do you know that sometimes Ms. Markovic would send people documents only about the flagship funds in March of 2013 and not mention the SPV? A: As I said, she's a professional. She did what she felt was appropriate. I will add to that, that whenever I attended a meeting with her, that was all I spoke about. Q: Mr.

C. Investors Heard a Drumbeat of Misrepresentations That Prevented Them From Discovering the Truth

623. Investors testified that they found the representations in the DDQs and OMs to reinforce the descriptions they heard from Respondents oral representations and other marketing materials.[1045]

a. Mr. Wils, for example, explained that the Overview's description of the portfolio as arising from settled litigation past the point of any potential appeals or other disputes mattered to him in making his investment decision because it was consistent with the description he was otherwise receiving from Respondents, and that consistency was important to him.[1046]

b. Mr. Condon, when asked about the DDQ's description of the Funds' factoring strategy, noted that he found the strategy "repeated several times in several places in all the due diligence materials [he] reviewed," found the

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Dersovitz, did you know in and around March of 2013, Ms. Markovic would sometimes send to some potential investors only flagship fund materials and nothing mentioning the SPV? A: If she made that decision in her -- if she made that decision, she must have had a reason for it. And I respect that reason for it. Q: Mr. Dersovitz, do you have any knowledge as to whether Ms. Markovic made such a decision? A: You saw an email a moment ago to Tiger 5 -- or to the Tiger group. And you also heard that I've said, I attended those meetings, and I spoke about it. Q: Would you answer the question, please, Mr. Dersovitz? A: I thought I did. Q: Do you have any knowledge as to whether Ms. Markovic would sometimes send investors in and around March of 2013 materials about the flagship funds without including any mention of the SPV? A: I've answered that already. She obviously did. You saw an illustration beforehand. Q: Other than any knowledge you gained from reading documents today, do you have any knowledge? A: Not specifically, but -- not specifically.").

[1045] Tr. 497:24—498:4 (Garlock) ("Q: Why if you already had a PPM, or if you were asking for a PPM, did you also want to see a marketing deck? A: The marketing deck is the first thing that we review. It describes the strategy usually in more detail, a little easier to understand.").

[1046] Tr. 881:17—882:2 (Wils) ("Q: And going back to No. 1, in case I forgot to ask, the paragraph No. 1, did that matter to you in making your investment decision? A: Yes. Q: Why? A: Well, just what it says, 'The legal fees which arise from settled litigation are past the point of any potential appeals or other disputes; therefore, the dollar value of the minimum legal fee can be accurately determined.' It's consistent. And that's important.").

DDQ's description "consistent with the other ... materials ... [he] read[,]" and understood 95% of the assets under management to be invested in settled cases.[1047]

c. Mr. Furgatch likewise recalled a consistent message that the Funds' strategy "was to invest in cases that were already resolved, but it was just a matter of timing risk when the money gets collected."[1048]

d. Dersovitz described the same "settled" strategy to Mr. Levenbaum.[1049] Mr. Levenbaum explained it was "[e]xtremely" important to him to hear a consistent message about Respondents' fee acceleration strategy.[1050]

[1047] Tr. 957:21—959:8 (Condon) ("Q: If you turn to Page 11 of 262, please. ... you'll see the number 1, 'Fee Acceleration Factor.' Do you see that? A: I do. Q: And it reads, this is – in part, 'This is RDLFP's primary investment product, and represents approximately 95 percent of assets under management.' What did you understand that to mean? A: That's the same thing we have been discussing. On the first document, this is the 95 percent of strategy Number 1, which is legal receipts, purchasing legal receivables on settled cases. Q: Okay. And where did you get the idea that they were purchasing legal receivables in settled cases for strategy number one? A: Well, it's within the document, whether it's that document or another one, it's repeated several times in several places in all the due diligence materials I've reviewed. Q: In fact it's right here in the next line, right? Purchase of legal fee at discount from a law firm once a settlement has been reached and the legal fee is earned. A: That's the settle[d] case. Q: You took that to mean that 95 percent of the fund was in factoring -- A: Yes. Q: -- of what you described? A: Yeah, and this is consistent with the other -- the other materials as well, which I would have read or I did read.").

[1048] Tr. 2011:6-16 (Furgatch) ("Q: And those two sentences [from the FAQ describing a 'post-settlement strategy'] we just looked at, how did that compare to the description Ms. Markovic had given you about the fund? A: It was consistent. She represented that the strategy of the fund was to invest in cases that were already resolved, but it was just a matter of a timing risk of when the money gets collected. Q: And how did those sentences compare to what Mr. Dersovitz described to you as how the fund invests money? A: Well, he described it the same way.").

[1049] Tr. at 2960:23—2961:6 (Levenbaum) ("Q: What about conversations with Mr. Dersovitz or any of his employees? Did you have any of those before you invested? A: I did. Q: Okay. And what -- you know, did they say anything about the strategy? A: All the conversations were consistent with the written documentation through that period of time I invested.").

[1050] Tr. 2982:17—2983:18 (Levenbaum) ("Q: Okay. So it says here [Ex. 533 at 11, DDQ], 'List the instrument types you used by percentage. The fund is predominantly in fee acceleration, and less than 5 percent is in credit line facilities.' And then it says, 'Describe your strategy in as much

624. Respondents' materials provided their own Chief Compliance Officer, Mr. Gottleib, with similar misunderstandings of how the Funds invested their money. Mr. Gottlieb testified that he believed the Funds invested in "settled cases."[1051] Gottlieb testified that Dersovitz told him directly that Respondents "only invest in settled cases."[1052]

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detail as possible.' Do you see all of that, sir, all of -- A: I do. Q: Okay. Towards the bottom, do you see where it says, 'Fee acceleration. This is RDLFP's primary investment product and represents approximately 95 percent of assets under management. A fee acceleration investment is a purchase of a legal fee at a discount from a law firm once a settlement has been reached and the legal fee is earned.' ... And what, if anything, did that convey to you about what this fund was in the business -- A: Again, one more step in the confirmation process; and as represented in the beginning, this was consistent. And this was -- indeed is what I was getting involved with as an investor. Q: And was that important to you in considering your investment? A: Extremely.").

[1051] Tr. 6350:18—6351:1 (Gottlieb) ("Q: What was your understanding of the business of RD Legal at the time this document was considered in September of 2012? A: Well, when you say 'the business,' as far as I understood it, RD Legal invested in post-settlement cases. Q: Were you aware at the time whether RD Legal invested in any cases related to judgments? A: No, I was not."); Tr. 6351:18—6352:3 (Gottlieb) ("Q: How does that sentence correspond to your understanding in September of 2012 as to what the business of RD Legal was? A: Well, my understanding still was what it was, which was that RD Legal invested in settled cases. Q: Do you have an understanding at the time whether RD Legal invested in non-appealable judgments as stated in paragraph 2? A: No. And I'm not even sure whether – a non-appealable judgment actually is.").

[1052] Tr. 6401:19—6402:19 (Gottlieb) ("Q: I believe it was your testimony that your understanding at the time you were reviewing those documents was that RD Legal invested in settled cases; is that right? A: Correct. Q: How did you come to have that understanding? A: When I first started at RD Legal, one of the things that I looked at when I was putting together the compliance program was the potential for insider trading. I thought -- first of all, the SEC was very concerned with it, as they are now. But it was a big issue back in '09. And I thought that if we knew the results of a case before the public knew the results of a case -- you know, if it was Pfizer or Glaxo and they were going to make a big settlement, that that could move the price of the stock. And I discussed that with Roni. And he was emphatic with me: It's not an issue here, because we only invest in settled cases. Q: And did Mr. Dersovitz, over the course of your time at RD Legal, ever tell you anything to the contrary? A: No.").

625. As with the reference to "Novartis" in the Audited Financial Statements, investors seeing a listing of "Novartis" in a list of positions understood that to refer to a settled manner, given the drumbeat about "settled cases" they had heard from Respondents.[1053]

V. Respondent's Misrepresentations Were Material

626. In addition to written materials, investors considered what is represented to them orally, including because "most offering documents offer a lot of leeway to hedge fund investors" so it was important to them "to understand what the manager is intending to do,"[1054] and because investors like to hear directly from the manager regarding what the investments consist of.[1055] Stated differently, investors "invest in people; not documents."[1056]

[1053] See, e.g., Ex. 1319 & 1319-001 (native Excel file "Top 5 Obligors" tab showing "Novartis Pharmaceutical Corp." as the "Obligor"); Tr. 302:25-303:12 (Ishimaru) ("Q: Okay. When you received this document – do you see where it says 'Novartis Pharmaceuticals Corp.'? . . . [D]id you know what that referred to? A: I just assumed that it was a lawsuit that Novartis lost against some people who took their medication. Q: What was your assumption based on that Novartis had lost this lawsuit? A: Because they -- the fund was taking the credit risk of Novartis, who was supposed to pay the law firms that the fund had lent money to.").

[1054] Tr. 401:12—402:1 (Ishimaru) ("Q: Did you consider what Mr. Dersovitz told you orally as part of your decision to invest? A: Yes. Q: Why did you consider what he told you orally? A: Because it's really important what the main strategy of a fund is. Q: In your dealing with hedge funds, do you normally rely on -- in your dealing with hedge funds, do you normally consider what the manager tells you orally, or just what is in the documents? A: They are both important, because, as stated before, most offering documents offer a lot of leeway to hedge fund investors as to what they invest in so it's important to understand what the manager is intending to do.").

[1055] Tr. 434:23:435:10 (Garlock) ("Q: At one point you said you believed it would be helpful to have Mr. Dersovitz talk about the fund. Why do you say that? A: We had gotten to the point where the due diligence had advanced to the point where we needed to hear and ask questions directly of the lead manager on the fund. Q: Why did you want to hear questions answered directly from the lead manager? A: As a matter of practice, we always eventually want to talk to the lead manager. We had set this call up specifically to hear from Roni, Mr. Dersovitz, about the strategy, and to answer some specific questions."); Tr. 446:12-17 (Garlock) ("Q: And did you want to learn about the risks? A: We did. Q: Why? A: It's a very important part of our due diligence process to hear the manager explain the risk, the strategy in their own words."); Tr. 498:5-499:13 (Garlock) ("Q: When you had your November 16, 2012 call, you already had in your possession the marketing deck, the PPM and other documents from the fund, correct? A: Correct. Q: Why then did you want to talk to Roni Dersovitz about what his strategy was? A: I always want to hear from the manager what their strategy is. Are you asking why I wanted to talk to him in general, or about

something specific? Q: Well, you already had the offering memorandum, correct? A: Correct. Q: I believe you testified earlier, I think you used the word or at least you responded to a question using the word contract, correct? A: Correct. MR. WILLINGHAM: Objection. Leading. MR. BIRNBAUM: Just laying a foundation, Your Honor. JUDGE PATIL: Overruled. Q: If you already had what you might describe as a contract and marketing materials and other materials from the fund, why did you still want to talk to Roni Dersovitz about how the fund was investing its money? A: We don't make investment decisions based on what the PPM says without understanding the strategy from the people that are running the strategy. Q: And you wanted to hear it straight from the people running the strategy? A: Correct. Q: And you understood Mr. Dersovitz was one of those people? A: Yes.");

See also Tr. 779:7-17 (Mantell) ("Q: And if you're looking at the various risks associated with any investments, would you rely upon only what you were told in an oral meeting, or would you also want to look at the placement memorandum itself? A: So I rely on everything that is given to me, right? I'm given constantly, as we all are in all these meetings -- you know, we have sponsors that are making lots of oral presentations about things. So you certainly are not ignoring what you're hearing in those oral presentations.");

Tr. 894:6-13 (Wils) ("Q: And, Mr. Wils, why did you invest in RD Legal? A: Because of what I saw in the offering memorandum and what I -- that's -- what I read in the offering memorandum, which -- items 1, 2 and 3, which seemed very plain and simple. And also from how Mr. Dersovitz represented the organization on two occasions.");

Tr. 3607:22 -- 3608:10 (Gumins) ("Q: Mr. Gumins, what do you do to familiarize yourself in your process of deciding whether to invest or not in a fund? A: You're running a fund. I'm going to come over to your office and visit you. I'm going to sit down. I'm going to look and watch and listen repeatedly. I'm going to ask you probably a number of different questions that seem to be the same thing. But they're not looking for any change or sound drift in exactly what you do. And if you're doing equities, which is the bulk of what I would be doing, I know the trade. In this case, it's outside of my knowledge. Q: Did you do that, though, in this case? A: Absolutely with Roni.");

Tr. 2778:2-23 (Geraci) (Q: I think you said you spoke to individuals at RD Legal? A: Yes. Q: That included Mr. Dersovitz? A: Yes. Q: Mr. Dersovitz told you certain things about what the fund invested in? A: Yes. Q: Your conversations with Mr. Dersovitz also colored the way you received other materials you received from the fund? A: I would say yes. Q: If we can, turn please to another document I believe you looked at, 1760. I want to ask you to look at . . . First at 5 just to ask you if you recognize that. A: Yes. Q: What is that? A: Page 5 you said? . . .Yes, that's the list of frequently asked questions regarding the investment.);

Tr. 2858:24—2859:15 (Hutchinson) ("Q: I believe you also said in addition to reading the marketing materials, you also had a considerable access to Mr. Dersovitz; is that correct? A: That's correct. Q: You were able to speak with him on many occasions about RD Legal? A: Yes. Q: What he told you, did that provide important context for you when you approached the memorandum? A: Yes, it did. Q: You said it was unusual to have so much access to a person like Mr. Dersovitz? A: Yes. Q: What he told you, was that a particularly important factor in the mix of information that you were considering when you made your investment decision? A: It's an important factor.");

627. As Respondents' witnesses and experts explained, an important part of the due diligence process in understanding a fund is to speak directly to the manager.[1057]

628. And investors explained that they found the marketing materials to be important parts of the total mix of information they considered in making investment decisions about the Funds.

a. Mr. Garlock, for example, explained that even if he already had a copy of the Funds' offering memoranda, he wanted to review the marketing

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Tr. 5605:1-19 (Dabbah) ("Generally, once you've determined that you want to check out or investigate a particular investment, you contact the hedge fund. Or you may have already met the principals or a salesman at a conference, at a bank, on a social occasion. Generally speaking, hedge funds are not allowed to advertise. So it's -- it's -- you know, it's a little bit different than, you know, seeing an ad in the Wall Street Journal for Fidelity Fund. So once you do that, you will make an appointment. I generally am not in favor of going to visit a hedge fund. And they take you into the conference room, and you have some kind of salesman. I said, Look, I am only interested if I can meet the principals, the CFO and things like that. So you would make an appointment, generally, you know, in the afternoon when the managers are not involved in trading. And you take it from there.").

[1056] Tr. 1507:24—1508:9 (Ashcraft) ("Q: And it's what offers the powers of the fund manager to act with your money in the way that he should underneath the offering memorandum, correct? A: This is a base, yes. But I also hold people that are RIAs and other investors to – you get -- you get somebody who owns a business presenting to you and telling you certain things, that trumps -- I mean, it's their intents, their experience that's far more relevant. Because when you invest, you invest in people; not documents.").

[1057] Tr. 2858:24—2859:15 (Hutchinson) ("Q: I believe you also said in addition to reading the marketing materials, you also had a considerable access to Mr. Dersovitz; is that correct? A: That's correct. Q: You were able to speak with him on many occasions about RD Legal? A: Yes. Q: What he told you, did that provide important context for you when you approached the memorandum? A: Yes, it did. Q: You said it was unusual to have so much access to a person like Mr. Dersovitz? A: Yes. Q: What he told you, was that a particularly important factor in the mix of information that you were considering when you made your investment decision? A: It's an important factor."); Tr. 5270:21—5271:7 (Metzger) ("Q: Might you look elsewhere in the offering memorandum to see if you found any clues to resolve that inconsistency? A: So, in fact, I think twice in the document it talks about litigation, judgments and settlements. And I believe twice it uses 'all of the legal fee receivables' language. I think that appears twice. So I think both appear twice. To me, one is a defined term, and the other is not a defined term. But putting that aside, I think that I would just ask the manager, explain to me the inconsistency.").

materials because they often describe a fund's strategy in a way he found "easier to understand."[1058]

b. Respondents' witness Mr. Geraci echoed that marketing materials put other documents in proper context.[1059]

c. Mr. Metzger testified that he, too, believes marketing materials to be a material to investors' decisions about whether to invest in the Flagship Funds, explaining he "would certainly call [the Funds' marketing materials] material."[1060]

A. Investors Cared That There Was No Litigation Risk in the Funds

629. As explained by Travis Hutchinson, an investor Respondents called to testify on their behalf, the FAQs communicated that Respondents' "strategy is post-settlement, post-judgment and after a memorandum of understanding has been issued. And therefore they are really making an investment in the delay of payment versus there are other investments vehicles that allow you to take a position prior to the settlement judgment being rendered."[1061]

[1058] Tr. 497:24—498:4 (Garlock) ("Q: Why if you already had a PPM, or if you were asking for a PPM, did you also want to see a marketing deck? A: The marketing deck is the first thing that we review. It describes the strategy usually in more detail, a little easier to understand.").

[1059] See also Tr. 2777:23—2778:1 (Geraci) ("Q Did the marketing material help you understand other documents you received and put them in proper context? A I think so.").

[1060] Tr. 5306:14-19 (Metzger) ("Q: So sitting here today, is it your belief that the marketing documents are immaterial to an investor's decision to invest in the flagship funds? A: No. I certainly call them material. I would be contradicting my testimony about the importance of redeeming the DDQ.").

[1061] Tr. 2857:2-10 (Hutchinson) ("Q: What did you understand RD Legal to be telling you, what did you understand RD Legal to be distinguishing as their strategy as compared to others [in Ex. 1851]? A: Their strategy is post-settlement, post-judgment and after a memorandum of understanding has been issued. And therefore they are really making an investment in the delay of payment versus there are other investments vehicles that allow you to take a position prior to the settlement judgment being rendered.").

630. At the hearing, Dersovitz defined his business to include not only settled cases, but all "[l]itigation, pre-settlement, post settlement [and] appellate ... any aspect of the litigation finance space."[1062]

631. The distinction between funding cases at the pre-settlement stage and the post-settlement stage mattered to investors.[1063]

a. Mr. Mantell, for example, made a separate investment in a litigation funding company that invested in "contingent cases who have not yet been brought to judgment or settlement," and explained that company had target returns

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[1062] Tr. 2903:11-18 (Dersovitz) ("Q: You think the berth at least was as broad as litigation settlements and judgments, correct? A: The space that I operate in, sir. Q: That includes as far as you are concerned litigation, settlements and judgments? A: Litigation, pre-settlement, post settlement, appellate. My whole space clearly within any aspect of the litigation finance space.").

[1063] See, e.g., Tr. 267:24—268:12 (Ishimaru) ("Q: Was the fact that the plaintiffs had won their cases important to you or attractive to you in considering this strategy? A. Yes, because I was also aware of funds that lent money to lawyers who were fighting a case, and so the outcome was still assured, so those were higher risk and this strategy I believed was less risk. Q: Did you have any interest in funds that – where the lawyers were still fighting, as you said? A: No. Q: And why not? A: Because I just felt that rulings can go either way, and even for people who are experienced, they never really know."); Tr. 99:20—100:3 (Burrow) ("Q: Was the fact that the lawsuits were, I think you used the word 'settled,' was that factor important to you? A: It was, and I'm not an attorney and so having to understand how that worked was somewhat important. I didn't think I needed to understand every nuance of it, but the most important part to me is that they were settled. They weren't able to be appealed, and it was just a matter of waiting."); Tr. 951:24—952:22 (Condon) ("Q: Did it matter to you that the investments were settled cases? A: Yes. That was the key point of this investment, is that the cases can -- I'm not a lawyer, so I may use terms that may not be fully accurate to all of you guys, but there was no litigation risk associated with this investment, is what I was told, in other words. Money -- settlements had been agreed to by the parties, and it was a matter of time before those payments were going to be made and that was kind of the opportunity, the investment opportunity, was purchase these receivables at a discount to their value, and the seller was motivated to -- because they had their money sooner rather than some unknown period of time."); Tr. 1114:20-1115:9 (Schaffer) ("Q: Okay. And 'The primary focus on purchasing the aforementioned receivables and settled cases are not appealable judgments.' Did you read that? A: Yes. Q: Okay. Was that part of the information you considered in determining whether to recommend investment in these funds? A: Yes. Q: Okay. Was it important to you for any reason? A: Yes. Q: And what was the reason? A: It was important because, as I said, I was focused on the potential risks of the investment and the fact that these were settled cases seemed to reduce the risk, the spectrum of potential risks in the fund.").

"in the 20s" because investors demanded such returns when they knew they were exposed to the kind of "litigation risk" Dersovitz "insisted he was not taking."[1064]

b. Mr. Schaffer testified that the distinction drawn in the FAQ between RD Legal's strategy and those funds engaged in "pre-settlement funding" was consistent with what Respondents represented elsewhere to Mr. Schaffer orally and in other written documents.[1065] He further explained that he was not interested in Funds engaged in pre-settlement funding because of the different risks related to such funding.[1066]

1064 See n. 759.

1065 Tr. 1115:19—1116:7 (Schaffer) ("Q: I see. Okay. Please turn to page 2 at the bottom question, the bottom where it says: 'How is the strategy different from your competitors that execute legal fee strategies?' Is says, 'We are the only significant sized SEC registered entity that we are aware of with a post-settlement strategy. There are many groups doing pre-settlement funding to varying degrees of success.' Did you see that, sir? A: Yes. Q: Okay. Was that something that people at RD Legal had said to you orally at the outset? A: Yes. This is all consistent with what we talked about and what I read.").

1066 Tr. 1070:15—1071:12 (Schaffer) ("Q: Okay. And were you looking at this time for some of these other strategies that had presettlement funding? A: Well, we were open to considering anything, but we weren't interesting in that, just because it's well beyond our area of expertise. Q: What do you mean by beyond your expertise? Let me ask you this: Are you an attorney? A: No. Q: Okay. So what do you mean by beyond your expertise? A: I just mean that it would be hard to – to recommend a manager you not only to have think it's good, but you also need to have a strong conviction in your beliefs. And so it would just -- it would be hard for me to imagine getting a strong conviction about understanding presettlement funding. I just don't understand the risks, things that could go wrong, This, as explained to me, was actually pretty simple. And, as we'll probably get into it, there really were just kind of a couple of things that could go wrong, and those risks were understandable and kind of directly comparable to other types of deals that we were doing.").

See also Tr. 1069:5—1070:14 (Schaffer) ("Q: Okay. And if I can direct your attention to this first top part of the notes. … A: Sure. It says: 'Only U.S. Only already settled.' Q: What does that reflect? A: That reflects the type of investments that RD Legal was making. Q: Who told you that? A: Katerina told me that. Q: Okay. And did you -- what did you understand that to mean, only U.S. Only already settled? A: Well, this described the nature of their business, which was that they were purchasing receivables from attorneys and the type of business they were targeting

c. Mr. Furgatch testified that this language distinguished the Flagship Funds from those "investing in litigation risk in the outcome of a litigation."[1067] Furgatch explained that there are "many funds out there that [he'd] looked at and rejected, because they engage in investing in unresolved litigation."[1068]

d. Mr. Geraci testified that as part of his due diligence, he found that the "bulk of" "funds that offer legal-related type of assets ... were dedicated to cases that were still being heard," but chose not to invest in those kinds of funds.[1069]

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were only U.S. and only cases -- it's referring to the cases that were already settled. Q: Okay. Did that mean anything to you, that the cases were already settled? ... A: Well, it meant one less dimension of risk. I'm familiar enough with the asset class to know that there are many managers that do sort of pre-sell the funding and do different types of legal support, legal funding, but contain in them more uncertainty due to the uncertain legal obligations. So this was described to me was really more just due to the nature of the court system and the fact that some of these liabilities for reasons that she explained, just have long tails and just take a while to work through the system.").

[1067] Tr. 2009:24—2010:21 (Furgatch) ("Q: If you can turn, please, to 44-2. ... And the first bullet begins, 'We are the only significant-sized SEC registered entity that we are aware of with a,' quote, "post-settlement,' closed quote, 'strategy. There are many groups doing pre-settlement funding to a varying degrees of success.' What did that mean to you? A: Just what it says. That there are other funds that exist -- who have been around for quite some time actually, that will take an investor money to finance prosecuting lawsuits or claims. And so what an investor essentially is doing in that scenario is investing in litigation risk in the outcome of a litigation.").

[1068] Tr. 2117:1-21 (Furgatch) ("Q ... Is it correct, you would not invest in the fund if you thought there were positions in the fund that were collateralized based on the outcome of certain litigation concerning Novartis? A: That is a somewhat different question. So my objection is not to Novartis. I knew nothing about them. My objection was to reference to it being unresolved litigation risk. There was litigation risk. So the answer is, yes, I would not invest in a fund -- look, there's many funds out there that I'd looked at and rejected, because they engage in investing in unresolved litigation. In fact, that's morally opposing to what I do for a living, to actually finance lawsuits, to enable them to happen, when I am on the defense side of the borrower, if you will. So I wouldn't do that.").

[1069] Tr. 2779:5—2780:2 (Geraci) ("Q: If we turn to page 6, do you see toward the bottom 'How is this strategy different from your competitors that execute legal fee strategies'? A: Yes. Q: Is

e. Mr. Gumins testified that "the fact that the cases were settled or finished" was the reason he invested.[1070]

632. That a significant portion of Fund assets were invested in unsettled Osborn-related matters was critically important to investors.

a. Mr. Mantell said had he known that approximately ten percent of the Funds were invested in the unsettled Osborn cases, "that fact alone" would probably have led him to avoid investing in the Funds.[1071] He explained further that Respondents' decision to continue advancing money to law firms they had already deemed workout situations would "[a]bsolutely" would have mattered to him.[1072]

b. Mr. Furgatch did not know that the Novartis cases had not reached a settlement at the time he invested in the Funds until he testified, and explained that he would have wanted to know about such a "big bet" on

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that something you wanted to know when you were approaching your decision whether to invest in RD Legal? A: Yes. In fact, part of the due diligence we actually look at the space of other funds that offer legal-related type of assets. The bulk of them we found were dedicated to cases that were still being heard. ... Q: Did you choose to invest in that kind of fund? A: We did not.").

1070 Tr. 3603:25—3604:4 (Gumins) ("Q: And was the fact that the cases were settled or finished, was that important in your analysis of this investment? A: Absolutely. It was the only reason I invested.").

1071 See n. 841.

1072 Tr. 862:5-15 (Mantell) ("Q: Sure. Does that paragraph say anything about RD Legal continuing to lend into situations that had resulted in delinquency -- A: You mean, in situations like the Osborn Law firm where they followed on with the investment? Is that what you're talking about? Does this say anything about that? Q: Correct, Mr. Mantell. A: No, it does not. Q: Would that have mattered to you? A: Absolutely.").

receivables relating to unsettled cases because he wanted to avoid litigation risk.[1073]

c. Mr. Condon, when asked if he would have wanted to know if the cases identified as Novartis settlements were actually unsettled, explained he "was very clear to ask" that very question because "he want[ed] to be real clear there's no risk of the litigation going back into court, being appealed, et cetera."[1074]

d. Mr. Young likewise wanted to know whether Respondents were funding unsettled cases, calling such possible investments "a guardrail question" that spoke to what risks the Funds were taking. Mr. Young explained: "The whole issue to me, when you look at this investment, is that the case has

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[1073] Tr. 2036:5—2037:5) (Furgatch) ("Q: At that time, had anybody told you that more than 10 percent of the fund was invested in litigation that had not yet reached a settlement against Novartis? A: No. Q: Would you have wanted to know that? ... A: No. That's the first I'm hearing of it. Q: Would you have wanted to know that? A: Yes. Q: Why is that? A: Well, for all he reasons I discussed. Firstly, 10 percent is a big bet. But putting that aside, specialty lending -- I could give you a list of all the other funds that we invested in, and they were all specialty lenders just collecting on something certain. We don't want litigation risk. I've got $400 million of outstanding claim reserves backing the litigation I'm defending already.").

[1074] Tr. 1055:8—1056:5 (Condon) ("Q: You wanted to know if the cases referred to here as Novartis were actually cases that were ongoing litigation, unsettled? A: Yeah, I mean, through other documents we've gone over, I was very clear to ask that point. I wasn't going to rely on a spreadsheet like this to be able to understand it. It's got acronyms and terminology which I'm not familiar with. So I, again, went to the point and I want to be real clear there's no risk of the litigation going back into court, being appealed, et cetera. Right? So I can't tell you that I looked at this document and said, settlement type, hum, I wonder if some of these aren't settled. I made the assumption that they all were. Q: And with the financial statements that we just looked at – we don't need to call them all up again, but where you saw the obligors, like Novartis, you were wanting to know if some of those obligors referred to cases where there was no settlement? A: Of course, but, again, I would have wanted to know if there was anything other than a settled case in this portfolio. Had I known that, I may have made a different decision."); see also n. 977 (Geraci testimony concerning Novartis).

settled, right? So you want -- you know that your risk is Johnson & Johnson paying the lawyers for Merck or whoever."[1075]

633. Hirsch acknowledged that if investors knew the Funds had 10 percent of their value invested in a "workout situation," they might ask questions.[1076]

634. In particular, that the Flagship Funds purportedly invested in cases that were past the point of potential appeals or other disputes was important to investors, who considered it the "linchpin" of the strategy.[1077] In fact, Dersovitz acknowledged he would tell investors he "only invested in cases that had no appellate rights left."[1078]

[1075] Tr. 3793:13 (Young) ("Q: Would you have wanted to know from RD Legal if they were funding unsettled cases? A: Well, that would have been a guardrail question, yeah. Q: Would you have wanted to know whether they had funded unsettled cases before you invested? A: Yeah, sure. The whole issue to me, when you look at this investment, is that the case has settled, right? So you want -- you know that your risk is Johnson & Johnson paying the lawyers for Merck or whoever. I keep saying the same thing. I'm sorry.").

[1076] Tr. 4612:23—4613:15 (Hirsch) ("Q: So you don't put your losers in your marketing documents, right? A: No, you don't. You're not marketing -- it's kind of like, the reason why you do due diligence is because no one's going to hand you a crappy track record and say, Invest with me. That's the essence of due diligence. Because they're going to give you a track record that looks good. And you have to peel away the onion step by step and look for the things underneath it. Q: Because if investors knew that 10 percent of the fund was a workout situation, they might have questions about it, right? A: They may not. Q: But they would -- A: It's irrelevant in a fund that's completely transparent.").

[1077] Tr. 112:20—114:2 (Burrow) ("Q: And then it continues, 'this portfolio has the following key characteristics: The legal fees, which result only from settled litigation, are past the point of any potential appeals or other disputes, and therefore the dollar value of the minimum legal fee can be accurately determined.' Do you see that, sir? . . . And did that mean anything to you when you read it? A: Absolutely. This is the key component, the linchpin, if you will, of the strategy. The strategy only holds up in my opinion -- and even Roni agreed that there would be much more risk if the settlements were able to be appealed. So if they're purchasing – taking investor money and putting it in a place that's somewhat irrevocable, and they do not get paid on that settlement, then that money's gone, that's a loss to the fund. So that's a risk that we weren't willing to take. So that's very important. Q: I'm sorry. What's the risk you were not willing to take? A: To have a settlement be appealed in the amount that we had assumed and accurately determined in the way it's described here in this executive summary to not come forward. That would be a loss in the fund. Q: And was this factor – I think you called it the 'linchpin' in the strategy – was that factor important in your decision to recommend this investment to your clients? A: It was. If there was any opportunity for any of these settlements to be appealed, I would not have put my investor

635. Mr. Condon explained that past the point of potential appeals or other disputes meant "there was no legal risk" in the Funds' investments, which mattered to him in making his investment decisions about the Funds.[1079]

636. Mr. Furgatch likewise explained that it "[a]bsolutely" mattered to him that the cases underlying the Funds' investments were past the point of appeals or other disputes, which he

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money there."); Tr. 125:11—126:2 (Burrow) ("Q: Okay. Now, at any time between your first contact with RD Legal and this first investment, did anyone at RD Legal mention that RD Legal was advancing funds to law firms on non-settled cases? A: No. Q: Did anyone mention that they were advancing funds on cases where disputes were still ongoing? A: No. Q: And would you have wanted to know that information, if that weren't true? A: Absolutely, because they would not have received money from my investors. Q: Why not? A: Because it's counter to the way the fund is described, and it increases the risk in a very large way, and that wouldn't have been a place where I would have put my clients' money."); Tr. 605:23—606:7 (Mantell) ("Q: And, Mr. Mantell, you mentioned a moment ago that the receivables were from certain kinds of cases. What kind of cases did they arise from? A: Cases where judgment had already been obtained, and the opportunity to appeal had passed. So there was no risk of the merit of the case. The merit of the case had nothing to do with the matter. Q: Did that matter to you? A: It mattered vastly."); Tr. 647:9-16 (Mantell) ("Q: ... [A]t the time you invested in June of 2013, had Mr. Dersovitz or anyone from RD Legal ever told you that the funds had invested in any unresolved cases? A: No. Q: If they had told you that, would that have affected your decision to invest in the funds? A: Vastly.").

[1078] Tr. 2904:22—2905:14 (Dersovitz) ("Q: You began that answer by saying 'when I speak like that.' Were you referring to the kinds of representations made to investors asked about in the last question specifically, did you speak to investors and sometimes tell them that you only invested in cases that had no appellate rights left? A: Yes. But when speaking in those terms, I was dealing with the practical effect of an appeal and the practical effect of the -- of an appeal in the space that we fund in is that the settlement gets paid. ...").

[1079] Tr. 956:6-19 (Condon) ("Q: What did 'past the point of potential appeals or other disputes' mean to you? A: It meant to me there was no risk, there was no legal risk associated, as I described earlier, the -- evaluated the risk as being not would I ever recoup my investment, but when would I recoup my investment. Q: In making your investment decision about whether to invest in the RD Legal Funds, did it matter to that decision whether the legal fees, which arised [sic] from settled litigation, were past the point of potential appeals or other disputes? A: Yes. I was not interested in taking on litigation risk. As pleasant as you are, I don't wish to be amongst attorneys or courtrooms.").

understood indicated the Funds "were very careful to make investments in receivables for which all legal remedies had been exhausted."[1080]

637. Mr. Sinensky explained the statement from the offering memoranda that the legal fees "arise from settled litigation are past the point of any potential appeals or other disputes" meant the cases were "resolved or settled," meaning "finalized."[1081] The settled nature of the receivables was important to Mr. Sinensky.[1082]

638. Investors did not want to have to analyze litigation-related risks when parties were still disputing the matter, even if Dersovitz was convinced those risks were small.[1083]

[1080] Tr. 2016:7-18 (Furgatch) ("Q: If you could take a look down below under the title 'The portfolio' [in Ex. 41]. It reads in part, 'This portfolio has the following key characteristics. One, the legal fees which arise from settled litigation are past the point of any potential appeals or other disputes.' What did you understand that to mean? A: That they were very careful to make investments in receivables for which all legal remedies had been exhausted. Q: Did that matter to you? A: Absolutely.").

[1081] See supra n. 765.

[1082] Tr. 3314:21—3315:11:6 (Sinensky) ("Q: On the second bullet point here, it says, 'The primary focus is on purchasing the aforementioned receivables of settled cases or non-appealable judgments.' Do you see that? A: Yes, I do. Q: What did you understand that to mean? A: As I said previously, it was a settled case. To me, that's the key here, that the case was done, the award had been made, and it was finished. Q: And was that important to you in your investment decision? A: Yes, it was. Q: Why? A: Because it led me to believe that this was final and predictable and not vague or open to further activity.").

[1083] See, e.g., Tr. 702:18—703:8 (Mantell) ("Q: Mr. Mantell, why did you redeem? A: I redeemed, because I felt the risk profile of the fund, as revealed by the financial statements of 2013, was intolerable. Q: And why was it intolerable? A: By then I knew that there were defaults that were resulting in advances that I wasn't certain were warranted by the collateral, but then in, any case, would require an analysis of collateral that I'm incapable of doing involving contingent recoveries in non-resolved cases. And, in addition, we had the Iran claim for a huge concentrated position that had risks that we discussed throughout this morning that I'm not capable of analyzing to my satisfaction to a long shot. So I began to redeem."); Tr. 953:23—954:11 (Condon) ("Q: You mentioned it was a small portion of their strategy. Did it matter to you that the credit lines were a small portion? A: Yes, it did. What attracted me to RD Legal was a diversified portfolio of settled legal cases. The legal factoring side. And I understood the payers to be large corporations, financially stable, and capable of settling. And, in fact, all of the cases were settled and payment had been agreed to, and everybody was happy, or at least the outcome had been, you know, agreed to. ***I was a lot less interested in extending debt to attorneys, personally, who I never met, never***

B. The Marketing of the Funds as Diversified Affected Investor Decisions

639. Respondents' assurances that the Flagship Funds would be diversified also were important to investors in making their investment decisions about the Flagship Funds.[1084]

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would -- never would meet, and wouldn't have the capability of assessing their ability to repay." (emphasis added)); see, infra, n. 1101 (Schaffer).

[1084] Tr. 99:2-19 (Burrow) ("Q: Now, at some point I think you said you spoke with Ms. Chandarana. After you spoke to Ms. Chandarana, did you make a determination as to whether or not your client should invest with the RD Legal entity? A: I did. Q: And were these factors that she described to you as the strategy part of that consideration? A: It was. Those factors were important. Q: Is diversification something that's important to you in this determination? A: Yeah, absolutely. In our business, not putting all your eggs in a basket, as they say, is probably a great idea. With respect to the timing risk of receiving the settlements in the fund, it would be important to have many different obligations across many different estimated time frames, so that's the way I understood her diversification strategy."); Tr. 108:6-18 (Burrow) ("Q: Would you have wanted to know if any particular lawsuit was a large exposure in the fund? A: Of course. It would increase the risk. Q: How so, if you could just explain? A: Again, not having an opportunity to know what the percentage of any one particular lawsuit not coming through and paying into the fund, the only way to then mitigate that risk is to make sure you can have many of those positions in the fund so if any one has a low opportunity and doesn't pay, hopefully that one that doesn't pay doesn't make up a large percentage of the fund. So it's a classic diversification of your investment portfolio."); Tr. 276:3-22 (Ishimaru) ("Q: Okay. And in terms of that diversification, did anyone at RD Legal discuss diversification with you around the time you were looking to invest with them? A: Yes, I was told it was a well-diversified portfolio. Q: Who told you that? A: Mr. Dersovitz. Q: Okay. Was that a factor that was important to you in determining whether to invest in RD Legal? A: Yes. Q: Why? A: Because a highly concentrated portfolio has higher risk. Q: And can you just explain for the Court in your view why a highly concentrated has a greater risk? A: Because if a loan that has a significant portion of the fund defaults, then the investors would lose a lot of the money, whereas if it's a small portion, then the investors would lose some money, but it's not as big an impact."); Tr. 887:19—889:24 (Wils) ("Q: Did Mr. Dersovitz say at that meeting that there was any Iranian positions inside the funds you were considering investing in? A: ... I did ask him, because I always ask this -- I asked two questions. I asked about the concentration of risk. ... Q: And what about the first question you asked about concentration? A: I asked about concentration. And I believe he said that the greatest concentration that he had was 8 or 10 percent. I guess it was diverse. But, again, that would be a question that I always ask. I really don't have a clear recollection of exactly what he said. If anything was more than 10, I probably would have raised – been a bit more skeptical about it, because that's my habit. Q: . . . why would you have been a bit more skeptical about it? A: Because when you -- when you have a concentration of risk, you're putting the enterprise at risk. And you -- you have a black swan event where something happens and suddenly, poof, that -- that interest is gone. You have to write it off... Therefore, you want to be diverse as a sound business practice."); Tr. 1465:17—1466:1 (Ashcraft) ("Q: And was diversification important to you in making your investment decision? A: It is in most of them, especially in this particular kind of case. It is only because it's dealing with a market that doesn't

a. Mr. Condon asked Dersovitz directly about the Funds' diversification after he learned of certain concentrations in Merck-related receivables and Dersovitz assured him that the Merck exposure was an aberration.[1085] Accordingly, when Respondents offered Condon the chance to invest in the Iran "special investment opportunity," his email to Dersovitz distinguished that investment from the "'core' business of RD Legal—the diversified fund in which [Condon had been] invested for the past 20 months."[1086] Several days later, upon learning of the "high concentration of Peterson vs. Iran in the RD Legal Fund," Condon told Dersovitz "I am not a candidate for the SPV."[1087] Condon explained that he was not "totally comfortable with any

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have a secondary market that's very substantial. So once you have something -- I don't want to say you're stuck with it, but it is not like there is a large market to resale to. It didn't appear to be."); see also supra n.571.

1085 Ex. 263 at 3 (Condon notes at item 5(a)) ("Portfolio concentration limits were exceeded (Merck...Vioxx) when 'soft commitments' from fund-of fund investors evaporated 2008/2009"); Tr. 963:9—965:20 (Condon) ("[discussing Ex. 263 at 3] Q; You mentioned you were interested in diversification. What do you mean by that? A: Diversification, what do I mean by diversification? That means a diverse number of opportunities within one portfolio. Just as you're interested in a -- in a mutual fund that invests in hundreds of stocks potentially, rather than if you felt like, you know, IBM was the best company in the world and you put all your money in IBM, that's not diversified. Investing in a mutual fund that includes IBM and 499 other companies, that's a diversified. Q: Why do you care about diversification? A: Because it limits your risk. Should any one investment not work out, you have the other 499 that might work out. Q: Did you discuss this idea of diversification with Mr. Dersovitz? A: Yes. Q: When did you have a conversation with Mr. Dersovitz? A: I don't recall exactly. ... Q: That's before you invested in the fund? A: Yes. ... Q: From your conversation with Mr. Dersovitz, did you have any understanding as to what the fund intended to do going forward regarding diversification? A: Yeah, my understanding was that there was an explanation of why this happened. It wasn't intended to happen this way. The recession came along, some commitments dried up, that this -- this was an aberration. Q: And where did you get the idea this was an aberration? A: From my conversation with RD Legal. Q: Mr. Dersovitz? A: Yes."); see also supra n.590.

1086 Ex. 377 (Sept. 30, 2013 email from T. Condon to Dersovitz).

1087 Ex. 380 (Oct. 11, 2013 email from T. Condon to Dersovitz).

one case comprising such a large portion of the Fund. "Greater diversity of risk is preferred, however small the risk may seem."[1088]

b. Respondents received a similar email from Ballantine Partners, in which Austin Poirier explained: "The Special Opportunities Fund doesn't look like something we would invest in but I would like to spend more time on the *diversified* contingent legal settlement Fund."[1089]

c. Mr. Demby testified that Respondents, in describing how the Funds were structured, "made a very important point, that no single investment in the fund would exceed 5 percent of the fund."[1090]

d. Cobblestone's Jason Garlock informed Respondents that his "primary concern is about the concentration of the portfolio," and asked "[h]ow much of the portfolio is concentrated in the top 1, 5 and 10 holdings by creditor."[1091]

e. Mr. Mantell explained that his actions upon learning about the Funds' concentration in Peterson-related assets evidenced the importance of that

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[1088] Ex. 380 (Oct. 11, 2013 email from T. Condon to Dersovitz); see also Tr. 975:4-11 (Condon) ("Q: The you wrote: 'Greater diversity of risk is preferred, however small the risk may seem.' Why did you want diversity, however small the risk may seem? A: Because stuff happens. Q: Right. A: Stuff happens, you know. We may think we have it all figured out, and yet stuff happens. So it's – I want as many of ways to mitigate risk as possible.").

[1089] Ex. 382 (Nov. 13, 2013 email from A. Poirier to M. Chandarana) (emphasis added).

[1090] Tr. 2167:11-24 (Demby) ("Q: What did they tell you about how the fund was structured? A: They buy legal settlements from attorneys in cases that have been fully adjudicated; that there are no appeals pending; that the moneys that are due to the plaintiffs are held in escrow; and that the chance of a default is extremely minimal; and that there was a very high return associated with the investment, 13.5 percent. They mentioned that the investment is not correlated to the stock market. And they made a very important point, that no single investment in the fund would exceed 5 percent of the fund.").

[1091] Ex. 302 at 1 (Oct. 4, 2012 email from J. Garlock to M. Chandarana to J. Garlock).

fact: "Q ... [I]f Dersovitz had told you at the time that 50 percent of the fund was in – invested in positions related to the Peterson case or Iran, would that have changed your investment decision? A Absolutely. And you can know that from the fact that the minute I learned later that he had slightly more than that exposed, I redeemed within about two days."[1092]

f. Mr. Mantell also testified that Dersovitz's assurances that "he was going to diversify and not take undue concentration risk" impacted his investment decision "[v]ery significantly."[1093]

g. Mr. Furgatch testified asked Dersovitz whether the Funds were complying with their underwriting guidelines regarding concentration limits, and Dersovitz's answer—that they "absolutely" were—mattered to Furgatch "[v]ery much so" in making decisions about whether to invest in the Flagship Funds.[1094]

[1092] Tr. 655:12-22 (Mantell).

[1093] Tr. 619:15—620:11 (Mantell) ("Q: Looking at risk No. 2 [in Ex. 336 at 17, the Dec. 2012 Alpha Presentation], what does that risk discuss? A: That's a critical risk in any investment thinking that we do, which is, you know, What kind of concentration risk are you accepting? And he was saying that the concentration risk in his portfolios was low. And he was in this case pointing out that he had some processes in which he limited risk to particular payors with attention to the creditworthiness of those payors. So he'd look at their ratings or other information about their liquidity or prospect of paying. And he would make business decisions about how much exposure to take to different such payors based on his insight into their creditworthiness from all available information. And he was going to diversify and not take undue concentration risk. That's what he's telling you. Q: Did that matter to you in your investment decision? A: Very significantly.").

[1094] Tr. 2031:4-20 (Furgatch) ("Q: I'm sorry. What are you say -- when you asked Mr. Dersovitz whether the fund was complying with its underwriting guidelines, what did you say his response was? A: 'Absolutely.' Q: And what did that mean to you? A: That in no uncertain terms, notwithstanding his memory of how much negligible Iran exposure is in there, that there was a very, very small percentage. I think my recollection at the time was, like, a 5 percent limitation on any one issuer. Q: And did it matter to you -- did Mr. Dersovitz's 'Absolutely'

h. Mr. Levenbaum testified about the importance of the marketing materials' representation that the portfolio "obligor investment matrix is designed to create a diversified portfolio in investment positions" [1095]

640. Investors rejected the suggestion that concentration is acceptable as long as the Funds were concentrated in "lower risk" investments. Mr. Wils, for example, explained that investments in Enron would have been considered low risk investments, but concentrating investments in a company like Enron, based on a "subjective determination" of the risks of that investment, would increase the risk of a portfolio in ways he did not want.[1096]

C. Investors Did Not Want to Invest in the Peterson *Case*

641. Investors wanted to avoid the political risk in the Peterson investment, i.e., the risk that the U.S. government would decide to compromise the frozen assets in an effort to normalize relations with Iran.[1097]

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answer matter to you when you then considered whether to invest in the flagship fund? A: Yes. Very much so.").

[1095] Tr. 2965:16—2966:10 (Levenbaum) ("[regarding Ex. 528 at 8] Q: Okay. A: ... Fourth, portfolio obligor was -- investment matrix is designed to create a diversified portfolio in investment positions. That was very, very appealing to me. The factor -- Q: Why was that very, very appealing to you? A: Because my -- as an investor, I invest in various category – outside categories. Category 1, 2, 3, 4, 5, 6 are all different degrees of risk. But my investment overall is diversified. Again, to cover myself, if one type of investment doesn't turn out well, you know, I got the others to cover me. I don't put all my money in one basket. So diversification was very important as far as my investment planning was concerned. Q: Okay. Did this document convey to you that this fund would be diversified? A: Absolutely, yes.").

[1096] Tr. 926:1-11 (Wils) ("Q: Does concentration always increase risk? A: It's a generalization. And -- but in my experience, concentration does increase risk. Q: What if you're concentrated in a position that has lower risk? A: You're still taking -- you're still increasing a risk. That's a -- that's a subjective determination. Image you were invested in Enron. Great company. Fabulous company. Had bought a lot of Enron stock. Great reports, great financials. Poof."); see also, supra, n.1088.

[1097] See n. 213; Tr. 3613:12—3614:1 (Gumins) ("Q: Would you have wanted to know about that case if it was in your fund before those investments? A: Yes. Q: Why? A: Because I wouldn't invest in that. Q: Why not? A: Headline risk. I don't invest. Two reasons: First, there's headline risk. **If we as the United States Government were to decide that it's in the United**

a. Mr. Mantell testified that investments in a case relating to Iran "introduce[d] country risk into the equation."[1098] Mantell explained: '[Y]ou couldn't possibly from any of the written material[s] imagine that you are going to take exposure to the question of whether or not Obama could feel the need to solidify his Iran deal and could pressure judges in any way ... or "that you needed to worry about whether or not the President of the United States might decide he wants to set aside the seizure of funds that Ron Dersovitz was relying upon because he wants to make a deal with Iran."[1099]

States Government's best interest to make a treaty and have a rapprochement with Iran, we will forget about the bombing because it's in the interest of the United States Government. Second, I specifically told Roni that it was blood money. And Jews don't belong doing that kind of business." (emphasis added)).

[1098] Tr. 648:8-19 (Mantell) ("Q: Did Mr. Dersovitz or anyone from RD Legal ever tell you that the funds would invest in cases related to Iran at the time you invested? A: No. Q: And if they had told you that, would that have affected your decision to invest in the funds? A: That fact introduced a completely different risk. And it's sort of worthwhile to talk about what that risk is, because it's a whole category of risk. In our world, there's country risk. And that's introducing country risk into the equation...").

[1099] Tr. 650:9—651:8 (Mantell) ("THE WITNESS: I really was only trying to say that there is a difference -- there is a new kind of risk involved, which no one had ever dreamed of in the discussions or in the -- out of the materials, which is country risk. Is there -- for example, you couldn't possibly from any of the written material imagine that you are going to take exposure to the question of whether or not Obama could feel the need to solidify his Iran deal and could pressure judges in any way, whether through the use of the attorney general in the action in the Iran case, in the Peterson case on appeal -- right? You couldn't imagine when you're making this investment that you needed to worry about whether or not the President of the United States might decide he wants to set aside the seizure of funds that Ron Dersovitz was relying upon to get paid, because he wants to make a deal with Iran. It's just not a risk that you could have imagined. It's adding country risk. I wasn't trying to say anything more sexy than that. If anyone wants to say he doesn't add country risk in this, I'll only be too happy to defend my expertise in response.").

642. Investors cared about potential litigation risk, including precisely the kind of appeal risk that was present in the Peterson Turnover Litigation, regardless of Respondents' confidence in its success.[1100]

a. Investors such as Mr. Schaffer testified that he viewed the Peterson case as "fundamentally different" from the matters in which he believed the Funds invested, and explained he "didn't want to be in a situation where [he] was

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[1100] Tr. 658:19—660:1 (Mantell) ("Q: And the fund that it's discussing in Exhibit 362, this other fund, did you invest in that fund? A: No. Q: Why not? A: I'm sorry. We're talking about the same fund, the SPV? Q: Yes, the SPV. A: I didn't invest in it. It's taking on a new kind of risk. The risk is described here. It involved country risk, political risk. Total to me -- I'm in a -- as an investor, one of the few things that I'm trying to do is to use my brain power to analyze the risk. I can't analyze this risk. It's inscrutable to me in a whole bunch of ways. And, in fact, the witness -- **until the last minute, Ron was saying it isn't going to get appealed to the Supreme Court. And the issues --he wrote some notes somewhere, I don't remember where they were, about what issues would govern what, in fact, would determine the case. Some other issues regarding separation of powers were in there in Justice Roberts' mind that we certainly never heard about when Ron was talking about this risk even when he disclosed it here. He didn't say, Well, maybe we're going to lose this collection, because Justice Roberts may think the Congress shouldn't have authorized the seizure of that money.** It's too sophisticated to think about, you know, a way that could give you analytical edge. So I don't make decisions on that basis." (emphasis added)); Tr. 662:18—663:6 (Mantell) ("Q: . . . Do you recall when you received this email [Ex. 365] whether anything in it changed your opinion about wanting to invest in the Iran fund? A: Just reverse. It reinforced my opinion. Q: How so? A: Because it talks about the fact that there are -- **he's starting to talk about Iran and then these -- this money that's been set aside. If Ron's takes an appeal, what's going to happen. I'm not interested on Ron's speculation on what will happen in appeal. It's the last thing I want in the world to know about, that Ron's going to take an appeal, and I have to take a guess about what's going to happen.**" (emphasis added)).

See also Tr. 1473:9—1474:7 (Ashcraft) ("Q: And in terms of the -- you discussed earlier something about binary risk. And, again, how did you understand that? A: In my opinion, whenever a separate fund, if that never – and it did bounce around for many years already. And if it was never awarded or – or upheld, I'll say that -- it just seemed like it had a whole lot of things that could go wrong in it, in my judgment. You had -- you know, the past administration still dealing with Iran and not in the best of terms -- these are things that come up in other meetings, posters, presentations. They were trying to get their deals that they needed to get. You just never knew whether that would be tossed in or not. So that was part of the nuclear arms deal. Obviously, that wasn't my thoughts in 2013. It was through just other discussions even at the Tiger 21 meetings. So it was -- just still had a lot of risk to it, so -- and when I say binary, had it not been judged by the Supreme Court last February, it could be out there another 10 years. You just don't know."); ¶¶ 441-442 (Gumins informed Dersovitz of his objections).

trying to evaluate legal risk" even if Dersovitz thought the chances of success in Peterson were excellent.[1101]

643. Investors also did not want to invest in the Peterson related opportunities because of the different credit risk it represented compared with how Respondents marketed the Flagship Funds, as explained by Mr. Mantell:

> I want to add one other thing, though. I really do. Because this is the essence of the entire matter. . . . That's credit risk. . . . I just want to say there are two things that would have affected me about that. One was the country risk. The other was the credit risk, right? It's just two different kinds of risk, both of which are not -- were not disclosed. And the reason I say that is because when you look at all of the disclosure about credit risk, it's constantly saying the credit risk is low, the credit risk is low. Because the payor is very capable, right? We're going to make selective judgments. We're only going to allocate certain amounts to Fortune 500 companies and, you know, we're -- it's always talking about very, very creditworthy payors. **What it's not doing is suggesting the entire creditworthy of the payor is going to be**

[1101] Tr. 1162:25—1164:16 (Schaffer) ("Q: ... [You] knew [Peterson] was a non-appealable judgment, how is it different then? Can you explain that? A: Well, looking now with hindsight, I think that what's happened over the past 18 months is -- informs my opinion as to why I knew it was different. And I don't know if it's been discussed at all in the case before me, but the saga about whether we were going to get the money and whether the supreme court was going to take the case or not, and when they did, I thought the judgment was going to be -- I'm sorry, I'm going fast. All of this together has been, you know, I think, in my mind, confirmation of why it's fundamentally different. I was, at one point, very worried about whether they were going to get their money back at all. What happens if the supreme court ruled against our position. So that, to me, was a stressful time where I was basically, fingers crossed, waiting for news. So that's unlike any other case, I believe, in the portfolio. Q: And was that the kind of -- the situation you wanted to be in when you invested in the traditional strategy, stressful time waiting for news on a case? A: No. Q: These types of delays, you equate those types of delays to this process or this saga? A: No, because I mentioned earlier, I didn't want to be in a situation where I was trying to evaluate legal risk and throughout the time, post redemption, when I was asking for updates from the firm, you know, I really, I believe I was put in the position where I was just—when I expressed the concern to Roni that, 'what if the Supreme Court rules against us?' He was very strong that this -- it's going to work. The votes were there. But he said even if it doesn't, there was another path to liquidity, there was another process, the details of which I think are in my notes, about how he might get paid. So, it all sounded somewhat comforting, but it was beyond my ability to handicap the odds of all this happening. I was in over my head at that point, if that makes sense.").

> **immaterial. We never get to the question: Does Iran have money? Because the question we're having to deal with is: Can we get at it? That's a completely different thing than if we are dealing with: Could we get at Aetna or -- or AIG, if AIG didn't pay on a claim, whoever the insurance company was.** That risk was never anywhere in these documents in any way you could fantasize about. If you can find it, you're a better man than I.[1102]

644. The nature of the recipients of the funding and the funding terms as to those recipients mattered to investors as well, particularly the level to which Respondents hoped to profit at the expense of veterans and their families, and would have affected investors' investment decisions.[1103]

[1102] Tr. 651:21—653:10 (Mantell) (emphasis added); Tr. 770:19—771:17 (Mantell) ("Q: . . . So what was your analysis? What did you do? A: My analysis? Q: How did you get -- A: My analysis -- Q: -- to yours? For example, did you do any research? A: As to the likelihood of collecting against the country of Iran. **I don't have to be a genius to know that there is a risk against collecting against the country of Iran. And I don't need to do any further research for the world to know that that is a fact. Q: There was a turnover action -- A: We couldn't even get our people out of the country of Iran.** Q: Now, Mr. Mantell, you said you did an analysis of the risk in the Peterson case, correct? A: You just heard my analysis. I'm not being cute. **I didn't have to go further than to say there is a drastic risk that if we don't get a hold of these segregated and seized assets, we will not get paid. It's a huge risk. It's an obvious risk.**" (emphasis added)).

[1103] See n. 213 (Wils); Tr. 918:8—919:4 (Wils) ("Q: And you told us there were some reasons why you were not interested in the Iran positions; is that right? A: Yes. Q: One of them said you did not want to profit from harm to others? . . . You said you did not want to profit from -- on a misfortune of others? A: In that particular case, yes. Q: In that particular case? A: Yes. In particular. People lost their lives. . . . And also I would add that it appeared --here's another thought about that. **There was a greater return, which means that the discounts were bigger. And they were to individuals as opposed to where the payor was a corporation.** Am I making sense here? That the people who would collect the returns were individuals who lost family members." (emphasis added)); Tr. 3734:12—3735:11 (Gumins) ("JUDGE PATIL: But if you could just describe to me why those particular issues were important to you, either as a matter of culture or your own tradition, that would help me to understand your ethical conditions and your views. THE WITNESS: I don't know the right way to put it. But it's always Jews and money, the moneylender, going back for 2,000 years. I did not think that we should be loaning money on American servicemen that had died in the 1982 bombing. If you're part of a suit and you're going to take that money as a memory for your son and you're going to create a charity or something, that's mekhaya. It's a wonderful thing to do. If you're a Jewish attorney that is going to represent that and you're going to make that your profitable business, it's morally wrong to me. If you're a

645. Investors cared about the risk of other claimants against the assets in the Peterson Turnover Litigation.[1104]

646. Respondents' offering memoranda for the Iran SPV also acknowledged the materiality of these risks to investors, including risk that the Turnover Litigation would be unsuccessful, duration, additional claimants, constitutionality, and U.S. relations with Iran.[1105]

647. Investors testified that Respondents did not disclose that the Flagship Funds were exposed to the Iran-related risks disclosed in the SPV Offering Memorandum, and that such information would have been important to their investment decisions about the Flagship Funds.[1106]

Jewish person and you're going to donate 100 percent of that to the fund, I would respect you. It's just, you have to draw a line somewhere. And that's a line that I would draw. JUDGE PATIL: What did you mean when you said you were culturally Jewish? THE WITNESS: I love my culture. I just don't go to temple. You can be a Jew. You don't have to go to temple.").

See also, supra, n.869 (Investor Ashcraft not "enamored" with Peterson investment); ¶¶ 445, 446 (Iran investment was material to Gumins because of his Jewish tradition).

1104 Tr. 657:25—658:12 (Mantell) ("Q: And with bullet No. 2, what do you understand that bullet to be discussing? A: Oh, risks about what share you might have in seized assets, as a means of getting -- and now New York State law might bear upon it. That's another kind of risk, you know, that of course we never had any thought about. Q: And why didn't you have any thought about that risk, sir? A: It was never mentioned as something being relevant to anything that was being done. **When I started reading this, I thought, I don't want any of these risks, so I stopped reading it.**" (emphasis added)).

1105 See supra ¶¶ 308-313 (regarding the Iran SPV Offering Memoranda).

1106 See, e.g., Tr. 166:14—167:6 (Burrow) ("Q: And what, if any, of these risks that you see here [in Ex. 273, SPV Offering Memorandum] were described to you in terms of the funds you were invested in? A: None of those risks were involved in the funds I was invested in. That was my understanding: Those risks did not exist in that fund. Q: Did anyone at RD Legal ever tell you that the funds you were invested in had any of those risks? A: No, not at all. Q: Would you have wanted to you to know if any of the funds your clients were invested in had any of these risks? A: Absolutely. Q: Why? A: Because it would change my decision to invest in it because it increased the risk, and the number of things I needed to consider then were larger than I understood initially.").

a. Ms. Ishimaru, for example, testified that she would have wanted to know if a defendant was contesting its obligation to turn over funds "[b]ecause it changes the whole risk profile of the investment."[1107]

648. Respondents also flagged various Peterson-related risks in other materials sent to potential investors in the RD Legal Special Opportunities Funds. For example, in a "Special Opportunity Model" spreadsheet Markovic sent in April 2014 (at Dersovitz's instruction),[1108] Respondents represented that the "ultimate yield on these assets is subject to many variables including but not limited to ... the success or failure of the Turnover Litigation ... risks associated with the distribution of proceeds following any success of the Turnover Litigation, and the timing of distribution of proceeds following any success of the Turnover Litigation."[1109]

649. Investors' understanding of whether, and to what extent, the Flagship Funds invested in Peterson receivables was an important part of the mix of information bearing upon their investment decisions.[1110]

1107 See, e.g., Tr. 286:20—287:11 (Ishimaru) ("Q: Okay. Would you have wanted to know of the time payments might be delayed because the defendant was contesting its obligation to turn over funds? A: I would have liked to have known that, yes. Q: Why? A: Because it changes the whole risk profile of the investment. Q: Can you explain in your own words why that changes the risk profile. A: Lending money to law firms that have won a settlement for its plaintiffs against a defendant that had agreed to pay because they were actually forced to, and as Mr. Dersovitz had said before, that they had agreed because they have the wherewithal to pay, so it was a matter of time that these payments would be made, whereas if the defendant itself is contesting it, that changes the whole scenario.").

1108 Ex. 406 (Apr. 29, 2014 email from Markovic to P. Ingram and "x," copying Dersovitz ("Roni asked that I send you the model...")).

1109 Ex. 406-A at Cell B-82.

1110 Tr. 158:16-24 (Burrow) ("Q: Would you have wanted to know if that was not the case: If the funds you had invested in were invested in this opportunity, the Iran opportunity? A: Absolutely. Q. Why? A: Because it increased the risk and that risk as I described was not one I was willing to take. I didn't want to have any RD Legal fund in any capacity in any size in any position."); Tr. 877:18—878:15 (Wils) ("Q: And were you interested in investing or potentially investing in the separate entity? A: No. I was not interested in investing in that. Q: Why not? A:

a. Mr. Demby similarly "asked for complete redemption of [his] investment" after learning that the Funds had a concentrated investment in the Peterson case.[1111] He testified that had he "known at the time [he] invested that the Iranian fund constituted approximately 50 percent of the fund that [he] invested in," he absolutely would not have made his investment.[1112]

b. Mr. Ashcraft testified that the "binary" nature of the Peterson claims meant investments in those receivables had "[m]uch higher risk," and described "a whole lot of things that could go wrong" in the Peterson case, including those risks Respondents identified in the documents they used in marketing the Special Opportunities Fund.[1113]

A few reasons. First of all, the claim was -- the event was 30 years prior. And I -- and I just thought that's a long time. Also, there was political risk. I think having a claim against a country like Iran is extremely risky. I understood they had assets in the United States, but I just thought it was a long stretch from having a claim to settling a claim. And also, frankly, the idea -- and this is where -- I think we're getting a little bit ahead of ourselves, because there is a second conversation. But I'll answer your question. That the idea of profiting on someone else's misfortune and -- wasn't something that didn't feel right to me. [sic] It's not my nature. And it's something that I wasn't – I really wasn't interested in."); Tr. 896:6-20 (Wils) ("Q: Would it have affected your decision to invest if you had known that in July 2013, 50 percent of the fund was invested in the Iran position? A: Most definitely. Q: Why? A: I wouldn't have invested in it. Q: Why not? A: Because it was – 50 percent was in something that I didn't want to invest in. It broke two of my rules. It was a great concentration. Five times is my standard. And it was an investment that I would not favor – look upon favorably, for the reasons that I discussed."); n. 967 (Schaffer testimony).

[1111] Tr. 2183:12-16 (Demby) ("Q: After you read the [Wall Street Journal] article, what did you do? A: I sent an email to Katarina, and I asked for complete redemption of my investment in the fund. I wanted nothing more to do with the fund.").

[1112] Tr. 2196:17-21 (Demby) ("Q: Dr. Demby, if you had known at the time you invested that the Iranian fund constituted approximately 50 percent of the fund that you invested in, would you have invested? A: Absolutely not.").

[1113] Tr. 1471:12—1474:7 (Ashcraft) ("Q: And in discussing that opportunity, what did Mr. Dersovitz say about it? A: ... [I]n his legal opinion, that he was pretty confident with that opportunity. Now, it was basically a separate investment option. Much higher risk, because it's kind of binary. Either -- if it never transpired or was completed, you know, he's taking those

c. Mr. Levenbaum "[a]bsolutely" would have wanted to know about investments in Peterson because he viewed the "Iranian type of risk" to be "a risk times ten," and "was not willing to participate" in investments with that kind of risk.[1114]

d. Mr. Sinensky testified he "would not have invested in all likelihood if [he] knew [the Peterson case] was in there to [the] magnitude [he later learned existed.]"[1115]

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monies to do a similar thing, pay out the families of the Marines that were owed. But until it was collected, just like anything else, you know, you're still kind of tied, hoping you can get settlement on it. So, in our opinion, and it was presented that way, the risk profile was kind of night and day between the two. You were -- now you've morphed over into a singular investment that's kind of an all or nothing, which changes the game of risk. The payouts were -- you know, we've been dealing with federal government, dealing with Iran, dealing with -- I mean, it is much more complex, at least in my perspective. ... Q: And in terms of the -- you discussed earlier something about binary risk. And, again, how did you understand that? A: In my opinion, whenever a separate fund, if that never -- and it did bounce around for many years already. And if it was never awarded or – or upheld, I'll say that -- it just seemed like it had a whole lot of things that could go wrong in it, in my judgment. You had -- you know, the past administration still dealing with Iran and not in the best of terms -- these are things that come up in other meetings, posters, presentations. They were trying to get their deals that they needed to get. You just never knew whether that would be tossed in or not. So that was part of the nuclear arms deal. Obviously, that wasn't my thoughts in 2013. It was through just other discussions even at the Tiger 21 meetings. So it was -- just still had a lot of risk to it, so -- and when I say binary, had it not been judged by the Supreme Court last February, it could be out there another 10 years. You just don't know.").

[1114] Tr. 3084:6-23 (Levenbaum) ("Q: When you were investing in the RD Legal funds ... did you understand that you would be taking that kind of risk, the Iranian type of risk, whatever it is in your mind? A: No way. That is a risk times ten. Q: Would you want to know whether RD Legal had already invested in that case when you invested? A: Absolutely. Q: Would you have wanted to know whether RD Legal was planning on further investing in that case, including victims, when you invested? A: Yes, sir. Q: Why? A: Because that was a risk that I was not willing to participate in or be involved in, either indirectly or directly as an investor with RD.").

[1115] Tr. 3337:10-15 (Sinensky) ("Q: Why did you redeem? A: Well, once I understood fully that the fund had invested in the Iran deal, I didn't want to hold the investment any longer because it was beyond my parameters. I would not have invested in all likelihood if I knew it was in there to this magnitude.").

D. Respondents' Representations Concerning Credit Risk and Duration Were Material

650. Representations about the ordinary duration of the Funds' receivables mattered to investors' decisions.[1116]

a. Ms. Ishimaru testified that her understanding that "there was really only duration risk involved ... [a]nd maybe some credit risk of the defendant" "was important in informing [her] investment decision," because she "wasn't interested in taking risk where the lawyers had a possibility of not getting paid."[1117]

b. Mr. Burrow testified that Respondents' representation that the Flagship Funds' "risk was mainly the timing" was important to him, and he would

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[1116] E.g., Tr. 146:6—147:3 (Burrow) ("Q: Okay. And on the next page [1592-8], where [the Alpha presentation] says opportunities, the fourth bullet point that says, 'Settled court cases do not immediately lag 9 to 18 months.' A: Yes. Q: Did that mean anything to you? A: It did. It matched up with the way I understood it and how Roni described it. Nine to 18 months was never a certain time frame, but sort of a generic time frame in the future, 9 to 18 months. So I understood that to be if the runway of how long we would have to wait to actually get the money. Q: Would you have wanted to know if the lag was bigger than that? A: Sure. If it's 20 months, that's not that big of a deal, right? But if it's much longer than that or if it's undetermined, I think that's something that we would all need to know as investors. Q: Why? A: Because, again, that is the main risk of the fund: The timing of the money coming in, the quicker the money comes in, the better the opportunity with respect to the investor. They're always going to get the same return. It's always going to be in RD Legal's interest to try to get it sooner, but if the time frame was so long, then that means maybe there's not enough money for the fund to operate, so that increases risks, so I want that to be in that time frame as described.").

[1117] Tr. 270:9—271:12 (Ishimaru) ("Q: Okay. Now, do you see [at Ex. 225-3] where it says, 'The Fund' -- I'm going to start with the second half where it says, 'The Fund portfolio is principally comprised of purchased legal fees associated with settled litigation. This portfolio has following key [characteristics]: The legal fees which arise from settled litigation are past the point of any potential appeals or disputes, and therefore the dollar value of the minimum legal fee can be accurately determined.' Do you see that? A: Yes. Q: And did that mean anything to you in terms of the strategy of these funds? A: Yes, that there was really only duration risk involved. . . . A: And maybe some credit risk of the defendant. Q: Right. And was that consistent with what you had been told orally? A: Yes. Q: Okay. And what that a characteristic that was important in informing your investment decision about these funds? A: Yes. Q: Why was that? A: Because I really wasn't interested in taking risk where the lawyers had a possibility of not getting paid.").

have wanted to know if there were risks other than timing and an obligor's creditworthiness.[1118]

651. Part of the liquidity of the Flagship Funds was tied to the expected duration of the matters in which it invested—if a matter was of an expected duration longer than that of the 2-4 years mentioned in the Flagship Funds' Marketing Materials (such as the funding of the 9/11 first responders victims), then even Respondents' employees expected the Flagship Funds not to enter into such transactions within the Flagship Funds.[1119]

[1118] Tr. 97:5—98:18 (Burrow) ("Q: Okay. You mentioned that [Meesha Chandarana] said the risk was mainly the timing. Was that important to you in any way in considering RD Legal? A: It was. Again, as a professional investment advisor, managing someone's portfolio and their personal financial life has a lot to do with risk. In fact, it's the first thing we look at. So in an alternative investment like RD Legal, the most important aspect would be to understand which risks were being taken compared to the average risk a person takes in, say, the stock market or the bond market. So my understanding of the risk and the way they explained it, was simply timing. The second risk was credit and if for some reason a large company like Pfizer decided not to pay because they went bankrupt, that would be extremely low probability, but that risk did exist. So really it was just the timing of the money coming in that was the risk. Q: Would you have wanted to know if there were other risks involved other than, I think you said, timing and creditworthiness? A: I did. When I was looking at the documents, the fact sheets and the offering documents, it mentioned the same risks that she had mentioned. I did get a chance to meet the manager, Roni, at some point a few months after I talked to Meesha over the phone. He brought up another risk which I thought was interesting, and that's that the law firm that essentially would have the settlement come into the escrow account would essentially steal it and run away and never be seen again, but of course, in doing that, the attorney would lose his license to practice law, so there's a lot at stake, plus he had a legal obligation and fiduciary obligation to not do that. So I thought that was also a small risk, but outside of those risks that was my understanding, you know, of the problems that could occur.").

[1119] See, e.g., Ex. 1198 at 1 (July 11, 2011 email from J. Genovesi to A. Hirsch expressing that the 9/11 first responders opportunity "cannot be expressed in our current funds because of the liquidity mismatch" and thus "will be marketed as a separate fund or a structure product"); see also Tr. 1205:13—1206:4 (Genovesi) (Q: Then let's turn to your email up top on July 11, 2011. And the email begins, 'The first opportunity cannot be expressed in our current funds because of the liquidity mismatch.' What opportunity are you referring to there again? A: It looks like the 9-11 first responder. Q: And what did you mean by the liquidity mismatch? A: The RD's fund offers its investors certain liquidity. And this opportunity had a time horizon that did not match that liquidity. Q: Because it was shorter? longer? or what? A: Longer, I believe. . . . It wouldn't have been a mismatch if it was shorter.").

652. As Mr. Furgatch testified he understood the FAQs to be describing, duration was an important component of assessing the risk of the investment—the longer the duration of a position, the greater the risk.[1120]

E. The Manager's Flexibility Did Not Decrease the Materiality of Respondents' Misstatements to Investors

653. The offering memoranda contained a "flexibility" clause that read as follows:

> The Partnership will not be limited with respect to the types of investment strategies it may employ or the markets or instruments in which it may invest. Over time markets change, and the General Partner will seek to capitalize on attractive opportunities, wherever they might be. Depending on conditions and trends in securities markets and the economy generally, the General Partner may pursue other objectives or employ other techniques it considers appropriate and in the best interest of the Partnership.
>
> There can be no assurance that the Partnership will achieve its investment objectives.[1121]

a. Investors consistently testified that they considered the flexibility clause in the Funds' offering memoranda to be a boilerplate disclosure.[1122]

[1120] Tr. 2135:13—2136:6 (Furgatch) ("Q: Mr. Furgatch, you were discussing something before about duration and some number of months or years. And so I want to point you to this fourth bullet [in Ex. 44 at 4] that reads, 'The contract duration will typically depend on the type of matter being funded, for instance, historically personal injury, 24 months; class actions 36 months; mass tort MDLs, 48 months.['] And then it continues, 'these cases,' referring to the mass torts or MDLs 'are rarely purchased due to the duration mismatch.' What did that mean to you when you received this FAQ? A: That it was important to match an account. In this case, it applies more specifically to cash flow. And, obviously, the longer the duration, you know, the greater the risk, not just of the recovery but of the timing of recovery.").

[1121] E.g., Ex. 60 at 17.

[1122] Tr. 124:4—125:2 (Burrow) ("Q: Okay. And the same page, if I could direct Mr. Murphy and you to where it says 'flexibility,' further up. If you could read that to yourself. A: Okay. Yes. Q: . . . Did that section called flexibility mean anything to you when you read it? A: To be quite frank, it didn't mean anything with respect to this particular paragraph showing up in nearly every single offering memorandum that's ever written in the United States for investments. It is something that in our profession we ask. Just in case we ever get in the courtroom, this gives us a little bit of an out clause, and it's something that nearly every document has, and so it doesn't

b. For example, Mr. Mantell, who reviews approximately 100 offering memoranda per year, explained that such memoranda "very often include a phrase like [Respondents' flexibility clause," but such clauses do not "eliminate the obligation of the sponsor to give [investors] accurate information in written materials – not to mislead us by something in these materials. They need to be accurate. And not to omit something that's very important that they know at the time." In Mr. Mantell's considerable experience, "sponsors don't utilize [flexibility clauses] that to tell us they're going to do one thing and do completely different." Otherwise, Mr. Mantell testified, "the entire securities disclosure system in the country just wouldn't mean anything, it would be useless, because these provisions are put into so many of the operating documents... ."[1123]

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really mean anything in nearly every document that I've read. And reading it, it's far too open ended. In other words, it looked like if they had the opportunity to buy a stock, which would be completely counter to the way it's described everywhere else. So it's there, and I've seen it in a lot of places, but it doesn't necessarily mean anything with respect to the strategy. Q: And if they were going to buy a stock, would you have expected them to tell you about that? A: Absolutely, they would let us know."); Tr. 2788:18—2789:1 (Geraci) ("Q: Part of what you read is that flexibility clause Mr. Healy showed you a moment ago at page 45 of this document, correct? A: Yes. And I think the other documents, the operating agreement and other documents, [al]luded to the flexibility notion. Q: Is this pretty much boilerplate for the documents you look at? A: Pretty much.").

[1123] Tr. 636:12—638:13 (Mantell) ("Q: Looking at the flexibility provision there, did you read this at the time you received the -- A: Yes, I did. Q: What did you understand from this? A: I knew you would ask me this, and I thought about my answer carefully. We see this kind of language routinely inserted in offering documents of all kinds, right? Part of my advisory work includes structuring funds of hedge funds – funds of hedge funds is wrong -- portfolios of hedge funds for others. I probably review in that regard, I don't know, certainly a hundred a year of the documents -- looking at others. They'll very often include a phrase like this where they're saying, We're telling you what we're going to do, but we can do anything we want. So it is -- what I would say is, I know it's there. I'm a securities lawyer, so I know something, I think, of what it's saying when it says, I can do whatever I want. But what it doesn't do is eliminate the obligation of the sponsor in the minds of myself or any of the investors that we hang out with to give us accurate

654. Mr. Young, who testified on Respondents' behalf, explained that the flexibility clause operates within certain "guardrails," which he explained were informed by the Offering Memorandum's description of the Funds' investment strategy.[1124] Mr. Young testified that the Peterson investments were not within the Flagship Funds' guardrails, as that case had certain risks that made it "bothersome on about 30 different levels."[1125]

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information in written materials – not to mislead us by something in these materials. They need to be accurate. And not to omit something that's very important that they know at the time. Other than that, it enables them to have a lot of discussion and to make lots of changes and do things, change things around. There's one other aspect of that. We expect -- whether it has legal implication or not, I can't say. But what I can say is as a businessman, we expect, and it is our experience that sponsors don't utilize that to tell us they're going to do one thing and do completely different. That's not the meaning or the intention of this. If it were, the entire securities disclosure system in the country just wouldn't mean anything, it would be useless, because these provisions are put into so many of the operating documents. But that's just my belief on how it works. Q: And, Mr. Mantell, does the flexibility paragraph here, does it tell you anything about what RD Legal had already invested in? A: No, I don't think it does.").

[1124] Tr. 3754:13:13—3755:13 (Young) ("JUDGE PATIL: Excuse me. You've used the phrase 'inside the guardrails.' Would you please describe to me what you mean by that? A: So go back to page 21 [of Ex. 1266, the Onshore OM] which [says] the partnership will purchase law firm and attorney's receivables. And then I go over here to page 33. And it goes, 'It may not be limited with respect to those investors.' They're going to do other things. So I'm talking about those other things. The guardrails are those law firms and whatever else. . . . When he starts or any manager has the latitude to go outside of whatever I understand them to be in my mind, my guardrails are, the duration is going out. I've got to either move into a different risk bucket or make a decision about whether I need to put those assets in the same risk bucket but with a different manager.").

[1125] Tr. 3789:7-21 (Young) ("Q: You spoke earlier about this concept of guardrails, correct? A: It's my makeup, my construct. Q: The way you described guardrail, did you understand Peterson to be within the guardrails as you described it? A: Once I understood Peterson, the answer to me was no. And that's why it was a red flag; hence why I gave my redemption. So for me, the guardrails, remember, were short-term, rolling over every 12 months or so, cases you knew about with good credit, all that stuff. I overlaid the politics that I was talking about trying to make piece in the Mid-East and all that kind of stuff. It appears the case was bothersome on about 30 different levels.").

655. Investors also testified that it would have been important to know, at the time investors were making decisions about whether to buy into the Flagship Funds, whether Respondents had *already* invoked the flexibility clause to purchase certain assets.[1126]

656. Dersovitz did not read the flexibility clause to mean there were no limits to what the Funds could do. Rather, he believed it afforded him "quite a bit of flexibility in investing in litigation settlements or funding settlements or judgments."[1127] Dersovitz testified that while he believed the flexibility clause allowed him "a great deal of latitude," he could not invest in something like gold because it was beyond his area of expertise.[1128]

[1126] See, e.g., Tr. 3789:22—3791:7 (Young) ("Q: You discussed the flexibility clause in the offering memorandum earlier. You remember that? A: Correct. Q: I think you said the flexibility clause, you read it as giving the investment manager at least some discretion to go beyond guardrails, correct? A: Yes. Q: Were you referring to the discretion to do that in the future? A: Yeah. Q: Would you have wanted to know when you invested if the fund had already gone beyond the guardrails? A: Well, in my due diligence on the fund, I did not learn that they had, if indeed, they had. So if you're telling me in 2011, he had a huge exposure to Peterson, then maybe there's an issue. But I did not understand that at the time. But prospectively in '14 or 15, if his analysis worked, whatever the year was, I don't know the year and he starts increasing or ramping up that Peterson exposure, believe me, he was good to let me know it. And I was, in my opinion, smart to get out. Q: So in making your decision, initially as to whether to invest in the fund or not, is it fair to say you would want to know whether the fund had already gone beyond the guardrails? A: Correct. And I tried to do that when I talk to the administrator and others to see if, in fact, there was a history. You would want to know that. Q: When you invested, sitting here today – let me ask it differently. It's your understanding that when you invested, the fund had not yet gone beyond the guardrails? A: That's correct.").

[1127] Tr. at 2900:1-8 (Dersovitz) ("Q: In your opinion the offering memorandum allowed you to invest in gold, correct? A: It didn't -- the -- I would never think that it allowed me to go that far. But if we limit our discussion to litigation, I had quite a bit of flexibility in investing in litigation settlements or funding settlements or judgments. It's clearly defined in the objectives of the strategy.").

[1128] Tr. at 2902:11-19 (Dersovitz) ("Q: You thought about what it says before you allowed people at RD Legal to share it with investors, right? A: Yes, and I'm saying it -- it says it allows me a great deal of latitude. Q: Why do you think it doesn't allowed the latitude to go invest in gold without first talking to investors? A: That's not my area of expertise."). See also n. 1127.

657. Mr. Levenbaum, similarly, testified that he read the flexibility clause to be informed by Respondents' "entire representation, the entire investment scheme," and thus understood the flexibility clause to be limited "the purview of loans to lawyers."[1129]

658. Dersovitz testified that, in his view, Peterson investments were part of the Funds' "core business."[1130]

659. RDLC stated in 2008 that plaintiffs' positions were not provided for in the Funds' offering documents,[1131] and Ms. Hirsch wrote Dersovitz in November 2014 to "suggest that [he] write, as Investment Manager, a formal exception to the 'other' category in [the] Offshore [Offering Memorandum]," noting that the "other" category "requires 12 months or less in duration."[1132]

[1129] Tr. 3067:1—3068:3 (Levenbaum) ("Q: [The flexibility clause] means that the partnership will not be limited, right? A: Well, you got to read that -- I interpret that in terms of the scope and the direction, the target audience to lawyer loans; not loans beyond lawyers. So you got to look at the flexibility concerning the entire representation, the entire investment scheme, if I can use that term, descriptive to this, so -- Q: And here it basically says, 'Over time, markets, change, and the general partner will seek to capitalize on attractive opportunities whenever they might be.' Do you see that? A: Yes. ... Q: And, in fact, you made notes next to that. Do you see that? A: My investment limited to fee -- yeah, precisely. I'm telling myself the story despite that, the flexibility, my investment limited to fee acceleration and fee factoring. So the flexibility within the purview of loans to lawyers, not to victims. So that's how I interpreted that.").

[1130] Tr. 2899:15-25 (Dersovitz) ("Q: At that point you believed the Iran investment would become more in line with the core business of the RD Legal funds? ... A: The business was permitted to invest. If you refer to the offering documents, the business was – at all times was permitted to invest in litigation settlements and/or judgments. It was always part of the core business.").

[1131] Ex. 633 at 2 ("Along with this inflow of demand, we are also being presented with opportunities that are closely aligned to our present business . . . **but are not provided for in our Policies and Procedures manual or the fund offering documents.** Specifically, we have been presented two opportunities in the past few months to fund plaintiffs (our customer's client) for cases that are settled, the case is payable by an entity that is otherwise credit worthy and where the requested amount is an acceptably large advance to be of interest." (emphasis added)).

[1132] Ex. 2060 at 1, 12-14 (Nov. 3, 2014 email from Hirsh rejecting request for Offshore Fund to participate in Fay Kaplan: "rejected due to duration mismatch with offshore fund – see extract from offering memorandum attached."); Ex. 617 at 2-3 (Nov. 5, 2014 email from Hirsch stating "I

a. Similarly, the Funds' auditor testified that he understood that the Offering Memoranda were amended in 2012 or 2013 to expand the scope of what the Funds could invest in and that, prior to this amendment, the Offering Memoranda did not cover the plaintiff purchases.[1133]

VI. Respondents' Scienter

A. Dersovitz Repeatedly Gave False and Incomplete Information to Investors

1. Dersovitz Avoided Providing Truthful Answers to Direct Questions About the Flagship Funds' Investments

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suggest that you write, as Investment Manager, a formal exception to the 'other' category in you Offshore document"); Tr. 4587:4-18 (Hirsch) ("Q: And the one that you appear to have rejected, the Fay one, it is at the back of 2060 at page 0012 and 0013. . . . Why did you reject those positions? A: I rejected it, because per conversations with the CFO, Leo Zatta, the duration was expected to extend beyond the 12 months and, therefore, does not meet the standards of the offshore fund. Q: Okay. And what does that mean; it doesn't meet the standards of the offshore fund? A: It means that the offshore fund, one of the requirements apparently when we -- participations went in, the seasoned sale occurred, was a duration of 12 months or less."); Tr. 4591:4—4592:1 (Hirsch) ("Q: Yeah, [Ex.] 61. You'll see the offshore memorandum at 61-13 describes legal receivables and then lines of credit. Do you see that? . . . A: Yes, I do see that. Q: Okay. And was there another – another category called 'Other;' do you recall that? A: I believe somewhere there was, yeah. I don't recall where, though. Q: So if we go to page 16 of this document. A: There we go, 'Other.' Thank you. Q: So the offering document described advances to law firms, correct? A: Yes. Q: And the borrower has to be an attorney or a law firm; is that correct? A: Yes. This is what I was referring to earlier when I said that I rejected this particular transaction because it didn't meet -- at the time I felt it was going to go beyond 12 months, and this is also what I was referring to when I said, Do you think that we should put a note in the file, because it is going beyond the 12-month period.").

[1133] Tr. 3177:23—3178:25 (Schall) ("Q: And I think you talked about just a minute ago, you understood that there were amendments to their confidential private offering memorandum sometime around 2012 or 2013; is that correct? A: Yes. Q: And was it your understanding that these amendments brought into the scope of what they could invest in; is that correct? A: Yes. Q: How so? A: I believe it expanded the scope of what they could be investing in. Q: Into what? A: Into the legacy funds. Q: . . . What was the new thing that the scope captured? A: Judgments, judgment receivables, and I believe fund purchases from plaintiffs. … Q: And was it your understanding that before this amendment, the scope of the offering memorandum did not cover these new things that the new broader scope covered? A: Yes.").

660. Dersovitz affirmatively misled investor Arthur Sinensky, who had read an article about the Flagship Funds' litigation in connection with the ONJ Cases,[1134] after Sinensky asked Dersovitz whether it would impact the Funds' results given that "[t]he article describes the loans as providing funding for litigation, which is different then [sic] the loans in the fund."[1135] In response, Dersovitz falsely and misleadingly stated that "[t]he litigation involves two non fund attorneys,"[1136] even though, as he well knew given what his lawsuit against those attorneys makes clear, it was the Onshore Flagship Fund that had advanced monies to those attorneys.[1137] Mr. Sinensky thought the article described something "separate from what was going on in the [Flagship Fund] at the time" because it "sounded like it was financing a lawsuit which is very different from investing in the settled lawsuits,"[1138] and Dersovitz's response further misled him into thinking the ONJ Cases were not a part of the Flagship Funds.[1139]

1134 See ¶ 532(a)-(c); Ex. 192 at 3 (Complaint in RD Legal Funding Partners v. Powell, No. 14-cv-7983 (FSH) (D.N.J. Dec. 23, 2014) (D.E. 1).

1135 Ex. 442 at 1-2 (Jan. 2, 2015 email from Sinensky to Dersovitz). See also ¶ 532(a)-(c).

1136 Ex. 442 at (Jan. 3, 2015 email from R. Dersovitz to A. Sinensky). See also ¶ 532(a)-(c).

1137 See, e.g., Compl. in RD Legal Funding Partners v. Powell, No. 14-cv-7983 (FSH) (D.N.J. Dec. 23, 2014) ¶ 52 ("Following the execution of the Subordination Agreements, and given their continuing obligations with respect to any funding issued to Osborn thereafter, Plaintiff provided written notice to both the Bogert and Powell Defendants each time that there was an advancement of additional funds by Plaintiff").

1138 Tr. 3339:4-16 (Sinensky) ("Q: And what do you recall -- what was the article about in Exhibit 441? A: Well, this article was about the lawsuit that RD Legal was bringing against these other attorneys. And it sounded to me that this was something separate from what was going on in the fund at the time. And, therefore, I just wanted to confirm that this will not impact our results. Q: And why did it sound like it was something separate from what you had invested in? A: Well, because this sounded like it was financing a lawsuit which is very different from investing in the settled lawsuits."). See also ¶ 532(a)-(c).

1139 Tr. 3341:6-20 (Sinensky) ("[discussing Ex. 442] [Q:] If we turn to page 442-1, you'll see in the middle of the page there, Mr. Dersovitz's response to you. A: Yes. Q: And you'll see he says that he's abroad and has not read the article. And the paragraph goes on. And he describes the litigation as involving two non-fund attorneys that have signed an escrow agreement for the fund's benefit and not remitted the legal fees collected. Do you see that? A: Yes. Q: What did you

661. Dersovitz also misled Mr. Sinensky in April 2013 when, in response to an article in the Wall Street Journal about "pre-settlement" funding, which Dersovitz represented to Mr. Sinensky was "very distinct from what we're doing."[1140]

662. Dersovitz testified that he understood that the "most transparent way to disclose the flagship funds['] investments in Iran was to make reference to Iran exposure ... in marketing pieces [and Respondents'] materials.[1141] Dersovitz acknowledged, however, that the Funds' FAQ, Alpha presentation, DDQ and offering memoranda made no mention of Peterson.[1142]

663. Dersovitz further testified that when he told investors the Funds invested only in cases past the point of any appeals, he knew that was not true, but thought the truth was too complicated to explain to investors.[1143]

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understand from that? A: I didn't understand the whole point. But when I saw two non-fund attorneys, I kind of said, okay, this has nothing to do with the fund."). See also ¶ 532(a)-(c).

1140 See, supra, ¶ 488(a)-(d).

1141 Tr. 3884:19-23 (Dersovitz) ("Q: And you thought the most transparent way to disclose the flagship funds investments in Iran was to make reference to Iran exposure in the special opportunity vehicle documents? A: The marketing pieces, our materials, yes.").

1142 Tr. 3885:1—3886:9 (Dersovitz) ("Q: Is the FAQ what you consider a marketing piece? A: Yes. Q: And do you believe that disclosed the existence of Peterson in the flagship funds? A: That was a generic presentation that merely defined the strategy. And it imparted knowledge to people. We accelerated fees or amount receivables due to plaintiffs or attorneys on settlements and judgments. Q: Mr. Dersovitz, when you say that all of the funds marketing materials -- I'm sorry, yes, all the funds' disclosures explained that there was Iran in the flagship funds, I'm asking if the FAQ is one of the documents you believe disclosed to potential investors that the flagship funds were exposed to the Iran investment. A: Look, I'm being general. You're being specific. Q: Yes, sir. A: It spoke to judgments, not to Peterson. We all know that. Q: You know that the FAQ did not speak to Peterson; is that your testimony? A: Of course not. Q: How about the Alpha marketing material? Do you believe that spoke to Peterson? A: No. Q: How about the DDQ; when it asks to describe in as much detail as possible, the investment strategy, do you believe that spoke to Peterson? A: Specifically, no. Q: Do you believe the offering memoranda for the flagship funds specifically mentioned Peterson? A: No.").

1143 Tr. 2907:19—2908:11 (Dersovitz) ("Q: I'm trying to understand why if you thought there were appellate possibility, you said we are investing in cases past the point of appeal. Is that because as you explained you didn't think that investors could understand what you meant? ... A: You saw the confusion amongst the witnesses. This is a complicated strategy. Very hard to explain

664. When investors found out about the true nature of the Flagship Funds' portfolio, and in particular the existence of and/or the concentration of the Peterson Turnover Litigation in that portfolio, Respondents did not directly and accurately answer all questions, becoming instead evasive, as testified by the following individuals:

a. When Mr. Burrow confronted Dersovitz about the existence of the Peterson Turnover Litigation in the Flagship Funds, Dersovitz was "very evasive" in answering questions.[1144]

b. When Mr. Levenbaum first confronted Dersovitz about the existence of Peterson Turnover Litigation investments in the Flagship Funds in June of

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in a minute, in twenty or twenty-five minutes. What I do is try to explain as best as I can the limited risks of the strategy. Settlements pay in all, but the rarest of instances there is still some appellate risk sometimes. But it's generally of no consequence. And in the situation of judgments when you already restrained a corpus of money, the risk is very limited because you have already identified to the court's satisfaction who owns those, that corpus of funds.").

[1144] Tr. 171:5-172:21 (Burrow) ("Q: Okay. And what did Katarina say during the phone call? A: She said there are too many reasons why there was illiquidity. She said the main one was that the large position in the fund that they had was still not receiving the payment. They had hoped it would come in, but it had not. Secondly, she had said that they were changing entities and the fund structure itself was changing from what we had initially invested in. I knew that because I had received many documents. The process, frankly, was very confusing. I didn't understand why there was going to be a new entity that needed to invest or that the clients' entity had switched to. She said because of that, any new money that's coming in from new investors is going into this new entity, and since we existed in the old entity, the cash had already run dry, and the only way we were going to get cash from this entity was what's your time frame, what's the suit and that's the first time she had brought up the Peterson case, the Iran Beirut bombing. Q: You had heard of the Iran bombing case before that in the context of the SPV; is that right? A: Correct. So it was very confusing because we had never invested in it, so that was the first time I had ever heard of it. Q: So what happened after that conversation? A: I was clearly upset because I felt like I had been duped, but idea I needed more clarity to understand the timing of this case and really what choices I had, so she said, 'Why don't you talk to Roni?' So we set up a call and I spoke to Roni about it. Q: And what did he say? A: He said a lot of the same things. He said, you know, 'I can't tell you for sure when the Peterson case will be settled,' but he had a great deal of confidence that the Supreme Court would, of course, you know, rule in their favor. The entities themselves were also a part of that discussion: Why did we have to move into this new limited partnership? **He seemed very evasive.**" (emphasis added)).

2015, he was getting "some evasive" answers and some questions were "put off."[1145]

c. When Mr. Levenbaum later wrote Dersovitz a letter in January of 2016 asking for the specific percentage of the Flagship Funds invested in the Peterson Turnover Litigation, Dersovitz refused to answer, noting only that the position had been previously disclosed in the Funds' Financial Statements, and giving him the size of the position as of the "close of 2014" (i.e., fifteen months earlier),[1146] Mr. Levenbaum later reiterated his question, but received no answer.[1147]

[1145] Tr. 3026:7-23 (Levenbaum) ("Q: So now -- the next one, it says, 'On December 17, 2015, I received a vague status update form letter from RD Legal Funding Partners, which in' -- I'm sorry -- 'signed by Roni Dersovitz, which, in view of the totality of circumstances, neglected to adequately address reasonable investor redemption expectations. Roni, I need specific answers to certain questions.' Why were you asking these questions, sir? A: I wanted to decide where I'm going to go with this . . . what I am going to do. I just want answers. As an investor, I'm entitled. Q: Were you getting answers? A: Not really. Some evasive and some put off, you know."); see also Ex. 549 (Jan. 12, 2016 letter from W. Levenbaum requesting additional information).

[1146] Tr. 3028:20—3029:23 (Levenbaum) ("[discussing Ex. 549] Q: Okay. What about the questions about the Iranian claims? A: Let me read, please. Q: Yes, go ahead. (The witness examined the document.) THE WITNESS: Nothing in paragraph 3. I'm continuing to read. (The witness examined the document.) THE WITNESS: Nothing to paragraph 4. Paragraph 5, he mentioned the Iranian claims. And he says, 'That the position was disclosed under the condensed schedule of investments in our year-end financial statement since 2011.' And I was somewhat amused by this, because I think he made reference it was disclosed. And I looked at it. And if anything was disclosed, it wasn't the Iranian. It was on the -- under the 'Other' category, like an after-thought in small print. So to me, nothing was disclosed specifically about the Peterson case or the Iranian bombing case or anything related thereto. . . . So I thought that amusing. Q: Did he answer your question about the percentage of the fund invested in this claim? A: No."); Ex. 549 at 4 (R. Dersovitz response to W. Levenbaum).

[1147] Ex. 470 at 1 (Jan. 21, 2016 email form W. Levenbaum to R. Dersovitz); Ex. 551 at 1 (Mar. 1, 2016 letter form W. Levenbaum to R. Dersovitz); Tr. 3030:5-24 (Levenbaum) ("Q: Sir, can you please turn to the front of the binder to Exhibit 470. A: Yes. Q: Do you recognize this document? A: Yeah. It's an email that I wrote to Roni Dersovitz dated January 21, 2016. Q: Okay. And I think you say, 'Roni, thank you for your reply. You answered most questions. But I need a response to the following questions as priestly indicated. The percentage of RD's investment portfolio representing the Iranian terrorist claims holders' advances.' . . . Why are you still asking

d. When Ms. Ishimaru and Mr. Craig first confronted Dersovitz about the existence of a "Citicorp" concentration in the Flagship Funds, they asked him what the exposure related to and how it had arises, but he did not answer their questions over a series of various emails.[1148]

e. When Ms. Ishimaru and Mr. Craig first confronted Dersovitz about the concentration of the Peterson Turnover Litigation in the Flagship Funds' he tried to assuage their concerns by stating that he would consult investors if he decided to significantly raise the exposure,[1149] but did not tell them that he was in the process of in fact increasing that exposure because he had been thinking of financing plaintiffs in that Litigation for several months, since at least February of 2012.[1150]

f. When Mr. Wils and Mr. Sinensky confronted Dersovitz about the existence of and the concentration in the Peterson Turnover Litigation in the Flagship Funds, "[h]e was evasive" and he "didn't respond to what [they] had

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him that? A: I never got an answer. Other than reading in the Wall Street Journal. But that's -- you know, you got to take the source for what it is, it's a newspaper."); Tr. 3036:4-24 (Levenbaum) ("Q: Okay. And what are you asking for here, at least with respect to No. 1, for example? A: Well, basically I lead off by saying 'I'm a little bit perturbed about your lack of responsiveness to my two previous important questions. And for clarification, I'll repeat them.' And that's -- the subject matter was outlined in 1, 2 and 3. Q: Okay. What's 1 about? A: The percentage of RD's investment portfolio representing the Iranian terrorist claims. Q: Why are you still asking about that? A: I wanted to validate from him what the Wall Street Journal had to say. And if what they said was true, that was not going to be very kind, not very nice, to say the least, to me and his other investors. Q: Okay. So is it fair to say that up to this point, you had not received an answer on this question about the percentage? A: Correct.").

[1148] See supra nn. 636 & 637.

[1149] See supra ¶¶ 417.a & 417.b and accompanying footnotes.

[1150] Tr. 2899:9-14 (Dersovitz) ("Q: At what point did you start considering doing the plaintiffs' receivables for the flagship funds? A: I think once the executive order was signed that evoke TRIA and once I began to see the black lines of Section 502 that were being circulated amongst congressman and women in the foreign relation committee.").

requested in any meaningful way."[1151] Overall, Mr. Wils had a hard time "ascertaining what the facts were" when he asked questions of Dersovitz.[1152]

g. When Mr. Ashcraft got on the phone with Dersovitz after hearing rumors about the Flagship Funds investing in the Peterson Turnover Litigation, he "never walked away exactly certain . . . whether or not there was money invested" in that case.[1153] Dersovitz was "elusive" and "not as forthright" in answering Mr. Ashcraft's questions about whether the Flagship Funds were invested in the Peterson Turnover Litigation.[1154]

[1151] See n. 870 (Wils).

[1152] See n. 876 (Wils); Ex. 420 at 1 (June 24, 2014 email from R. Dersovitz to A. Demby); Tr. 3333:19—3334:20 (Sinensky) ("Q: Mr. Sinensky, if you turn to Exhibit 423, do you recognize Exhibit 423? A: Yes. Q: What is it? A: Well, it starts with Allen Demby asking Mr. Dersovitz a simple question of what percentage of the existing fund is in the Iranian settlement. And what I recall about this was there really wasn't a clear answer to that. And Mr. Dersovitz was explaining why there wasn't a clear answer because there were a lot of other considerations. And my point was, you know, there must be a way to get an answer to this question. Q: So if we turn to page 423-2 at the very bottom there, is that the e-mail to which you just referred from Mr. Demby starting the chain? A: Yes. Q: And then you'll see at the top of the page after Mr. Dersovitz responds to that, you say, 'Roni, why can't you simply provide him an answer?' . . . Why did you write that to Mr. Dersovitz? A: Because it seemed to me like a pretty straightforward question that there should be an answer to. And there could be caveats around the answer. But it seemed pretty basic and straightforward. So I was just wondering why there wasn't an answer.").

[1153] See n. 871 (Ashcraft).

[1154] Tr. 1518:3—1519:8 (Ashcraft) ("Q: Okay. And is that why you didn't redeem? A: Part -- twofold. One, I wanted -- it is hearsay. I've also just invested and wanted to see facts; not what might be the case or not the case. I think following that, there was a number of questions in regard to this. And I -- you know, I would say frankly, in my opinion, it was not as forthright to answer these questions. It was rather elusive. Q: And he didn't want to discuss with you the different questions with regard to the concentration level, for example, and things like that? A: This particular case was -- it seemed to me took way too long. Meetings were scheduled and canceled. Q: It was that he didn't actually schedule the meeting with you and it was hard to get a hold of him? A: No. There was a scheduled meeting that got cancelled with the group. Q: Okay. JUDGE PATIL: Sorry. Excuse me. Who cancelled the meeting? THE WITNESS: Oh, Roni. Or his office. I mean, the meeting was a day before, and it was canceled. And at that point, people were -- in my

h. When Mr. Furgatch and his assistant at Magna Carta found out about the high concentration of the Peterson Turnover Litigation in the Domestic Flagship Funds, they'd get "two different set of facts" in answers to their questions from Ms. Markovic and Dersovitz.[1155]

i. When Mr. Demby asked about the percentage of the Offshore Flagship Fund invested in the Peterson Turnover Litigation in May of 2014, Dersovitz said he didn't know, that he couldn't give an estimate, and was unavailable when Mr. Demby attempted to call him back at his office to get an exact answer.[1156]

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case, I was contacted separately. I even talked with, I believe, Katrina to say, I can't -- I can't make this meeting, can I dial in, because I live in Dayton."); Tr. 1528:7-12 (Ashcraft) ("Q: And that was, you know, causing you at this point in time to submit your redemption forms, right? A: There were a couple. One was just the apprehensiveness and the gray area around transparency.").

[1155] Tr. 2047:14—2048:6 (Furgatch) ("Q: And what are you asking Mr. Dersovitz when you ask, 'Did I get that right? Did I miss anything of significance?' A: Well, I clearly wanted validation in writing that what I heard or what I thought I heard on the call was accurate. I vaguely recalled what I had -- what was happening is Miriam and I would get together and talk. We'd have two different set of facts. So I would have a dialogue with Roni, and Miriam would be having a dialogue with Katarina, and then we'd get together and we would often have conflicting feedback from those two. So we had reached the point where both -- well, as I say, I got on Miriam's page and thought, Okay, I need to stop acting so cozy and trusting of this fellow, I need to start handling this in a matter to verify our facts and manage this properly.").

[1156] See n. 880; Tr. 2193:19—2194:9 (Demby) ("Q: Okay. And then in response, a person whose email address is Art789, he writes, 'Thanks, Allen. Did he give any indication of the appreciation from the original investment through today's fair market'? Do you see that? . . . Who is Art789? A: Arthur Sinensky. Q: And then you wrote, 'No, he didn't. He said the Iranian exposure was irrelevant to you because you had filed for a full redemption.' . . . Did Mr. Dersovitz say that to you? A: If I wrote it, I'm sure he said it."); see also Ex. 422 at 1 (June 25, 2014 email from R. Dersovitz to G. Mrkonic).

j. When Mr. Gumins asked for an explanation of the percentage of the Flagship Funds that was invested in the Peterson Turnover Litigation, he got "non-answers" and promises of return phone calls that did not happen.[1157]

665. When investors found out about the true nature of the Flagship Funds' portfolio, and asked questions about the concentration of the Peterson Turnover Litigation in that portfolio, Respondents at times also misdirected investors to make it seem as if the concentration was not as high as it was, such as:

a. When Mr. Demby asked Dersovitz on March 24, 2014 what percentage of the Flagship Funds' were invested in the Peterson Turnover Litigation, Dersovitz told him that "$54.8 million of the total $178 million in RD Legal Funding Fund is currently in the Iranian litigation pool," giving Mr. Demby the impression that approximately one-third of the portfolio was so-invested,[1158] when, in reality, while the Flagship Funds had deployed

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[1157] Tr. 3650:24—3651:4 (Gumins) ("A: I smell it, nonstop. And I can't get a damn answer. I can't understand it. All I get is a non-answer or Roni saying he's going to call me back and doesn't call, doesn't return my calls. The CPA won't return my calls. Meesha doesn't. Nobody will talk to me or Brian.").

[1158] Ex. 398 at 1 (Mar. 24, 2014 email from A. Demby); Tr. 2185:5—2186:24 (Demby) ("Q: What is Division Exhibit 398? A: It's an email from me to members of Tiger 21 Group 5 informing them of my conversation with Katarina and Mr. Dersovitz. Q: Okay. And do you recall when you had that conversation? A: Well, it says Monday, March 24 on it. It says, 'Just got off the phone,' so it must have been on March 24. Q: And in the prior email, Exhibit 393, do you recall the date of that -- if you look at that, what was the date on that email? . . . A: That's March 24. Q: Do you recall the conversation with Ms. Markovic and Mr. Dersovitz on March 24? A: I don't recall the details of the conversation. I do not. Q: And if you look at Exhibit 398, it says on that email that you 'Just got off the phone with Katarina and Ron D. 54.8 million of the total 178 million RD Legal Funding fund is currently in the Iranian litigation pool.' Do you see that? A: Yes, I do. . . . JUDGE PATIL: Excuse me. Doctor, where would you have gotten the information that you were reporting to the Tiger 21 group other than from the phone call? THE WITNESS: It could only have come from the phone call."); Tr. 2190:3-7 (Demby) ("Q: Dr. Demby, if those numbers were correct, what would you calculate the approximate concentration of the Iranian settlement in the fund to be? A: It says about 30 percent.").

approximately $54 million to the Peterson Turnover Litigation and the Flagship Funds were worth approximately $170 million,[1159] the percentage of the Flagship Funds' invested in the Peterson Turnover Litigation was 55.83% measured as dollars deployed or 63.52% measured as fair value;[1160]

b. When Mr. Demby asked Dersovitz around May 21, 2014 what percentage of the Flagship Funds' were invested in the Peterson Turnover Litigation, Dersovitz told him in the "high 40 percentage range,"[1161] when in reality it was in the 60s;[1162]

c. When Dersovitz got on a call with certain Tiger 21 investors around June 24, 2014, he told participants, including Mr. Sinensky, that he "had" $190 million in the Flagship Funds and that approximately $65 million of that was in the Peterson Turnover Litigation,[1163] again creating the false impression that about a third of the Flagship Funds were invested in that case, at a time when the amount was much higher;[1164]

1159 See Ex. 2 at cell C-35 (fair value of Flagship Funds was $168 million as of 3/31/2014); id. at cell L-35 ($57 million advanced to Peterson Turnover Litigation as of 3/31/2014).

1160 Ex. 2 at cells M-35 & O-35.

1161 See n. 880; see also Ex. 424 at 1 (email from A. Demby); Ex. 449 at 1 (May 15, 2015 email form A. Demby to G. Mrkonic).

1162 See Ex. 2 at cell O37 (showing 64.34% invested in Flagship Funds' as of 5/31/2014); see also Ex. 41 *A (showing as of May 31, 2014 that 71.73% of the Onshore Flagship Funds' fair value and 59.25% of the Offshore Funds' fair value was invested in the Peterson Turnover Litigation by changing dropdown menu under "Select Fund" (cells Q4-R4) to "Onshore" and "Offshore").

1163 See Ex. 423 at 1 (June 25, 2014 email from A. Sinensky to R. Dersovitz).

1164 See supra n. 1162; see also Tr. 3337:16-20 (Sinensky) ("[discussing Ex. 423] Q: And what was the magnitude you understood at the time? A: Well, the number moved around over this period. But just doing the basic arithmetic of what I wrote here, I was probably surmising about the third.").

d. When Mr. Furgatch asked Dersovitz about the concentration of the Funds' in the Peterson Turnover Litigation, he falsely told him it was a $8 to $10 million investment, worth about 10-20% of the Funds';[1165]

e. When Mr. Gumins asked Dersovitz about the concentration of the Onshore Flagship Fund in the Peterson Turnover Litigation on January 15, 2013, he responded "roughly 40-45% and now beginning to dial down with new dollars"[1166] even though (i) the percentage concentration in the Onshore Flagship Fund at that time was above 68% as a percentage of partners' capital as stated in the Onshore Financial Statements,[1167] (ii) Dersovitz at another time would direct investors asking the same questions to the Financial Statements, and (iii) the concentration of the Flagship Funds in the Peterson Turnover Litigation increased steadily in January of 2013—indeed through all of 2013—both as a percentage of dollars deployed by the Funds and as a percentage of the Funds' value;[1168] and

f. Respondents' employees made similarly misleading or incomplete statements to investors when fielding questions about exposure to the Peterson Turnover Litigation.[1169]

666. Although he told investors that he did not always have access,[1170] and although he testified that he did not always have access,[1171] at relevant times Dersovitz had immediate access to

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1165 See, supra, nn. 930-933.

1166 Ex. 598 at 2-3 (January 15, 2013 correspondence).

1167 Ex. 14 at 6.

1168 See Ex. 2 at cells L21 through O32.

1169 See, infra, ¶ 680; n. 1211 and accompanying text.

the information that investors sought from him regarding the concentrations of the Peterson Turnover Litigation in the Flagship Funds, such as:

a. Having immediate access to the breaking of the Peterson Turnover Litigation as a percentage of the Flagship Funds' portfolio on June 25, 2014,[1172] at the exact same time he was fielding questions from Tiger 21 investors about these matters that he refused to answer;[1173]

b. Having access to the "dashboards" with Fund-level specific information on the RD Legal's networks and also distributed on a monthly basis to him by his employee;[1174] and

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1170 E.g., Ex. 422 at 1 (June 25, 2014 at 2:02 p.m. email from R. Dersovitz to G. Mrkonic saying he was "out to lunch" when Allen Demby called asking for information about concentration in Peterson Turnover Litigation exposure and not providing specific numbers).

1171 E.g., Tr. 5709:17-23 (Dersovitz) ("JUDGE PATIL: And how was it that you didn't have access to that? THE WITNESS: I'm traveling. I'm working in two offices. I'm not always -- I'm not dealing with the financials. I'm dealing with overseeing everything. I'm meeting with clients, thinking of trades.").

1172 See Ex. 421 at 1 (June 25, 2014 at 12:27 p.m. email from M. Spadafora to R. Dersovitz giving him specific information about concentrations).

1173 Ex. 423 at 2 (June 24, 2014 email from R. Dersovitz to A. Demby).

1174 Tr. 2276:7—2277:1 (Larochelle) ("Q: So, Mr. Larochelle, are you familiar with something called the RD Legal dashboards? A: Yes. Q: What are those? A: Those are something that I created to kind of summarize the portfolio as of a specific point in time. Q: When did you create those? A: I don't really remember. I think 2013. Q: . . . Have you created more than one? A: Yes. Q: And who asked you to create those? A: Marketing had asked me to create something, a list of different items. And I tried to condense it using that dashboard. Q: And where did you store that dashboard? A: On the network."); Tr. 2302:13-20 (Larochelle) ("Q: . . . So did you create monthly dashboards that just had snapshots? A: Yes. Q: Okay. And those were distributed? A: Yes. Q: To whom? A: To Ms. Markovic, Mr. Dersovitz, the CFO, to Amy Hirsch, Melissa Spadafora, to accounting."); Tr. 2306:18-25 (Larochelle) ("Q: Was this dashboard available to all employees at RD Legal Capital? A: All RD Legal Capital employees. Q: Okay. So do you know if it was available to marketing specifically, for example? A: Yes. Q: Was it available to Mr. Dersovitz? A: Yes."); see, e.g., Ex. 363A (RD Legal dashboard as of Aug. 31, 2013); Ex. 378B (RD Legal dashboard as of Mar. 31, 2013); Ex. 418A (RD Legal dashboard as of May 31, 2014); Ex. 418A Ex. 463A (RD Legal historical dashboard ending as of Aug. 31, 2015).

c. Having access to the monthly internal Fund information documents, which included all Peterson-related concentrations, that his employees sent him,[1175] and which included the Pluris sheet of monthly positions, which he testified were available within 15 days of month end.[1176]

667. Dersovitz gave various accounts of his ability to answer people's questions regarding concentrations in Peterson including:

a. Talking about his ability to "simply walk[] over" to one of his employees to obtain information about the investments in the Funds' portfolios;[1177]

b. Testifying that he would prefer to direct people to his CFO Leo Zatta or to Katarina Markovic for answers to these questions, and also that Ms.

[1175] See supra ¶ 295.

[1176] See, e.g., Ex. 341 at 43 (March 31, 2013 Pluris sheet); see also Tr. 5708:8—5709:16 (Dersovitz) ("JUDGE PATIL: Okay. Let's go back to the monthly static figures that Leo had access to. MR. WILLINGHAM: Your Honor, I was about to hit that. I can put one in front of the Court, if that makes sense. JUDGE PATIL: Well, I mean, my question is: How is that different from the dashboard that everyone at RD Legal had access to? And why didn't you just go to the dashboard and say, Due to the complexity, I can't tell you what it is right now, but our month-end from December was 50.9 percent? THE WITNESS: Because it's 45-plus days in arrears, so it wouldn't be accurate either. So my CFO -- so we produce monthly results -- first of all, I use a Mac. Mac -- JUDGE PATIL: This raises a great point, and one you just reminded me of. If you can't give the month-end statistics because they're 45 days in arrears, so that is inaccurate, how can you refer to someone's last year's audited financials to get the concentration? THE WITNESS: It depends when in the year I was doing it. JUDGE PATIL: Explain. THE WITNESS: If someone -- if someone is asking me that question January through June and there haven't been a lot of originations, you would expect it not to change very much. That's a static number that I know is audited by my accountant. Otherwise, Leo or my CFO would within 15 days of month-end have the fair value results from Pluris and be able to communicate the most current information."); see also supra ¶ 528.c.

[1177] E.g., Tr. 6056:6-13 (Dersovitz) ("Q: Why did you write that? A: He had asked me a question of what the combination -- of what the percentage in the domestic and offshore fund was at that time. I had -- I was in my office coincidentally at that time. I simply walked over to Phil Larochelle. I told him -- I asked him to give me the numbers, and he gave me both.").

Markovic would have no relevant information, but only Mr. Zatta would;[1178]

c. Stating that he could not give accurate information at particular points in time because of fluctuations in participations and originations for the Peterson assets;[1179]

d. Stating that although he had access to the RD Legal dashboards, those did not contain information from whence he could answer because they were 45 days old;[1180]

1178 Tr. 5704:12—5707:7 (Dersovitz) ("A ... And my custom and practice, not always, but most of the time, was to refer people to either Kat or Leo or to the year-end financials. Because everything was static then. ... JUDGE PATIL: Okay. Wait a second. You've lost me. So I have some questions, and I don't mean to interrupt you. All right. So someone asks you, What's a concentration in Peterson? I understand – I don't fully understand, but I get a sense of all of the complexities that would make you hesitant in providing them with a percentage, correct? THE WITNESS: Correct. JUDGE PATIL: But one of the first things you said is that you would either refer them to Kat, Leo or the annual audited financial statement. THE WITNESS: Correct. JUDGE PATIL: Given all the complexities, what would Kat and Leo be able to tell them about the percentage of concentration in Peterson? THE WITNESS: Kat, nothing. She would go to Leo or my CFO. They would have the most current information available at their fingertips. As of month-end, it was static. As of year-end, it was static. That's what I needed. ... That's the only way to do it accurately... .").

1179 Tr. 5703:2—5704:11 (Dersovitz) ("Q: I want to ask you a question, Mr. Dersovitz. Is it your preference to talk about concentration in connection with a specific percentage? A: No. I don't like doing that. Q: Why not? A: Well, it was particularly relevant vis-a-vis Peterson. And you have to understand that there are a lot of -- you have to consider that there are a lot of moving parts. We take allocations mid-month. So we can have several flows of money in a given month. Money is generally and has historically been deployed quickly. When you're thinking about the Peterson assets, you have to acknowledge that there are three, possibly four different types of positions with different expected durations resulting from when they were underwritten with different internal rates of return. So those functions alone would create different impacts on fair value. Some -- then you would have to understand that we would have -- so you have originations at any given period of time during the month. You would have participations to the offshore vehicle. You would have participation/sales to CCY, which is Constant Cash Yield, a long-term participant of ours. And then starting in October of 2014, we would also be originating for two other counterparties. So it was -- it was very difficult for me to keep track of the different amounts that each vehicle were housing.").

1180 See n. 1176.

e. Stating that he preferred to direct investors to year-end information—even elven months after the end of the year—because that information was "static;" [1181]

f. Stating that by the end of 2014, a time when he was nevertheless still directing investors to year-end information for 2013, the concentrations did not change much;[1182] and

g. Stating that it was not "his role" to answer these questions.[1183]

[1181] Tr. 6611:16—6613:3 (Dersovitz) ("Q: Mr. Dersovitz, my question relates to what Mr. Kaminsky is asking you [in Ex. 717]. Do you understand him to be asking what the flagship funds concentrations are in the Peterson case? A: Yes. . . . And I was, by virtue of my answer, doing the same thing that I said I had always had done. **Effectively referred him to the year-end financials.** Q: Okay. And this is November of 2014. So you would have been referring to the year-end financials for 2013; is that right? A: **We've not yet been able to significantly participate a great deal of those assets, so I told him to look to the year-end financials.** That's what I told him to do. Q: And my question is: By year-end financials in your November 14, 2014, email, you were referring him to the year-end financials for 2013; is that right? A: Yes. **Q: And I believe you told Mr. Willingham in response to a question that one of the reasons you wanted to be careful when you emailed people numbers about Peterson concentrations is those numbers were subject to change so quickly, correct? A: But not once they've been originated.** And -- but what you have to consider, was anything else sold. . . . **Q: By 2014, is it fair to say that you were past the point where it was very difficult to figure out accurate percentages of concentration in the Peterson case? A: I could have.** It wasn't my role. That's why I have my CFO and IR person. I think that's a reasonable course of conduct for me to do." (emphasis added)).

[1182] Tr. 5716:11—5717:10 ("[discussing Ex. 717] JUDGE PATIL: Go ahead and read it. THE WITNESS: 'Furthermore, I was out to lunch when he called and told him that the exact numbers are available in the year-end financials.' JUDGE PATIL: The year-end financials for what year? THE WITNESS: That would have been 2013. JUDGE PATIL: Understood. Go ahead. . . . Q: And if they looked at the year-end financials . . . If we can put 3106 up. . . . what would they have seen in terms of the concentration of the investments in the Iran-Peterson case? A: 75 percent. Q: And the onshore? A: In the onshore. Q: And what in the offshore? A: 61 percent. . . . **Can I add? At that point, the concentrations weren't changing that much from that point on.**" (emphasis added)).

[1183] Tr. 6612:22—6613:2 (Dersovitz) ("Q: By 2014, is it fair to say that you were past the point where it was very difficult to figure out accurate percentages of concentration in the Peterson case? A: I could have. It wasn't my role. That's why I have my CFO and IR person.").

668. Dersovitz also understood that comparing the amounts of dollars deployed to ultimate concentration numbers was comparing "apples to oranges," as he acknowledged to Ms. Markovic.[1184]

2. Dersovitz Tried to Lull Investors Into Thinking the Peterson Exposure Would Decrease

669. Confronted with concerns about the exposure to and concentration in the Peterson Turnover Litigation in the Flagship Funds, Dersovitz repeatedly told investors that he was diluting the position in various ways, even though, in reality, he continued to increase the exposure, including:

a. Telling investor Tom Condon in October of 2013 that it was his "intention to reduce the concentration of Peterson v. Iran in the Fund" with "Zadroga and other large cases,"[1185] (as well as with the funds raised by the Iran SPV), even though in the last quarter of 2013 alone he funded 23 new positions relating to Peterson Turnover Litigation plaintiffs, deploying over $5 million of Flagship Fund assets,[1186] and only two Zadroga (9/11) positions in through July of 2014, advancing under $200,000 for those combined.[1187]

1184 Ex. 308 at 1-2 (Nov. 3, 2012 email from R. Dersovitz).

1185 Ex. 380 at 1 (Oct. 11, 2013 email from T. Condon to R. Dersovitz); see also Tr. 975:12-24 (Condon) ("Q: Then you wrote: 'I'm glad that it's your intention to reduce the concentration of Peterson versus Iran in the fund.' What did you mean by that? A: Well, I mean, I expressed concern pretty directly about the concentration of this case in the fund, and I was uneasy about it. I think I said it here. I said: 'I'm not totally comfortable.' I think that understates how I felt. And Roni explained to me that it was the special purpose vehicle, one of the intents was to raise money there, raise commitments to that, and he could pull money from RD Legal out of the RD Legal fund and into this special purpose vehicle. So that's what I'm referring to.").

1186 Ex. 6 at rows 191-213.

1187 Ex. 174 at 2.

b. Telling investor Alan Mantell in March of 2014 that he was making efforts to "lay off" some of the position,[1188] even though at that time he was deploying millions more into the Peterson Turnover Litigation in the Flagship Funds;[1189]

c. Telling investor Andrew Furgatch that the liquidity issues the Domestic Flagship Fund was facing would "self-correct" and not last a long period of time;[1190]

d. Telling investor Allen Demby in March of 2014 that Respondents were engaged in an effort to reduce the percentage of the Peterson Turnover Litigation investment in the Flagship Funds by selling parts of it to Swiss investors,[1191] even though he simultaneously was purchasing additional claims from plaintiffs and attorneys in the Peterson Turnover Litigation (including a $1.5 million advance to Mr. Fay on April 30, 2014).[1192]

3. Other Emails Record Dersovitz's Misstatements and Omissions

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1188 Tr. 695:10-17 (Mantell) ("Q: Did you speak to anyone from RD Legal about that issue, reducing the concentration? A: My recollection is that at some point, I had a concentration -- a communication with Katarina. It may have been with Ron -- in which they had discussion about some efforts to lay off some of this position. But I don't remember it well.").

1189 Ex. 6 at rows 221-227 ($3.245 million more deployed into the Peterson Turnover Litigation).

1190 Ex. 447 at 1; Tr. 2048:15—2049:5 (Furgatch) ("Q: And it reads, 'Andrew, you are correct in all respects with potentially one minor correction. My hope is to have the domestic fund caught up in two to four weeks. Regards, and thank you for being so understanding.' Did you get that email? A: Yes. Q: And did you understand that email to -- what did that email mean to you? A: Well, it was reflective of Roni's position for a great deal of time, which was that his liquidity problem was minor, not major; that it was self-correcting in a short period of time. And he was suggesting that we would be made whole in our redemption request within that two- to four-week time frame.").

1191 Ex. 398 at 1 (March 24, 2014 email from A. Demby).

1192 See Ex. 6 at rows 216-232.

670. Dersovitz repeatedly orally misrepresented the concentration of the Peterson Turnover Litigation in the Flagship Funds on many occasions that were subsequently captured by contemporaneous written emails confirming the lies that Dersovitz had told them about those concentrations, including:

a. Telling Mr. Furgatch that only 10-20% of the Funds' were exposed to the Peterson Turnover Litigation at a time when he knew it was over 60%;[1193]

b. Telling Fund investor William Beckers in February of 2012 that "the biggest deal in the portfolio is 10% of AUM"[1194] at a time when the Peterson Turnover Litigation represented more than a quarter of the Funds' portfolio,[1195] which Dersovitz testified was "a poor choice of words."[1196]

c. Telling certain investors in Australia in December 2013 that the Funds "had limited out at 10% exposure on the Beirut deal"[1197] at a time when the Peterson Turnover Litigation represented over 60% of the Funds'

1193 Supra nn. 930-933 and accompanying text.

1194 Ex. 270 at 1 (Feb. 11, 2012 email from R. Dersovitz to W. Beckers).

1195 Ex. 2 at Cell M-9 (reflecting 25.84% in Peterson assets on Jan. 31, 2012 measured by Portfolio Purchase Price); Cell O-9 (reflecting 28.74% in Peterson assets on Jan. 31, 2012 measured by Indicated Portfolio Value).

1196 Tr. 3541:3-25 ("Q: If you look at his e-mail about five lines down, you'll see a sentence that begins: 'We do realize the possibility of payor default and have concentration limiters in place that dictate how much exposure we can take to any single payor. This is more fully explained in page 13 of our DDQ in the section entitled Risk Management.' ... My question is whether what it says in your belief indicates to an investor that the concentration limiters are merely guidelines. A: It was a poor choice of words. But it says what it says.").

1197 Ex. 383 at 1 (Dec. 11, 2013 email from R. Bernie to R. Dersovitz).

portfolio,[1198] though Dersovitz testified, however, that no ten percent limit existed, and denied ever telling Bernie that there was such a limit;[1199]

d. Telling Flagship Fund investor Sal Geraci in March of 2014 that the Domestic Flagship Fund had a "$6 million loan" advanced to the Peterson Turnover Litigation,[1200] at a time when the Flagship Funds together had advanced over $57 million to that matter,[1201] of which $18 million was in the Onshore Flagship Fund;[1202]

e. Telling certain Tiger 21 investors on the phone that the exposure to the Peterson Turnover Litigation was in the "high 40s" at a time when it was over 64%;[1203] and

f. Telling Mr. Geraci that the maximum exposure to the Flagship Funds if nothing was collected on the Peterson Turnover Litigation was $12.5

1198 Ex. 2 at cell O32.

1199 Tr. 3563:20—3564:10 (Dersovitz) ("Q: Still on the subject of limits, Mr. Bernie writes in part: 'Hi, Roni. My concern, of course, is one of perception as most gatekeepers are used to certain risk management procedures in place and also when we met with clients and we told them that we had limited out as a 10 percent exposure on the Beirut deal.' . . . Do you have an understanding as to what Mr. Bernie means regarding the Beirut deal? A: No. Oh, the Beirut deal is Iran. I don't know why he said we limited it to 10 percent. Q: But that's not true, correct? A: It was inaccurate. Amy was with me. Q: It's not accurate that you kept a 10 percent limit for Peterson, right? A: Nor is it accurate that I would have said that.").

1200 Tr. 2796:21—2797:10 (Geraci) ("Q: Under number 2, 'I believe Roni told me the domestic fund has a currently $6 million fund in the Iranian judgment'? A: Yes. Q: You had a belief Mr. Dersovitz told you the domestic fund had a $6 million loan in that judgment? A: Yes. Q: And you were reaching out to Ms. Markovic to figure out if it had grown since the 6 million? A: Yes. Q: That e-mail where you say 'I believe Roni told me the domestic fund has currently a $6 million loan in the Iranian judgment,' when you say 'currently' do you mean roughly the time of the e-mail? A: It would appear so, yes.").

1201 Ex. 2 at cell L35.

1202 Ex. 1936 at 1-2 (Mar. 27, 2013 email from K. Markovic to S. Geraci).

1203 See supra nn. 1161 & 1162.

million,[1204] at a time when the Flagship Funds were valuing their Peterson Turnover Litigation positions at over $111 million and had advanced over $55 million into that case, of which over $25 million was advanced to plaintiffs.[1205]

671. When Mr. Condon asked Dersovitz about the timing for satisfaction of a redemption request, Dersovitz told Mr. Condon over the phone that a partial redemption would be made effective immediately and paid upon the completion of the 90 day notice period plus the 30 day payout window, when, in reality, the Offering Memoranda provide that partial redemption requests are made effective on a quarterly basis, and only then does the 90 day notice period begin to run.[1206]

[1204] Ex. 453 at 2 (Sal Geraci notes on Wall Street Journal story); Tr. 2800:19—2801:11 (Geraci) ("Q: And then it reads, tell me if I'm wrong here, 'Mass exposure if zero collected on Iranian judgment Roni -- $12-1/2 million'? A: Yes. Q: Is that because Mr. Dersovitz told you the maximum exposure, if nothing is corrected on the Iranian judgment, would be $1-1/2 million? A: Yes. Let me give you a broader scope of the question. It was our understanding that many of the Iranian positions were collateralized by attorneys. I think that answer referred to if no, the judgment in the Iranian case went to zero, the award went to zero that the attorneys would have to put up their collateral position of a certain dollar amount. Q: So worse case scenario, if the Iran case lost you can go after the attorneys and you would only be out $12-1/2 million; is that your understanding? A: Yes.").

[1205] Ex. 2 at cells L50 and N50.

[1206] Ex. 385 at 1 (Jan. 14, 2013 email T. Condon to M. Chandarana); Ex. 386 at 1 (R. Dersovitz email to T. Condon stating that Dersovitz "misspoke . . . during [their phone] conversation"); Tr. 979:11—980:19 (Condon) ("Q: Okay. Do you see a response from you – a little higher on that same page it says, 'Thank you for the form. On the phone, Roni said my redemption request would be accepted monthly not quarterly. I was careful to clarify that point on the phone call, and then it continues. As the quarter just began, it obviously makes a big difference to me and my investors, is RD Legal going to stand by what Roni told me today and accept my redemption request effective February 1, 2014.' When you said 'What Roni told me today,' did you have a conversation with Mr. Dersovitz on the day you sent that e-mail, January 14? A: Yeah, and Meesha was on the phone as well. The three of us were on the phone together. Q: And what was it Mr. Dersovitz told you that you're referring to in this e-mail? A: Well, I think at some point I must have expressed my intent to make a redemption. I asked about the process for doing that. Q: And what's that you were saying you were careful to clarify on the phone call? A: Just the timing associated with it when redemption requests would be accepted and then following that, you know,

672. When Mr. Levenbaum asked Dersovitz about the liquidity issues raised by the April 30, 2015 suspension of redemptions notice that Respondents sent to investors, Dersovitz falsely told Mr. Levenbaum that the liquidity issue only applied to the Offshore Flagship Fund, even though a few days later he suspended redemptions on both Funds.[1207]

673. Ms. Hirsch accused Dersovitz of not being forthright and reneging on his agreements in circumstances leading up to her initial departure.[1208]

674. Despite the representation in the Offshore Funds' Offering Memoranda that the Fund: "has selected persons who are not affiliated with the Investment Manager to serve of an investment committee[,]" Dersovitz selected Ms. Hirsch, who was affiliated with RDLC as a consultant at the time, to serve on the investment committee.[1209]

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when they would be realized. Q: What did Mr. Dersovitz clarify for you, if anything, on that phone call, about timing? A: So, you know, my memory is, and seeing the correspondence -- all right. You've got it marked as 386 and Roni made some statements that were incorrect. And, you know, when I went back to the -- to the limited partnership agreement, I discovered, yes, what Meesha is saying is correct, even despite what Roni had told me, you know, the redemption timeline was not what -- what he had said.").

1207 Tr. 3025:5-22 (Levenbaum) ("Q: Okay. And then on the next page, it says, 'On May 21, 2015, I had a telephone conference with you whereby you informed me that the liquidity dilemma only applied to the offshore fund, not the domestic fund for which I am a member.' . . . Is that the May 21, 2015, call we discussed a minute ago? A: Yes. Q: Okay. And who told you -- who are you referring to here when you say 'I had a telephone conference with you whereby you informed me that the liquidity dilemma,' et cetera? A: Mr. Dersovitz, Roni. Q: Does that reflect something he told you about the liquidity dilemma? A: Yes."); see also Ex. 549 at 2 (Jan. 12, 2016 letter from W. Levenbaum memorializing May 21, 2015 conversation).

1208 Ex. 617 at 1-2 (Nov. 12, 2014 email from Hirsch ("After you have reneged on our agreement four times to come on board, you are going to play games with my final invoice? . . . I had thought that you were a man of your word. We struck a deal no less than four times for me to come on board, and you reneged. You even blamed Kat, Joe, and Leo. . . . I have gone through all our emails, and my notes from every one of our conversations. At no time did you ever tell me you wanted to lower my rate or end our agreement. Not once.")).

1209 Ex. 65 at 20; Tr. 4592:20—4593:10 (Hirsch) ("Q: And if you turn to page 65-20. You see the header 'Investment committee'? A: Yes, I do. Q: And that's the committee you were on, correct? A: Yes. Q: And this describes it as 'The fund has selected persons who are not affiliated with the investment manager to serve on an investment committee.' Do you see that? A: Yes. Q:

B. Dersovitz Understood That RD Legal Employees Were Making Misstatements to Investors

675. Dersovitz approved all emails that went out to potential and actual investors, including emails by the marketing director, Katarina Markovic.[1210]

676. When Respondents' employees began to receive straightforward questions about the concentration of the Flagship Funds in the Peterson Turnover Litigation, Respondents' employees had to ask Dersovitz how to respond to those questions before responding to an investor.[1211]

677. In November of 2012, Ms. Markovic asked Respondents: "Do we have pre-settlement risk on the book: Osborne?" and warned Respondents to "be careful not to put in writing that [the Flagship Funds] do not take litigation risk and that we ONLY purchase legal fee

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And you were being paid as a consultant independent of being on the investment committee, correct? A: Yes.").

[1210] See, e.g., Tr. 6733:24—6734:14 (Markovic) (as transcribed) ("QUESTION: Okay. He says, 'Kat, I think you were grabbing a number for us on the percentage -- percent size of the Iran settlement in the main fund, but we departed before it was delivered. Could I trouble you for that number.' Do you see that? ANSWER: Yes. QUESTION: Okay. And you responded – did you respond. ANSWER: Yes. QUESTION: Okay. And you responded with the original dollars deployed. ANSWER: Yes. QUESTION: Okay. Who -- who told you to respond in that way. ANSWER: Roni."); Tr. 6750:22—6751:20 (Markovic) (as transcribed) ("QUESTION: . . . going back to the e-mail . . . It says, 'I believe Roni told me that the domestic fund has currently a 6 million loan in the Iranian judgment, is that accurate?' The response, 'Roni has deployed a total of 18 million in the domestic fund.' Do you see that? ANSWER: Yes. QUESTION: And who gave you that answer. ANSWER: I don't know. QUESTION: So was -- was it Mr. Dersovitz, or somebody else, is that -- ANSWER: It would have been Mr. Dersovitz, or Leo Zatta. QUESTION: Okay. And in terms of – is there any reason why the answer is limited, for example, to dollars deployed. ANSWER: I don't know. QUESTION: Okay. MR. BONDI: Ms. Markovic, did you clear these answers by Mr. Dersovitz before sending them? THE WITNESS: Yes.").

[1211] See, e.g., Ex. 396 at 1 (Mar. 24, 2014 email from K. Markovic to S. Geraci); see also Ex. 435 (Nov. 14, 2014 email from K. Markovic to R. Dersovitz ("Roni, I received another email requesting the % of assets the iran positions represents today & over the last 3 quarters. Let's discuss soon.")).

receivables of settled cases or non-appealable judgments" given the investments in the ONJ Cases and the Peterson Turnover Litigation.[1212]

a. Despite being prompted by Ms. Markovic's question to rethink the way the Flagship Funds were marketed, Dersovitz resisted, insisting that "it would be a mistake to change the way we market" because the ONJ Cases—at times over 10% of the Flagship Funds' portfolios—was "absolutely not what we do," and even tried to pass off the advances with respect to the ONJ Cases as the same as lines of credit.[1213]

678. After realizing that describing the Funds as taking no litigation risk given the investments in the ONJ Cases and the Peterson Turnover Litigation, Ms. Markovic continued to send out emails to potential investors stating that the Funds "took no litigation risk" or otherwise stating that the Flagship Funds invest "once cases have settled."[1214]

679. In May of 2013, investor Ned Doubleday emailed Ms. Markovic to ask: "Is the Marine case going to be put in a separate fund?" to which she obliquely and untruthfully responded "As I'm sure you know, the magnitude of this opportunity calls for a unique structure to accommodate its size."[1215]

680. In January of 2014, investor Jason Riley emailed RD Legal employee Meesha Chandarana to ask what percentage of the Funds' assets under management was invested in the

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1212 Ex. 610 at 1 (Nov. 20, 2012 email to K. Markovic to R. Dersovitz).

1213 Ex. 610 at 1 (Nov. 20, 2013 email from R. Dersovitz to A. Hirsch ("the simple fact is that this advance [to Osborn] is no different than a credit facility advance, meaning that we are lending against work in progress… .")).

1214 See, e.g., Ex. 348 at 1 (June 11, 2013 email form K. Markovic to P. Monea stating that the funds invest "once cases have settled"); Ex. 425 at 1 (June 30, 2014 email from K. Markovic to T. Siriski).

1215 Ex. 344 at 1 (May 20, 2013 email exchange).

Peterson Turnover Litigation. Ms. Chandarana, after looking at the "dashboard" for an answer emailed Ms. Markovic that the position was 56.80% of "total fair value," 51.92% of "total net book value" and that the dashboard did not have the numbers as a percentage of assets under management but that she had herself calculated it to be 60.07%, and asking Ms. Markovic how to respond to the query, to which Ms. Markovic instructed her to give the lowest figure she had calculated: "[t]ell him it's roughly 50% NBV, however we are close to offloading a significant portion of the position to another institution."[1216]

681. Dersovitz was present on at least one telephone call where he heard Ms. Markovic misrepresent that the Funds invested in "those that are only settled claims."[1217]

C. *Dersovitz Understood That There Were Different Risks in the* Peterson *Investment*

682. In soliciting Peterson plaintiffs to enter into funding agreements with RD Legal, Respondents, in a letter edited by Dersovitz, referenced specifically the possibility that the potential proceeds from the Peterson case "are not released by the court and returned to Clear Stream or the Islamic Republic of Teharan."[1218] Peterson plaintiffs were sent an email with the same sales pitch.[1219]

683. Ian Guy testified that the uncertainty of any payout in the Peterson case was part of Respondents' sales pitch, and part of what led him to enter funding agreements with RD Legal.

1216 Ex. 387 at 1 (Jan. 30, 2014 email exchange).

1217 See, supra, ¶ 465. See also Tr. 452:7-12 (Garlock) ("Q: When Markovic says to you the bottom of page 31, line 21, 'Right, because, remember, our area of focus is very, very specific. First of all, we have to work with those that are only settled claims,' what did that mean to you? A: Again, only settled claims, no litigation risk.").

1218 Ex. 1384 at 7 (May 19, 2012 email from Dersovitz to Genovesi, et al., attaching draft letter to Peterson plaintiffs).

1219 See Ex. 2959 (May 8, 2014 email from A. Walter to Ian Guy ("...you are not required to re-pay any part of the purchase price if the action to recover these funds is unsuccessful")). See, e.g., Ex. 2992 at 2 (§ 1(f) (no recourse provision)).

Guy explained: "And when [Mr. Genovesi] was talking to me, he told me, Say, hey, listen, you know this lawsuit's been going on for a while, ***and there's no guarantee that it is going to settle.*** Here you have the opportunity to receive some money at no cost to you or anything else, you know. You don't have to pay the money back if the lawsuit doesn't settle."[1220]

684. Respondents also flagged various Peterson-related risks in other materials sent to potential investors in the RD Legal Special Opportunities Funds. For example, in a "Special Opportunity Model" spreadsheet Markovic sent in April 2014 (at Dersovitz's instruction),[1221] Respondents represented that the "ultimate yield on these assets is subject to many variables including but not limited to ... the success or failure of the Turnover Litigation ... risks associated with the distribution of proceeds following any success of the Turnover Litigation, and the timing of distribution of proceeds following any success of the Turnover Litigation."[1222]

685. As late as December 2015, Dersovitz was circulating internally a draft "Assignment and Sale Agreement" relating to Peterson receivables similarly acknowledged that "Collection Risks are substantial, including because each judgment obligor is a foreign government that has

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[1220] Tr. 1771:25—1774:14 (Guy) ("A: So we discussed the advance. And when he was talking to me, he told me, Say, hey, listen, you know this lawsuit's been going on for a while, and there's no guarantee that it is going to settle. Here you have the opportunity to receive some money at no cost to you or anything else, you know. You don't have to pay the money back if the lawsuit doesn't settle. ... Q: And then you mentioned that Mr. Genovesi told you that you don't have to pay the money back if it turns out this case doesn't settle? A: If it doesn't settle, yes, sir. Q: Did that matter to you in determining whether to enter into a deal? A: Yeah. I mean, it was a win-win for my family, I thought. You know, the lawyer – the lawyers weren't saying that it was going to settle. It was still ongoing. And it kept going back and forth between court and court and court. They tried to keep us updated as much as possible through the website, but it wasn't looking promising. ***And when I talked to Mr. Genovesi, he sort of convinced me, just by our conversation, not saying, Ian, you must do this, but just the dialogue we had back and forth about the case might not settle.*** So it compelled me to go ahead and do some advances with them." (emphasis added)).

[1221] Ex. 406 (Apr. 29, 2014 email from Markovic to P. Ingram and "x," copying Dersovitz ("Roni asked that I send you the model...")).

[1222] Ex. 406-A at Cell B-82.

refused to pay and there is ongoing litigation collateral to each Judgment to satisfy the applicable Award from property located in the United States."[1223]

686. Some of the lawyers Dersovitz hired to help him evaluate the purchase of plaintiff positions in Peterson told him that the case was an ongoing litigation were there was a realistic chance of losing.[1224]

687. Many investors told Dersovitz they did not like the Peterson case, and provided many different reasons why they did not like that case.[1225]

688. Investors told Dersovitz they did not like the Peterson case for reasons including "political risk," "normalization risk," and "litigation risk," including the risk that the Peterson plaintiffs might not prevail in the turnover action.[1226]

[1223] Ex. 596 at 5 (§1(e)). See also Ex. 516 at 2 (§ 1(c)) (agreement signed by Perles and Fay with identical acknowledgement).

[1224] See, e.g., supra n 199.

[1225] Tr. 2887:3-12 (Dersovitz) ("Q: You heard many investors -- excuse me, potential investors tell you that they did not like the Peterson case, correct? A: Many investors expressed their opinion. Q: And many investors expressed the opinion they did not like the Peterson case, correct? A: Correct. Q: And they gave you many reasons why they did not like the Peterson case, correct? A: Correct."). See also ¶¶ 641-644; 687-688.

[1226] Tr. 2887:13—2889:2 (Dersovitz) ("Q: Some told you they didn't like the Peterson case, they feared litigation risk, correct? A: Correct. Q: Some told you they did not like the Peterson case, they fear the political risk, correct? A: Correct. Q: Some people used the word 'normalization risk' in describing their fears about the Peterson case, correct? A: Correct. Q: What did you understand normalization risk to be? A: People were frightened that relations would normalize and some -- and that somehow it would impact this corpus of money. Q: What did you understand investors to mean when they told you they feared litigation risk relating to the Peterson investment? ... A: They generally thought that it could go on and on and it did not understand that it had a limited duration. Q: You understood that some investors were concerned about the litigation risk, that the Peterson plaintiffs might not prevail in the turnover action, correct? A: I understood that some investors expressed litigation risk as a concern. Q: Mr. Dersovitz, you understood when some investors expressed litigation risk as a concern, some of those people were referring to the risk in the turnover action, the plaintiffs might not ultimately succeed in the turnover action? A: They -- as I understand, they saw that possibility. Q: And you have that understanding because at least some investors expressed that to you? A: Yes."); n. 679 (Gumins testimony).

689. Dersovitz testified that he recalled investors—including, but not limited to, Tiger 21 members—contacting him after the Wall Street Journal published an article about RD Legal's Peterson-related investments to express surprise at the Funds' investments in that matter.[1227]

690. Dersovitz knew investors sought to avoid investing in Peterson-related assets since at least 2012.[1228] Dersovitz knew investors often chose not to invest in the Special Opportunities Fund based on these very concerns about Peterson.[1229] And Dersovitz knew that some of the

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[1227] Tr. 6458:11-22 (Dersovitz) ("Q: Thank you, Mr. Dersovitz. I believe you said – you gave some testimony about certain Tiger 21 investors contacting you after a Wall Street Journal article to express their surprise at the fund's investments in the Peterson matter; is that correct? A: Yes. Q: And it wasn't just Tiger 21 members, right? People outside of Tiger 21 also contacted you to express their surprise at the fund's investments in the Peterson matter? A: Some.").

[1228] Tr. 3825:13—3826:13 (Dersovitz) ("JUDGE PATIL: If you read on -- forget about the highlighted sentence. There's one sentence after that. It says, 'If only a few remain unhappy with the exposure at that time, the option exists to redeem them out.' So the reason why I'm asking about who these people are is because you're obviously anticipating there, I think, that some people will be unhappy. THE WITNESS: I knew people were unhappy for all the reasons we've been discussing. And it's not my money. It's their money. My responsibility is to, A, act within the four corners of my offering documents and to do what I think is in their best interest. Their responsibility is to remain informed. And if they don't like the strategy, redeem. ... Q: Is it the case that only a few of the RD Legal investors were unhappy with the Peterson exposure as of or around June 2012? A: As I just mentioned, we -- the funds must have paid in excess of $50-plus million over a period of four years. There were a lot of people who just didn't understand or were unhappy with the trade. Q: And you understood that in 2012, correct? A: Absolutely."); ; see also Ex. 734 (Mar. 23, 2013 email chain among Dersovitz and RD Legal personnel (Dersovitz encouraging Markovic to "revisit" the Iran opportunity with potential investors who declined previously)).

[1229] Tr. 2692:22—2896:11 (Dersovitz) ("MR. BIRNBAUM: Division Exhibit 204 at 286, line 23... 'Question: Did any Tiger 21 people like to invest in the special opportunities vehicle? Answer: I don't believe [N]atan [Vais]man is a member of Tiger 21, but I think a friend of -- I think the answer is no as I don't think he is a special Tiger 21 member. Question: Why, did [he] not invest in the special opportunities vehicle? Answer: No. Question: Did anyone tell you why? Answer: It all -- it goes back, it always goes back to the same thing, the what if in the emotive response.' ... Q: When you say 'It goes back, it always goes back to the same thing, the what if and the emotive response,' are you referring to the what if the Peterson litigation doesn't go well? A: I don't remember my exact thoughts at that moment in time, but it probably dealt with what if President Obama were to repatriate that response somehow, those monies somehow. Q: You heard that from investors during the times when you were running the flagship funds, right? A; Among numerous other concerns."); see also supra n.377.

investors who did not want to invest in Peterson receivables were invested in the Flagship Funds.[1230]

a. Dersovitz also understood that he had to offer higher returns in an effort to attract prospective investors to the Peterson-related assets, whether in the Iran SPV[1231] or as participations from the Flagship Funds' portfolio.[1232]

b. Investors understood that the Peterson-related assets were higher risk than the Flagship Funds in part because of the higher projected returns.[1233]

691. Dersovitz was warned by Ms. Hirsch that he was putting the firm at risk by investing so much in Peterson because "people don't want to be in a fund that has that level of concentration."[1234]

[1230] See, e.g., 3831:3—3832:4 (Dersovitz) ("Q: Mr. Kessenich e-mailed you, saying, 'Roni, I presented this fund at our investment committee meeting today. We are going to pass. I received the same reaction as the 9-11 fund. My partners were not comfortable receiving 18 percent from the veteran families. I look forward to seeing Leo in a couple of weeks. Will you be joining him? I hope all is well. Best wishes. Pace.' Did you understand Mr. Kessenich to be explaining that his fund was not interested in whatever investment opportunity you were describing in your e-mail? A: Yes. Q: And do you understand that the reason he was giving is because his investment committee was not comfortable making 18 percent from the veteran families in the Marine barracks case? A: Yes. Q: And were those the same veteran families that ultimately entered into transactions with the flagship funds? A: Yes. Q: I think you already answered my next question. And you understood at that time that Mr. Kessenich was invested in those flagship funds, correct? A: That was my -- yes. I believe he was at that time.").

[1231] Ex. 320 (Jan. 26, 2013 email from Dersovitz to Slifka (projecting overall return on the Iran portfolio "to be slightly higher than 20%")).

[1232] Ex. 426 (July 15, 2014 email from Dersovitz (offering to negotiate participation in portfolio of Iranian assets at approximately 15% return)); Ex. 427 (July 15, 2014 email from Dersovitz (same)).

[1233] Tr. 924:14-22 (Wils) ("Q: And you never did any separate analysis of what the risk of the cases in the domestic fund were compared to the Peterson cases? A: I never did a study of what the risk in the cases were, because I was not interested in it. And -- but I did assume, given that the return was greater, that there was a higher risk. Because any investment of -- in any investment, the greater the return, the higher the risk.")

[1234] Tr. 4574:13—4575:10 (Hirsch) ("Q: Did you ever tell Mr. Dersovitz that he was betting the farm on the Iran case because the concentrations were so high? A: I may have said something like

692. When Michael Davis, a member of the Offshore Fund's Investment Committee, was asked about potential approval for advances to the Perles Law Firm, he explained that the Peterson case "isn't like the award ... against a State or Drug Company or Bank that we can rate the credit of the obliger."[1235] Davis, after doing "a lot of reading on the subject," wrote to Dersovitz regarding the Peterson case, stating: "As you know, this is not a normal situation. In every case, there is a judgment or agreement and an obligor, which there is here. We then look at the creditworthiness of the obligor and decide an appropriate exposure level." Recognizing that, as Respondents used the term obligor, Iran would be the obligor in the Peterson case, Davis continued: "Iran would receive a low rating and the exposure would be very limited, if any. The

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that, yes. And what I meant was that when you're in any kind of concentrated position, it could be 100 percent cash, and the investor is not at risk, but your firm may still be at risk. So there's a distinct difference between a concentration risk on behalf of the information and concentration risk on behalf of the firm. Bill Ackman, for example, who is an investor who invests in one or two positions at a time, he is betting his firm on two positions, and he is betting his client's portfolio on two positions, because those are completely speculative positions. But if I have cash in my book, and I'm 90 percent cash, I'm not putting my client at risk. So that becomes a completely different risk. And one of the things that everybody loves to conflate are the risks in portfolios and as they relate to concentration or diversification."); Tr. 4577:11—4579:2 (Hirsch) ("Q: Okay. So in terms of your understanding of the Peterson position, when you warned Mr. Dersovitz that he was -- he was risking the future of his fund on it -- A: No. I didn't say the future of the fund. . . . I said you're putting the firm potentially at risk, because even if -- even if the investors -- which they did -- had not get affected by it -- okay? -- you may be putting your firm at risk if people don't want to be in a fund that has that level of concentration. That's what I said. Q: So that's why the firm was at risk is that level of concentration? A: But that does not -- I am not by any stretch of the imagination comparing that to risk, which is what you seem to be connecting. I'm not talking about risk. I'm talking about just sheer concentration. Q: Just the fact that there was any concentration at all? A: Correct. Q: Because the investors would care about that? A: Do they care about it? You know, what -- investors care about returns, and investors care about getting their money back. That's what they really care about. And – Q: So why would it matter how concentrated the fund was? And then why would you warn Mr. Dersovitz? A: Again, there's a difference between what you do to your --what concentration affects a fund and a firm, okay? There are plenty of people that won't invest in Bill Ackman, for example -- and I keep using poor Bill as an example only because he's got one position in his portfolio, okay? The Peterson position was not one position. It was a diversified pool. So when we talk about concentration, we have to be very careful about how we address it.").

[1235] Ex. 234 at 1 (Jan. 26, 2011 email to P. Larochelle).

difference here is that there is a substantial asset of the obligor that is being looked at as the payment source." Even if one treated the Peterson receivable as cash, Davis explained: "The problem is, there is no 'credit rating' here that can be linked to the cash." Based on that, it would seem that the maximum unrated level as detailed in your Policy and Procedures Manual be used, which relates to the Level III."[1236]

693. In an email to his employees, Dersovitz explained his view that given the longer duration and the longer ROI, comparing the investment in the Peterson Turnover Litigation to the other investments in the Flagship Funds' portfolio was like comparing "apples to oranges."[1237]

694. Dersovitz perceived the collection risk involved in the Peterson Turnover Litigation to decrease as new developments in Congress and the Executive occurred,[1238] as shown for example with:

a. The email he wrote his son in February of 2012, after the issuance of the Executive Order, stating that with that action and the operation of TRIA, the Peterson Turnover Litigation would then become "almost totally akin" to his business;[1239]

1236 Ex. 259 at 1-2 (Nov. 14, 2011 email to Dersovitz).

1237 Ex. 308 at 1 (Nov. 3, 2012 9:51 P.M. email from R. Dersovitz to K. Markovic).

1238 See generally Tr. 2897:24—2898:15 (Dersovitz) ("Q: My question, sir, is whether starting from the time the funds made their first investment in the Iran case you always told potential investors in the flagship fund that the funds were investing in the Iran case? A: When I -- when I first began investing in Iran, it was a normal trade. It was a little unusual, but it was a normal trade. Q: Can you answer my question, sir? A: I can't tell you right as I sit here today that I told every single person that I ever spoke to. I wouldn't make that statement. In my mind it was a normal trade at that point in time, going back to 2011 or so. Q: Did there come a time when you can confidently say you always told investors the flagship funds were invested in the Peterson case? A: I started getting more and more excited about it as circumstances changed.").

1239 Ex. 271 at 1 (Feb. 19, 2012 email form R. Dersovitz to J. Dersovitz); Tr. 2913:22—2914:3 (Dersovitz) ("[discussing Exhibit 271] [Q:] Do you have any reason to believe you didn't send that e-mail? A: It's still accurate. Q: It's still accurate once the events described in your e-mail

b. The email he wrote certain individuals on April 6, 2012, stating that in his view the upcoming passage of § 8772 would "dramatically reduce[]" the "nature of the risk" with respect to the Peterson Turnover Litigation;[1240]

695. In June of 2012, when Mr. Craig and Ms. Ishimaru were expressing discomfort to Dersovitz with the exposure to the Peterson Turnover Litigation,[1241] he told them that the anticipated passage of § 8772 (then referred to as Section 503) he told them the investment would become "a new game" and that in his view the position "is clearly improving" such that there was "less risk with [the] incremental passage of time."[1242]

D. Dersovitz Had Final Authority and Approval Concerning the RD Legal Funds

696. Dersovitz was responsible for all investment for the Onshore Flagship Fund.[1243] Dersovitz was, at all times relevant to this matter, President and Chief Executive Officer of the Investment Manager.[1244] For the Offshore Flagship Fund, the Investment Manager—Respondent

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happened, the Peterson investment was almost totally akin to what RD Legal already did? A: Yes.").

[1240] Ex. 279 at 1 (Apr. 6, 2012 email from R. Dersovitz).

[1241] Tr. 343:9-12 (Ishimaru) ("Q: Why did you write that? A; Because I still want to get to the bottom of how high this exposure can go, because I wasn't very happy about this loan."); supra ¶¶ 414-423 (chronology of Ishimaru and Craig interactions with Dersovitz regarding Peterson).

[1242] Ex. 287 at 1.

[1243] Tr. 2648:16-21 (Dersovitz) ("Q: And as president and CEO of RDLC, you controlled all of the onshore fund's investment activities, correct? A: I was ultimately responsible for those decisions. But it was done with my co-manager, if I may.").

[1244] Tr. 2649:12—2650:4 (Dersovitz) ("Q: And do you see under the underlined 'General,' ... 'Roni Dersovitz is the president and chief executive officer of [RDLC]... .' Do you see that? A: Yes. ... Q: Okay. In your explanation, do you disagree with that statement in any way? A: This statement is accurate... .").

RDLC[1245]—was authorized to make, "with the approval of the Investment Committee, ... all decisions as to the Fund's Receivables, Lines of Credit and Other Advances."[1246]

a. Dersovitz testified that he relied upon a "collaborative" process.[1247]

697. Dersovitz also had final approval authority over all of RD Legal's marketing materials.[1248] And Dersovitz frequently edited such materials.[1249]

1245 See, e.g., Ex. 67 at 7 (defining "Investment Manager").

1246 See, e.g., Ex. 67 at 14.

1247 Tr. 3546:6-15 (Dersovitz) ("Q: My question, Mr. Dersovitz, is whether there came a time where you said to people that RD needed to stop calling things exposure limits. A: We have a collaborative process in the office. Many times, it's not me that comes up with improvements. Q: Can you please answer the question? MR. WILLINGHAM: Objection; asked and answered. JUDGE PATIL: Overruled. A: I don't know who came up with it as I sit here today."); 3554:24—3554:3 (Dersovitz) ("Q: You believe the one posted on the website should have included any changes you made on February 29th; is that fair? A: As you can see by these e-mails, it was a collaborative process. So I can't tell you."); Tr. 5503:21—5504:5 (Dersovitz) ("Q: And let's get this out of the way now, Mr. Dersovitz. When these are finally approved and dates are put on them, is that something that you take part in? A: Yes. I ultimately have to approve them after -- internally we use a collaborative process. People like Kat and Amy would have prepared these. And then it would have been disbursed to a wider group, and everyone would have -- insert their comments and so on and so on."); Tr. 5532:15-25 (Dersovitz) ("Q: And was this part of the collaborative process that you described going on at RD Legal? A: Yes. Katarina, Amy and others were involved in this process, because we each had our areas of expertise. They were professionals in different areas, and everybody has something valuable to contribute to these documents. People have different talent sets, and I wanted to make full use of their talent sets. And that is how I structured the organization. And that is how we work through today."); Tr. 5830:3-8 (Dersovitz) ("Q: This dialogue and red lining of the marketing materials, was this common? A: This is -- this was our -- this is what I previously described as our collaborative process. Q: People exchanging comments on the document? A: It was encouraged, yes.").

See also Ex. 214 at 70 (Jan. 19, 2017 Dersovitz deposition testimony reflecting 63 references to "collaborative" and 17 references to "collaboratively").

1248 Tr. 2653:11-15 (Dersovitz) ("Q: And you had final approval authority over all of RD Legal's marketing materials, correct? A: Ultimately the responsibility was mine. But once again, it was done as a collective process throughout the organization."); Tr. 2678:13-24 ("Q: Let's please take a look at Division Exhibit 31, which should also be before you. Mr. Dersovitz, do you recognize that as a December 19, 2011, RD Legal marketing presentation? A: Yes, I do. Q: And this is one of the marketing materials over which you had ultimate approval authority, correct? A: Once again, I, of course, had ultimate approval authority. But all of these documents were done by a collective process. That's how we did things internally.").

698. As Mr. Genovesi, who worked in RD Legal's originations group,[1250] testified: "The firm is called RD Legal. Ron had authority over everything."[1251] Mr. Gottlieb likewise testified about Dersovitz's control over all things RD Legal, explaining "nothing really happened without him knowing about it or approving it."[1252]

699. Genovesi further testified that Dersovitz had the sole authority to determine how to deploy Fund capital.[1253]

[1249] Tr. 2659:2—2660:10 (Dersovitz) ("[regarding investigative testimony] Q: And if I may read from the same page in the record at line 8. This is 393 line 8: 'QUESTION: Okay. Did you make edits just as a general – as a general matter? ANSWER: Many times I make edits. I don't have a specific recollection as to here.... ANSWER: I always ultimately had final approval.' Mr. Dersovitz, were you asked those questions, and did you give those answers? A: Yes. Yes, I did.").

[1250] See, e.g., Tr. 1206:19-23 (Genovesi) ("Q: So you were in originations the whole time you were at RD Legal? A: Yes. My title changed throughout. I oversaw more people as time went on. But I was always focused on originations.").

[1251] Tr. 1211:1-16 (Genovesi) ("Q: Who, if anybody, had final authority over approval of that kind of letter [to Peterson plaintiffs regarding a potential funding agreement]? A: Ron. Q: Why do you say that? A: The firm is called RD Legal. Ron had authority over everything."); Tr. 1239:1-6 (Genovesi) ("Q: Now, do you have an understanding – you said Mr. Dersovitz, as the president or the CEO, the head of the business, he had final authority about all the decisions the company's made, correct? A: Correct.").

[1252] Tr. 6400:18—6401:1 (Gottlieb) ("Q: Who did you view as the sheriff of RD land? A: Roni Dersovitz. Q: Why do you say that? A I mean, it was Roni's firm. He was the boss. He -- nothing really happened without him knowing about it or approving it. But Roni was also the smartest – often the smartest person in the room.").

[1253] See, e.g., Tr. 1216:9-1217:2 (Genovesi) ("Q: And what I would like to know is how you came to -- well, let's start with how you came to learn that it was okay that somebody at RD Legal had approved doing deals with non-law firms. A: I don't recall the details. You know, I -- it must have been internal discussion that was brought to Roni's attention that this was something that existed, and he had to approve saying, Yes, we can proceed with this. Q: Why do you say you believe Mr. Dersovitz would have had to approve that you could proceed with this? A: Because no one else had the authority to make those kind of decisions other than Ron. Q: What do you mean by 'those kinds of decisions'? A: Deploying capital. No one could say, Let's wire money to that guy, without Roni approving it.").

700. When Ms. Markovic made her pitch to investors, her understanding was that there were no cases in the Flagship Funds' portfolio that had not yet been settled or reach final judgment.[1254]

701. Ms. Markovic did not understand that the size of the Peterson Turnover Litigation investments in the Flagship Funds' portfolio was above 50% until after she read the Wall Street Journal story in March of 2014 and had a conversation with Mr. Genovesi about it, thinking before that that it was around 30%,[1255] even though that position became larger than 30% of the Flagship Funds' portfolio in July of 2012,[1256] before she even began working at the Funds.

[1254] Tr. 6725:10-14 (Markovic) (as transcribed) ("MR. BIRNBAUM: When you made your pitch to investors, it was your understanding that there were no cases that had not yet been settled or reached final judgment; is that fair -- THE WITNESS: Yes.").

[1255] Tr. 6734:15—6737:10 (Markovic) (as transcribed) ("QUESTION: Okay. Did there come a time when you learned what percentage of the fund was invested in the Iran case. ANSWER: Yes. QUESTION: When was that. ANSWER: I don't remember the date. QUESTION: What percentage did you come to learn. ANSWER: I don't remember the exact percentage, but I remember it being over half of the portfolio. QUESTION: Okay. And I appreciate you don't remember the date, but do you remember, was there something that precipitated or how it is that you learned. ANSWER: Yes, it was in around the time of the Wall Street Journal article. QUESTION: The first one. ANSWER: Yes. QUESTION: Okay. And you learned from whom that it was over half of the portfolio. ANSWER: I think it might have been the head of Origination at that time. QUESTION: Who was that. ANSWER: Joe Genovesi. QUESTION: Why -- why from him. ANSWER: A conversation we had. QUESTION: Was it -- was the conversation prompted by the Wall Street Journal article in some way. ANSWER: I don't remember. QUESTION: Okay. Well, you seem to recall learning about it around the time of the Wall Street Journal article, so I'm trying to understand why -- why those are -- those two are related in your mind. ANSWER: I don't know. . . . MR. BIRNBAUM: Sorry. Was Mr. Genovesi's answer to you in response to a question you asked him? THE WITNESS: I don't think so, I don't think so. . . . MR. BIRNBAUM: Did you have any reaction to learning that the Iran claim was, did you say, over fifty percent? THE WITNESS: Yes. MR. BIRNBAUM: Did you have any reaction? THE WITNESS: Yes. MR. BIRNBAUM: What was that reaction? THE WITNESS: Surprised. MR. BIRNBAUM: Why were you surprised? THE WITNESS: I guess I didn't appreciate that it had grown so big. MR. BIRNBAUM: Mr. Dersovitz had never told you that the Iran claim had -- was at or above fifty percent of the portfolio? THE WITNESS: I don't remember him saying it, no. QUESTION: You used the words 'grown so big.' Did you have an understanding before you learned about the fifty percent that it was something else, something smaller. ANSWER: I can only tell you what I think I remember during that time, and for some reason in my mind, when I start -- in my mind, I thought it was around thirty percent; I can't tell you why I thought that, but

702. Mr. Gottlieb testified that he did not understand his role to review marketing materials to determine whether their descriptions of cases as "settled" was accurate.[1257] Mr. Gottlieb's role with respect to reviewing marketing materials was to look for "grammatical and drafting errors" and to add boilerplate disclosures.[1258]

a. Gottlieb did not have a computer, phone, or access to documents at RD Legal.[1259]

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for the longest time, I thought it was thirty. QUESTION: So before you spoke to Mr. Genovesi, you thought it was thirty; is that what you're saying. ANSWER: Mm-hmm. QUESTION: And then you found out it was more than fifty, that was what was surprising to you. ANSWER: Yes. QUESTION: Okay. MR. BIRNBAUM: Did you discuss that concentration with Mr. Dersovitz at any time after learning from Mr. Genovesi what the concentration was? THE WITNESS: Yes. MR. BIRNBAUM: Did you express your surprise to him in any way? THE WITNESS: Yes. MR. BIRNBAUM: How did you do that? THE WITNESS: I don't know specifically, but, you know. MR. BIRNBAUM: In substance, if you don't remember the exact words, what did you say to convey your reaction to learning how much of the fund was invested in the Iran claim as a proportion? THE WITNESS: I guess I must have said, wow, I didn't realize it got to be this big.").

[1256] Ex. 2 at Cell O-15.

[1257] Tr. at 6402:20-25 (Gottlieb) ("Q: And when you were reviewing those marketing documents and saw the language related to settled cases, did you view it as your role to test the accuracy of whether, in fact, RD Legal was investing in a way described there? A: No.").

[1258] Tr. 6332:20—6333:15 (Gottlieb) ("Q: And during your time when you were working with RD Legal, did you review marketing materials as they were updated? A: Absolutely. Q: And what type of things did you review them for? A: I would review them for -- I would look for grammatical and drafting errors. If a capitalized term was used one place and not used in another place, I would comment on that. I would add the requisite disclosures and disclaimers, you know, RD Legal Capital was an investment advisor registered with the SEC. Registration does imply, you know, that sort of thing. Past performance, those types of common disclosures that the SEC would want to see on marketing material. And then if there was some egregious marketing issue, I would call attention to it. If I thought something was approaching, like, say, a guarantee, I would make note of that.").

[1259] Tr. at 6501:2-13 (Gottlieb) ("Q: . . . did you have a physical office at either of RD Legal's offices? A: No. I used -- I was allowed to use a guest office. I had a desk -- it wasn't a desk. It was more like a table. And then I was kind of removed from that to a conference room I'd use when I'd come in. But I never had a computer. I never had access to documents. I never had a phone. I never had a business card that showed RD Legal. Nothing like that.").

703. Ms. Hirsch testified that her role in reviewing marketing materials was "predominantly" to "revise for formatting" and "get it institutional quality looking."[1260]

a. Ms. Hirsch, when reviewing documents, did not personally review them for accuracy.[1261]

704. Ms. Markovic's role with respect to the marketing materials used by Respondent RDLC with respect to all its funds was limited to doing graphical work and other non-substantive

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[1260] Tr. 4599:4-4600:6 (Hirsch) ("Q: And when you looked at documents like this presentation [Ex. 1145], all you did was revise for formatting and issues like that, correct? A: Predominantly. I mean, what we tried to do was make it the best that we could, and make it as clear as we could. That's what we did with all documents. . . . That's why I said they're evolving. Everything that you're going to see was an evolution from something else. The first FAQ that came out was very different than the second one, the third one and the fourth one. Q: . . . Your role was the formatting and making it look professional, correct? A: When you institutionalize something, most of what you're trying to do is get it institutional quality looking. So, yes, mostly you're trying to change formatting. When you're changing formatting, you also are taking things out and putting things in. But it was a collective -- a collective effort. And I know we discussed this in January, and we discussed it during the summer. This is an effort that everyone participated in. It's really hard to tell where one person left off and the other person came on.").

See also Tr. 4608:5-23 (Hirsch) ("Q: And when you reviewed the due diligence questionnaire, what did you review it for? A: Again, I reviewed it in general to make sure that it was industry standard; they didn't see anything glaring; that it was formatted the right way. I coordinated with Leo's group to make sure the numbers were correct. It got kicked around the firm to the appropriate people to put their stamp on it. . . . That was part of my role, kicking it around the firm to the various people that really needed to check it for accuracy of numbers, disclaimers, et cetera.").

[1261] Ex. 620 at 170:6-25 (Hirsch deposition tr.) ("Q: Did you have any role in drafting what you call the 'one-pager'? A: I probably looked at it, yes. Q: What did you look at it for? A: Probably format and -- I think that might be it really. Q: I'm going to ask the question again just to correct my form: What did you look at the document for? A: I believe format. Q: And in terms of formatting, what were you looking at when you looked at formatting? A: Did it flow properly? Did it make sense? Did it make sure that they discussed the net returns since there was a target net return, and the gross ultimately didn't mean anything to the client? So that's probably what I was looking for. Q: Did you review it for accuracy? A: You mean did I compare it to anything? No, I did not.").

updates, as well as spearheading the update process so that Dersovitz would ultimately grant his approval to release the documents to investors.[1262]

705. The comments and concerns raised by employees were often non-substantive and substantive concerns were overruled by Dersovitz.[1263]

[1262] Ex. 210 at 14:4-13 (Test. Tr. of K. Markovic) ("Q: And then what happened next, what happened after you met -- or had lunch with him? A: He talked to me a little bit about, you know, potentially coming on board and had asked me if I would, you know, start doing some work, you know, mainly with helping with the graphics on the marketing presentations and so forth, and, you know, potentially introducing him to some investors. With all due respect, nobody works for free, so I put some graphics together for him, but that's really where it ended."); id. at 23:1-24:11 ("Q: When you say the presentation materials, are you referring to a PowerPoint presentation? A: Yes. Q: Is that the one that you helped them put together? You mentioned PowerPoint earlier. A: The one that I just did the graphics for, yeah. Q: Understood, understood. And you're saying the content of -- you did the graphics, but the content of it, where did that come from? A: I believe it came from Amy and Roni, it was in existence when I was introduced to the firm. Q: Did that -- just speaking specifically about the PowerPoint presentation, did that get updated at various times while you were at the firm? A: Yes. Q: And who was in charge of that? A: Well, I spearhead all of that, so on a monthly basis, if I'm sure you're familiar with it, the presentation, it has a table of growth -- gross monthly performance, which needs to be updated on a monthly basis; on a quarterly basis, we look at it and see if there's any way to improve the way that we communicate with investors. So shall I get into my process? Q: Please. A: Okay. Typically what I do is my group will -- will go take the first pass, and that goes for pretty much any document that comes in or question -- list of questions from investors; we'll reach to source documents, we'll reach out to the various heads of departments to make sure that we, get the right information; we'll mark up an update, and then we'll send it to the next head of whichever department it is that that relevant change is being made. Ultimately then, it goes through Compliance, sometimes outside counsel, sometimes in-house counsel, and then Roni has the final sign-off, he -- he has to approve all materials."); id. at 54:1-23 ("Q: But did RD Legal Capital have a due diligence questionnaire? A: Yes, yes, I agreed that, yes. Q: Oh, okay. Who prepared it? A: I think, originally, it must have been an Amy/Roni effort. . . . Q: You said originally, it was prepared by them. Then, what happened? A: It would be updated periodically. Q: By whom? A: My group and then, again, same process; it goes through my group first, we use the source documents; then, it goes to the heads of departments; then, ultimately, Roni has the final say. And typically, at that stage, even with any of the presentations, questions, any of the marketing materials, more often than not we would convene in one of the conference rooms, pull it up on the screen and then go through it together; sometimes with only Roni, sometimes with Roni and Compliance, sometimes everyone would be involved, it's just what was efficient and who had the time."); id. at 97:3-15 ("Q: Do you see this is -- do you see the date as December 2012? A: Yes, I do. Q: Okay. Did you have any role in updating this from the one we saw previously, to the extent there was an update? MR. BONDI: Which one previously? MR. TENREIRO: 107. A: Define 'update.' Q: Any edits that might have been made, did you have a role? A: Nothing substantive; as you see, it's graphics mainly.").

VII. Respondents Unreasonably Withdrew Proceeds From the Funds

706. All of the non-line of credit assets in the Flagship Funds' portfolio were valued using the discounted cash flow method ("DCF").[1264]

707. The DCF consists of discounting to present value a supposed repayment amount by estimating duration until repayment and then discounting a supposedly known payment amount over that duration period, using a discount rate.[1265]

708. That discount rate was derived based on market interest rate yield spread curves, the credit rating of the payor assigned by Respondents to a particular receivable, and historic yields achieved by Respondents on past sales of receivables that had been purchased when the underlying cases had settled.[1266]

[1263] E.g., Ex. 610 at 1 (Nov. 20, 2012 email from R. Dersovitz to K. Markovic ("I feel it would be a mistake to change the way we market. That is absolutely not what we do and was only necessary because of need to work out of a situation")).

[1264] Tr. 1830:19—1831:3 (Robak) ("Q: And is that sometimes called a discounted cash flow method? A: Correct. Q: And why does Pluris employ the income approach or the discounted cash flow method to RD Legal's receivables? A: We think it's the best approach in this case. These are instruments that aren't traded very frequently, so a market approach isn't that relevant."); Ex. 256 at 1 (Respondents' letter dated Jan. 30, 2012 (stating "Management developed a discounted cash flow model, based on actual transactions, to determine the Fair Value of the Fund assets.")).

[1265] Tr. 1830:13-18 (Robak) ("Q: Okay. And when you say 'income approach,' what do you mean by that? A: It means you look at the income or cash flow that a particular asset is likely to produce at some point in the future, and then you discount that back to the present using a discount rate.").

[1266] Tr. 1881:15—1889:11 (Robak) ("Q: Mr. Robak, do you recognize this tab? A: Yeah. Q: What is it? A: It gives you a difference -- it gives you a yield spread to apply to the base yield. And it gives you then different discount rates depending on essentially maturity and a spread and the base discount rates and the rating. Q: . . . And with respect to the yield, is this the same yield that is applied as the starting point of the discount rate in the model? A: That's the -- in other words, this is the base yield, yes. So it gives you a different base yield for different instruments before we start adding these increments that we just looked at. Q: . . . And with respect to the word 'rating' that appears in this spreadsheet at Columns A and B here at Row 15. Do you see that? . . . What does that rating correspond to? A: Those are the RD Legal ratings."); Tr. 1987:4-24 (Robak) ("Q: So the beginning of the discount rate that Pluris ultimately provides begins at RD Legal's rating of the position, correct? A: Well, this formula refers for a yield matrix, which we saw that

709. The use of this methodology meant that a dollar deployed for an asset normally resulted in an immediate large increase in the overall value of the Flagship Funds' portfolio value, with a longer assumed duration have a larger impact on value all else being equal.[1267]

710. The fair value obtained using the DCF is higher than the fair value obtained using a straight-line, or net book value, accrual method, such that when Respondents' switched from straight-line to DCF valuation for the year 2011, they were able to draw money from the Funds based on a "higher valuation."[1268]

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before. We've discussed that. That yield matrix does, to some extent, to a very, very small extent, but to some extent take into account this rating, yes. Q: But that yield matrix is built around RD Legal's ratings, correct? A: Well, it's mostly based upon the empirical data -- as we saw before, the ratings make very little impact on that 13 to 20 percent discount rate, and has an impact of one or two points. The -- we're basically at a point plus or minus from the midpoint. Q: And the empirical data is derived from the Brevet portfolio? A: Correct. That's where the yield matrix comes from."); see also Ex. 355A at "Model 6.30.13" Tab Column CD (showing yields feed from "Yield Matrix" Tab based on RD Legal rating in Column F); Ex. 355A at "Yield Matrix" Tab (showing yield spread corresponding to RD Legal ratings I-VI); Ex. 355A at "Yield Cal on Cases Sold" Tab Rows 43-52 (showing basis of calculation for yield spread).

[1267] Tr. 6604:15-18 (Dersovitz) ("A: No. What I was discussing and attempting to explain to her, because of the valuation methodology -- okay -- you could deploy a dollar and all of a sudden it would be worth three."); Ex. 308 at 2 (Nov. 3, 2012, 9:06 p.m. email from R. Dersovitz to K. Markovic (explaining that deployment into Peterson case had a "huge bump in value" because of "long duration" and "a high rate of return" in the model)).

[1268] Tr. 297:25—298:2 (Ishimaru) ("A: Well, because the valuation was really due to this new model. He took in an incentive fee accordingly to a higher valuation."); Tr. 293:24—294:19 (Ishimaru) ("Q: Just generally speaking, would you just tell the Court what this e-mail is about. A: Yes. Oh, do you want me to tell now? Q: Yes, please. A: Just let me review it. Q: Sure, take your time. A: So this is explaining to Mr. Craig what Mr. Rowella had told me about the qualified opinion of Rohtstein Kass, and that in the past RD Legal had been accruing the interest of the receivable on a straight-line basis, but since the FASB 157 requires the fund to value assets at the price that someone would pay, that means, as I explained before, they would have to consider interest rate movement and credit quality of the defendant -- I mean the payor. So RD Legal, instead of using a straight-line amortization, developed a model that incorporated into it interest rate reduction and credit quality changes and asked a third-party valuation firm, Pluris, to validate that model and they did validate it, but Rothstein Kass -- actually, I shouldn't say something I'm just interpreting, so --"); see also Ex. 268 at 1 (Feb. 9, 2012 email from A. Ishimaru to P. Craig (explaining switch from straight line to DCF valuation)).

711. The DCF permitted Respondents to withdraw large amounts of assets from the Flagship Funds based on appreciation, and not collection, alone, for example:

a. The Flagship Funds deployed $7,441,964 to purchase the first receivables directly from the Peterson plaintiffs in September of 2012, and the fair value of those assets under the DCF method jumped immediately to $10,261,814.[1269] Of that approximate $2.8 million increase in value, a return equal to 13.5% in the first year of the $7.4 million deployed (approximately $1 million) would be allocated to the investors' accounts, but the rest, $1.8 million, would go to RD Legal Capital LLC's account. Thus, simply by deploying $7,441,964 to the Peterson plaintiffs, RD Legal Capital could immediately withdraw approximately $1.8 million from the Flagship Fund.

b. The assigned value of Licata and Wellcare Turnover Litigation positions went from approximately $12.5 million at the end of June 2011 to $25.2 million at the end of June 2015.[1270] An investor purchasing those assets by investing in the Funds on June 30, 2011 would have been entitled to a paper return of 13.5% for four years (from June 2011 through June 2015), or approximately $20.7 million total, leaving Respondents to withdraw approximately $4.5 million in real funds with respect to these assets.

[1269] Ex. 86 at 6 (Pluris valuation report); summarized at Ex. 8P (sum of column G, rows 46-56, 63-73 & 82-88 = $7,441,964); Ex. 8P (sum of column Q, rows 46-56, 63-73 & 82-88 = $10,261,814).

[1270] Ex. 2 (compare Cell J2 to Cell J50).

712. Respondents did in fact withdrawal all or nearly all of the value allocated to RD Legal Capital's capital account, based on the increases in the Funds' value, each year.[1271]

713. The Flagship Funds' available cash was low from the start of the period at issue in the OIP and diminished through 2015.[1272]

714. Respondents took out over $40 million in cash from the Flagship Funds from 2012 through 2015, and $4.5 million in 2011.[1273]

715. For investors, withdrawal of monies from the Flagship Funds based on the DCF was not problematic as long as the assets actually represented settled cases in which the exact collection amount was known because collecting more fees upfront would mean collecting fewer later.[1274]

716. By contrast, because investors understood that the Funds provided no clawbacks in case an investment did not pay out as it was supposed to (for example if it related to cases that

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[1271] See, e.g., Ex. 12 at 7 (2011 Financial Statements for Onshore Fund showing $5.2 million cash withdrawal by RDLC after $5.2 million allocation to its account); Ex. 14 at 8 (withdrawal of $2.4 million cash after $2.4 million allocation in 2012); Ex. 16 at 8 (2013: $6.7 million allocation and $6.9 million withdrawal); Ex. 19 at 8 (2014: $11 million withdrawal after $12.9 million allocation); Ex. 22 (2015: $9.3 million withdrawal after $15.6 million allocation); see also Ex. 13 at 9 (2012 allocation of $6.1 million to RDLC account from Offshore Flagship Fund); Ex. 15 at 10 (2013 allocation of $6.9 million to RDLC from offshore fund); Ex. 18 at 8 (2014 allocation of $1.7 million to RDLC from offshore fund); Ex. 172 (showing cash withdrawals from offshore fund of $6.3 million, $6.5 million, and $2.3 million for 2012, 2013, and 2014 respectively, essentially matching the foregoing allocations).

[1272] See Ex. 12 at 4; 14 at 5; 16 at 5; 19 at 5; 22 at 5 (2011 through 2015 Financial Statements for Onshore Fund showing decrease in available cash from over $3 million in 2011 to $564,671 at the end of 2015).

[1273] Ex. 2379; Ex. 12 at 7 & 11 at 7 (showing draws of $5.2 million and contribution of $652,303 for 2011, respectively); see also Ex. 2378 (showing over $9 million in net draws for Mr. Dersovitz alone in 2011-2015).

[1274] E.g., Tr. 299:16-19 (Ishimaru) ("A: At first, based on the fact that the law firm had won a settlement and it was just a matter of time and going through certain procedures that they would be paid.").

were not settled so that the actual earned fee was not known), they were uncomfortable with Respondents drawing money from the Funds based on DCF over any such non-settled cases.[1275]

[1275] E.g., Tr. 293:24—300:4 (Ishimaru) ("Q: Just generally speaking, would you just tell the Court what this e-mail is about. . . . A: So this is explaining to Mr. Craig what Mr. Rowella had told me about the qualified opinion of Rothstein Kass, and that in the past RD Legal had been accruing the interest of the receivable on a straight-line basis, but since the FASB 157 requires the fund to value assets at the price that someone would pay, that means, as I explained before, they would have to consider interest rate movement and credit quality of the defendant -- I mean the payor. So RD Legal, instead of using a straight-line amortization, developed a model that incorporated into it interest rate reduction and credit quality changes and asked a third-party valuation firm, Pluris, to validate that model and they did validate it, but Rothstein Kass -- actually, I shouldn't say something I'm just interpreting, so -- Q: Okay. So I think you said RD Legal developed a model; is that right? A: Yes. Q: And who told you that? A: Mr. Rowella. Q: Okay. Can I direct your attention to paragraph 3m please, and we can blow that up. And I'm just going to read into the record. It says 'Pluris evaluated the new NAV which was higher than the NAV obtained using the straight-line method. I will call the inclusion of the straight line 'X.' When this happens, Roni could not help himself but pay himself the increase in cash. The problem is since RD Legal does not actually sell the assets at the new price and holds the assets to maturity, the fund does not capture X. X can only be captured if the asset is sold at the valuation price. In other words, Roni ended up paying himself more fees up front. He will collect less fees down the road since he over-collected towards the beginning, so in absolute dollar terms the amount he ultimately collects does not change, but he collects more sooner.' Did I read that correctly? A: Yes. . . . [objection and ruling reserved by Court] . . . Q: You write, 'In other words, Roni ended up paying himself more fees up front.' Can you explain to the Court what you meant there? A: Well, because the valuation was really due to this new model. He took in an incentive fee accordingly to a higher valuation. Q: Okay. And then you say, 'He will collect less down the road since he over-collected in the beginning. So in absolute value terms the money he ultimately collects does not change, but he collects more sooner.' Can you please explain to the Court what that means. A: So let's say he bought something at a discount, as $0.80 to the dollar, so ultimately, the most profit that the fund can make on such an investment is $0.20. So if Mr. Dersovitz -- so Mr. Dersovitz's maximum incentive fee is based on $0.20, so if he collects more towards the beginning, he ends up collecting less later on because the value cannot go any higher than par, which is 100. Q: Okay. And you understood that the funds had a sort of preferred return for investors? A: Yes. Q: And what was that? A: 13 and 1/2 percent. Q: So in your example of the 80 and a hundred, what would investors get? A: Would get 13 half of that, of the 20. Q: Okay. And did you ultimately gain comfort with the issue about the model that had been developed? A: Well, I don't really recall how comfortable I got, but since it really was that -- **it was just Mr. Dersovitz was collecting these earlier, it didn't -- it wasn't like I loved the idea, because there's no clawback if something does happen, but since I felt comfortable that these investments it was just a matter of the duration, and ultimately the law firms would be paid and RD Legal fund would be paid, I didn't really think it was a major problem.** Q: And I think you said you felt comfortable that the law firms would ultimately be paid, it was just a matter of duration? A: Yes. Q: Okay. And what was that feeling based on? A: At first, based on the fact that the law firm had won a

settlement and it was just a matter of time and going through certain procedures that they would be paid. Q: Okay. Now, there's a risk that the settlement could somehow be -- let me strike that. If there was a risk that the defendant would not have to pay the settlement, would you have been able to obtain the same comfort on the this issue? A: No. Q: Why not? A: Because Mr. Dersovitz would collect incentive fees on interest that didn't materialize, that has the potential of not realizing." (emphasis added));

Tr. 668:10—671:23 (Mantell) ("Q: Okay. And, Mr. Mantell, if you look at the page marked Division Exhibit 369-6 . . . Is this the position to which you were just referring? A: Yeah. Because this is -- if you look at the second paragraph, it specifically points out at the end and says, Basically, as part of the decision, we continued advancing funds to Osborn. The investment manager has increased the portfolio concentration limit for the Novartis Pharmaceutical Company to $9 million. And what I thought at the time was, That's convenient. They're suddenly saying we had a limit that was planned that we won't want to take for Novartis, but now we need to. So we'll just increase the limit and advance the funds, because we don't want to admit that the Osborn case needs to be written down. We're deferring and denying to some degree or would be by virtue of making this choice in the long run. Q: And why did that alarm you? A: It alarmed me in one very specific way. It made me realize for the first time, and you can say, Boy, you're a fool, Alan, you should have seen this earlier. But I didn't believe what we were dealing with were valuation cases with these cases. And suddenly I realized, Oh, my God. I am no better than the marks. My investment position has no more validity than the way in which somebody is marking these assets to market. What I thought that we were talking about was a book. I thought we're making an investment in a $100 claim. It's got $100 face. We're paying 60 million for it -- $60 for it. We're carrying that thing at $60 and maybe we'll accrue some interest. But we're not otherwise dependent for our sense of whether there's been a profit or not a profit in any month on the way in which some other independent valuing agency is valuing or Roni, the manager, is valuing the portfolio. So I realized there's an entirely new risk in here that I have not accurately assessed. Q: And why did that risk -- why was that risk highlighted for you by the Osborn situation? A:You know, because they're starting to support -- if we read this whole thing, there's two or three pages of it. I have to see where it was, specifically whether it was the Osborn matter or the Cohen matter or the Smith law firm matter. In one of those discussions it became clear to me that valuations were being made to support the validity of the collateral position. And that meant to me, I'm no better than the truth or falseness of that valuation methodology. It's scary. Just that simple. Q: And if I could direct your attention to that second paragraph you referred to earlier. It says, 'To date, the Smith Mazure law firm has conducted' -- A: Yeah. Five audits of the Osborn portfolio. Last draft in July of 2013 concluded that the anticipated legal fees due should significantly exceed the balance due to us, including interim advances that have been made during the pendency of the litigation, the ONJ litigation. Now, this is something about some ONJ litigation. It isn't -- it's talking about the Novartis, Merck, they're writing about some speculation of trials. They're writing about how many have been won, how many have been lost. They're clearly concerned with what the likelihood of recovery is. That's the first time I realized -- or thought I realized, **Wait a minute. If I'm understanding this correctly, they're now valuing our portfolio, in part, based upon their beliefs about contingent future recoveries in some cases. That was not a risk that I thought I had, so I started trying to look harder.** And I actually asked Roni, as I recall. I think I asked Roni for a meeting with some people who were involved in valuation to try to understand how they were looking at that." (emphasis added)); Ex. 277 at 3 (email from P. Craig to R.

717. The expected date of payment and a calculated discount rate were the primary inputs affecting the DCF calculation over the Funds' assets, and the calculation did not account for risk that the asset would not collect due to court disputes—i.e., litigation risk.[1276]

718. Mr. Robak explained that the "possibility of winning a case" is not a number that Pluris determined.[1277]

719. After the Supreme Court granted certiorari to review Clearstream I, the value of the Peterson case investments in the Flagship Funds' portfolio increased.[1278]

Dersovitz (asking that Respondents "go back to its old way of calculating its cut on a straight-line basis")).

[1276] Ex. 16 at 16 (Funds' financials explaining that fair value is determined based on "current interest rate environment, the rates relating to the enterprise responsible for payment of the settlements . . . and the risk characteristics of the attorney business relationship.").

[1277] Tr. 1840:8-15 (Robak) ("Q: Okay. And with respect to that 'the receivables represent loan arrangements with certain lawyers or law firms,' what does that mean? A: Well, that's a description of what it means effectively. Q: Okay. A: In other words, not legally necessarily, but that -- that's what it amounts to economically."); Tr. 1841:9-15 (Robak) ("Q: Okay. And in addition to reviewing some of those contracts -- I'm sorry -- but did you go and review any of the underlying cases or case files? A: No. We reviewed -- we read these kinds of documents, pointing at the document he showed me earlier."); Tr. 1918:1-5 (Robak) ("A: That wasn't -- discount rate is not what I just was referring to. That's not -- I was talking about a specific number reflecting the possibility of not winning a case or not paying a receivable. We don't have that number. Nor does anyone else.").

[1278] Ex. 2 (Cells N53 & N54 showing fair value of overall Peterson position increasing during the month the Supreme Court granted certiorari); Tr. 1942:15—1946:10 (Robak) ("Q: . . . Now, how did those two plaintiff positions in terms of how they were structured affect the impact on the portfolio when the duration or the expected payment date moved in one direction or another? A: Well, the ones that we receive a certain amount of money, regardless of a timing, if you get that amount of money sooner, then that will be very good for the return on that position. And so if we change our expectation of that timing of receipt of any one of those, it would tend to drive the value up. But on the other ones, depending on the interplay between the discount rate and the per-diem rates, that could actually drive their value up -- value down if we change the timing. Q: There came a time when the Supreme Court of the United States granted certiorari and indicated that it would hear on appeal the Peterson case, correct? A: Correct. Q: And when that happened, you had some discussions with your client, RD Legal, as to what an appropriate adjusted expected payment date would be. Do you recall that, sir? A: Yes. Q: And the expected payment date was extended for some period of time; is that right? A: Correct. Q: . . . did RD Legal just tell you what the new expected payment date was? Or did you do some separate analysis? A: Well, we did some

720. The discount rate was derived based on the implied rate of return RD Legal Capital had achieved on the sale of receivables that related to settled or otherwise resolved cases.[1279]

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online research. But, no, we didn't -- we had a conversation and a discussion about what this would do to the expected repayment timing. And I believe we may have spoken with the Perles Law Firm as well. And not necessarily at this exact point in time. We certainly did, however, over some -- over a span of a couple of years, that this was a big issue. And, yeah, that was part of the work that we did. Q: And ultimately you chose an expected payment date that was farther out in time than what RD Legal believed that that date would be? MR. SUTHAMMANONT: Objection, Your Honor. Leading. At this point he's well beyond the scope of my direct. JUDGE PATIL: Sustained. BY MR. HEALY: Q: Did you and RD Legal agree on what the expected repayment date would be? A: Sometimes we did. I don't recall the specific time. I think there were many cases where RD Legal suggested a certain date would have been appropriate or maybe had a view in a range of dates, and we would have taken a different position. Q: Let's say you and RD Legal don't agree on an input, an expected repayment date or some other input. What does Pluris do? A: Well, we're going to go with our – what our analysis to write this -- in the direction that it takes us regardless. But then we would expect to have a discussion about what the right number should be that's -- obviously, that's a proper role of the investment manager. Q: Those kind of discussions you would have with RD Legal about what different inputs should be or how they should be adjusted, do you have those kind of discussions with your other clients as well? A: Correct. Absolutely. Q: And why is that? That's the role of the investment manager. The investment manager is responsible for marking to portfolio. It's not our job to mark to portfolio. We can only provide inputs. And the investment manager, if they disagree or think that there's any part of our analysis that isn't correct or maybe doesn't reflect all the data or all the factors that should be considered, then they should absolutely let us know and make their opinion heard. That's a completely normal part of the process. Q: Going back to the time the Supreme Court granted certiorari, and the expected payment date was pushed out a number of months, how did that impact the overall value of the RD Legal portfolio? A: I don't recall at that point. I think it might have increased the value."); Tr. 1961:23—1962:7 (Robak) ("Q: He also asked you about a conversation with Mr. Perles and when the Supreme Court granted certiorari in Peterson. Do you recall that testimony? A: Yes. Q: Did the discount rate on the Peterson positions change at all when the Supreme Court granted certiorari? A: We didn't. And I don't believe we ended up changing it at that point.").

[1279] Tr. 1836:1—1837:3 (Robak) ("Q: And when you say that you look at similar things, did Pluris undertake that analysis as to look at what people paid for similar things? A: We did, yes. Q: And how did you do that? A: Well, we -- you know, in our normal work, we -- first of all, we valued illiquid fixed income instruments all day long. That's a big part of our work. We value auction and securities. We value defaulted or high-yield instruments, instruments that don't trade very much. So we have the background. We look at increments to the discount rate all day long for things like illiquidity, default risk, et cetera, et cetera, et cetera. And particularly for the RD Legal portfolio, we looked at a number of instruments that they had sold early on before we were retained. And we looked at those also to gauge the discount rates that were implicit in those kinds of instruments. Q: Okay. And you said that they were – they were similar. You understood they were similar. And how did you come to understand that the positions that were sold before Pluris was engaged were similar to the instruments you ended up actually valuing? A: They were legal

receivables.") Tr. 1839:5—1841:15 ("Q: Do you recognize Division Exhibit 247? A: It looks like one of our retainer letters. Q: I'm sorry. I missed that word. A: I'm sorry. No, it actually looks like one of our opinion letters. Q: Opinion letters. I think that answers the question of what it is. If you turn to the second page of that 247-2, do you see your signature on that page, sir? A: Yes. Q: Turning back to page 1, in the second paragraph that begins, 'The portfolio which comprises 86 receivables.' Do you see that paragraph? A: I do. Q: The second sentence of that paragraph reads, 'The receivables represent effectively loan arrangements with certain lawyers or law firms wherein said lawyers or law firms are able to monetize their contingent share of legal settlements reached with defendants in cases where they have represented the plaintiffs.' Do you see that? A: Yep. Q: Okay. What did you mean when you wrote that line? A: Exactly what it says. Q: Okay. And with respect to that 'the receivables represent loan arrangements with certain lawyers or law firms,' what does that mean? A: Well, that's a description of what it means effectively. Q: Okay. A: In other words, not legally necessarily, but that -- that's what it amounts to economically. Q: Okay. And that's the conversation we had a moment ago about the way the rebates work versus an interest rate or -- A: Correct. Q: Okay. And it says, 'Wherein said lawyers or law firms are able to monetize their contingent share of legal settlements.' Do you see that? A: Yes. Q: And what did you mean by that, the contingent share of legal settlements? A: Meaning that when law firms get a nice settlement for one of their clients, they get a piece of the -- piece of the settlements. Q: Okay. And how did you know that that's what the receivables were in July 28 of 2011? A: Through discussions with RD Legal and reviewing some of these documents. Q: Okay. And in addition to reviewing some of those contracts -- I'm sorry -- but did you go and review any of the underlying cases or case files? A: No. We reviewed -- we read these kinds of documents, pointing at the document he showed me earlier."); Tr. 1858:24—1859:12 ("Q: And No. 3 there in paragraph 5 in Exhibit 247-3 says, 'An analysis of interest rates for similar illiquid instruments was performed primarily with reference to similar receivables sold historically.' Do you see that? A: Yeah. Q: Okay. And what is that describing? A: That describes the analysis that we just discussed that we looked at similar legal receivables. Q: The similar legal receivables that were sold by RD Legal prior to Pluris becoming engaged? A: That's correct.") Tr. 1885:25—1886:12 ("Q: Just so it's clear in the record and we understand, the cases -- the case names that are listed on the left there in Column A, is it your understanding -- understanding that those reflect the positions that were sold to Brevet? A: Yes. Q: Prior to when Pluris was engaged? A: Yes. Q: Okay. And that -- withdrawn. You used the information from that -- those sales to calculate what, in this sheet? A: To calculate the base -- the incremental discount rates.") Tr. 1887:16—1889:6 ("Q: And so is it -- am I correct in saying that, in effect, by testing the Brevet portfolio, you were able to come up with this yield matrix? A: Yes, we did. Q: Okay. And this yield matrix is the same -- or essentially the cursor of the yield matrix in the yield matrix tab? A: It is. Q: And that yield matrix feeds into the discount rate in the model? A: Correct. Q: Do you have an understanding of when RD Legal sold the positions in the Brevet portfolio? A: I don't recall exactly, but I don't think it was too far before we were retained. Maybe somewhere in the 2008, 2010 time frame. But I couldn't tell you. Q: And I believe you testified earlier that it was your understanding that that set of cases was the same as what you were valuing in RD Legal's portfolio? MR. HEALY: Objection. You can ask the question if he wants to ask the question. He's just sort of summarizing prior testimony before the proceeding began. MR. SUTHAMMANONT: Not before the proceeding. I think he testified earlier to that same -- today. THE WITNESS: I did not say that. MR. SUTHAMMANONT: Okay. Sorry. JUDGE PATIL: Sustained. THE WITNESS: I said I believe they are similar. BY

721. Respondents treated all of the assets in the Flagship Funds' portfolio were collection was "just a matter of duration" and the credit risk of the obligor, but the collection amount was known and the fact of collection from litigation proceedings was assumed.[1280]

722. The purpose of a fair value valuation method is to try to approximate what an independent third party would pay for the asset and a sale to an independent third party is a good sign of the true value of a position.[1281]

MR. SUTHAMMANONT: Q: Sorry. So they are similar to what's in RD Legal's portfolio as of this -- as of the time Pluris started to value them? A: Correct. Q: And that understanding was based on what? A: Based on our discussions with RD Legal that they were similarly legal receivables."); Ex. 243 (Respondents sending to Pluris information on Brevet receivables); Exs. 2476; 2480; 2481; 2483 (Marcum's analysis of Pluris' valuation model explaining that the "primary assumptions" in the model are the book value, the time to collection, and the discount rate, which was "developed . . . based upon the historic collections" of past assets considering "credit rating, the case type, and size of the investment."); see also Ex. 247 at 1 & 3 (Pluris assignment letter describing the receivables as "loan arrangements with certain lawyers" who are "able to monetize their contingent share of legal settlements reached with defendants" and describing that "an analysis of interest rates for similar illiquid instruments was performed, primarily with reference to Receivables sold historically").

[1280] Ex. 354 at 2 (email from L. Zatta explaining that Respondents "know the purchase price as well as the amount to be collected" and therefore "[d]uration is the remaining item which must be estimated"); see also Tr. 299:16-19 (Ishimaru) ("A: At first, based on the fact that the law firm had won a settlement and it was just a matter of time and going through certain procedures that they would be paid."); Ex. 2396 at 38 ¶ 111 (expert report of L. Metzger stating that turnover risks were assumed to be "virtually nil"); Tr. 5345:17-22 (Metzger) ("Q: And any conclusions you draw about risks in the Peterson cases rely on the premise provided to you by people at RD Legal that the turnover risk relating to the Peterson cases is next to nil, correct? A: Correct.").

[1281] Tr. 4163:10-18 (D. Martin) ("Q: Fair value is trying to approximate what an independent third party would pay for the asset, correct? A: Yeah, I would say that -- what you could sell it -- what the market value is, yes. Q: So if you have a sale to an independent third party, that's a good sign of what the true value of this position is? A: Most of the time, yes."); Tr. 1958:18—1959:16 (Robak) ("Q: When there is a sale like that to a third party, how does that impact your valuation analysis? A: I don't recall exactly how it impacted. Q: Would a sale to a third party -- A: In general -- Q: -- something that you consider? A: In general, when there is a sale to a third party, we look at what the sale price was at, how it compared with our valuation. JUDGE PATIL: Excuse me. When one of these positions gets sold to a third party, what happens to this? THE WITNESS: It's removed from the model. JUDGE PATIL: Okay. THE WITNESS: Yeah. But we then would also -- I think what Mr. Healy is referring to, we would then also -- our staff would take a look at the price that that position sold versus the price that we had assigned to it just before, and at least be -- make sure that we were comfortable that we were close. If we were really far apart,

723. As of July of 2015, the Flagship Funds had redemptions pending over $9 million, without counting redemptions that at that moment had not been made effective such as Magna Carta's redemption for $10 million (plus interest), Mr. Schaffer's redemption for $3 million (plus interest), and the redemption requests of a large Japanese investor.[1282]

724. The Peterson positions that the Flagship Funds sold to third parties were sold at their Net Book Value as carried in the Flagship Funds' books, not at the Fair Values that Pluris provided.[1283]

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then that would be something that we would want to consider if we should adjust our models for that.").

[1282] See Ex. 171 at 2 ($38 million outstanding redemption subtracting approximately $30 million attributable to Japanese investors results in nearly $8 million total redemptions pending in Offshore Fund); Ex. 170 at 2 (over $1 million total redemptions pending in Onshore Fund); see also Tr. 2045:24—2046:25 (Furgatch) ("Q: Thank you, Mr. Furgatch. In 447, on page 2 at the bottom, you conclude by saying -- first you say, 'In any event, the domestic fund is not overly dependent on the Iran recovery as it represents something like 8 or 10 million of investment, about 10 percent to 20 percent of the fund.' What were you recording there? Why were you including that in your email? Actually, I said conclude, I shouldn't say 'conclude the email.' On the next page it finishes, 'Did I get that right? Did I miss anything of significance? Thanks. Andy.' So what was it that you were asking Mr. Dersovitz there? A: Well, there were two major concerns. One was -- I'm sorry. Let me back up. I think there's another critical fact in the chronology that we missed. Before January and this date -- in or around this date, but I think before this date, we ourselves as an investor put in for a redemption request. So we're sitting on a redemption, and it's essentially, I've been informed, unfulfilled. Meaning that they won't have the capital to return to us on a timely basis."); Tr. 1133:9—1134:6 (Schaffer) ("Q: What happened after that? Did there come a time when your clients sought redemptions from this fund, from the main fund? A: Yes. My recommendation to clients was to redeem from the fund after this conversation. Q: Why did you make that recommendation? A: Well, three reasons, I guess, the first of which was that the fund itself was experiencing some illiquidity, and I was concerned that we didn't want to be the last ones in the building after everyone had run for the doors. So I wanted to get us in line for that. The second of which was that I believe that -- I was -- learning that the investments were in this, what he called the Peterson opportunity, was not what I believed we signed up for. And, third of all, I believe that, regardless of the particulars of the opportunity, that this was a poor portfolio management decision for Roni to have such concentration in any single thing, and that's just a blanket statement, not particular to this transaction, just if my stock pickers told me they had 55 percent in Apple, and I thought it was 40 different stocks, that, to me feels like poor risk management.").

[1283] Compare Ex. 167 (list of sale of Peterson plaintiff receivables sold to Cedar's Funding) with Ex. 518 at 2, 4, 5, 7 & 8 (bank statements showing credits to RD Legal bank accounts in

amounts equal to the book values listed in Exhibit 167); see also Ex. 463A (Dashboard of sales); Tr. 2314:1—2321:5 (Larochelle) ("Q: Okay. All right. MR. TENREIRO: Let's go back to the left, the categories. BY MR. TENREIRO: Q: Okay. 'Important cases,' what is that? A: Those were four cases that I had picked out to kind of drill down so I could see specific data on those cases. Q: And what are the four? Are they in this drop-down also on M-N 6? A: Yeah. The drop-down list amount. The Peterson, Deep Water Horizon, ONJ cases for Osborn and Cohen, Jayson & Foster. Q: Okay. So let's click on Peterson. . . . Q: What does it show where it says 'Basic summary'? A: Just the basic statistics of the portfolio. Fair value, net book value, the total collections, total advanced, total receivable purchased. It details the collections by cash, by swaps or by purchases from a third party, when it was purchased. Q: Okay. Where it says 'Recent activity this month,' which is kind of in Column O, Row 7, what is that? A: That shows the transactions that happened in that particular month. Q: Okay. . . . And then where it says, 'End of month date,' type in -- let's type in 063024. 2014, sorry. . . . Is that the way to do it, Mr. Larochelle? A: Yes. Q: So that gives you the -- what happened -- what is that? What are we seeing now on the screen? A: Well, you'll see the data updated as of June 30, 2014, so -- Q: I'm sorry. A: Yeah -- Q: Is this for the Peterson case where we are now? A: Yes. Q: Do you see now where it says, 'Recent activity' to the right? A: Yes. Q: You see a lot of things there. What are those? A: Those transactions that happened in that month. Q: Okay. So, for example, where it says 'Participations to CCY,' what's that? A: That means that CCY purchased -- CCY, Constant Cash Yield purchased a portion of that receivable. Q: And there was a couple -- there is one that says on 6/20/2014, 'Payment, Caroline Davis.' What does that mean? A: Well, I don't know if that was actually supposed to be a payment. That looks like that's probably an error. Because I don't think we actually received any cash on this position yet. But it's supposed to refer to a collection from the actual case. Q: Are you familiar with an entity called Cedars Funding? A: Yes. Q: Okay. What is that? A: They are a third-party firm that purchased several of our receivables. Q: Okay. Does that have anything to do with this payment? A: It might. Q: Okay. And where it says 'Amount,' what does it represent? A: That's the total dollars. Q: I'm sorry? A: Total dollars. Q: Total dollars what? A: That were in this transaction that were either -- it was advanced, how much dollars would you put out the door. Q: Okay. A: Collections, how much money you received, et cetera. Q: So as a payment, is that a payment to RD Legal? A: Yes. Q: Let's scroll down a little bit on this section, a little more. . . . You see there's all these payments. The first one starts with 'Davis, Caroline; 63,254.' There's a number here, a number of them? A: Yes. Q: There's actually three on 6/20/24 [sic]. And then there's some -- A: Yes. Q: I keep saying '24. 2014. A: Okay. Q: Do you see that? A: Yes. Q: And those are all -- those are all the payments? A: I think those were all, yeah, payments from a third parties on this case, Cedars Funding. Q: Okay. And these are payments to RD Legal? A: Yes. Q: And are these the amounts of the payments? A: Yes. Q: Okay. And are these all Peterson Plaintiffs -- what are these positions -- A: Those are Peterson Plaintiffs, yes. Q: Okay. . . . Let's pull up Division Exhibit 167, please. . . . Do you recognize this sheet? A: Vaguely. Q: Okay. Were you -- okay. What do you mean? A: I mean, it's just -- I think it's an old -- or relatively old sheet. Q: Let me ask you this: Were you ever asked to compile a list of Iran positions sold from the RD Legal portfolios to third parties? A: Yes. Q: Okay. Did you provide that sheet? A: Yes. Q: All right. Do you know if that's this sheet? A: I believe so. Q: All right. Do you see where it says 'Caroline Davis, date of sale, 6/20/2014 book value, 63,254'? A: Yes. Q: Okay. Let's go back to where we were in Division Exhibit 463-A. Is that where I was? 463-A. Do you see that? Do you see the entry 'Caroline Davis, 6/20/2014, 63,254'? A: Yes. Q: And the next two, Violet Garcia -- I mean, take

725. The Peterson and ONJ Case positions that the Flagship Funds participated to CCY were participated out at their Net Book Value as carried in the Flagship Funds' books, not at the Fair Values that Pluris provided.[1284]

726. Up until April of 2015, Pluris' discount rates for the ONJ Cases in the Flagship Funds' portfolios were under 20%.[1285]

727. Up until October of 2015, Pluris' discount rates for the Licata and Wellcare Turnover Litigations receivables were under 20%.[1286]

728. The amount Osborn and his co-counsel obtained from their work on the ONJ Cases was less than the amount they had received from the Flagship Funds, and less than the value that those receivables had in the Flagship Funds' books.[1287]

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a look at the numbers on your screen and compare them to what's on 167, please, for Violet Garcia. A: Okay. Q: Are those the book values there? A: Yes. Q: Okay. What does that mean? A: That means that was the book value as of this specific date it was sold. Q: Okay. And they were sold at book value? Is that what this means here? A: Yes. Q: Is that the case for -- I mean, just take a moment to compare Division Exhibit 167 to what you have on your screen in 463-A. Please let me know if they match the amounts to the net book values. A: They do.").

[1284] See, e.g., Ex. 3148 (for Osborn receivable participation percentage multiplied by NBV results in nearly exact or exactly participation purchase price by CCY); Ex. 3149-28 (same); Ex. 3149-31 (same); Ex. 3150 at 19, 21, 23, 25, 27, 29 & 31 (same); Ex. 3151 at 19, 21, 23 & 25 (same); Ex. 3152-3 (same); see also Ex. 3150 at 1, 3, 5, 7, 9, 11, 13, 15, 17 (same calculation for various Peterson receivables shows purchase prices were all at NBV); Ex. 3151 at 27, 29, 31, 33, 35, 37 & 39 (same).

[1285] Compare Ex. 115 at 6 & 116 at 6 (14.49% to 16.49% discounts for Novartis litigation receivables in February and March of 2015) with Ex. 117 at 5 & 117 at 6 (20% discount in April of 2015).

[1286] Compare Ex. 123 at 6 (USA v. Wellcare Sch. A-6 discount rate of 16.49% and Licata schedules with discount rates of 17% as of September of 2015) with Ex. 124 at 6 (same receivables at 20% as of October 2015).

[1287] Compare Ex. 2 cell F47 (showing value of $16.2 million for Novartis receivables) with Ex. 715 at 52 (explaining that even if it recouped all of the attorneys' fees for the Novartis settlement, the fund would receive less than $9 million).

729. The advances to some of the Peterson plaintiffs did not net the Flagship Funds the amounts they thought they were purchasing.[1288]

730. Respondents collected approximately $98,898,260.71 from Fay and Perles, with Fay paying $36,898,260.71 on May 12, 2016, and Perles paying $62 million in September of 2016.[1289]

731. As of the end of January 2016, the Fay & Perles positions together were valued at $30,205,255 in the CCY portfolio[1290] and at $69,924,577 in the Flagship Funds' portfolio.[1291] In other words, without even accounting for the additional accrual of interest owed by Mr. Fay and Mr. Perles between January and May or September of 2016, respectively, by January of 2016 the value of the Fay & Perles positions in the Flagship Funds' and CCY's portfolios was already higher than that which Respondents would eventually collect on those assets.

732. When Mr. Perles paid off his position to RD Legal, he simply paid them the amount he owed them, which was measured as principal plus interest—in other words, the net book value of that position—minus a $3.2 million discount.[1292]

1288 See, e.g., Ex. 499 at 8 (describing over $20,000 shortfall to be paid to RD Legal Funding on Ian Guy's advance); Ex. 625 at 5 (explaining that "[i]n many cases . . . the amount owed to an Advance Company exceeds the amount of the respective Plaintiff's initial distribution").

1289 Ex. 2333 at 1 ($62 million payoff from Perles); Ex. 2998 ($36.898 million payoff from Fay).

1290 Ex. 7ZF (sum of Q55-Q60 and Q80-Q86).

1291 Ex. 8ZZD (sum of Q50-Q67).

1292 Ex. 555A at tab "PL – payoff – all"; see also Tr. 4170:9-13 (D. Martin) ("Q: If they're sold at exactly book value, does that tell you anything as a valuation -- A: Well, yeah. I mean, think about it. The best you can get -- I mean, you know, the collection is the receivable itself plus the accrual."); Tr. 4171:13—4172:2 (D. Martin) ("Q: I understand what an investor might pay. But what I was asking about was what Mr. Perles would pay RD Legal back. He's not going to pay more than the net book value? A: He's not going to pay back more than what he owes them. Q: Exactly. He's not going to pay back more than what he owes them. That's my question. And Mr. Perles didn't pay back RD Legal more than he owed them, correct? A: He paid them back 60

733. Except for to the non-straight out purchases of fees with Mr. Fay, Mr. Fay also paid back the net book value of his positions plus the amount of the straight out purchases.[1293]

734. Respondent RDLC had the following amount of revenue from the Flagship Funds for the following years at issue in the OIP:

a. For 2011, $8,617,771;

b. For 2012, $8,617,711;

c. For 2013, $13,690,566;

d. For 2014, $14,760,909; and

e. For 2015, $15,661,831.[1294]

735. The total revenues for July 14, 2011 through the end of 2015—using $4,037,367 as the prorated share of 2011 revenues excluding the 194 days pre-dating the filing of the OIP by more than 5 years—is $56,768,384.

736. Dersovitz's draws for years 2011 through 2014 were $3,040,690 for 2011; $2,189,532 for 2012; $3,011,271 for 2013; and $1,687,546 for 2014.[1295]

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million bucks. Q: In fact, it was less than he owed them, right? A: But 60 million -- Q: They gave him a discount?").

[1293] Ex. 555B; 555C; 555D.

[1294] See Ex. 2379 at 1-4 (the amount for 2014 does not include the additional $223,563 fee Respondent RDLC obtained from the Peterson SPV and the amount for 2015 does not net out the $12,567,133 number that Respondents aver was "owed" to the Offshore Flagship Fund but was not actually paid); see Tr. 5847:24—5848:13 (Dersovitz) ("Q: With regard to the expenses to run the fund, I will ask you to take a look at 2379. Do you have 2379, the first page, in front of you? A: Yes. Q: What is the first page of 2379? A: It is a P&L for the operation of the business. Q: When you say -- A: For 2012, I apologize. Q: When you say 'P&L,' what do you mean? A: Profit and loss. Q: Is this something that can be readily attained from a software program? A: QuickBooks. Q: And the QuickBooks for RD Legal? A: Yes."); Tr. 5853:11-23 (Dersovitz) ("Q: And if you take a look at the revenue for investment manager offshore, what does it say? A: Negative 12,567,133. Q: And what about the revenue for General Partner Onshore? A: 15,661,831. Q: A positive number there? A: Yes. Q: Why is the revenue negative for the offshore fund? A: It's probably a payable that was due and owing from the domestic to offshore to make up for a shortfall in performance.").

737. Discounting the 2011 draw to account for the only the 171 days within five years of the filing of the OIP—i.e., discounting the 2011 draw to $1,424,542—Dersovitz's total draw for 2011 through the end of 2014, the last year he claims to have drawn a positive balance, is $8,312,891.[1296]

738. Dersovitz testified that he did not move assets out of his name during the pendency of the Commission's investigation into him and his companies,[1297] but when confronted with documents indicating otherwise, testified that his earlier testimony must have been a "mistake."[1298]

739. The expenses that Respondents incurred in running all of their business—including, for example, in managing receivables that had been participated in whole or in part to Constant Cash Yield ("CCY"), were commingled and indistinguishable from expenses used to manage solely the assets of the Flagship Funds.[1299]

[1295] Ex. 2378; Tr. at 5844:13-20 (Dersovitz) ("Q: I'm going to ask you to take a look at Exhibit 2378. Have you seen that? A: I have seen that, yes. Q: What is it? A: That is a net draw calculation that has been made by -- that was produced by my CFO for various years. Q: Do you understand whether or not it's accurate? A: I believe it is accurate, yes.").

[1296] Ex. 2378.

[1297] Tr. 6201:13-17 (Dersovitz) ("Q: Okay. You testified last week that you didn't move anything -- any of the assets reflected on 2727 out of your name during the pendency of the SEC's investigation; is that right? A: Correct.").

[1298] Tr. 6211:8-12 (Dersovitz) ("Q: How do you square this -- the ownership change in 2015 with your testimony that you didn't move any assets out of your name while you were under investigation from the SEC? A: Made a mistake.").

[1299] Tr. 3231:1-18 (Schall) ("Q: And is it your understanding that CCY only, in fact, purchased a portion or -- sorry -- a participation in these assets so that it would only receive a certain return on the assets and the remainder would go back to either the fund or RD Legal? A: Yes. Q: Okay. And do you recall what the return to CCY was? A: I believe it was either 12.5 percent or 13.5 percent. Q: Okay. Just to summarize in laymen's terms, CCY was not purchasing the entire asset; is that fair to say? A: Yes. Q: It was -- RD Legal retained a remainder of interest in these assets, correct? A: Yes."); Tr. 3245:16-24 (Schall) ("[discussing Ex. 16] Q: . . . And those rights included -- those rights specifically were a certain rate of return over what they paid for them, correct? A: Correct. Q: Okay. Do the -- do the financials for the fund distinguish between expenses related to the assets that were not participated and assets that were participated? A: No.").

740. It is Respondents, not the Flagship Funds and not the investors, that are responsible for the expenses of running the business.[1300]

741. Part of the "expenses" the Respondents have incurred since 2015 have been financed by "borrowing" funds from the Dersovitz Family LLC, which is wholly owned by Dersovitz and his family, which amounts are being booked as loans from Dersovitz Family LLC in the books of the Flagship Funds.[1301]

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June 23, 2017

Respectfully submitted,

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1300 See, e.g., Ex. 42 at 6 (January 2013 FAQ) ("Unlike other hedge funds, we charge no fees. We absorb all the costs for: origination, underwriting, fund expenses, payroll, marketing, travel, fund administration, fund audits, infrastructure, and other fund related costs.").

1301 Tr. 5874:4-19 (Dersovitz) ("Q: How have you managed to come up with money to continue the operation of the fund? A: With the advice that we received in March of 2015, we began creation of other vehicles. RD Legal Finance came into existence. That's an LLC came into existence and operation in, as best as I can recall, middle of -- middle of '15. And that is the Delaware Series LLC that I was referring to a moment ago. The sole investor in that vehicle is the Dersovitz Family LLC. It has been profitable, so the monies that I use to keep my office staff in place pending the resolution of this matter and carry the overhead came from two sources. The income that I make or that Pam made and was kind enough to allow me to use from the Dersovitz Family LLC's participation in investments in RD Legal Finance, LLC. And I've also had to unfortunately borrow $9 million."); Tr. 5877:18-21 (Dersovitz) ("Q: Mr. Dersovitz, that money that has been borrowed by Dersovitz Family LLC, is there an obligation to pay that money back? A: I fully intend to."); Tr. 5878:4-8 (Dersovitz) ("Q: If the money had not been borrowed by Dersovitz Family LLC to fund the ongoing operations, would that have affected the balance sheet that we saw in 2727 with regard to Dersovitz Family LLC assets? A: Yes.").